

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,133 of 28th October, 1999**

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I ASSENT,  
P. SPELLER,  
ACTING GOVERNOR.

28th October, 1999.



**GIBRALTAR**

**No. 30 of 1999**

**AN ACT** to amend the Companies Act.

**ENACTED** by the Legislature of Gibraltar.

**Title and commencement.**

1. This Act may be cited as the Companies (Amendment) Act 1999 and comes into operation on the 1st day of January 2000.

**Amendment to section 2.**

2. Section 2 (interpretation) of the Companies Act (“the principal Act”) is amended by inserting the definition —

““authorized signatories” means —

- (a) the persons authorized by the company to sign, singly or jointly as resolved by the company from time to time, on behalf of, and thereby to bind the company, to the extent so resolved; or
- (b) two directors or a director and the secretary of the company signing jointly;”

after the definition “articles”.

**Amendment to section 8.**

3. Section 8 (articles prescribing regulations for companies) of the principal Act is amended by omitting “may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited,” and substituting “shall in respect of any company”.

**Amendment to section 15.**

4. Section 15 (effect of registration) of the principal Act is amended —

- (a) in subsection (2) by omitting “and a common seal”;
- (b) by inserting after subsection (2) the following subsection —

“(3) A company may, but need not, have a seal for use in Gibraltar.”.

**Amendment to section 19A.**

5. Section 19A (power to require company to change name) of the principal Act is amended in subsection (1) by inserting after paragraph (b) the following paragraph —

“(c) is in the opinion of the Registrar undesirable;”.



**Amendment to section 21.**

6. Section 21 (provision as to memorandum and articles of companies limited by guarantee) of the principal Act is amended by —

- (a) omitting subsection (1);
- (b) omitting “(2)”.

**New sections 24B, 24C, 24D, 24E, 24F, 24G, 24H, 24J, 24K and 24L.**

7. The principal Act is amended by inserting after section 24A the following sections —

**“Re-registration of limited company as unlimited.**  
(Companies Act 1985, section 49)

24B.(1) Subject to the provisions of this section and section 24C, a company which is registered as limited may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this section.

(2) A company is precluded from re-registering under this section if it is limited by virtue of registration under section 24D.

(3) A public company shall not be re-registered under this section.

(4) A company which has previously been re-registered as unlimited shall not be re-registered under this section.

(5) An application under this section shall be —

- (i) the documents specified in subsection (10); and
- (ii) the prescribed fee.

(6) An application under this section shall set out such alterations in the company’s memorandum as —

- (a) if it is to have a share capital, are requisite to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company to be formed as an unlimited company having a share capital; or
- (b) if it is not to have a share capital, are requisite in the circumstances.

(7) If the articles of the company have been registered, the application under this section shall set out such alterations in those articles as —

- (a) if the company is to have a share capital, are requisite to bring the articles (in substance and in form) into conformity with the requirements of this Act with respect to the articles of a company to be formed as an unlimited company having a share capital; or
- (b) if the company is not to have a share capital, are requisite in the circumstances.

(8) If articles of the company have not been registered, the application under this section shall have annexed to it, and request the registration of, printed articles.

(9) Articles of the company annexed to an application under this section by virtue of subsection (8) shall, if the company is to have a share capital, comply with the requirements mentioned in subsection (7)(a) and, if not, be articles appropriate to the circumstances.

(10) The documents to be lodged under subsection (5)(d)(i) with the Registrar are —

- (a) the prescribed form of assent to the company being registered as unlimited, subscribed by or on behalf of all the members of the company;
- (b) a statutory declaration made by the directors of the company —

- (i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole of the membership of the company; and
- (ii) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered so to do;
- (c) a printed copy of the memorandum incorporating the alterations in it set out in the application;
- (d) if articles have been registered, a printed copy of them incorporating the alterations set out in the application; and
- (e) where the company carries on in or from within Gibraltar a business which is —
  - (i) licensed under the Financial Services Act 1989; or
  - (ii) authorized under the Banking Act 1992 or the Financial Services Act 1998; or
  - (iii) licensed or authorized in accordance with a Community requirement other than one falling within sub-paragraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company deregistering as a limited company and registering as an unlimited company.

(11) For the purposes of this section —

- (a) subscription to the form of assent by the legal personal representative of a deceased member of a company is deemed subscription by him;

- (b) a trustee in bankruptcy of a member of a company is, to the exclusion of the latter, deemed to be a member of the company.

**Certificate of re-registration under section 24B.**

(Companies Act 1985, section 50)

24C.(1) The Registrar shall retain the application and other documents lodged with him under section 24B and shall —

- (a) if articles are attached to the application, register them; and
- (b) issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate referred to in subsection (1)(b) -

- (a) the status of the company, by virtue of the issue, is changed from limited to unlimited; and
- (b) the alterations in the memorandum set out in the application and (if articles have been previously registered) any alteration to the articles so set out take effect as if duly made by resolution of the company; and
- (c) the provisions of this Act apply accordingly to the memorandum and articles as altered.

(3) The certificate issued under subsection (1)(b) is conclusive evidence that the requirements of section 24B in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorized to be registered under this Act in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 24B is a continuation of that company prior to that re-registration.



**Re-registration of unlimited company as limited.**

(Companies Act 1985, section 51)

24D.(1) Subject to the provisions of this section and section 24E, a company which is registered as unlimited may be re-registered as limited if —

- (a) a special resolution that it should be so re-registered is passed, and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A company shall not under this section be re-registered as a public company.

(3) A company is precluded from re-registering under this section if it is unlimited by virtue of registration under section 24B.

(4) The special resolution referred to in subsection (1)(a) shall state whether the company is to be limited by shares or by guarantee and —

- (a) if it is to be limited by shares, shall state what the share capital shall be and provide for the making of such alterations —
  - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company so limited, and
  - (ii) in the articles as are requisite in the circumstances;
- (b) if it is to be limited by guarantee, shall provide for the making of such alterations in its memorandum and articles as are necessary to bring them (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum and articles of a company so limited.

(5) The special resolution referred to in subsection (1)(a) is subject to section 110 (copy to be forwarded to the Registrar within fifteen days).

(6) An application for the company to be re-registered as limited, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with —

- (a) the necessary documents, and
- (b) the prescribed fee,

not earlier than the day on which the copy of the special resolution forwarded under section 110 is received by him.

(7) The documents required to be lodged with the Registrar for the purposes of subsection (6)(a) are —

- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
- (b) a printed copy of the articles so altered;
- (c) where the company carries on in or from within Gibraltar a business which is —
  - (i) licensed under the Financial Services Act 1989; or
  - (ii) authorized under the Banking Act 1992 or the Financial Services Act 1998; or
  - (iii) licensed or authorized in accordance with a Community requirement other than one falling within sub-paragraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company deregistering as an unlimited company and registering as a limited company; and

- (d) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Act or the consent in writing of every registered mortgagee or chargee to the deregistration of the company as an unlimited company and reregistration as a limited company has been obtained.

(8) This section does not apply to the re-registration of an unlimited company as a public company.

