

GIBRALTAR

COMPANIES ORDINANCE

CHAPTER 30

1. Short title

This Ordinance may be cited as the Companies Ordinance. (The Gibraltar Companies Ordinance is based on the English Companies Act of 1929 and makes similar provisions for the incorporation of companies. The private company limited by shares is most widely used: it can be used for the holding of property, investment portfolios, royalties and patents, the performing of services and the carrying on of any form of trade or business.)

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires;

"annual return" means the return required to be made in the case of a company having a share capital, under Section 100, and, in the case of a company not having a share capital, under Section 101;

"articles" mean the articles of association of a company, as originally framed or as altered by special resolution including, so far as they apply to the company, the regulations contained in Table A in the First Schedule;

"Book and paper" and "book or paper" includes accounts, deeds, writings and documents;

"Company" means a company formed and registered under this Ordinance;

"The court", used in relation to a company, means the Supreme Court;

"Debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"Director" includes any person occupying the position of director by whatever name called;

"Document" includes summons, notice, order and other legal process and registers;

"Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

"Prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

"The Registrar" means the Registrar of Companies appointed under section 278 and, subject to the provisions of that section, includes an Assistant Registrar of Companies;

"Share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

"Table A" means Table A in the First Schedule.

(2) A person shall not be deemed to be within the meaning of any provision in this Ordinance a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

PART I INCORPORATION AND MATTERS INCIDENTAL THERETO

MEMORANDUM OF ASSOCIATION

3. Mode of forming incorporated company

(1) Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a

memorandum of association and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either:

- (a) a company having the liability of its members limited by the memorandum to the amount (if any) unpaid on the shares respectively held by them (in this Ordinance referred to as "a company limited by shares"); or
- (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Ordinance referred to as "a company limited by guarantee"); or
- (c) a company not having any limit on the liability of its members (in this Ordinance referred to as "an unlimited company").

4. Requirements with respect to memorandum

(1) The memorandum of every company must state:

- (a) the name of the company with "Limited" as the last word of the name in the case of a company limited by shares or by guarantee; and
- (b) the objects of the company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is

a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital:

- (a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
- (b) no subscriber of the memorandum may take less than one share;
- (c) each subscriber must write opposite to his name the number of shares he takes.

5. Stamp and signature of memorandum

The memorandum must bear the same stamp as if it were a deed and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

6. Restriction on alteration of memorandum

A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Ordinance.

7. Mode in which an extent to which objects of company may be altered

(Amended by No. 30 of 1991)

(1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it:

- (a) to carry on its business more economically or more efficiently;
- (b) to attain its main purpose by new or improved means;
- (c) to enlarge or change the local area of its operations;
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;
- (e) to restrict or abandon any of the objects specified in the memorandum;
- (f) to sell or dispose of the whole or any part of the undertaking of the company; or
- (g) to amalgamate with any other company or body of persons,

but if an application is made under subsections (2) to (9) of this section, the alteration does not have effect except insofar as it is confirmed by the court.

(2) Where a company's memorandum has been altered by special resolution under subsection (1) of this section, application may be made to the court for the alteration to be canceled.

(3) Such an application may be made:

- (a) by the holders of not less in the aggregate than 15% in nominal value of the company's issued share capital or any class of it or, if the company is not limited by shares, not less than 15% of the company's members; or
- (b) by the holders of not less than 15% of the company's debentures entitling the holders to object to an alteration of its objects;

but an application shall not be made by any person who has consented to or voted in favor of the alteration.

(4) The application must be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(5) The court may on such an application make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fits, or may:

- (a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and
- (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

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

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

(8) An alteration in the memorandum or articles of a company made by virtue of an order under this section, other than one made by resolution of the company, is of the same effect as if duly made by resolution, and this Ordinance applies accordingly to the memorandum or articles as so altered.

(9) The debentures entitling the holders to object to an alteration of a company's objects are any debentures secured by a floating charge which were issued or first issued before the date of the coming into force of this section or form part of the same series as any debentures so issued; and a special resolution altering a company's objects requires the same notice to the holders of any such debentures as to members of the company

In the absence of provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members apply.

(10) Where a company passes a resolution altering its objects, then:

(a) if with respect to the resolution, no application is made under this section, the company shall within 15 days from the end of the period for making such an application deliver to the registrar of companies a printed copy of its memorandum as altered; and

(b) if such an application is made, the company shall:

(i) forthwith give notice of that fact to the registrar, and

(ii) within 15 days from the date of any order canceling or confirming the alteration, deliver to the registrar an office copy of the order and in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

(11) The court may by order at any time extend the time for the delivery of documents to the registrar under subsection (10)(b) above for such period as the court may think proper.

(12) If a company makes default in giving notice or delivering any document to the registrar of companies as required by subsection (10), the company and every officer of it who is in default is liable on summary conviction to a fine at level 4 on the standard scale and, for continued contravention, to a daily penalty of one-twentieth of the amount at level 4 on the standard scale.

(13) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorized by subsection (1) of this section, except in proceedings taken for the purpose (whether under subsections (2) to (9) or otherwise) before the expiration of 21 days after the date of the resolution in that behalf.

(14) Where such proceedings are taken otherwise than under subsections (2) to (9), subsections (10) to (12) above apply in relation to the proceedings as if they had been taken under those subsections, and as if an order declaring the alteration invalid were an order canceling it, and as if an order dismissing the proceedings were an order confirming the alteration.

ARTICLES OF ASSOCIATION

8. Articles prescribing regulations for companies

There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

9. Regulations required in case of unlimited company or company limited by guarantee

(1) In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(2) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has not a share capital, must state the number of members with which the company proposes to be registered.

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the Registrar of Companies notice of the increase, and the Registrar shall record the increase. If default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of offenses and liable on summary conviction to default fines.

10. Adoption and application of Table A

(1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after the commencement of this Ordinance, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

11. Printing, stamp and signature of articles

Articles must:

(a) be printed;

(b) be divided into paragraphs numbered consecutively;

(c) bear the same stamp as if they were contained in a deed; and

(d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

12. Alteration of articles by special resolution

(1) Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Ordinance, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

FORM OF MEMORANDUM AND ARTICLES

13. Statutory forms of memorandum and articles

The form of:

(a) the memorandum of association of a company limited by shares;

(b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(c) the memorandum and articles of association of a company limited by guarantee and having a share capital;

(d) the memorandum and articles of association of an unlimited company having a share capital,

shall be respectively in accordance with the forms as put in Tables B, C, D and E in the First Schedule or as near thereto as circumstances admit.

REGISTRATION

14. Registration of memorandum and articles

The memorandum and the articles (if any) shall be delivered to the Registrar of Companies and the Registrar shall retain and register them.

15. Effect of registration

(1) On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.

16. Conclusiveness of certificate of incorporation

(1) A certificate of incorporation given by the Registrar in respect of any association 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 association is a company authorized 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 solicitor of the Supreme Court engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

PROVISIONS WITH RESPECT TO NAMES OF COMPANIES

17. Restriction on registration of companies by certain names

(1) (Amended by No. 30 of 1987) No company shall be registered by a name:

(a) which includes, otherwise than at the end of the name, the word "limited";

(b) which includes, otherwise than at the end of the name, an abbreviation of the word "limited";

(c) which is the same as the name appearing in the registrar's index of company names, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires;

(d) the use of which by the company would in the opinion of the registrar constitute a criminal offense; or

- (e) which in the opinion of the registrar is offensive;
- (f) which contains the words "Chamber of Commerce", unless the company is a company which is to be registered under a license granted in pursuance of section 18 without the addition of the word "Limited" to its name; or
- (g) which contains the words "Building Society".

(2) Except with the consent of the Governor no company shall be registered by a name which:

- (a) contains the words "Royal" or "Imperial" or "Empire" or "Windsor" or "Crown" or in the opinion of the Registrar suggest, or is calculated to suggest, the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty's Government or the Government of Gibraltar or any department thereof; or
- (b) contains the words "Municipal" or "Chartered" or in the opinion of the Registrar suggests, or is calculated to suggest, connection with any municipality or other local authority or with any society or body incorporated by Royal Charter; or
- (c) in the opinion of the Registrar is undesirable; or
- (d) contains the word "Co-operative"; or
- (e) (Added by No. 30 of 1987) includes any word or expression for the time being specified in regulations made under subsection (4) of this section.

(3) (Added by No. 30 of 1987) In determining for the purposes of subsection (1)(c) whether one name is the same as another, there are to be disregarded:

- (a) the definite article, where it is the first word of the name;
- (b) the following words and expressions where they appear at the end of the name, that is to say:

"company" or "and company"

"company limited" or "and company limited"

"limited";

- (c) abbreviations of any of those words or expressions where they appear at the end of the name; and
- (d) type and case of letters, accents, spaces between letters and punctuation marks;

and "and" and "&" are to be taken as the same.

(4) (Added by No. 30 of 1987) The Governor may by regulations specify words or expressions for the registration of which as or as part of a company's corporate name his approval is required under subsection (2) of this section.

(5) (Added by No. 30 of 1987) Regulations made under subsection (4) may contain such transitional provisions and savings as the Governor thinks appropriate and may make different provisions for different cases or classes of case.

(6) (Added by No. 30 of 1987) The registrar of companies shall keep an index of the names of the following bodies:

- (a) companies as defined by this Ordinance;
- (b) companies incorporated outside Gibraltar which have complied with Part IX of this Ordinance, and which do not appear to the registrar of companies not to have a place of business in Gibraltar;
- (c) incorporated and unincorporated bodies to which any provision of this Ordinance applies;
- (d) limited partnerships registered under the Limited Partnerships Ordinance;
- (e) societies registered under the Co-operative Societies Ordinance, the Friendly Societies Ordinance and the Building Societies Ordinance.

18. Power to dispense with "Limited" in name of charitable and other companies

(1) Where it is proved to the satisfaction of the Governor that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Governor may by license direct that the association may be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A license by the Governor under this section may be granted on such conditions and subject to such regulations as the Governor thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Governor so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) - (5) Omitted.

