

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,133 of 28th October, 1999



I ASSENT,
P. SPELLER,
ACTING GOVERNOR.

28th October, 1999.



GIBRALTAR

No. 31 of 1999

AN ORDINANCE to amend the Limited Partnerships Ordinance.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

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

Amendment to section 3.

2. Section 3 (definition and constitution of limited partnership) of the Limited Partnerships Ordinance (“the principal Ordinance”) is amended by inserting after sub-section (4) the following sub-sections —

“ (5) A limited partnership shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its registration, whichever is the earlier, have a registered office in Gibraltar to which all communications and notices may be addressed.

(6) Notice of the situation of the registered office shall be given within twenty-eight days after the date of the registration of the limited partnership or of the change, as the case may be, to the Registrar who shall record the same.

(7) Where none of the partners in a limited partnership is resident in Gibraltar the partnership shall appoint a secretary resident in Gibraltar.

(8) Notice of the appointment of the secretary as required by sub-section (7) shall be given within twenty-eight days after the date of the registration of the limited partnership or of the provision becoming applicable to the limited partnership, as the case may be, to the Registrar who shall record the same.”.

New section 7A.

3. The principal Ordinance is amended by inserting after section 7 the following section —

“Registration of company limited by shares or guarantee or both as a limited partnership.

7A.(1) Where a company limited by shares or guarantee or both seeks registration as a limited partnership the provisions of sections 7 and 11 shall apply as provided for in this section.

(2) In addition to the statement specified in section 7 the partners shall send or deliver to the Registrar —

- (a) the special resolution passed by the vote of each member of that company entitled to receive notice of an extraordinary meeting of the company conforming to the requirements of section 24K of the Companies Ordinance, and
- (b) the documents required to be lodged with the Registrar of Companies for the purposes of section 24K(5)(a) of the Companies Ordinance, that is to say —
 - (i) a printed copy of the memorandum and articles as altered in pursuance of the special resolution to be the limited partnership agreement containing —
 - (aa) the name of the company and the firm name under which registration as a limited partnership is to be sought;
 - (bb) the proposed principal place of business of the limited partnership;
 - (cc) the date on which it is proposed to register under this Ordinance;
 - (dd) a copy of the statement to be submitted to the Registrar in accordance with section 7;
 - (ii) a certificate of good standing in respect of the company issued by the Registrar of Companies under the Companies Ordinance;
 - (iii) where the company carries on in or from within Gibraltar a business which is —
 - (aa) licensed under the Financial Services Ordinance 1989; or
 - (bb) authorised under the Banking Ordinance 1992 or the Financial Services Ordinance 1998; or

- (cc) licensed or authorised 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 company deregistering under the Companies Ordinance and registering under this Ordinance;
- (iv) evidence to the satisfaction of the Registrar that no proceedings for insolvency have been commenced against the company in Gibraltar;
- (v) evidence to the satisfaction of the Registrar that any charge recorded in respect of that company has been discharged in accordance with the Companies Ordinance or the consent in writing to the deregistration of every registered chargee has been obtained;
- (c) a certificate of the Registrar of Companies that the requirements of section 24K of the Companies Ordinance are complied with.

(3) Where the Registrar is satisfied that the requirements of this Ordinance for registration as a limited partnership deregistered as a company registered under the Companies Ordinance and continued as a limited partnership registered under this Ordinance are met he shall issue a notice in writing to the Registrar of Companies stating that he is so satisfied and the date and time of the intended registration as a limited partnership under this Ordinance.

(4) When the Registrar has received a Certificate of Deregistration and Continuation for the purpose of Registration as a Limited Partnership issued by the Registrar of Companies under section 24L(2) of the Companies Ordinance he shall register that limited partnership under the Ordinance and issue a Certificate of Registration and Continuation as a Limited Partnership.

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

- (a) in this section; and
- (b) sections 24K and 24L of the Companies Ordinance,

is on the date and time referred to in subsection (4) a continuation of the undertaking deregistered by virtue of the procedures referred to in paragraph (b).

(6) In this section “Registrar of Companies” means the person appointed under section 278 of the Companies Ordinance.”.

Amendment to section 8.

4. Section 8 (registration of changes in partnership) of the principal Ordinance is amended in sub-section (1) by —

- (a) omitting the comma at the end of paragraph (g) and substituting a semi-colon;
- (b) inserting after paragraph (g) the following paragraphs —
 - “(h) the location of the registered office;
 - (j) the person of the secretary notified under section 3,”.

New sections 11A and 11B.