**Certificate of re-registration under section 24D.**  
(Companies Act 1985, section 52)

24E.(1) The Registrar shall retain the application and other documents lodged with him under section 24D and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate under subsection (1) —

- (a) the status of the company, by virtue of the issue, is changed from unlimited to limited; and
- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 24D in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorized to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 24D is a continuation of that company prior to that re-registration.

**Re-registration of company limited by shares as company limited by guarantee and not having share capital.**

24F.(1) Subject to the provisions of this section and section 24G, a company which is registered as limited by shares or as limited by shares and by guarantee may be re-registered as limited by guarantee and not having share capital if —

- (a) a special resolution that it should be so re-registered is passed by the vote of each member entitled to receive notice of an extraordinary meeting of the company, and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A public company shall not be re-registered under this section.

(3) A company is precluded from re-registering under this section if it is limited by shares by virtue of registration under section 24H.

(4) The special resolution referred to in subsection (1)(a) shall state the share capital of the company and shall provide -

- (a) that the total amount of the guarantee of the members from time to time shall not fall below the amount of the share capital of the company at the date of the resolution; and
- (b) for the making of such alterations —
  - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company limited by guarantee and not having share capital, and
  - (ii) in the articles as are requisite in the circumstances.

(5) The special resolution referred to in subsection (1)(a) is subject to section 110 (copy to be forwarded to the Registrar within fifteen days).

(6) An application for the company to be re-registered as limited by guarantee and not having share capital, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with —

- (a) the necessary documents, and
- (b) the prescribed fee,

not earlier than the day on which the copy of the special resolution forwarded under section 110 is received by him.

(7) The documents required to be lodged with the Registrar for the purposes of subsection (6)(a) are —

- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
- (b) a printed copy of the articles so altered;
- (c) where the company carries on in or from within Gibraltar a business which is —
  - (i) licensed under the Financial Services Act 1989; or
  - (ii) authorized under the Banking Act 1992 or the Financial Services Act 1998; or
  - (iii) licensed or authorized in accordance with a Community requirement other than one falling within sub-paragraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company deregistering as a company limited by shares and registering as a company limited by guarantee; and

- (d) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Act.

(8) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

(9) For the purposes of this section “share capital” shall include —

- (a) the nominal value of the allotted shares of every class in the company, whether or not paid up and whether or not paid up in cash or otherwise; and
- (b) any amount in the share premium account (as defined by section 46A(1)) of the company.

**Certificate of re-registration under section 24F.**

24G.(1) The Registrar shall retain the application and other documents lodged with him under section 24F and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate under subsection (1) —

- (a) the status of the company, by virtue of the issue, is changed from limited by shares or limited by shares and by guarantee, as the case may be, to limited by guarantee; and
- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 24F in respect of re-registration and of matters precedent and

incidental to it have been complied with, and that the company was authorized to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 24F and in respect of which a certificate has been issued under subsection (1) is a continuation of that company prior to that re-registration.

**Re-registration of company limited by guarantee and not having share capital as company limited by shares.**

24H.(1) Subject to the provisions of this section and section 24J, a company which is registered as limited by guarantee and not having share capital may be re-registered as limited by shares if—

- (a) a special resolution that it should be so re-registered is passed, and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A company shall not be re-registered under this section as a public company.

(3) A company is precluded from re-registering under this section if it is limited by guarantee by virtue of registration under section 24F.

(4) The special resolution referred to in subsection (1)(a) shall state the total amount of the guarantee of the members at the date of the resolution and shall provide—

- (a) that the amount of the share capital of the company from time to time shall not fall below the total amount of the guarantee of the members at the date of the resolution; and
- (b) for the making of such alterations—
  - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company limited by shares, and
  - (ii) are requisite to bring the articles (in substance and in form) into conformity with the requirements of this Act with respect to the



articles of a company to be formed as an unlimited company having a share capital.

(5) The special resolution referred to in subsection (1)(a) is subject to section 110 (copy to be forwarded to the Registrar within fifteen days).

(6) An application for the company to be re-registered as limited by shares, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with —

- (a) the necessary documents, and
- (b) the prescribed fee.

not earlier than the day on which the copy of the special resolution forwarded under section 110 is received by him.

(7) The documents required to be lodged with the Registrar for the purposes of subsection (6) are —

- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
- (b) a printed copy of the articles so altered; and
- (c) where the company carries on in or from within Gibraltar a business which is —
  - (i) licensed under the Financial Services Act 1989; or
  - (ii) authorized under the Banking Act 1992 or the Financial Services Act 1998; or
  - (iii) licensed or authorized in accordance with a Community requirement other than one falling within sub-paragraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company

deregistering as a company limited by guarantee and  
registering as a company limited by shares.

**Certificate of re-registration under section 24H.**

24J.(1) The Registrar shall retain the application and other documents lodged with him under section 24H and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate under subsection (1) —

- (a) the status of the company, by virtue of the issue, is changed from limited by guarantee to limited by shares; and
- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 24H in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorized to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 24H and in respect of which a certificate has been issued under subsection (1) is a continuation of that company prior to that re-registration.

**Deregistration of company limited by shares or guarantee or both on registration as a limited partnership.**

24K.(1) Subject to the provisions of this section and section 24L, a company which is registered as limited by shares or by guarantee or by shares and guarantee may be deregistered on being registered as a limited partnership under the Limited Partnerships Act if —

- (a) a special resolution that it should be so re-registered is passed by the vote of each member entitled to receive

notice of an extraordinary meeting of the company,  
and

- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A public company shall not be de-registered under this section.

(3) The special resolution referred to in subsection (1)(a) shall state the share capital or the total amount of the guarantee or both, as the case may be, of the company and shall provide-

- (a) that the total amount of the capital of the limited partnership from time to time shall not fall below the amount of the share capital or the total amount of the guarantee or the total of both, as the case may be, of the company at the date of the resolution; and
- (b) for the method of converting shares or membership or both, as the case may be, into participation in the capital of the limited partnership, specifying which members shall become the limited partners and which shall become the general partners and the sum contributed to the capital of the limited partnership by each shareholder or member or both, as the case may be; and
- (c) or the making of such alterations in the memorandum and articles as are necessary to bring them (in substance and in form) into conformity with the requirements of the Partnership Act and the Limited Partnerships Act as the partnership agreement.

(4) The special resolution referred to in subsection (1)(a) is subject to section 110 (copy to be forwarded to the Registrar within fifteen days).

(5) An application for the company to be deregistered on registration under the Limited Partnerships Act as a limited partnership, framed in the prescribed form and signed by a

director or by the secretary of the company, shall be lodged with the Registrar, together with —

- (a) the necessary documents, and
- (b) the prescribed fee,

not earlier than the day on which the copy of the special resolution forwarded under section 110 is received by him.