19. Change of name

(1) (Amended by No. 30 of 1987) A company may, by special resolution, change its name.

(2) - (4) Omitted.

19A. Power to require company to change name

(Amended by No. 30 of 1987)

(1) Where a company has been registered by a name which:

- (a) is the same as or, in the opinion of the registrar, too like a name appearing at the time of registration in the registrar's index of companies names; or
- (b) is the same as or, in the opinion of the registrar too like the name which should have appeared in that index at that time,

the registrar may within 12 months of the time of registration, in writing, direct the company to change its name within such period as he may specify.

Section 17(3) applies in determining under this subsection whether the name is the same as or too like another.

(2) If it appears to the registrar that misleading information has been given for the purpose of a company's registration with a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, he may within 5 years of the date of its registration with that name in writing direct the company to change its name within such period as he may specify.

(3) Where a direction has been given under subsections (1) or (2) the registrar may by a further direction in writing extend the period within which the company has to change its name at any time before the end of that period.

(4) (Amended by No. 30 of 1991) A company which fails to comply with a direction under this section, and any officer of it who is in default is liable on summary conviction to a fine at level 4 on the standard scale, and for continued contravention, to a daily penalty of one-twentieth of the amount at level 4 on the standard scale.

(5) Subsections (3) and (4) of Section 19 shall apply to any change of name under this section.

19B. Requirement to change name of company when name is misleading

(Added by No. 30 of 1987)

(1) If in the registrar's opinion the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public he may direct it to change its name.

(2) The direction must, if not duly made the subject of an application to the court under the following subsection, be complied with within a period of 6 weeks from the date of the direction or such longer period as the registrar may see fit to allow.

(3) The company may within a period of 3 weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction shall specify the period within which it must be complied with.

(4) (Amended by 30 of 1991) If a company defaults in complying with the direction under this Section, it is liable on summary conviction to a fine at level 4 on the standard scale and, for continued contravention, to a daily penalty of one-twentieth of the amount at level 4 on the standard scale.

(5) Subsections (3) and (4) of Section 19 shall apply to any change of name under this Section.

19C. Use of "Limited" as last word of company's name when company is not incorporated with limited liability

(Added by No. 30 of 1987; amended by No. 30 of 1991) If any person trades or carries on business under a name or title of which "Limited" or any contraction or imitation of that word, is the last word, that person unless duly incorporated with limited liability, is liable on summary conviction to a fine at level 4 on the standard scale and, for continued default to a daily penalty of one-twentieth of level 4 on the standard scale.

GENERAL PROVISIONS WITH RESPECT TO MEMORANDUM AND ARTICLES

20. Effect of memorandum and articles

(1) Subject to the provisions of this Ordinance, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt of the nature of a specialty debt due from him to the company.

20A. Power to contract not restricted by memorandum and articles

(1) In favor of a person dealing with a company in good faith, any transaction decided on by the directors shall be deemed to be one which it is within the capacity of the company to enter into, and

the power of the directors to bind the company shall be deemed to be free of any limitation under the memorandum or articles of association; and a party to a transaction so decided on shall not be bound to enquire as to the capacity of the company to enter into it or as to any such limitation on the powers of the directors, and shall be presumed to have acted in good faith unless the contrary is proved.

21. Provision as to memorandum and articles of companies limited by guarantee

(1) In the case of a company limited by guarantee and not having a share capital, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Ordinance relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

22. Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent

Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company.

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made to be bound thereby.

23. Copies of memorandum and articles to be given to members

(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles (if any) and a reference to any Ordinance which alters the memorandum, subject to payment of 5 pence or such less sum as the company may prescribe.

(2) (Amended by No. 30 of 1991) If a company makes default in complying with this section, the company and every officer of the company who is in default are guilty of offenses and are liable on summary conviction for each offense to a fine of one-tenth of the amount at level 1 on the standard scale.

24. Issued copies of memorandum to embody alterations

(1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) (Amended by No. 30 of 1991) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it is guilty of an offense and is liable on summary conviction to a fine of one-tenth of the amount at level 1 on the standard scale for each copy so issued, and every officer of the company who is in default is also guilty of an offense and is liable on summary conviction to the like penalty.

24A. Statutory alterations

Where any alteration is made in a company's memorandum or articles of association by any statutory provision, whether contained in an Ordinance or in an instrument made under an Ordinance, a printed

copy of the Ordinance or instrument shall not later than fifteen days after that provision comes into force be forwarded to the Registrar and recorded by him; and where a company is required by this section or otherwise to send to the Registrar any document making or evidencing an alteration in the company's memorandum or articles of association (other than a special resolution under section 7) the company shall send with it a printed copy of the memorandum or articles as altered.

If a company fails to comply with this subsection, the company and any officer of the company who is in default is liable to a default fine.

MEMBERSHIP OF COMPANY

25. Definition of member

(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

PRIVATE COMPANIES

26. Meaning of "private company"

(1) For the purpose of this Ordinance, the expression "private company" means a company which by its articles:

- (a) restricts the right to transfer its shares; and
- (b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

27. Circumstances in which company ceases to be or to enjoy privileges of a private company

(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under Section 26, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the Registrar of Companies for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the Second Schedule.

(2) - (3) Omitted.

REDUCTION OF NUMBER OF MEMBERS BELOW LEGAL MINIMUM

28. Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members

If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven and it carries on business for more

than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore.

CONTRACTS

28A. Contracts prior to formation

Where a contract purports to be made by a company, or by a person as agent for a company, at a time when the company has not been formed, then subject to any agreement to the contrary the contract shall have effect as a contract entered into by the person purporting to act for the company or as agent for it, and he shall be personally liable on the contract accordingly.

29. Form of contracts

(1) Contracts on behalf of a company may be made as follows:

- (a) A contract which if made between private persons would be by law required to be in writing, and under seal, may be made on behalf of the company in writing under common seal of the company;
- (b) A contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;
- (c) A contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

30. Bills of exchange and promissory notes

A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

31. Execution of deeds abroad

(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place outside Gibraltar.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

32. Power for company to have official seal for use abroad

(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorized by its articles, have for use in any territory, district or place outside Gibraltar, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) - (5) Omitted.

AUTHENTICATION OF DOCUMENTS

33. Authentication of documents

A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company and need not be under its common seal.

PART II SHARE CAPITAL AND DEBENTURES

PROSPECTUS

34. Dating and registration of prospectus

(1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be delivered to the Registrar for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company and every person who is knowingly a party to the issue of the prospectus, are guilty of offenses and are each liable on summary conviction to a fine of L5 for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

35. Specific requirements as to particulars in prospectus

(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule, and Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) - (6) Omitted.

36. Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus

(1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

37. Liability of statements in prospectus

(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company:

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- and

- (b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time; and
- (c) every person being a promoter of the company; and
- (d) every person who has authorized the issue of the prospectus,

is liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved:

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice to the withdrawal, and of the reason therefor: or
- (iv) that;
 - (A) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
 - (B) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
 - (C) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv) 1 B) of this subsection was competent to make it.

(2) - (4) Omitted.

38. Document containing offer of shares or debentures for sale to be deemed prospectus

(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view of all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares

or debentures, but without prejudice to the liability (if any) of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) - (4) Omitted.

ALLOTMENT

39. Prohibition of allotment unless minimum subscription received

No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 of Part I of Schedule 3 has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Ordinance referred to as "the minimum subscription".

(3) The amount payable on application on each share shall not be less than 5 per cent of the nominal amount of the share.

(4) - (6) Omitted.

40. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar

(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three day before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Schedule 4.

(2) This section shall not apply to a private company.

(3) (Amended by No. 30 of 1991) If a company acts in contravention of this section, the company and every director of the company who knowingly authorizes or permits the contravention are guilty of offenses and are each liable on summary conviction of a fine at level 3 on the standard scale.

41. Effect of irregular allotment

An allotment made by a company to an applicant in contravention of the provisions of Sections 39 and 40, shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company, and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) A director of a company who knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of those sections with respect to allotment, is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

42. Return as to allotments

Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the Registrar of Companies for registration:

- (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) - (3) Omitted.

COMMISSIONS AND DISCOUNTS

43. Power to pay certain commissions and prohibition of payment of all other commissions and discounts

It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if:

- (a) the payment of the commission is authorized by the articles; and
- (b) the commission paid or agreed to be paid does not exceed 10% of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and
- (c) the amount or rate per cent of the commission paid or agreed to be paid is:
 - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
 - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the Registrar for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and
- (d) the number of shares which Persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase

money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) - (4) Omitted.

44. Statement in balance sheet as to commissions and discounts

(1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offenses and are liable on summary conviction to default fines.

45. Prohibition of provision of financial assistance by company for purchase of its own shares

(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person or any shares in the company:

Provided that nothing in this section shall be taken to prohibit:

- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully- paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;
- (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos 16) and (c) to subsection (1) shall be shown as a separate item in every balance sheet of the company.

(3) Omitted.

ISSUE OF REDEEMABLE PREFERENCE SHARES AND SHARES AT DISCOUNT

46. Power to issue redeemable preference shares

(Amended by No. 30 of 1987 and No. 30 of 1991)

(1) Subject to the provisions of this section, a company limited by shares or limited by guarantee and having a share capital, may, if so authorized by its articles, issue preference shares which are, or are liable, to be redeemed at the option of the company or the shareholder:

Provided that:

- (i) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

- (ii) no such shares shall be redeemed unless they are fully paid, and the terms of redemption must provide for payment on redemption;
- (iii) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund," a sum equal to the nominal amount of the shares redeemed, and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid up share capital of the company ;
- (iv) the premium, if any, payable on redemption, shall have been provided for out of the profits of the company, which would otherwise have been available for dividend, or out of the company's share premium account, before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default shall be guilty of an offense and liable on summary conviction to a fine at level 3 on the standard scale.

(3) Subject to the provisions of this section, the redemption of preference shares may be effected on such terms and in such manner as may be provided by the company's articles.

(4) Shares redeemed under this section shall be treated as canceled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorized share capital.