5. The principal Ordinance is amended by inserting after section 11 the following sections —

“Effect of Registration.

11A. From the date of registration mentioned in a certificate of issued under section 7A or section 11 the partners together with such other persons as may from time to time become partners in accordance with this Ordinance shall be a limited

partnership having separate legal personality by the name contained in the statement sent to the Registrar in accordance with section 7 or section 7A, as the case may be, and ,subject to section 3, capable forthwith of exercising all the functions of a limited partnership, and having perpetual succession, but with such liability on the part of the partners to contribute to the assets of the limited partnership in the event of its being wound up as is mentioned in this Ordinance.

Conclusiveness of certificate of registration.

11B. (1) A certificate of registration given by the Registrar in respect of any limited partnership shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the partnership is a limited partnership authorised to be registered and duly registered under this Ordinance.

(2) A statutory declaration by a solicitor of the Supreme Court or by a barrister lawfully acting as a solicitor of the Supreme Court engaged in the formation of the limited partnership, or by a person named in the statement sent to the Registrar in accordance with section 7 or 7A, as the case may be, as a partner or, in accordance with section 3, as the secretary of the partnership, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar shall be entitled to rely on such a declaration as sufficient evidence of compliance.”.

New sections 13A to 13N.

6. The principal Ordinance is amended by inserting after section 13 the following sections —

“Recording of charges.

13A.(1) The capital of a limited partnership registered under this Ordinance may be made a security for a loan, debt or other obligation, and the document creating the security falling within this section shall be in a form specified by the Registrar,

or in a form as near thereto as circumstances permit, and on the production of such instrument in proper form, the Registrar shall record it as provided for under the Ordinance and such recording shall have the effect provided for in this Ordinance.

(2) Subject to the provisions of this section and section 13B to 13J, every charge created after the commencement of this section by a limited partnership registered in Gibraltar and being a charge to which this section applies shall, so far as any security on the limited partnership's property or undertaking is conferred thereby, be void against any liquidator or creditor of the partnership, unless the specified particulars of the charge, together with the instrument by which the charge is created or evidenced, are delivered to or received by the Registrar for recording in manner required by this Ordinance within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(3) This section applies to —

- (a) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
- (b) a charge on land, wherever situate, or any interest therein;
- (c) a charge on book debts of the limited partnership;
- (d) a floating charge on the undertaking or property of the limited partnership;
- (e) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(4) In the case of a charge created out of Gibraltar comprising solely property situate outside Gibraltar, the delivery to and the receipt by the Registrar of a copy verified in the specified manner of the instrument by which the charge

is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if dispatched with due diligence, have been received in Gibraltar, shall be substituted for twenty-one days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the Registrar.

(5) Where a charge is created in Gibraltar but comprises property outside Gibraltar, the instrument creating or purporting to create the charge may be sent for recording under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a limited partnership the deposit of the instrument for the purpose of securing an advance to the limited partnership shall not for the purposes of this section be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(8) In this section and sections 13B to 13N —

“charge” includes mortgage;

“specified” means specified by the Registrar.

Duty of limited partnership to record charges created by limited partnership.

13B.(1) It shall be the duty of a limited partnership to send to the Registrar for recording the particulars of every charge created by the limited partnership but recording of any such charge may be effected on the application of any person interested therein.

(2) Where recording is effected on the application of some person other than the limited partnership, that person shall be entitled to recover from the limited partnership the amount of any fees properly paid by him to the Registrar on the recording.

(3) If any limited partnership makes default in sending to the Registrar for recording the particulars of any charge created by the limited partnership, then, unless the recording has been effected on the application of some other person, the limited partnership and every partner or secretary who is knowingly a party to the default are guilty of offences and are each liable on summary conviction to a fine not exceeding level 2 on the standard scale for every day during which the default continues.

Duty of limited partnership to record charges existing on property acquired.

13C.(1) Subject to sub-section (2), where a limited partnership acquires any property which is subject to a charge of any such kind as would, if it had been created by the limited partnership after the acquisition of the property, have been required to be recorded under section 13B, the limited partnership shall cause the specified particulars of the charge, together with a copy (certified in the specified manner to be a correct copy) of the instrument by which the charge was created or is evidenced, to be delivered to the Registrar for recording in manner required by this Ordinance within twenty-one days after the date on which the acquisition is completed.

(2) If the property is situate and the charge was created outside Gibraltar, twenty-one days after the date on which the copy of the instrument could in due course of post, and if dispatched with due diligence, have been received in Gibraltar shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(3) If default is made in complying with this section, the limited partnership and every partner and secretary of the limited partnership who is in default are guilty of offences and

are each liable on summary conviction to a default fine at level 2 on the standard scale.