(6) The documents required to be lodged with the Registrar for the purposes of subsection (5)(a) are —

- (a) a printed copy of the memorandum and articles as altered in pursuance of the special resolution to be the limited partnership agreement containing —
  - (i) the name of the company and the firm name under which registration as a limited partnership is to be sought;
  - (ii) the proposed principal place of business of the limited partnership;
  - (iii) the date on which it is proposed to register under the Limited Partnerships Act;
  - (iv) a copy of the statement to be submitted to the Registrar of Limited Partnerships in accordance with section 7A of the Limited Partnerships Act;
- (b) a certificate of good standing in respect of the company issued by the Registrar;
- (c) where the company carries on in or from within Gibraltar a business which is —
  - (i) licensed under the Financial Services Act 1989; or
  - (ii) authorized under the Banking Act 1992 or the Financial Services Act 1998; or

- (iii) licensed or authorized in accordance with a Community requirement other than one falling within sub-paragraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company deregistering under the Act and registering under the Limited Partnerships Act;

- (d) evidence to the satisfaction of the Registrar that no proceedings for insolvency have been commenced against the company in Gibraltar;
- (e) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Act or the consent in writing to the deregistration of every registered mortgagee or chargee has been obtained.

(7) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

(8) For the purposes of this section “share capital” shall include —

- (a) the nominal value of the allotted shares of every class in the company, whether or not paid up and whether or not paid up in cash or otherwise; and
- (b) any amount in the share premium account (as defined by section 46A(1)) of the company.

**Certificate of deregistration under section 24K.**

24L.(1) The Registrar shall —

- (a) retain the application and other documents lodged with him under section 24K; and —

(b) provide to the Registrar of Limited Partnerships appointed under section 13 of the Limited Partnerships Act the document provided for in section 7A of that Act.

(2) The Registrar shall —

(a) on being satisfied that the requirements of section 24K are satisfied; and

(b) having received notice in writing from the Registrar of Limited Partnerships appointed under section 13 of the Limited Partnerships Act that, on receipt of confirmation from the Registrar that the requirements of section 24K and this section have been met in respect of the body, the body may be registered under section 4 of that Act,

deregister the body as a company registered under this Act and issue to the company a Certificate of Deregistration and Continuation for the purpose of Registration as a limited partnership on the date and at the time signified by the Registrar of Limited Partnerships as the date and time at which the registration of the body under section 4 of the Limited Partnerships Act shall occur.

(3) On the issue of the certificate under subsection (2) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(4) The certificate issued under subsection (2) is conclusive evidence that the requirements of section 24K in respect of deregistration and of matters precedent and incidental to it have been complied with, and that the company was authorized to be deregistered in pursuance of that section and was duly so deregistered.

(5) For the avoidance of doubt it is hereby declared that a limited partnership registered under section 4 of the Limited Partnerships Act as a result of the procedures contained in —

- (a) section 24K and this section; and
- (b) section 7A of the Limited Partnerships Act,

is on the date and time referred to in subsection (2) a continuation of the undertaking of the company deregistered by virtue of the procedures referred to in paragraph (a).”.



**Repeal and replacement of section 28A.**

8. Section 28A, including the marginal note thereto is repealed and replaced by the following section —

**“Pre-incorporation actions.**

28A. (1) Where, —

- (a) prior to the date of incorporation mentioned in the certificate of incorporation of a company, any action has been carried out in the name of that company and purportedly by or on behalf of that company, and
- (b) that company is not precluded from doing so by its memorandum or articles,

the company may after that date by resolution ratify that action, and that action shall then be deemed to be the action of the company and —

- (c) the company shall be entitled to the benefit of that action; and
- (d) the company shall be liable in respect of that action; and
- (e) any failure to take any steps necessary to give effect to that action shall be a failure by the company.

(2) Except —

- (a) where a company has ratified that action, as provided for in subsection (1), or
- (b) there is an agreement to the contrary,

an action carried out in the name of a company and purportedly by or on behalf of that company prior to the date of incorporation mentioned in the certificate of incorporation of that company shall be the action of the person or persons by whom it was carried out and that person or those persons shall

be jointly and severally liable in respect of that action and shall be entitled to the benefit of that action.”.

**Amendment to section 29.**

9. Section 29 (form of contracts) of the principal Act is amended —

- (a) in the marginal note thereto by inserting a comma and “deeds, instruments and other documents” after “contracts”;
- (b) in subsection (1)(a) by omitting “under the common seal of the company;” and substituting a dash and the following subparagraphs —
  - “(i) if the company has a seal for use in Gibraltar, under that seal; or
  - (ii) signed by the authorized signatories of the company, each signing or under the seal of the signatory, as the case may be;”;
- (c) by inserting the following subsection after subsection (3) —

“(4) The references in subsections (1) to (3) to a contract or contracts shall be taken to include reference to deeds, instruments and other documents and where a company executes a deed, instrument or other document, whether or not the company has a common seal, it shall be sufficient and the company shall be bound if that deed, instrument or other document is signed by the authorized signatories of the company intending it to be executed by way of a deed.”.

**Amendment to section 31.**

10. Section 31 (execution of deeds abroad) of the principal Act is amended —

- (a) by omitting the marginal note thereto and substituting the following —

**“Execution of deeds, instruments and other documents abroad  
and execution in Gibraltar by foreign companies.”;**

- (b) in subsection (1) by —
  - (i) omitting “under its common seal” and substituting a dash and the following paragraphs —
    - “(a) if the company has a seal for use in Gibraltar, under that seal; or
    - (b) signed by the authorized signatories of the company, each signing or under the seal of the signatory, as the case may be;”;
  - (ii) inserting a comma and “instruments or other documents” after “deeds”;
- (c) in subsection (2) by —
  - (i) inserting a comma and “instrument or other document” after “deed”;
  - (ii) omitting everything after “company and” where those words appears for the first time and substituting a dash and the following —
    - “(a) if he has a seal, under that seal; or
    - (b) signed by him or, where the attorney is a legal person, the authorized signatories of the attorney,shall bind the company and have the same effect as if the deed, instrument or other document had been sealed or signed as provided for in section 29(1).”;
- (d) by inserting the following subsections after subsection (2) —
  - “(3) Where a company executes a deed, instrument or other document outside Gibraltar, whether or not the company has an official seal for use in the territory, district or place outside Gibraltar, it shall be sufficient and the company and the other parties shall be bound if that deed, instrument or document is signed by the authorized signatories of the company intending it to be executed by way of a deed.

(4) Section 15(3) shall apply to a company incorporated outside Gibraltar as it applies to a company incorporated or registered under this Act.

(5) Section 29(1)(a) shall apply to a company incorporated outside Gibraltar as if there were substituted for sub-paragraph (ii) the following —

- “(ii) by any person who, in accordance with the laws of the territory in which the company is incorporated, is acting under the authority, (express or implied) of that company; or
- (iii) in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a company;”.

(6) In respect of a company incorporated outside Gibraltar, a deed, instrument or other document which —

- (a) is signed by a person or persons who, in accordance with the laws of the territory in which the company is incorporated, is or are acting under the authority (express or implied) of that company; and
- (b) is expressed (in whatever form of words) to be executed by the company,

has the same effect in relation to that company as it would have in relation to a company incorporated in Gibraltar if executed in accordance with section 29.

(7) In favour of a purchaser a document shall be deemed to have been duly executed if it purports to have been signed by a person or persons who, in accordance with the laws of the territory in which the company is incorporated, is or are acting under the authority (express or implied) of that company, and for the purpose of this section “a purchaser” means a purchaser in good faith for valuable consideration and includes a lessee,

mortgagee or other person who for valuable consideration acquires an interest in a property.