(5) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where the new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(6) Where new shares have been issued in pursuance of subsection (5) of this section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

46A. Application of premiums received on issue of shares

(Added by No. 30 of 1987)

(1) Where a company on or after the commencement of this section issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called "the share premium account", and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything in the foregoing subsection, be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares, in writing off:

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has before the commencement of this section issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this section:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this section form an identifiable part of the company's reserves shall be disregarded in determining the sum to be included in the share premium account.

47. Power to issues shares at a discount

(1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that:

(a) the issue of the shares at a discount must be authorized by resolution passed in general meeting of the company, and must be sanctioned by the court;

(b) the resolution must specify the maximum rate of discount at which the shares are to be issued;

(c) not less than one year must, at the date of the issue, have elapsed since the date on which the company was entitled to commence business;

(d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) - (3) Omitted.

MISCELLANEOUS PROVISIONS AS TO SHARE CAPITAL

48. Power of company to arrange for different amounts being paid on shares

A company, if so authorized by its articles, may do any one or more of the following things:

(a) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payments of calls on their shares;

(b) Accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

(c) Pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

49. Reserve liability of limited company

A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

50. Power of company limited by shares to alter its share capital

(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may:

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
- (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so canceled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) 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 Ordinance.

51. Notice to Registrar of consolidation of share capital and conversion of shares into stocks

(1) If a company having a share capital has:

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
- (b) converted any shares into stock; or
- (c) reconverted stock into shares; or
- (d) subdivided its shares or any of them; or
- (e) redeemed any redeemable preference shares; or
- (f) canceled any shares, otherwise than in connection with a reduction of share capital under Section 55,

it shall within one month after so doing give notice thereof to the Registrar of Companies specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or canceled, or the stock reconverted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offenses and are liable on summary conviction to default fines.

52. Notice of increase of share capital

(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within fifteen days after the passing of the resolution authorizing the increase, give to the Registrar of Companies notice of the increase, and the Registrar shall record the increase.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the Registrar of Companies together with the notice a printed copy of the resolution authorizing the increase.

(3) Omitted.

53. Power of unlimited company to provide for reserve share capital on re-registration

An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Ordinance, do either or both of the following things, namely:

- (a) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of company being wound up;
- (b) Provide that a specific portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

54. Power of company to pay interest out of capital in certain cases

(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restriction in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that:

- (a) no such payment shall be made unless it is authorized by the articles or by special resolution;
- (b) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the Governor;
- (c) before sanctioning any such payment the Governor may, at the expense of the company, appoint a person to inquire and report to him as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
- (d) the payment shall be made only for such period as may be determined by the Governor, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;

- (e) the rate of interest shall in no case exceed four per cent per annum or such other rate as may for the time being be prescribed by order of the Governor published in the Gazette ;
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid ;
- (g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(2) (Amended by No. 30 of 1991) If default is made in complying with proviso (g) to subsection (1), the company and every officer of the company who is in default are guilty of offenses and are each liable on summary conviction to a fine at level 2 on the standard scale.

REDUCTION OF SHARE CAPITAL

55. Special resolution for reduction of share capital

(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorized by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may:

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid- up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid- up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Ordinance referred to as "a resolution for reducing share capital".

56. Application to court for confirming order objections by creditors, and settlement of list of objecting creditors

(1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the court for an order confirming the reduction.

(2) - (3) Omitted.

57. Order confirming reduction and powers of court on making such order

(1) The court, is satisfied, with respect to every creditor of the company who under Section 56 is entitled to object to the reduction, that either his consent to the reduction has been obtained or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) - (3) Omitted.

58. Registration of order and minute of reduction

(1) The Registrar, on production to him of an order of the court confirming the reduction of the share capital of a company and the delivery to him of a copy of the order and of a minute approved by the

court, showing with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) - (6) Omitted.

59. Liability of members in respect of reduced shares

(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid, or the reduced amount (if any) which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Ordinance with respect to winding up by the court, to pay the amount of his debt or claim, then-

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Omitted.

60. Obligation of director, manager, secretary or other officer

A director, manager, secretary or other officer of the company who:

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation he is guilty of an offense.

VARIATION OF SHAREHOLDERS' RIGHTS

61. Rights of holders of special classes of shares

(1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen percent of the issued shares of that class, being persons who did not consent to or vote in favor of the resolution for the variation, may apply to the court to have the variation canceled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) - (6) Omitted.

TRANSFER OF SHARES AND DEBENTURES AND EVIDENCE OF TITLE

62. Nature of shares

(1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

63. Transfer not to be registered except on production of instrument of transfer

Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

64. Transfer by personal representative

A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

65. Registration of transfer at request of transferor

On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

66. Notice of refusal to register transfer

(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

(2) Omitted.

67. Duties of company with respect to issue of certificates

(1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock, and within two months after the date on which a transfer of any such shares, debentures or debenture stock, is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression "transfer" for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) - (3) Omitted.

68. Certificate to be evidence of title

A certificate, under the common seal of the company specifying any shares held by any member, shall be "prima facie" evidence of the title of the member to the shares.

69. Evidence of grant of probate

The production to a company of any document which is by law sufficient evidence of probate of the will or letters of administration of the estate of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

70. Issue and effect of share warrants to bearer

(1) A company limited by shares, if so authorized by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant is in this Ordinance referred to as a "share warrant".

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

71. Penalty for personation of shareholder

A person who falsely and deceitfully personate any owner of any share or interest in any company or of any share warrant or coupon issued in pursuance of this Ordinance, and thereby obtains or endeavors to obtain any such share or interest or share warrant or coupon, or receives or endeavors to receive any money due to any such owner, as if the offender were the true and lawful owner, is guilty of an offense and is liable to imprisonment for life or for a term not less than three years.

SPECIAL PROVISIONS AS TO DEBENTURES

72. Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deeds

(1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection.

For the purposes of this subsection, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of three pence for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of five pence or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of three pence for every hundred words required to be copied.

(4) - (5) Omitted.

73. Perpetual debentures

A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Ordinance, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long, any rule of equity to the contrary notwithstanding.

74. Power to re-issue redeemed debentures in certain cases

(1) Where a company has redeemed any debentures previously issued, then:

(a) Unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or

(b) Unless the company has, by passing a resolution to that effect, or by some other act, manifested its intention that the debentures shall be canceled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the persons entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.

(4) Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

75. Specific performance of contracts to subscribe for debentures

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

76. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge

(1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in the course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming

to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) - (3) Omitted.

PART III REGISTRATION OF CHARGES

REGISTRATION OF CHARGES WITH REGISTRAR OF COMPANIES

77. Registration of charges created by companies registered in Gibraltar

(1) Subject to the provisions of this Part, every charge created after the commencement of this Ordinance by a company registered in Gibraltar and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the Registrar for registration in manner required by this Ordinance within 21 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.

(2) - (9) Omitted.

78. Duty of company to register charges created by company

(1) It shall be the duty of a company to send to the Registrar of Companies for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under Section 77, but registration of any such charge may be effected on the application of any person interested therein.

(2) - (3) Omitted.

79. Duty of company to register charges existing on property acquired

(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to be delivered to the Registrar for registration in manner required by this Ordinance within 21 days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Gibraltar, 21 days after the date on which the copy of the instrument could in due course post, and if dispatched with due diligence, have been received in Gibraltar shall be substituted for 21 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.

(2) (Amended by No. 30 of 1991) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offenses and are each liable on summary conviction to a default fine at level 2 on the standard scale.

80. Register of charges to be kept by Registrar

(1) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part, and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars:

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in Section 77(7);

(b) in the case of any other charge:

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and

(ii) the amount secured by the charge; and

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration 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, not exceeding five pence for each inspection.

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

81. Endorsement of certificate of registration on debentures

(1) The company shall cause a copy of every certificate of registration given under Section 80 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) (Amended by No. 30 of 1991) A person who knowingly and willfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, is guilty of an offense and, without prejudice to any other liability, is liable on summary conviction to a fine at level 3 on the standard scale.

82. Entry of satisfaction

The Registrar may, on evidence being given to his satisfaction that the debt for which any registered 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 company with a copy thereof.

83. Rectification of register of charges

The court, on being satisfied that the omission to register a charge within the time required by this Ordinance or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

84. Registration of enforcement of security

(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, 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) - (3) Omitted.

PROVISIONS AS TO COMPANY'S REGISTER OF CHARGES AND AS TO COPIES OF INSTRUMENTS CREATING CHARGES

85. Copies of instruments creating charges to be kept by company

Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

86. Company's register of charges

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

(2) (Amended by No. 30 of 1991) A director, manager or other officer of the company who knowingly and willfully authorizes or permits the omission of any entry required to be made in pursuance of this section, is guilty of an offense and is liable on summary conviction to a fine at level 2 on the standard scale.

87. Inspection of instruments creating mortgages and charges and register of charges

(1) The copies of instruments creating any charge requiring registration under this Part with the Registrar, and the register of charges kept in pursuance of Section 86, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding 5 pence for each inspection, as the company may prescribe.

(2) (Amended by No. 30 of 1991) If inspection of such copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and willfully permitting the refusal, are guilty of offenses and are each liable on summary conviction to a fine of 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.

APPLICATION OF PART III TO COMPANIES INCORPORATED OUTSIDE GIBRALTAR

88. Application of Part III to company incorporated outside Gibraltar

The provisions of this Part shall extend to charges on property in Gibraltar which are created, and to charges on property in Gibraltar which are created, and to charges on property in Gibraltar which is acquired, after the commencement of this Ordinance by a company (whether a company within the meaning of this Ordinance or not) incorporated outside Gibraltar which has an established place of business in Gibraltar.

PART IV MANAGEMENT AND ADMINISTRATION

REGISTERED OFFICE AND NAME

89. Registered office of company

(1) A company shall, as from the day on which it begins to carry on business or as from the 28th day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein shall be given within 28 days after the date of the incorporation of the company or of the change, as the case may be, to the Registrar, who shall record the same. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offense and liable on summary conviction to default fines.