Register of charges to be kept by Registrar.

13D.(1) The Registrar shall keep, with respect to each limited partnership, a register in the specified form of all the charges requiring to be recorded under section 13B and 13C, and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars:-

- (a) if the charge is a charge created by the limited partnership, the date of its creation, and if the charge was a charge existing on property acquired by the limited partnership, the date of the acquisition of the property; and
- (b) the amount secured by the charge; and
- (c) short particulars of the property charged; and
- (d) the persons entitled to the charge.

(2) The Registrar shall give a certificate of the recording of any charge recorded in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to recording have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee.

(4) The Registrar shall keep a chronological index, in the specified form and with the specified particulars, of the charges entered in the register.

Entry of satisfaction.

13E. The Registrar may, on evidence being given to his satisfaction that the debt for which any recorded charge was given has been paid or satisfied, order that a memorandum of

satisfaction be entered on the register, and shall, if required, furnish the limited partnership with a copy thereof.

Recording of enforcement of security.

13F.(1) If any person obtains an order for the appointment of a receiver or manager of the property of a limited partnership, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a limited partnership under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the Registrar notice to that effect, and the Registrar shall on payment of the prescribed fee enter the notice in the register of charges.

(3) A person who makes default in complying with the requirements of this section, is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

Copies of instruments creating charges to be kept by limited partnership.

13G. Every limited partnership shall cause a copy of every instrument creating any charge requiring registration under section 13B or 13C to be kept at the registered office of the limited partnership.

Limited partnership's register of charges.

13H.(1) Every limited partnership shall keep at its registered office a register of charges and enter therein all charges specifically affecting property of the limited partnership and all floating charges on the undertaking or any property of the limited partnership, giving in each case a short description of the property charged, the amount of the charge and the names of the persons entitled thereto.

(2) A partner or secretary of the limited partnership who knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

Inspection of instruments creating charges and register of charges.

13J.(1) The copies of instruments creating any charge requiring to be recorded under sections 13B and 13C with the Registrar, and the register of charges kept in pursuance of section 13H, shall be open during business hours (but subject to such reasonable restrictions as the limited partnership may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or partner without fee, and the register of charges shall also be open to the inspection of any other person on payment of such reasonable fee as the limited partnership may determine.

(2) If inspection of such copies or register is refused, any officer of the limited partnership refusing inspection, and every partner and secretary of the limited partnership authorising or knowingly and wilfully permitting the refusal, are guilty of

offences and are each liable on summary conviction to a fine one half of the amount at level 1 on the standard scale and further fine of one fifth of the amount at level 1 on the standard scale for every day during which the refusal continues.

(3) If any such refusal occurs, the court may by order compel an immediate inspection of the copies or register.

Recording of instruments registered under the Companies Ordinance.

13K. Notwithstanding any other provisions of the Ordinance, if —

- (a) a limited partnership has previously been registered as a company under the Companies Ordinance; and
- (b) charges were registered in respect of that company; and
- (c) at the time of application for registration, in addition to the other documents required to be produced on first registration, there is produced to the Registrar the written consent of every holder of any registered charge,

then on the production of the documents creating those charges they may be recorded in the order of rank, priority and precedence in which they were registered in the register provided for under the Companies Ordinance.

Priority of charges.

13L. Where there are more charges than one recorded in respect of the same limited partnership, the charges shall notwithstanding any express, implied or constructive notice, be entitled in priority between each other according to the date and time at which each charge is recorded in the register and not according to the dates and times of the charges.

Chargees not treated as partner.

13M. Except as far as may be necessary for making the capital of a limited partnership available as a security for the secured debt, the chargee shall not by reason of the recorded charge be deemed a partner, nor shall the charger be deemed to have ceased to be a partner.

Transfer of charge.

13N. A charge recorded under the provisions of this Ordinance may be transferred to any person, and on the production of an instrument of transfer in the specified form the Registrar shall record that instrument in accordance with the provisions of section 13D.”.

Consequential Amendment to Rectification of Register Regulations 1994.

7. The Rectification of Registers Regulations 1994 are amended in the Schedule thereto by inserting in respect of the entry number 5 (Register of Limited Partnerships kept under the Limited Partnerships Ordinance) in the third column (limitations) the following entry —

“shall not include the register of recorded charges provided for in section 13D”.

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

D. J. REYES,

Clerk to the Assembly.