(8) A document executed by a company incorporated outside Gibraltar which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect upon delivery as a deed and it shall be presumed, unless the contrary intention is proved, to be delivered upon its being so executed.”.

**Amendment to section 32.**

11. Section 32 (power for company to have official seal for use abroad) of the principal Act is amended —

(a) in subsection (1) by omitting everything after “an official seal, which” and substituting a dash and the following paragraphs -

“(a) if the company has a seal for use in Gibraltar, shall be a facsimile of that seal; or

(b) if the company does not have a seal for use in Gibraltar, shall bear the name of the company engraven in legible characters,

with the addition on its face of the name of every territory, district or place where it is to be used.”;

(b) in subsection (2) by omitting “with the common seal of the company” and substituting “or signed as provided for in section 29(1)”;

(c) in subsection (3) by omitting “under its common seal” and substituting “sealed or signed as provided for in section 29(1)”.

**Amendment to section 33.**

12. Section 33 (authentication of documents) of the principal Act is amended by omitting everything after “signed by” and substituting “the authorized signatories of the company.”.

**Amendment to section 42.**

13. Section 42 (return as to allotments) of the principal Act is amended —

(a) in subsection (3) —

- (i) by omitting the comma after “manager” and “secretary”;
- (ii) in the proviso thereto by omitting “court for relief, and the court” and substituting “Registrar for leave to file the return of allotment out of time, and the Registrar”;

(b) by inserting after subsection (3) the following subsections —

“(4) An application made under subsection (3) shall be accompanied by —

(a) an affidavit of —

- (i) the applicant’s interest in the matter; and
- (ii) a statement of the facts on which the application is based; and
- (iii) the relief sought; and

(b) the fee prescribed in Schedule 8.

(5) The Registrar may, in his discretion, require that a person making an application under subsection (3) give notice of that application (including the facts on which the application is based and the relief sought) to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest and may specify the time for receipt by him of any written objection from such person.

(6) On receipt within the time specified by virtue of subsection (5) of any written objection to the granting by the Registrar of an extension of time within which the return of allotment may be filed the Registrar shall forthwith notify the

applicant of the receipt of the objection, the terms of the objection and of the identity of the objector.

(7) Where an application for an extension of time for the filing of a return of allotment has been made under subsection (3), the Registrar may, in his discretion refuse to consider the application and require that the person by whom the application was made apply to the Supreme Court for an order for such an extension of time.

(8) On receipt of an application under this section the Registrar, if satisfied that there are good grounds for extending the time within which the return of allotment may be made, may direct that the time be extended to the extent specified in his direction.

(9) A direction given under this section may be made subject to conditions and the Registrar may include such further directions and such provisions as seem just and equitable in the circumstances.

(10) The court may, on application under subsection (7), refuse the application or order the period of time for the filing of the return of allotment be extended by the period specified by the court.

(11) In any proceedings under this section, the court may determine any question which may be necessary or expedient to decide in connection with the extension of the time within which the return of allotment may be filed.

(12) The Registrar shall be entitled to appear and be heard on any application to the court under this section and shall appear if so directed by the court.

(13) Any order made by the court under this section shall direct that notice of the order shall be served on the Registrar in the prescribed manner and the Registrar shall, on receipt of the notice, act accordingly.”.

**Amendment to section 45A.**



14. Section 45A (power of company to purchase own shares) of the principal Act is amended —

- (a) in subsection (1) by inserting “and to any requirements imposed on that company by virtue of any licence or authorization to which it is subject under any other Act,” after “this section,”;
- (b) in subsection (2) by omitting “Schedule 11” and substituting “sections 45B to 45V”;
- (c) in subsection (3) by —
  - (i) omitting “Schedule 11” and substituting “sections 45B to 45V”;
  - (ii) omitting “the Schedule” and substituting “those sections”.

**New sections 45B to 45V.**

15. The principal Act is amended by inserting after section 45A the following sections —

**“Acquisition other than for value, in reduction of capital, alteration of objects and on forfeiture.**

45B. The restrictions of section 45A shall not apply to a company limited by shares or limited by guarantee and by shares which —

- (a) acquires any of its own fully paid shares other than for valuable consideration;
- (b) acquires its own shares in a reduction of capital duly made;
- (c) purchases its own shares in pursuance of an order made under section 6;
- (d) accepts its own shares in forfeiture of them, or shares surrendered in lieu, in pursuance of the articles, for

failure to pay any sum payable in respect of the shares.

**Restrictions on power of company to purchase own shares.**

45C.(1) Section 46 applies to the purchase by a company under section 45A of its own shares as it applies to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the articles as required by section 46(3).

(2) A company may not under section 45A purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

**Definitions of “off-market” and “market” purchase.**

45D. (1) A purchase by a company of its own shares is “off-market” if the shares either —

- (a) are purchased otherwise than on a recognised investment exchange; or
- (b) are purchased on a recognised investment exchange but are not subject to a marketing arrangement on that investment exchange.

(2) For this purpose, a company’s shares are subject to a marketing arrangement on a recognised investment exchange if the company has been afforded facilities for dealings in those shares to take place on that investment exchange without prior permission for individual transactions from the authority governing that investment exchange and without limit as to the time during which those facilities are to be available.

(3) A purchase by a company of its own shares is a “market purchase” if it is a purchase made on a recognised investment exchange other than a purchase which is an off-market purchase by virtue of subsection (1)(b).

(4) In this section “recognised investment exchange,” means a recognised investment exchange as so listed from time to time in Chapter 11 of Administrative Notice No. 7 issued by the Banking Commissioner under the provisions of the Banking Act 1992.

**Authority for off-market purchase.**

45E.(1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved in advance in accordance with this section or under section 45F.

(2) The terms of the proposed contract shall have been authorized by a special resolution of the company before the contract is entered into and subsections (3) to (7) apply with respect to that authority and to resolutions conferring it.

(3) Subject to subsection (4), the authority may be varied, revoked or from time to time renewed by special resolution of the company.

(4) In the case of a public company, the authority conferred by the resolution shall specify a date on which the authority is to expire, and in a resolution conferring or renewing authority the date shall be not be later than 18 months after that on which the resolution is passed.

(5) A special resolution to confer, vary, revoke or renew authority is not effective if any member of the company holding shares to which the resolution relates exercised the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so, and for this purpose —

- (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;

- (b) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and
- (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

(6) Such a resolution is not effective for the purposes of this section unless (if the proposed contract is in writing) a copy of the contract or (if not) a written memorandum of its terms is available for inspection by members of the company both —

- (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and
- (b) at the meeting itself,

and a memorandum of contract terms so made available shall include the names of any members holding shares to which the contract relates, and a copy of the contract so made available shall have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

(7) A company may agree to a variation of an existing contract so approved, but only if the variation is authorized by a special resolution of the company before it is agreed to, and subsections (3) to (6) apply to the authority for a proposed variation as they apply to the authority for a proposed contract, save that a copy of the original contract or (as the case may require) a memorandum of its terms, together with any variations previously made, shall also be available for inspection in accordance with subsection (6).

**Authority for contingent purchase contract.**

45F.(1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares —

- (a) which does not amount to a contract to purchase those shares; but

- (b) under which the company may (subject to any conditions) become entitled or obliged to purchase those shares.