90. Publication of name by company

(1) Every company:

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) shall have its name engraven in legible characters on its seal;

(c) shall have its name mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) (Amended by No. 30 of 1991) If a company does not paint or affix its name in manner directed by this Ordinance, the company and every officer of the company who is in default are guilty of offenses and are each liable on summary conviction to a fine of one-half of the amount at level 1, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default are likewise guilty of an offense and liable on summary conviction to default fines.

(3) (Amended by No. 30 of 1991) If a company fails to comply with paragraph (b) or paragraph (c) of subsection (1), the company is guilty of an offense and is liable on summary conviction to a fine at level 2 on the standard scale.

(4) (Amended by No. 30 of 1991) A director, manager or officer of a company or any person on its behalf who:

- (a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid; or
- (b) issues or authorizes the issue of any notice, advertisement or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods, wherein its name is not mentioned in manner aforesaid; or
- (c) issues or authorizes the issue of any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid,

is guilty of an offense and is liable on summary conviction to a fine at level 2 on the standard scale, and is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the company.

90A. Particulars to be shown on letterheads, etc

(1) Every company shall have the following particulars mentioned in legible characters in all business letters and order forms of the company, that is to say:

- (a) the place of registration of the company, and the number with which it is registered;
- (b) the address of its registered office; and
- (c) in the case of a limited company exempt from the obligation to use the word "Limited" as part of its name, the fact that it is a limited company;

and, in the case of a company having a share capital there is on the stationery used for any such letters or on the order forms a reference to the amount of the share capital, the reference shall be to paid-up share capital.

(2) (Amended by No. 30 of 1991) If a company fails to comply with this subsection, the company is guilty of an offense and is liable on summary conviction to a fine at level 2 on the standard scale; and if an officer of a company or any person on its behalf issues or authorizes the issue of any business letter or order form not complying with this subsection, he is guilty of an offense and is liable on summary conviction to a fine at level 2 on the standard scale.

RESTRICTIONS ON COMMENCE OF BUSINESS

91. Restrictions on commencement of business

(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless:

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors. in the prescribed form. that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless:

- (a) there has been delivered to the Registrar for 'registration a statement in lieu of prospectus; and
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors in the prescribed form that paragraph (a) of this subsection has been complied with.

(3) The Registrar shall, on the delivery to him of the said statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) (Amended by No. 30 of 1991) If a company commences business or exercise borrowing powers in contravention of this section, every person who is responsible for the contravention is guilty of an offense and, without prejudice to any other liability, is liable on summary conviction to a fine at level 2 on the standard scale for every day during which the contravention continues.

(7) Nothing in this section shall apply to a private company.

REGISTER OF MEMBERS

92. Register of members

(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:

- (a) the names and addresses, and the occupations (if any) of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which each person was entered in the register as a member; and
- (c) the date at which any person ceased to be a member:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of" the amount of shares and the particulars relating to shares specified in paragraph (a) of this subsection.

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offenses and are liable on summary conviction to default fines.

93. Index of members of company

(1) Every company having more than fifty members shall, unless the register of members is in such form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of an offense and are liable on summary conviction to default fines.

94. Provisions as to entries in register in relation to share warrants

(1) On the issue of a share warrant the company shall strike out of its register of members the name of the "member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:

(a) the fact of the issue of the warrant;

(b) a statement of the shares included in the warrant, distinguishing each share by its number;
and

(c) the date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and canceled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Ordinance to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Ordinance, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Ordinance, either to the full extent or for any purposes defined in the articles.

95. Inspection of register of members

(1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and, except when the register is closed under the provisions of this Ordinance, shall during business hours (subject to such reasonable restrictions as the company at a general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of five pence, or such less sum as the company may prescribe for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of three pence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) (Amended by No. 30 of 1991) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default are guilty of offenses and are liable on summary conviction in respect of each offense to a fine of one-fifth of the amount at level 1 on the standard scale, and further to a default fine of the same amount.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

96. Power to close register

A company may, on giving notice by advertisement in some newspaper circulating in Gibraltar, close the register of members at any time or times not exceeding in the whole thirty days in each year.

97. Power to court to rectify register

(1) If:

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Ordinance to send a list of its members to the Registrar, the court when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

98. Trusts not be entered on register

No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar.

99. Register to be evidence

The register of members shall be prima facie evidence of any matters by this Ordinance directed or authorized to be inserted therein.

ANNUAL RETURN

100. Annual return to be made by company having a share capital

(1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting, in the

year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names, addresses and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return, or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar of Companies, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:

- (a) The amount of the share capital of the company, and the number of the shares into which it is divided;
- (b) The number of shares taken from the commencement of the company up to the date of the return;
- (c) The amount called up on each share;
- (d) The total amount of calls received;
- (e) The total amount of calls unpaid;
- (f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;
- (g) Particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;
- (h) The total amount of the sums (if any) allowed by way of discount in respect of any debentures, since the date of the last return;
 - (i) The total number of shares forfeited;
 - (j) The total amount of shares for which share warrants are outstanding at the date of the return;
- (k) The total amount of share warrants issued and surrendered respectively since the date of the last return;
- (l) The number of shares comprised in each share warrant;
- (m) All such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Ordinance required to be contained with respect to directors in the register of the directors of a company;
- (n) The total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies under this Ordinance.

(4) The return shall be in accordance with the form set out in the Fifth Schedule, or as near thereto as circumstances admit.

101. Annual return to be made by company not having share capital

(1) Every company not having a share capital shall once at least in every calendar year make a return stating:

(a) the address of the registered office of the company;

(b) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Ordinance required to be continued with respect to directors in the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Ordinance.

102. General provisions as to annual returns

(1) The annual return must be contained in a separate part of the register of members, and must be completed within 28 days after the first or only general meeting in the year, and the company must forthwith forward to the Registrar of Companies a copy signed by a director or by the manager or by the secretary of the company.

(2) Section 95 shall apply to the annual return as it applies to the register of members.

(3) Except where the company is a private company, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with as copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation:

Provided that, if the last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet in order to make it comply with such requirements, and the fact that the copy has been so amended shall be stated thereon.

(4) - (5) Omitted.

103. Certificates to be sent by private company with annual return

A private company shall send with the annual return required by Section 100 a certificate signed by a director or the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of Section 26, are not to be included in reckoning the number of fifty.

MEETINGS AND PROCEEDINGS

104. Annual general meetings

(1) **A general meeting of every company** shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.

(2) - (3) Omitted.

105. Statutory meeting and statutory report

(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Ordinance referred to as "the statutory report") to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state:

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
- (c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;
- (d) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company; and
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

106. Convening of extraordinary general meetings of other companies and of creditors

(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carried the right of voting at general meetings of the company, or in the case of a company not having a share capital, members of the company representing not less than one-tenth of the voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(4) - (6) Omitted.

107. Provisions as to meetings and votes

(1) The following provisions shall have effect in so far as the articles of the company do not make other provisions in that behalf:

- (a) A meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;
- (b) Notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph, "Table A" means that Table as for the time being in force;

- (c) Two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five percent in number of the members of the company may call a meeting;
- (d) In the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;
- (e) Any member elected by the members present at a meeting may be chairman thereof;
- (f) In the case of a company originally having a share capital, every member shall have one vote in respect of each share or each 10 pounds of stock held by him, and in any other case every member shall have one vote.

(2) Omitted.

108. Representation of companies at meetings of other companies and of creditors

(1) A corporation, whether a company within the meaning of this Ordinance or not, may:

- (a) if it is a member of another corporation, being a company within the meaning of this Ordinance, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
- (b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Ordinance, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Ordinance or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorized as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures, of that other company.

109. Provisions as to extraordinary and special resolutions

(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution. and at a general meeting of which not less than 21 day's notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 day's notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favor of or against the resolution.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded:

(a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles. so, however, that it shall not in any case be necessary for more than five members to make the demand; or

(b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than 15% of the paid- up share capital of the company.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Ordinance or the articles of the company.

(6) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the Ordinance or the articles.

109A. Written approval

(1) Notwithstanding anything contained in section 109 it shall not be necessary for the case of a private company to hold a general meeting in order to pass an extraordinary or a special resolution but such a resolution may, if it is so provided in the articles of the company, be passed by approval of such resolution being signified in writing by all members of the company who would be entitled to vote if such resolution were submitted to a general meeting.

(2) Where a resolution has been passed in accordance with the provisions of subsection (1) the printed copy of such resolution forwarded to the Registrar in accordance with the provisions of section 110 shall be accompanied by:

(a) the written approval of all the members; and

(b) a statement by an officer of the company that the members whose written approval is attached are all the members who would be entitled to vote at a general meeting.

(3) No resolution forwarded in accordance with the provisions of subsection (a) shall be recorded by the Registrar unless it complies with the provisions of that subsection.

(4) Omitted.

110. Registration and copies of certain resolutions and agreements

(1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the Registrar of Companies and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) - (7) Omitted.

111. Resolutions passed at adjourned meetings

Where a resolution is passed at an adjourned meeting of:

(a) a company;

(b) the holders of any class of shares in a company;

(c) the directors of a company;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

112. Minutes of proceedings of meetings and directors

(1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Omitted.

113. Inspection of minute books

The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to inspection of any member without charge.

(2) Any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of any such minutes as aforesaid at a charge not exceeding three pence for every hundred words.

(3) - (4) Omitted.

ACCOUNTS AND AUDIT

114. Keeping of books of account

(1) Every company shall cause to be kept proper books of account with respect to:

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) Omitted.

115. Profit and loss account and balance sheet

(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company and, in any other case, since the preceding account made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than 12 months.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in, general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs. The amount (if any) which they recommend should be paid by way of dividend, and the amount (if any) which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(3) (Amended by No. 30 of 1991) A person who, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, is guilty of an offense and is in respect of each offense, liable on summary conviction to imprisonment for six months or to a fine at level 4 on the standard scale:

Provided that a person shall not be sentenced to imprisonment for an offense under this section unless, in the opinion of the court dealing with the case, the offense was committed willfully.

116. Contents of balance sheet

(1) Every balance sheet of a company shall contain a summary of the authorized share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off:

(a) the preliminary expenses of the company; and

(b) any expenses incurred in connection with any issue of share capital or debentures; and

(c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trademarks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.