(2) A company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into, and subsections (3) to (7) of section 45E apply to the contract and its terms.

**Authority for market purchase.**

45G.(1) A company shall not make a market purchase of its own shares unless the purchase has first been authorized by the company in a general meeting.

(2) That authority —

- (a) may be general for that purpose, or limited to the purchase of shares of any particular class or description; and
- (b) may be unconditional or subject to conditions.

(3) The authority shall —

- (a) specify the maximum number of shares authorized to be acquired;
- (b) determine both the maximum and the minimum prices which may be paid for the shares; and
- (c) specify a date on which it is to expire.

(4) The authority may be varied, revoked or from time to time renewed by the company in general meeting, but this is subject to subsection (3), and in a resolution to confer or renew authority the date on which the authority is to expire shall not be later than 18 months after that on which the resolution is passed.

(5) A company may under this section make a purchase of its own shares after the expiry of the time limit imposed to comply with subsection (3)(c) if the contract of purchase was concluded before the authority expired and the terms of the authority permitted the company to make a contract of purchase which would or might be executed wholly or partly after its expiration.

(6) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum prices for purchase by —

- (a) specifying a particular sum; or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(7) A resolution of a company conferring, varying, revoking or renewing authority under this section is subject to section 110 (resolution to be sent to Registrar within 15 days).

**Assignment or release of company's right to purchase own shares.**

45H.(1) The rights of a company under a contract approved under section 45E or 45F, or under a contract for a purchase authorized under section 45G, are not capable of being assigned.

(2) An agreement by a company to release its rights under a contract approved under section 45E or 45F is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into, and subsections (3) to (7) of section 45E apply to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

**Payments apart from purchase price to be made out of distributable profits.**

45J.(1) A payment made by a company in consideration of —

- (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract approved under section 45F; or
- (b) the variation of a contract approved under section 45E or 45F; or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract approved under section 45E or 45F or under a contract for a purchase authorized under section 45G,

shall be made out of the company's distributable profits.

(2) If the requirements of subsection (1) are not satisfied in relation to a contract —

- (a) in a case within paragraph (a) of the subsection, no purchase by the company of its own shares in pursuance of that contract is lawful under section 45A;
- (b) in a case within paragraph (b) of the subsection, no such purchase following the variation is lawful under section 45A; and
- (c) in a case within paragraph (c), the purported release is void.

**Disclosure by company of purchase of own shares.**

45K.(1) Within the period of 28 days beginning with the date on which any shares purchased by a company under section 45A are delivered to it, the company shall deliver to the Registrar for registration a return in the prescribed form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.

(2) In the case of a public company, the return shall also state-

- (a) the aggregate amount paid by the company for the shares; and
- (b) the maximum and minimum prices paid in respect of shares of each class purchased.

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the Registrar, and in such a case the amount required to be stated under subsection (2)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

(4) Where a company enters into a contract approved under section 45E or 45F, or a contract for a purchase authorized under section 45G, the company shall keep at its registered office —

- (a) if the contract is in writing, a copy of it; and
- (b) if the contract is not in writing, a memorandum of its terms,

from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.

(5) Every copy and memorandum so required to be kept shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, provided that not less than 2 hours in each day are allowed for inspection) be open to inspection without charge —

- (a) by any member of the company; and
- (b) if it is a public company, by any other person.

(6) If default is made in delivering to the Registrar any return required by this section, every officer of the company



who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) If default is made in complying with subsection (4), or an inspection required under subsection (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the case of a refusal of an inspection required under subsection (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.

(9) The obligation of a company under subsection (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

**The capital redemption reserve.**

45L.(1) Where under section 45A shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with section 46(4) on cancellation of the shares redeemed or purchased shall be transferred to a reserve, called "the capital redemption reserve".

(2) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) Subsection (2) shall not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under section 45M.

(4) The provisions of the Act relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its

unissued shares to be allotted to members of the company as fully paid bonus shares.

*Redemption or purchase of own shares out of capital (private companies only)*

**Power of private companies to redeem or purchase own shares out of capital.**

45M. (1) Subject to —

- (a) the following provisions of this section;
- (b) sections 45N to 45U; and
- (c) any requirements imposed on a company by virtue of any licence or authorization to which it is subject under any other Act,

a private company limited by shares or limited by guarantee and having a share capital may, if so authorized by its articles, make a payment in respect of the redemption or purchase under section 45A or (as the case may be) section 46, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) References in this section and sections 45N to 45U to payment out of capital are (subject to subsection (6)) to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

(3) The payment which may (if authorized in accordance with the provisions of subsections (4) to (6) and sections 45N to 45U) be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount, as taken together with —

- (a) any available profits of the company; and
- (b) the proceeds of any fresh issue of shares made for the purchase of the redemption or purchase,

is equal to the price of redemption or purchase, and the payment permissible under this subsection is referred to in subsections (4) to (6) and sections 45N to 45U as the permissible capital payment for the shares.

(4) Subject to subsection (6), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(5) Subject to subsection (6), if the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased, the amount of any capital redemption reserve, share premium account or fully paid share capital of the company may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of shares.

(6) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section, the references in subsections (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

**Availability of profits for purposes of section 45M.**

45N (1) The reference in section 45M(3)(a) to available profits of the company is to the company's profits which are available for distribution, as determined as to availability and amount in accordance with subsections (2) to (6).

(2) Subject to subsection (3), the availability of profits for distribution and the amount thereof is to be determined by reference to —

- (a) profits, losses, assets and liabilities;
- (b) provisions as to depreciation, diminution in value of assets, retentions to meet liabilities, etc.; and

- (c) share capital and reserves (including undistributable reserves),

as stated in the relevant accounts for determining the permissible capital payment for shares.

(3) The relevant accounts for this purpose are such accounts, prepared as at any date within the period for determining the amount of the permissible capital payment, as are necessary to enable a reasonable judgment to be made as to the amounts of any of the items mentioned in paragraphs (a) to (c) of subsection (2).

(4) For purposes of determining the amount of the permissible capital payment for shares, the amount of the company's available profits (if any) determined in accordance with subsections (2) and (3) is treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.

(5) The reference is subsection (4) to distributions lawfully made by the company includes —

- (a) financial assistance lawfully given out of distributable profits as assistance to a person to acquire the shares of the company;
- (b) any payment lawfully made by the company in respect of the purchase of any shares in the company (except a payment lawfully made otherwise than out of distributable profits); and
- (c) a payment of any description specified in section 45J(1) lawfully made by the company.

(6) References in this section to the period for determining the amount of the permissible capital payment for shares are to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with section 45P(3).

**Conditions for payment out of capital.**

45P.(1) Subject to any order of the court under section 45T, a payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of this and the next two sections are satisfied.

(2) The payment out of capital shall have been approved by a special resolution of the company.

(3) The company's directors shall have made a statutory declaration specifying the amount of the permissible capital payment for the shares in question and stating that, having made full inquiry into the affairs and prospects of the company, they have formed the opinion —

- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts; and
- (b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.

(4) In forming their opinion for purposes of subsection (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant in any winding up by the court to the question whether a company is unable to pay its debts.

(5) The directors' statutory declaration shall be in the prescribed form and contain such information with respect to the nature of the company's business as may be so prescribed,

and shall in addition have annexed to it a report addressed to the directors by the company's auditors stating that —

- (a) they have inquired into the company's state of affairs; and
- (b) the amount specified in the declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with sections 45M and 45N; and
- (c) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in subsection (3) is unreasonable in all the circumstances.

(6) A director who makes a declaration under this section without having reasonable grounds for the opinion expressed in the declaration is liable on conviction on indictment to imprisonment or a fine, of both.

**Procedure for special resolution under section 45P.**

45Q.(1) The resolution required by section 45P shall be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that section; and the payment out of capital shall be made no earlier than 5 nor more than 7 weeks after the date of the resolution.

(2) The resolution is ineffective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

(3) For purposes of subsection (2), a member who holds such shares is to be regarded as exercising the voting rights carried by them in voting on the resolution not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll, and, notwithstanding anything in a

company's articles, any member of the company may demand a poll on that question.

(4) The resolution is ineffective unless the statutory declaration and auditors' report required by the section are available for inspection by members of the company at the meeting at which the resolution is passed.

(5) For purposes of this section a vote and a demand for a poll by a person as proxy for a member are the same (respectively) as a vote and demand by the member.

**Publicity for proposed payment out of capital.**

45R.(1) Within the week immediately following the date of the resolution for payment out of capital the company shall cause to be published in the Gazette a notice —

- (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be);
- (b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution under section 45P;
- (c) stating that the statutory declaration of the directors and the auditors' report required by that section are available for inspection at the company's registered office; and
- (d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under section 45S for an order prohibiting the payment.

(2) Within the week immediately following the date of the resolution the company shall also either cause a notice to the same effect as that required by subsection (1) to be published

in a newspaper circulating in Gibraltar or give notice in writing to that effect to each of its creditors.

(3) References in subsections (4) to (7) to the first notice date are to the day on which the company first publishes the notice required by subsection (1) or first publishes or gives the notice required by subsection (2) (whichever is the earlier).

(4) Not later than the first notice date the company shall deliver to the Registrar a copy of the statutory declaration of the directors and of the auditors' report required by section 45P.

(5) The statutory declaration and auditors' report —

- (a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital; and
- (b) shall during business hours on any day during that period be open to the inspection of any member or creditor of the company without charge.

(6) If an inspection required under subsection (5) is refused the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) In the case of refusal of an inspection required under subsection (5) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

**Objections by company's members or creditors.**

45S.(1) Where a private company passes a special resolution approving for purposes of section 45M any payment out of capital for the redemption or purchase of any of its shares —

- (a) any member of the company other than one who consented to or voted in favour of the resolution; and



(b) any creditor of the company,

may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.

(2) The application may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.

(3) If an application is made, the company shall —

(a) forthwith give notice in the prescribed form of that fact to the Registrar; and

(b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the Registrar.

(4) A company which fails to comply with subsection (3), and any officer of it who is in default, is liable to a fine and for continued contravention, to a daily default fine.

**Powers of court on application under section 45S.**

45T.(1) On the hearing of an application under section 45S the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interest of dissentient member or for the protection of dissentient creditors (as the case may be), and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(2) Without prejudice to its powers under subsection (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution, and, if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision in section 45A to 45U which

applies to the redemption or purchase of shares to which the resolution refers.

(3) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(4) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without leave of the court to make any such alteration in breach of the requirement.

(5) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution, and this Act applies accordingly to the memorandum or articles as so altered.

**Effect of company's failure to redeem or purchase.**

45U.(1) This section has effect where a company has —

- (a) issued shares on terms that they are or are liable to be redeemed; or
- (b) agreed to purchase any of its own shares.

(2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.

(3) Subsection (2) is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure, but the court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.

(4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company, and when shares are redeemed or purchased under this subsection they are treated as cancelled.

(5) Subsection (4) does not apply if —

- (a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up; or
- (b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up of the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

(6) There shall be paid in priority to any amount which the company is liable under subsection (4) to pay in respect of any shares —

- (a) all other debts and liabilities of the company (other than any due to members in their character as such);
- (b) if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

but, subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

**Definitions for sections 45A to 45T.**

45V. In sections 45A to 45U —

“distributable profits”, in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution equal in value to the payment;

“permissible capital payment” means the payment permitted by section 45M;

“prescribed form” means the form prescribed by the Registrar from time to time,

and references to payment out of capital are to be construed in accordance with section 45M.”.

**Amendment to section 60.**

16. Section 60 (penalty on concealment of name of creditor) of the principal Act is amended by omitting the comma after “manager” and “secretary”.

**New section 60A.**

17. The principal Act is amended by inserting after section 60 the following section —

**“Public companies reducing capital below authorized minimum.**

(Companies Act 1985, section 139)

60A.(1) This section applies where the court makes an order confirming a reduction of a public company’s capital which has the effect of bringing the nominal value of its allotted share capital below the authorized minimum.

(2) The Registrar shall not register the order under section 58 unless the court otherwise directs, or the company is first re-registered as a private company.

(3) The court may authorize the company to be so re-registered without its having passed a special resolution to this effect, and where that authority is given, the court shall specify in the order the alterations in the company’s memorandum and articles to be made in connection with that re-registration.

(4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the Registrar, together with a printed copy of the memorandum and articles as altered by the court's order and the prescribed fee.

(5) On receipt of such an application, the Registrar shall retain it and the other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company which is not a public company, and —

- (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations set out in the court's order take effect; and
- (b) the certificate is conclusive evidence that that the requirements of this section in respect of re-registration and of the matters precedent and incidental thereto have been complied with and that the company is a private company.”.

**Amendment to section 66.**

18. Section 66 (notice of refusal to register a transfer) of the principal Act is amended in subsection (2) by omitting the comma after “manager” and “secretary”.

**Amendment to section 67.**

19. Section 67 (duties of company with respect to issue of certificates) of the principal Act is amended in subsection (2) by omitting the comma after “manager” and “secretary”.

**Amendment to section 68.**

20. Section 68 (certificate to be evidence of title) of the principal Act is amended by omitting “under the common seal of the company” and substituting “sealed or signed as provided for in section 29(1).”.

**Amendment to section 70.**

21. Section 70 (issue and effect of share warrants to bearer) of the principal Act is amended —

- (a) in subsection (1) by omitting “under the common seal of the company” and substituting “sealed or signed as provided for in section 29(1).”;
- (b) by inserting after subsection (3) the following subsection —
  - “ (4) A private company may issue a share warrant only if the share capital of the company is divided into fifty or less shares and if a private company which has issued a share warrant increases its capital to more than fifty shares it shall cease to be a private company and shall comply with the conditions of section 27(1).;
- (c) by inserting after subsection (4) as now inserted the following subsection —
  - “ (5) Where a company is incorporated with share warrants, at least two subscriber shares shall be allotted to named subscribers.”.

**Amendment to section 78.**

22. Section 78 (duty of company to register charges created by company) of the principal Act is amended in subsection (3) by omitting the comma after “manager” and “secretary”.

**Amendment to section 90.**

23. Section 90 (publication of name by company) of the principal Act is amended in subsection (1)(b) by inserting a comma and “if any” after “seal”.