(4) The provisions of this section, are in addition to other provisions of this Ordinance requiring other matters to be stated in balance sheets.

117. Assets consisting of shares in subsidiary companies to be set out separately in balance sheet

Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first- mentioned company separately from all its other assets, and where a company is indebted, whether on account of a loan or otherwise to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities.

118. Balance sheet to include particulars as to loans to, and remuneration of directors

(1) Where a company (in this section referred to as ("the holding company")) holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section 121 the balance sheet is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have, so far as they concern the holding company, been dealt with in, or for the purposes of, the accounts of the holding company, and in particular how, and to what extent:

- (a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both; and
- (b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanation given to them and as shown by the books of the company, the statement which is to be annexed to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of such statement, the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet in lieu of the statement.

119. Meaning of subsidiary company

(1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Ordinance or not, and:

- (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent of the issued share capital of that other company or such as to entitle the company to more than fifty per cent of the voting power in that other company; or
- (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Ordinance, and the expression "subsidiary company" in this Ordinance means a company in the case of which the conditions of this section are satisfied.

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held.

120. Accounts to contain particulars as to loans to, and remuneration of directors

(1) The accounts which in pursuance of this Ordinance are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing:

- (a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period; and
- (b) the amount of any loans so made to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof; and
- (c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company.

(2) The provisions of subsection (1) with respect to loans shall not apply:

- (a) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business; or
- (b) to a loan made by the company to any employee of the company if the loan does not exceed 2,000 and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) with respect to the remuneration paid to shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) In this section, "emoluments" include fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

121. Signing of balance sheet

(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

(2) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, or if any copy of a balance sheet is issued, circulated or published without

having a copy of the auditors' report attached thereto, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default, are guilty of offenses and are each liable on summary conviction to a fine of L50.

122. Right to receive copies of balance sheets and auditor's report

(1) (Amended by No. 30 of 1991) In the case of a company not being a private company:

- (a) a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;
- (b) any member of the company, whether he is or is not entitled to have set to him copies of the company balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditor's report on the balance sheet.

If default is made in complying with paragraph (a) of this subsection, the company and every officer of the company who is in default are guilty of offenses and are each liable on summary conviction to a fine at level 1 on the standard scale, and if, where any person makes a demand for a document with which he is by virtue of paragraph (b) of this subsection entitled to be furnished, default is made in complying with the demand within 7 days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default are guilty of offenses and are each 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, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding three pence for each hundred words. If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefore the company and every officer of the company who is in default are guilty of offenses and are liable on summary conviction to a default fine.

123. Certain other companies to publish periodical statement

(1) Every company, being an insurance company or a deposit, provident or benefit society, shall, before it commences business, and also on the first Monday in February' and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in Schedule 6, or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding three pence.

(4) - (5) Omitted.

124. Appointment and remuneration of auditors

(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(1A) (Amended by No. 30 of 1991) A person or firm shall not be qualified for appointment as an auditor of a company, other than a company registered under Part IX, unless he is or, as the case may be, all the partners of the firm are registered under the auditors Registration Ordinance, 1983.

(1B) (Amended by No. 30 of 1991) A company which appoints as auditor, a person or firm who or which under subsection (1A) is not qualified to be an auditor, shall be guilty of an offense and shall be liable on summary conviction to a fine at level 5 on the standard scale.

(2) - (6) Omitted.

125. Disqualification for appointment as auditor

(1) None of the following persons shall be qualified for appointments auditor of a company:

(a) a director or officer of the company;

(b) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company;

(c) a body corporate.

(2) (Amended by No. 30 of 1991) A body corporate which acts as auditor of a company is guilty of an offense and is liable on summary conviction to a fine at level 3 on the standard scale.

126. Auditors' report and auditors' right of access to books and right to attend general meetings

(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state:

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

INSPECTION

127. Investigation of affairs of company by inspectors

(Amended by Companies (Amendment) Ordinance, 1988) Schedule 10 shall have effect with respect to the investigation of companies and their affairs, requisition of documents and other matters provided therein.

128. Proceedings on report by inspectors

(Amended by Companies (Amendment) Ordinance, 1988) If from any report made under the provisions of Schedule 10, it appears to the Attorney-General that any person has been guilty of any offense in relation to the company or any other body corporate whose affairs have been investigated by virtue of those provisions and that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other body corporate past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

For the purposes of this section, the expression "agents" in relation to a company or other body corporate is deemed to include its bankers and solicitors and any persons employed by it as auditors, whether those persons are or are not officers of the company or other body corporate.

129. Power of company to appoint inspectors

(1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) (Amended by Companies (Amendment) Ordinance, 1988) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Governor, except that, instead of reporting to him or the Attorney-General they shall report in such manner and to such persons as the company in general meeting may direct.

(3) An officer or agent of the company who refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, is liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Governor.

130. Report of inspectors to be evidence

A copy of the report of any inspectors appointed under this Ordinance, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

DIRECTORS AND MANAGERS

131. Number of directors

(Amended by No. 30 of 1991)

Every company shall have at least two directors, except in the case of a private company in which case the company shall have at least one director.

132. Restrictions on appointment or advertisement of director

(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a directors or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended 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:

- (a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and

(b) either:

- (i) signed the memorandum for a number of shares not less than his qualification (if any); or
- (ii) taken from the company and paid or agreed to pay for his qualifications shares (if any);
or
- (iii) signed and delivered to the Registrar for registration and undertaking in writing to take from the company and pay for his qualification shares (if any); or
- (iv) made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification (if any) are registered in his name.

(2) Where a person has signed and delivered an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) (Amended by No. 30 of 1991) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant is guilty of an offense and is liable on summary conviction to a fine at level 2 on the standard scale.

(4) This section shall not apply to:

- (a) a company not having a share capital; or
- (b) a private company; or
- (c) a company which was a private company before becoming a public company; or
- (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

133. Qualification of director or manager

(1) Without prejudice to the restrictions imposed by Section 132, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(5) Omitted.

134. Provisions as to undercharged bankrupts acting as directors

(1) (Amended by No. 30 of 1991) A person who, being an undischarged bankrupt, acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged bankrupt, is guilty of an offense and liable on conviction on indictment to imprisonment for two years, or on summary conviction to imprisonment for six months and to a fine at level 5 on the standard scale.

(2) - (3) Omitted.

135. Validity of acts of directors

The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

136. Register of directors

(1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say:

(a) in the case of an individual, his present Christian name and surname, any former Christian 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 business occupation (if any) or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship, or of some one of those directorships; and

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

(2) The company shall, within the periods respectively mentioned in this subsection, send to the Registrar a return in the prescribed form containing the particulars specified in such register and a notification in the prescribed form of any change among its directors 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 directors 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) - (6) Omitted.

137. Register of directors

(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, show cards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any of Her Majesty's dominions, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars:

(a) his present Christian name, or the initials thereof, and present surname;

(b) any former Christian names and surnames;

(c) his nationality of origin, if his nationality is not the nationality of origin:

Provided that, if special circumstances exist which render it in the opinion of the Governor expedient that such an exemption should be granted. the Governor may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) - (4) Omitted

138. Limited company may have directors with unlimited liability

(1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum be unlimited.

(2) - (3) Omitted.

139. Special resolution of limited company making liability of directors unlimited

(1) A limited company, if so authorized by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or manager, or of any managing director.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

140. Statement as to remuneration of directors to be furnished to shareholders

(1) Subject as hereinafter provided, the directors of a company shall, on demand in that behalf made to them in writing by members of the company entitled to not less than one- fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct or with such qualifications as may be necessary. by the auditors of the company, showing as respect each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is:

(a) a director of any other company which is in relation to the first- mentioned company a subsidiary company; or

(b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company,

be included in the said aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of that other company:

Provided that:

(i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished; and

(ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount receives by any individual.

(2) (a) In computing for the purpose of this section the amount of an a remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax (including super- tax and sur- tax) in respect of the remuneration or emoluments. be increased by the amount of the sum so paid.

(3) - (4) Omitted.

141. Disclosure by directors of interest in contracts

(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly, or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) - (5) Omitted.

142. Provisions as to assignment of office by directors for loss of office or on retirement

(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or nay part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) - (6) Omitted.

143. Provisions as to assignment of office by directors

If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the provision shall, notwithstanding anything to the contrary contained in the provision, be of no effect unless and until it is approved by a special resolution of the company.

AVOIDANCE OF PROVISIONS IN ARTICLES OF CONTRACTS RELIEVING OFFICERS FROM LIABILITY

144. Provisions as to liability of officers and auditors

Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise. for exempting any director, manager or officer of the company , or any person (whether an officer of the company or not) employed by the company as auditor from. or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void:

Provided that notwithstanding anything in this section a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor assistant liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment in his favor or in which he is acquitted or in connection with any application under [section 308](#) in which relief is granted to him by the court.

ARRANGEMENTS AND RECONSTRUCTIONS

145. Power to compromise with creditors and members

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them. or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) - (5) Omitted

146. Provisions for facilitating a reconstruction and amalgamation of companies

(1) Where an application is made to the court under Section 145 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section. and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies. and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as the transferee company), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests a that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;
- (d) the dissolution, without winding up, of any transferor company ;
- (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) - (5) Omitted.

147. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as ""the transferor company"") to another company, whether a company within the meaning of this Ordinance or not (in this section referred to as ""the transferee company") has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine- tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of such four months , give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

(2) - (4) Omitted.

PART V WINDING UP

A. PRELIMINARY

MODES OF WINDING UP

148. Modes of winding up

(1) The winding up of a company may be either:

- (a) by the court; or
- (b) voluntary; or
- (c) subject to the supervision of the court.

(2) The provisions of this Ordinance with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

CONTRIBUTORIES

149. Liability as contributories of present and past members

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the following qualifications:

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up:
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member:
- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance:
- (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member:
- (e) in the case of a company limited by guarantee, the contribution shall, subject to the provisions of subsection (3) be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (f) nothing in this Ordinance shall invalidate any provisions contained in any policy of insurance or other contract whereby the liability of individual members on the policy contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (g) a sum due to any member of a company, in his character of member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to the member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Ordinance, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of a unlimited company:

Provided that:

- (a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

(3) Omitted.