**Amendment to section 100.**

24. Section 100 (annual return to be made by company having a share capital) of the principal Act is amended —

- (a) in subsection (1A)(c) by omitting “officer” and substituting “the secretary”;
- (b) in subsection (3)(m) —
  - (i) by inserting “and secretaries” after “directors” in the three places where that word occurs;
  - (ii) by omitting “register” and substituting “registers”.

**Amendment to section 101.**

25. Section 101 (annual return to be made by company not having share capital) of the principal Act is amended in subsection (1)(b) by —

- (a) inserting “and secretaries” after “directors” in the three places where that word occurs;
- (b) omitting “register” and substituting “registers”.

**Amendment to section 104.**

26. Section 104 (annual general meetings) of the principal Act is amended in subsection (5) by inserting —

“and where the company has passed such a special resolution —

- (a) sections 115 and 124(1) shall be deemed to have no effect in respect of that company for such time and in respect of such years as the resolution shall have effect in accordance with this section; and
- (b) the special resolution is subject to section 110 (copy to be forwarded to the Registrar within fifteen days)”

after “meetings”.

**Amendment to section 109A.**

27. Section 109A (written approval) of the principal Act is amended in subsection (2)(a) by omitting “an officer” and substituting “the secretary”.

**Amendment to section 121.**

28. Section 121 (signing of balance sheet) of the principal Act is amended in subsection (2) by omitting the comma after “manager” and “secretary”.

**Amendment to section 122.**

29. Section 122 (right to receive copies of balance sheets and auditors’ report) of the principal Act is amended in subsection (1) by omitting the comma after “manager” and “secretary”.

**Amendment to section 124.**

30. Section 124 (appointment and remuneration of auditors) of the principal Act is amended —

- (a) in subsection (2) by omitting “Governor” and substituting “Registrar”;
- (b) in subsection (6) by omitting “Governor” in the two places where that word occurs and substituting in each such place “Registrar”.

**Amendment to section 125.**



31. Section 125 of the principal Act (disqualification for appointment as auditor) is amended in paragraphs (a) and (b) of subsection (1) by inserting “or the secretary” after “officer” in each paragraph.

**Amendment to section 130.**

32. Section 130 (report of inspectors to be evidence) of the principal Act is amended by omitting “by the seal of” and substituting “in accordance with section 33 by”.

**New sections 131A and 131B.**

33. The principal Act is amended by inserting after section 131 the following sections —

**“Secretaries**  
(Companies Act 1985, s.283)

131A.(1)Every company shall have a secretary.

(2) A sole director of a company shall not also be the secretary of that company.

(3) Anything authorized to be done by or to the secretary may, if there is no secretary for the time being or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to a person authorized generally or specifically in that behalf by the directors.

(4) No company shall —

- (a) have as secretary to the company a corporation the sole director of which is a sole director of the company;
- (b) have as sole director of the company a corporation the sole director of which is secretary to the company.

(5) A person shall not be capable of being appointed secretary to a company by the articles, and, in the case of a public company, shall not be named as secretary or proposed secretary of a company in a prospectus issued by or on behalf of the company, or as proposed secretary of an intended public company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be he has by himself or by his agent authorized in writing signed and delivered to the Registrar for registration a consent in writing to act as such secretary.

**Qualifications of company secretaries.**

(Companies Act 1985, s.286)

131B.(1) The directors of a company shall take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person that appears to them to have the knowledge and experience to discharge the functions of secretary of the company.

(2) The directors of a public company shall take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person that appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, that is to say —

- (a) for at least three out of the five years preceding his appointment as secretary he held the appointment of secretary in a company other than a private company; or
- (b) he is a person who by reason of previous appointments held appears to the directors to be a person capable of discharging the functions of secretary; or
- (c) he is a barrister, advocate or solicitor admitted in Gibraltar or in any part of the United Kingdom; or

- (d) he is a member of a recognised accounting body or of the Institute of Chartered Secretaries and Administrators of the United Kingdom.”.

**Amendment to section 134**

34. Section 134 (provisions as to undischarged bankrupts acting as directors) of the principal Act is amended —

- (a) in the marginal note thereto by inserting “or secretary” after “directors”;
- (b) in subsection (1) by inserting “or secretary” after “director”.

**Amendment to section 136.**

35. Section 136 (register of directors) of the principal Act is amended in subsection (1)(a) by omitting “Christian” in the two places where that word occurs and substituting in each such place “fore”.

**New section 136A.**

36. The principal Act is amended by inserting after section 136 the following section —

**“Register of Secretaries.**

136A.(1) Every company shall keep at its registered office a register of its secretary or secretaries containing with respect to each of them the following particulars, that is to say —

- (a) in the case of an individual, his present fore name and surname, any former fore name or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and his occupation (if any); and

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

(2) The company shall, within the periods respectively mentioned in this subsection, send to the Registrar a return in the form prescribed by the Registrar containing the particulars specified in such register and a notification in the form so prescribed of any change among its secretaries or in any of the particulars contained in the register. The period within which the return is to be sent is fourteen days from the appointment of the first secretary of the company, and the period within which the notification of a change is to be sent is fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of five pence, or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2), the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

(5) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(6) The form and notification to be prescribed by the Registrar for the purposes of subsection (2) shall be the form of return required by rules made under section 269 for the purposes of section 136(2), with the addition to that form of the requirement to provide in respect of a secretary the particulars specified in the register required to be kept by this section, and where there is a requirement under the Act that within the same period of time a return be made in respect of

(a) a director under section 136; and

(b) a secretary under this section,

the particulars of both may be sent on the same form, indicating under which section such particulars are sent.”.

**Amendment to section 137.**

37. Section 137 (particulars with respect to directors in trade catalogues and circulars) of the principal Act is amended —

- (a) in paragraphs (a) and (b) of subsection (1) by omitting “Christian” and substituting in each paragraph “fore”;
- (b) in subsection (3) by omitting the comma after “director” and “secretary”;
- (c) in subsection (4) —
  - (i) by omitting paragraph (a);
  - (ii) in paragraphs (c) and (f) and in sub-paragraph (ii) of paragraph (f) by omitting “Christian” and substituting in each paragraph or sub-paragraph “fore”.

**Amendment to section 138.**

38. Section 138 (limited company may have directors with unlimited liability) is amended in subsection (3) by omitting the comma after “director” and “manager or secretary” and substituting “or manager”.

**Amendment to section 168.**

39. Section 168 (statement of company’s affairs to be submitted to official receiver) of the principal Act is amended in subsection (2) by omitting “other” and substituting “is the”.

**Amendment to section 177.**

40. Section 177 (powers of liquidator) of the principal Act is amended in subsection (2)(b) by omitting everything after “purpose to” and substituting

therefore “seal or sign documents as provided for in section 29(1) using, if it exists, the company’s seal or being deemed to be an authorized signatory:”.

**Amendment to section 256.**

41. Section 256 (notification that a company is in liquidation) of the principal Act is amended in subsection (2) by omitting the comma after “manager” and “secretary”.

**Amendment to section 267.**

42. Section 267 (Registrar may strike defunct company off register) of the principal Act is amended —

- (a) by omitting subsection (6);
- (b) in subsection (7) by inserting “or under section 267A” after “this section”.