150. Definition of contributory

The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining and all proceedings prior to the final determination of, the persons who are to be deemed contributors, includes any person alleged to be a contributory.

151. Nature of liability of contributory

The liability of a contributory shall create a debt of the nature of a specialty debt accruing due from him at the time when his liability commenced, but payable at times when calls are made for enforcing the liability.

152. Contributors in case of death of member

(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and should be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment there out of the money due.

153. Contributors in case of bankruptcy of member

If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories;

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the bankrupt, the estimated value of his liability to future calls as well as calls already made.

154. Provision as to married women

Repealed

B. WINDING UP BY THE COURT

JURISDICTION

155. Jurisdiction

The Supreme Court shall have jurisdiction to wind up any company registered in Gibraltar.

CASES IN WHICH COMPANY MAY BE WOUND UP BY COURT

156. Circumstances in which company may be wound up by court

A company may be wound up by the court if:

- (a) the company has by special resolution resolved that the company be wound up by the court;
- (b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
- (c) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (d) the number of members is reduced, in the case of a private company, below two, or in the case of any other company, below seven.
- (e) the company is unable to pay its debts;
- (f) the court is of opinion that it is just and equitable that the company be wound up.

157. Definition of inability to pay debts

A company shall be deemed to be unable to pay its debts:

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding 500 pounds then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if execution or other process issued on a judgment, decree or order of any court in favor of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding Up and Effects Thereof

158. Provisions as to applications for winding up

(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that:

- (a) a contributory shall not be entitled to present a winding-up petition unless;
 - (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or
 - (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding-up, or have devolved on him through the death of a former holder; and
- (b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and
- (c) the court shall not give a hearing, to a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding-up has been established to the satisfaction of the court.

(2) - (3) Omitted.

159. Powers of court on hearing petition

(1) In hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Omitted.

160. Power to stay or restrain proceedings against company

At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may:

- (a) where any action or proceeding against the company is pending in the court apply for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company, apply to the court to restrain further proceedings in the action or proceeding,

and the court may stay or restrain the proceedings accordingly for such terms as it thinks fit.

Commencement of Winding up

161. Avoidance of dispositions of property after commencement in winding up

In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

162.

Where any company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

163. Commencement of winding up by the court

(1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) Omitted.

CONSEQUENCES OF WINDING UP ORDER

164. Copy of order to be forwarded to Registrar

On the making of a winding up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute thereof in his books relating to the company.

165. Actions stayed on winding up order

When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

166. Effect of winding up order

An order for winding up a company shall operate in favor of all the creditors and of all the contributories of the company as if made on the Joint petition of a creditor and of a contributory.

OFFICIAL RECEIVER IN WINDING UP

167. Appointment of official receiver for winding up purposes

(1) For the purposes of this Ordinance so far as it relates to the winding up of companies by the court, the term "official receiver" means an officer appointed for the purpose by the Governor.

(2) - (3) Omitted.

(4) (Added by No. 30 of 1991) Where a person is appointed under sub-section (3) he shall not be capable of acting as official receiver until he has given such security as may be specified in the notice of appointment.

(5) (Added by No. 30 of 1991) Where an appointment is made under sub-section (3) notice of the appointment specifying the name and address of the liquidator so appointed shall be:

(a) filed in the Court;

(b) served upon the company at its registered office; and

(c) published in the Gazette.

168. Statement of company's affairs to be submitted to official receiver

(1) Where the court has made a winding up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) - (8) Omitted.

169. Report by official receiver

(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under Section 168, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court:

- (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) - (3) Omitted.

LIQUIDATORS

170. Power of court to appoint liquidators

For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

171. Appointment and powers of provisional liquidator

(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding up petition.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding up order, and either at any time before the making of a winding up order, and either the official receiver or any other fit person may be appointed.

(3) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

172. Appointment and style of liquidators

The following provisions with respect to liquidators shall have effect on a winding-up order being made:

- (a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

- (b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver:
- (c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories, the court shall decide the difference and make such order thereon as the court may think fit;
- (d) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;
- (e) the official receiver shall by virtue of his office be the liquidator during any vacancy;
- (f) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator," and, where the official receiver is liquidator, by the style of "the official receiver and liquidator," of the particular company in respect of which he is appointed, and not by his individual name.

173. Provisions where person other than official receiver is appointed liquidator

Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator that person:

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the court;
- (b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance-

174. General provisions as to liquidators

- (1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.
- (2) - (5) Omitted.

175. Custody of company's property

Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

176. Vesting of property of company in liquidator

Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

177. Powers of liquidator

- (1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection:

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;
- (c) to appoint a solicitor to assist him in the performance of his duties;
- (d) to pay any classes of creditors in full;
- (e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- (f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory or other debtor or person apprehending liability to the company and all questions in any way relating to or affecting the asset or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court shall have power:

- (a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;
- (c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and ratably with the other separate creditors;
- (d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
- (e) to raise on the security of the assets of the company, any money requisite;
- (f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
- (g) to appoint an agent to do any business which the liquidator is unable to do himself;
- (h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

178. Exercise and control of liquidator's power

Omitted.

179. Books to be kept by liquidator

Omitted

180. Payment of liquidator into Saving Bank

Omitted

181. Audit of liquidator's accounts

Omitted

182. Release of liquidators

Omitted

COMMITTEES OF INSPECTION

183. Meetings of creditors and contributories to determine whether committee of inspection shall be appointed

(1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not a application is to be made to the court for the appointment of a committee of inspection to act with the liquidators and who are to be members of the committee if appointed.

(2) Omitted.

184. Constitution and proceedings of committee of inspection

(s. 199)

(1) A committee of inspection appointed in pursuance of this Ordinance shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

(2) - (8) Omitted.

185. Powers of court where no committee of inspection

Where there is no committee of inspection, the court may, on application of the liquidator, do any act or thing or give any direction or permission which is by this Ordinance authorized or required to be done or given by the committee.

GENERAL POWERS OF COURT IN CASE OF WINDING UP BY COURT

186. Power to stay winding up

(1) The court may at any time after an order for winding up, on the application either of the liquidator, or the official receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

187. - 203. Omitted.

(C) VOLUNTARY WINDING UP

RESOLUTIONS FOR, AND COMMENCEMENT OF VOLUNTARY WINDING UP

204. Circumstances in which company may be wound up voluntarily

(1) A company may be wound up voluntarily:

- (a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) if the company resolves by special resolution that the company be wound up voluntarily;
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Ordinance, "a resolution for voluntary winding up means a resolution passed under any of the provisions of subsection (1).

205. Notice of resolution to wind up voluntarily

(1) When a company has passed a resolution for voluntary winding up, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offenses and are liable on summary conviction to a default fine, and for the purposes of this subsection the liquidator of the company is to be deemed to be an officer of the company.

206. Commencement of voluntary winding up

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

CONSEQUENCES OF VOLUNTARY WINDING UP

207. Effect of voluntary winding up on company

In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as maybe required for the beneficial winding up thereof.

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

208. Transfer after commencement of voluntary winding up

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

DECLARATION OF SOLVENCY

209. Statutory declaration of solvency in case of proposal to wind up voluntarily

(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that having so done, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the winding up.

(2) - (3) Omitted.

PROVISIONS APPLICABLE TO A MEMBERS VOLUNTARY WINDING UP

210. Application of section 211 to 215

The provisions contained in Sections 211 to 215 (both inclusive) shall apply in relation to a members voluntary winding up.

211. Power to appoint and fix remuneration

(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

212. Power to fill vacancy in office of liquidator

(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangements with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Ordinance or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

213 - 215 Omitted.

PROVISIONS APPLICABLE TO A CREDITORS VOLUNTARY WINDING UP

216. Application of section 217 to 224

The provisions contained in Sections 217 to 224 (both inclusive) shall apply in relation to a creditors voluntary winding up.

217. Meeting of creditors

(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in another newspaper published in Gibraltar.

(3) - (5) Omitted.

218. Appointment of liquidator

The creditors and the company at their respective meetings mentioned in Section 217 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company; and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person (if any) nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

219. Appointment of committee of inspection

(1) The creditors at the meeting to be held in pursuance of Section 217 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of Section 184 (except subsection (1) thereof) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

220. Fixing of liquidator's remuneration and cesser of directors powers

(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

221. Power to fill vacancy in office of liquidator

If a vacancy occurs by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court the creditors may fill the vacancy.

222. Application of section 213 to a creditors' voluntary winding up

The provisions of Section 213 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding-up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the court or of the committee of inspection.

223. Duty of liquidator to call meetings of company and of creditors at end of each year

(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) (Amended by No. 30 of 1991) A liquidator who fails to comply with this section is guilty of an offense and is liable on summary conviction to a fine at level 1 on the standard scale.

224. Final meeting and dissolution

(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) (Amended by No. 30 of 1991) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator is guilty of an offense 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:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return herein before mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) - (5) Omitted.

PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP

225. Application of sections 226 to 233

The provisions contained in Sections 226 to 233 (both inclusive) shall apply to every voluntary winding up whether a members' or a creditors' winding up.

226. Distribution of property of company

Subject to the provisions of this Ordinance as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

227. Powers and duties of liquidator in voluntary winding up

(1) The liquidator may:

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of Section 177(1) to a liquidator in a winding up by the court;
- (b) without sanction, exercise any of the other powers by this Ordinance given to the liquidator in a winding up by the court;
- (c) exercise the power of the court under this Ordinance of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the court of making calls;
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) - (3) Omitted.

228. Appointment and removal of liquidator by court

- (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

229. Notice by liquidator of his appointment

- (1) The liquidator shall, within twenty- one day after his appointment, deliver to the Registrar for registration a notice of his appointment in the prescribed form.
- (2) (Amended by No. 30 of 1991) A liquidator who fails to comply with the requirements of this section, is guilty of an offense 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.