**New section 267A.**

43. The principal Act is amended by inserting after section 267 the following section—

**“Restoration of dissolved companies to the register.**

267A.(1) A company or any member or creditor thereof who feels aggrieved by the company having been struck off the register under section 267 may, before the expiration of 10 years from the publication of a notice under that section, make application to the Registrar to restore the company to the register.

(2) An application made under subsection (1) shall be accompanied by —

- (a) an affidavit of —
  - (i) the applicant’s interest in the matter;
  - (ii) a statement of the facts on which the application is based;

- (iii) where the company was —
  - (aa) licensed under the Financial Services Act 1989;  
or
  - (bb) authorized under the Banking Act 1992 or the  
Financial Services Act 1998; or
  - (cc) licensed or authorized in accordance with a  
Community requirement other than one falling  
within article (aa) or (bb),

evidence of the consent of the competent authority  
under the relevant legislation to the restoration of the  
company to the register;

- (iv) the relief sought; and
- (b) the fee prescribed in Schedule 8.

(3) The Registrar may, in his discretion, require that a person making an application under subsection (1), give notice of that application (including the facts on which the application is based and the relief sought) to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest.

(4) On an application being made to the Registrar to restore a company, the Registrar shall cause a notice to be published in the Gazette to the effect that the applicant has made an application to the Registrar to restore the company to the register and that unless written objection is made to the Registrar within 30 days of the date of publication, the Registrar may restore the company to the register.

(5) The Registrar shall not make a direction under this section to restore the name of the company to the register or otherwise earlier than 30 days after the date of publication of the notice published for the purposes of subsection (4).

(6) On receipt of any written objection to the restoration of the company, the Registrar shall forthwith notify the applicant of the receipt of the objection, the terms of the objection, and of the identity of the objector.

(7) On receipt of an application under this section the Registrar, if satisfied that there are good grounds for restoration of the company to the register, may direct the name of the company to be restored to the register.

(8) A direction given under this section may be made subject to conditions and the Registrar may include such further directions and such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(9) On the Registrar restoring a company to the register the company shall be deemed to have continued in existence as if its name had not been struck off and the Registrar may make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(10) Where an application to restore a company to the register has been made under subsection (1), the Registrar may, in his discretion, refuse to consider the application and require that the person by whom the application was made to apply to the Supreme Court for an order to restore the company.

(11) The court may, on application under subsection (10), refuse the application or order the Registrar to restore the company to the register.

(12) In any proceedings under this section, the court may determine any question which may be necessary or expedient to decide in connection with restoration of the company to the register.



(13) The Registrar shall be entitled to appear and be heard on any application to the court under this section and shall appear if so directed by the court.

(14) Any order made by the court under this section shall direct that notice of the order shall be served on the Registrar in the prescribed manner and the Registrar shall, on receipt of the notice, act accordingly.

(15) After the expiration of the period of ten years referred to in subsection (1), if a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Registrar of the court on an application made by the company or member or may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Registrar of the Supreme Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.”.

**Amendment to section 273.**

44. Section 273 (notification that receiver or manager appointed) of the principal Act is amended in subsection (2) by omitting the comma after “manager” and “secretary”.

**Amendment to section 281A.**

45. Section 281A (official notification) of the principal Act is amended —

(a) in subsection (1) —

(i) in paragraph (c) by inserting “or secretary” after “directors” in the two places where that word occurs;

(ii) by inserting after paragraph (h) the following paragraphs —

“(k) any return relating to a company’s register of members, or notification of a change among its members including any notification of a purchase of own shares by the company;

(l) any application made under sections 24B, 24D, 24F, 24H and 24K and any certificate issued under sections 24C, 24E, 24G, 24J and 24L;”;

(b) in subsection (2)(c) by inserting “or secretary” after “directors”;

**Amendment to section 282.**

46. Section 282 (meaning of unregistered company) of the principal Act is amended by omitting everything after “company” where that word appears for the second time and substituting “other than a registered company.”.

**Amendment to section 302.**

47. Section 302 (provision with respect to default fines and meaning of officer in default) of the principal Act is amended in subsection (2) by omitting the comma after “manager” and “secretary”.

**Amendment to Schedule 1.**

48. Schedule 1 to the principal Act is amended —

(a) in Table A (regulations for management of a company limited by shares) —

(i) in regulation 4 by inserting a comma and “if the company has a seal for use in Gibraltar, or otherwise signed by the authorized signatories of the company” after “seal of the company”;

(ii) by inserting after regulation 66 the following regulation —

“66A Subject to the provisions of the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.”;

(iii) in regulation 71 by omitting “The” and substituting “Any”;

(b) in Table C (form of memorandum and articles of association of a company limited by guarantee, and not having a share capital — articles of association to accompany preceding memorandum of association) in regulation 33 by omitting “The” and substituting “Any”.

**Amendment to Schedule 5.**

49. Schedule 5 (form of annual return of a company having a share capital) to the principal Act is amended —

(a) in the particulars of Directors by omitting “Christian” in the two places where that word occurs and substituting in each such place “Fore”;

(b) in the particulars of members by omitting “Christian” and substituting “Fore”;

(c) by inserting after the particulars of members the following —

“Particulars of the Secretaries of the Company, Limited, at the date of the Annual Return.

†The present Fore Name or Names and Surname	Any former Fore Name or Names or Surname	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	Other business occupation (if any).
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† in the case of a corporation its corporate name and registered or principal office should be shown.”.

**Transitional provisions.**

50.(1) Sections 3, 5, 6, 8 and 21(c) shall operate in relation to a company incorporated or registered under the principal Act on and after the operative date of this Act.

(2) Sections 24, 25 and 49(c) shall operate in respect of the annual return due —

- (a) in respect of a company incorporated or registered under the principal Act at the operative date of this Act, at the next return date of the company, as defined by section 100 of the principal Act, after the operative date, provided that that return date shall be later than the date of the next annual general meeting required to be held on or after the operative date by the application of section 104 of the principal Act to the conduct of business of that company;
- (b) in respect of any other company, from the date of incorporation or registration of the company.

(3) Sections 33, 36 and 48(a)(ii) shall operate —

- (a) in respect of a company incorporated or registered under the principal Act at the operative date of this Act, from the date of the next annual general meeting required to be held on or after the operative date by the application of section 104 of the principal Act to the conduct of business of that company;
- (b) in respect of any other company, from the date of incorporation or registration of the company.

(4) In this section “operative date” means the date provided for by section 1 as the date on which the Act comes into operation.

**Repeal of section 291.**

51. Section 291 of the principal Act (balance sheet of company carrying on business in Gibraltar) is repealed.

**Amendments to the Companies (Share Allotment and Capital Maintenance) Act 1998.**

52(1) Section 3 of the Companies (Share Allotment and Capital Maintenance) Act 1998 is deleted.

(2) Section 6 of the Companies (Share Allotment and Capital Maintenance) Act 1998 is amended by deleting “section 45” and substituting “section 44” and renumbering the inserted section as “44A”.

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Passed by the Gibraltar House of Assembly on the 15th day of October, 1999.

D. J. REYES,

Clerk to the Assembly.