230. Arrangement when binding on creditors

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution and on the creditors if acceded to by three- fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

231. Power to apply to court to have questions determined or powers exercised

(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

232. Costs of voluntary winding up

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

233. Saving for rights of creditors and contributories

The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(D) WINDING UP SUBJECT TO SUPERVISION OF COURT

234. Power to order winding up subject to supervision

When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

235. Effect of petition for winding up subject to supervision

A petition for the continuance of a voluntary winding-up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

236. Application of sections 161 and 162

A winding up subject to the supervision of the court shall, for the purposes of sections 161 and 162, be deemed to be a winding up by the court.

237. – 238. Omitted

(E) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

PROOF AND RANKING OF CLAIMS

239. Debts of all descriptions to be proved

In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Ordinance of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as

possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

240. Application of bankruptcy rules in winding up

In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

241. Preferential payments

(1) In a winding up there shall be paid in priority to all other debts:

- (a) all local rates due from the company at the relevant date, and having become due and payable within 12 months next before that date, and all taxes assessed on or otherwise due by the company within twelve months next before the relevant date, and not exceeding in the whole the amount assessed or due in respect of one year;
- (b) (Amended by No. 30 of 1991) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date, not exceeding £1000;
- (c) (Amended by No. 30 of 1991) all wages of any workman or laborer not exceeding £1000, whether payable for time or for piece work. in respect of services rendered to the company during 4 months next before the relevant date:

Provided that, where any laborer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the case may decide to be due under the contract proportionate to the time of service up to the relevant date;

- (d) all amounts, not exceeding in any individual case £500, payable by the company in respect of compensation under the provisions of the Contract and Tort Ordinance, the liability wherefore accrued before the relevant date;
- (e) all amounts payable by the company in respect of contributions as the employer of any person under the Social Security (Employment Injuries Insurance) Ordinance and under the Social Security (Insurance) Ordinance.

(2) - (5) Omitted.

EFFECT OF WINDING UP ON ANTECEDENT AND OTHER TRANSACTIONS

242. Fraudulent preference

(1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

243. Effect of floating charge

Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum.

244. – 270. Omitted

PART VI RECEIVERS AND MANAGERS

271. Disqualification for appointment as receiver

(1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

(2) (Amended by No. 30 of 1991) A body corporate which acts as such receiver is guilty of an offense and is liable on summary conviction to a fine at level 5 on the standard scale.

272. Power to appoint official receiver as receiver

Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed.

273. Notification that receiver or manager appointed

(1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) Omitted.

274. Power of court to fix remuneration on application of liquidator

The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

275. - 276. Omitted.

PART VII GENERAL PROVISIONS AS TO REGISTRATION

277. Registration office

For the purposes of the registration of companies under this Ordinance there shall be an office at such address as the Governor may think fit.

278. Appointment of Registrar

(1) The Governor may appoint a Registrar of Companies for the purposes of this Ordinance and in default of such appointment the Registrar of the Supreme Court shall be such Registrar, and where the Registrar of the Supreme Court is the Registrar of Companies the registry of the Supreme Court shall be the office for the registration of companies under this Ordinance.

(2) The Registrar of Companies shall have a seal and such seal shall bear the words "Registrar of Companies, Gibraltar".

(3) Omitted.

279. Fees

There shall be paid to the Registrar in respect of the several matters mentioned in the Table set out in the Eighth Schedule the several fees therein specified.

280. Inspection, production and evidence of documents kept by Registrar

(1) (Amended by No. 30 of 1991) Any person may by search inspect the documents kept by the Registrar, and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment for each search, certified copy or photocopy, of the appropriate fee specified in the Table set out in Schedule 8:

Provided that no fee shall be payable by the Crown in respect of a search carried out or a certificate, certified copy or photocopy obtained for or on behalf of the Crown in respect of the Government of Gibraltar.

(2) - (3) Omitted.

281. Enforcement of duty of company to make returns to Registrar

(1) If a company, having made default in complying with any provision of this Ordinance which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may on an application made to the court by any member or creditor of the company or by the Registrar of Companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) - (3) Omitted.

281A. Official notification

(1) The Registrar shall cause to be published in the Gazette notice of the issue or receipt by him of documents of any of the following descriptions (stating in the notice the name of the company, the description of document and the date of issue or receipt), that is to say:

- (a) any certificate of incorporation of a company ;
- (b) any document making or evidencing an alteration in the memorandum or articles of association of a company;
- (c) any return relating to a company's register of directors, or notification of a change among its directors;
- (d) a company's annual return;
- (e) any notice of the situation of a company's registered office, or of any change therein;
- (f) any copy of a winding- up order in respect of a company;
- (g) any order for the dissolution of a company on a winding up;

(h) any return by a liquidator of the final meeting of a company on a winding up,

and in the following provisions of this section "official notification" means, in relation to anything stated in a document of any of the above descriptions, the notification of that document in the Gazette under this section and, in relation to the appointment of a liquidator in a voluntary winding up, the notice thereof under section 229(1), and "officially notified" shall be construed accordingly.

(2) A company shall not be entitled to rely against other persons on the happening of any of the following events that is to say:

- (a) the making of a winding-up order in respect of the company, or the appointment of a liquidator in a voluntary winding up of the company; or
- (b) any alteration of the company's memorandum or articles of association; or
- (c) any change among the company's directors; or
- (d) (as regards service of any document on the company) any change in the situation of the company's registered office,

if the event had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned, or if the material time fell on or before the fifteenth day after the date of official notification (or, where the fifteenth day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

For this purpose "non-business day" means a Saturday or Sunday, Christmas Day, Good Friday and other day which is a public holiday under section 55 of the Interpretation and General Clauses Ordinance or a bank holiday under section 2 of the Banking and Financial Dealings Ordinance.

PART VIII WINDING UP OF UNREGISTERED COMPANIES

282. Meaning of unregistered company

For the purpose of this Part, the expression "unregistered company" includes any partnership, whether limited or not, any association and any company with the following exceptions:

- (a) A partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company;
- (b) A limited partnership registered in Gibraltar.

283. Winding up of unregistered companies

(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Ordinance and all the provisions of this Ordinance with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:

- (a) No unregistered company shall be wound up under this Ordinance voluntarily or subject to supervision;
- (b) The circumstances in which an unregistered company may be wound up are as follows:
 - (i) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (ii) if the company is unable to pay its debts;

(iii) if the court is of opinion that it is just and equitable that the company should be wound up;

(c) an unregistered company shall, for the purposes of this Ordinance , be deemed to be unable to pay its debts:

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding L500 then due , has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditors;

(ii) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason of the same;

(iii) if execution or other process issued on a judgement, decree or order obtained in any court in favor of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(iv) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(2) Where a company incorporated outside Gibraltar which has been carrying on business in Gibraltar ceases to carry on business in Gibraltar, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

284. Contributories in winding up of unregistered company

(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) In the event of the death, bankruptcy or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Ordinance with respect to the personal representatives, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

285. Power of court to stay or restrain proceedings

The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to

stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

286. Actions stayed on winding up order

Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

287. Provisions of Part VII cumulative

The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Ordinance contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Ordinance:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this Part.

PART IX COMPANIES INCORPORATED OUTSIDE GIBRALTAR CARRYING ON BUSINESS WITHIN GIBRALTAR

288. Companies to which Part IX applies

This Part shall apply to all companies incorporated outside Gibraltar which, after the commencement of this Ordinance, establish a place of business within Gibraltar, and to all companies incorporated outside Gibraltar which have, before the commencement of this Ordinance, established a place of business within Gibraltar and continue to have an established place of business within Gibraltar at the commencement of this Ordinance.

289. Documents to be delivered to Registrar by companies carrying on business in Gibraltar

Companies incorporated outside Gibraltar which establish a place of business within Gibraltar, shall, within one month from the establishment of the place of business, deliver to the Registrar for registration:

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Ordinance required to be contained with respect to directors in the register of the directors of a company;
- (c) the names and addresses of some one or more Persons resident in Gibraltar authorized to accept on behalf of the company service of process and any notices required to be served on the company.

290. Return to be delivered to Registrar where documents altered

If in the case of any company to which this Part applies any alteration is made in:

- (a) the charter, statutes or memorandum and articles of the company or any such instrument as aforesaid; or
- (b) the directors of the company or the particulars contained in the list of the directors; or

- (c) the names or addresses of the persons authorized to accept service on behalf of the company,

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

291. Balance sheet of company carrying on business in Gibraltar

(1) Every company to which this Part applies shall in every calendar year make out a balance sheet in such form, and containing such particulars and including such documents, as under the provisions of this Ordinance it would, if it had been a company within the meaning of this Ordinance, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the Registrar for registration.

(2) If any such balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

(3) This section shall not apply to a private company incorporated in and registered as a company in the United Kingdom under the law for the time being in force there.

292. Obligation to state name of company, whether limited, and country where incorporated

Every company to which this Part applies shall:

- (a) In every prospectus inviting subscriptions for its shares or debentures in Gibraltar state the country in which the company is incorporated; and
- (b) Conspicuously exhibit on every place where it carries on business in Gibraltar the name of the company and the country in which the company is incorporated; and
- (c) Cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all billheads and letter paper, and in all notices, advertisements and other official publications of the company; and
- (d) If the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all billheads, letter paper, notices, advertisements and other official publications of the company in Gibraltar, and to be affixed on every place where it carries on its business.

293. Service on company to which Part IX applies

Any process or notice required to be served on a company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part and left at or sent by post to the address which has been so delivered:

Provided that;

- (a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Gibraltar who is authorized to accept on behalf of the company service of process or notice; or
- (b) if any time the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served.

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

294. Penalties

(Amended by No. 30 of 1991)

If a company to which this Part applies fails to comply with any of the foregoing provisions of this Part the company, and every officer or agent of the company, are guilty of offenses and are each liable on summary conviction to a fine at level 2 on the standard scale, or, in the case of a continuing offense, of one-tenth of the amount at that level for every day during which the default continues.

295. Interpretation of Part IX

For the purposes of this Part:

"certified" means certified in the prescribed manner to be a true copy or a correct translation;

"director", in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"place of business" includes a share transfer or share registration office;

"prospectus" has the same meaning as when used in relation to a company incorporated under this Ordinance.

PART IXA RE-DOMICILIATION

(Added by No. 30 of 1991; Amended by No. 4 of 1996)

295A. Companies to which Part XA applies.

(Added by No. 30 of 1991; Amended by No. 4 of 1996)

(1) This Part shall apply to companies:

- (a) incorporated outside Gibraltar in a relevant State which re-domicile in Gibraltar;
- (b) incorporated in Gibraltar which re-domicile to a relevant State.

(2) The Governor may by regulation in respect of a company incorporated outside Gibraltar in a relevant State make provision for:

- (a) eligibility of a company to re-domicile in Gibraltar;
- (b) the form of application for registration as a company re-domiciled in Gibraltar;
- (c) evidence to be submitted in support of an application for registration in accordance with paragraph (b);
- (d) the form and effect of registration as a company re-domiciled in Gibraltar.

(2A) The Governor may in respect of a company incorporated in Gibraltar by regulation make provision for:

- (a) the eligibility of a company to re-domicile into a relevant State;
- (b) the form of application for re-domiciliation into a relevant State;
- (c) the evidence to be submitted in support of an application for re-domiciliation in accordance with paragraph (b);

(d) conditions to be satisfied by a company prior to and during re-domiciliation;

(e) the form and effect of registration as a company incorporated in Gibraltar and re-domiciled in a relevant State.

(3) Notwithstanding the provisions of this Ordinance, regulations made by virtue of sub-section (2) may provide for the application of this Ordinance to companies to which this Part applies.

(4) In this Part "relevant State" means a State having regulation of companies compatible with the provisions of this Part and regulations made under this section and which state is prescribed by the Governor for the purposes of this Part.

PART X RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE

296. Prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale

(1) It shall not be lawful for any person:

(a) to issue, circulate or distribute in Gibraltar any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Gibraltar, whether the company has or has not established, or when formed will or will not establish a place of business in Gibraltar, unless:

(i) before the issue, circulation or distribution of the prospectus in Gibraltar a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar of Companies;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated;

(iv) the prospectus otherwise complies with this Part; or

(b) to issue to any person in Gibraltar a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favor of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Gibraltar are offered for sale to the public would, if the company concerned had been a company within the meaning of this Ordinance, have been deemed by virtue of Section 38 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 37 shall extend to every prospectus to which this section applies.

(6) (Amended by No. 30 of 1991) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures in contravention of the provisions of this section is guilty of an offense and liable on summary conviction to a fine at level 5 on the standard scale.

(7) In this section and Section 297, "prospectus", "shares", and "debentures" have the same meanings as when used in relation to a company incorporated under this Ordinance.

(8) (Added by No. 30 of 1991) With the exception of the requirements contained in paragraph (a)(i), the provisions of sub-section (1) shall not apply to a prospectus or form of application which:

- (a) is issued in a member state of the European Economic Communities in accordance with the laws of that state regulating the issue of such a prospectus or form of application; and
- (b) is in the English language or if not in the English language is accompanied by a certified translation into the English language; and
- (c) contains or is accompanied by details of the name and address of the competent authority in the member state in which the prospectus or form of application was issued and with which it is registered or by which its issue, circulation or distribution was authorized.

297. Requirements as to prospectus

(1) In order to comply with this Part a prospectus in addition to complying with the provisions of subparagraphs (ii) and (iii) of paragraph (a) of subsection (1) of Section 296 must:

- (a) contain particulars with respect to the following matters:
 - (i) the objects of the company;
 - (ii) the instrument constituting or defining the constitution of the company;
 - (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was incorporated;
 - (iv) an address in Gibraltar where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
 - (v) the date on which and the country in which the company was incorporated;
 - (vi) whether the company has established a place of business in Gibraltar, and, if so, the address of its principal office in Gibraltar;

Provided that the provisions of sub- paragraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

- (b) subject to the provisions of this section, state the matters specified in Part I of the Third Schedule (other than those specified in Paragraph 1 of Part I) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of the said Schedule:

Provided that:

- (i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and
- (ii) in Paragraph 3 of Part I of the said Third Schedule a reference to the constitution of the company shall be substituted for the reference to the articles; and
- (iii) Paragraph I of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if:

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in Paragraph 15 of Part I of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Ordinance, apart from this section.

(5) (Added by No. 30 of 1991) The provisions of sub-section (1) shall not apply to a prospectus which is:

- (a) issued in a member state of the European Economic Communities in accordance with the laws of that state regulating the issue of such a prospectus; and
- (b) is in the English language or if not in the English language is accompanied by a certified translation into the English language; and
- (c) contains or is accompanied by details of the name and address of the competent authority in the member state in which the prospectus was issued and with which it is registered or by which its issue, circulation or distribution was authorized.

298. Restrictions on offerings of shares for subscription or sale

(1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection "house" shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Gibraltar, either by such a statement as aforesaid, or by such a prospectus as complies with this Part:

Provided that the provisions of this subsection shall not apply:

- (a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by any recognized stock exchange in Gibraltar and the offer so states and specifies the stock exchange; or
- (b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or
- (c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The statement shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The statement shall contain particulars with respect to the following matters:

- (a) Whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Gibraltar where that principal can be served with process;
- (b) The date on which and the country in which the company was incorporated and the address of its registered or principal office in Gibraltar;
- (c) The authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of share holders in respect of capital, dividends and voting;
- (d) The dividends (if any) paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
- (e) The total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;
- (f) The names and addresses of the directors of the company;
- (g) Whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;
- (h) Whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognized stock exchange in Gibraltar or elsewhere, and, if so, which, and if not, a statement that they are not so quoted or that no such permission has been granted;
- (i) Where the offer relates to units, particulars of the name and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to

any document defining the terms on which those shares are held, and an address in Gibraltar where that document or a copy thereof can be inspected.

In this subsection, "company" means the company by which the shares to which the statement relates were or are to be issued.

(5) (Amended by No. 30 of 1991) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be guilty of an offense and liable on summary conviction to imprisonment for six months and to a fine at level 4 on the standard scale, and in the case of a second or subsequent offense to imprisonment for twelve months and to a fine at level 5 on the standard scale.

(6) Where a person convicted of an offense against this section is a company (whether a company within the meaning of this Ordinance or not), every director and every officer concerned in the management of the company is guilty of the like offense unless he proves that the act constituting the offense took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires, "shares" mean the shares of a company, whether a company within the meaning of this Ordinance or not, and includes debentures and units, and "unit" means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person is convicted of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

PART XI MISCELLANEOUS

PROHIBITION OF PARTNERSHIPS WITH MORE THAN 20 MEMBERS

299. Prohibition of partnerships with more than twenty members

No company, association or partnership consisting of more than twenty persons shall be formed for the purpose carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance, or is formed in pursuance of some other Ordinance, or of letters patent.

MISCELLANEOUS OFFENSES

300. Penalty for false statement

(Amended by No. 30 of 1991) A person who in any return, report, certificate, balance sheet or other document, required by or for the purpose of any of the provisions of this Ordinance specified in Schedule 9 willfully makes a statement false in any material particular, knowing it to be false, is guilty of an offense, and is liable on summary conviction to imprisonment for four months, and to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that:

- (a) the fine imposed on summary conviction shall not exceed level 3 on the standard scale; and
- (b) nothing in this section shall affect the provisions of Part XX of the Criminal Offenses Ordinance.

301. Penalty for improper use of word "Limited"

(Amended by No. 30 of 1991) If any person or persons trade or carry on business under any name or title of which "Limited", or any contraction or imitation of that word, is the last word, that person or those persons are, unless duly incorporated with limited liability, guilty of an offense and are liable on summary conviction to a fine of one-half of the amount at level 1 on the standard scale for every day upon which that name or title has been used.

GENERAL PROVISIONS AS TO OFFENSES

302. Provision with respect to default fines and meaning of "officer in default"

(1) (Amended by No. 30 of 1991) Whereby any enactment in this Ordinance it is provided that a company and every officer of the company who is in default are liable to a default fine, the company and every such officer are, for every day during which the default, refusal or contravention continues, liable to a fine not exceeding such amount as is specified in the enactment, or, if the amount of the fine is not so specified, to a fine of one-half of the amount at level 1 on the standard scale.

(2) For the purpose of any enactment in this Ordinance which provides that an officer of a company who is in default is liable to a fine or penalty, the expression "officer who is in default" means an) director, manager , secretary or other officer of the company , who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the enactment.

303. Application of fines

The court imposing any fine under this Ordinance may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered , and subject to any such direction all fines under this Ordinance shall be paid into the Consolidated Fund.

304. Savings to private prosecutors

Nothing in this Ordinance relating to the institution of criminal proceedings by the Attorney- General shall be taken to preclude any person from instituting or carrying on any such proceedings.

305. Saving for privileged communications

Where proceedings are instituted under this Ordinance against any person by the Attorney- General, nothing in this Ordinance shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

SERVICE OF DOCUMENTS AND LEGAL PROCEEDINGS

306. Service of documents on company

A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

307. Costs in actions by certain limited companies

Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defense, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

308. Power of court to grant relief in certain cases

(1) If in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he as acted honestly and reasonably, and that having regard to all circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may, relieve him, either wholly or partly, from his liability on such terms as the court think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) of this section applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following:

- (a) directors of a company;
- (b) managers of a company;
- (c) officers of a company;
- (d) persons employed by a company as auditors, whether they are or are not officers of the company.

309. Power to enforce orders

Orders made by the Supreme Court under this Ordinance may be enforced in the same manner as orders made in an action pending therein.

GENERAL PROVISIONS

310. Authentication of documents

Any approval, sanction or license, or revocation of license, which under this Ordinance may be given or made by the Governor or any other act or thing required or authorized by this Ordinance to be done by the Governor may be given, made or done by the Deputy General or any person authorized in that behalf by the Governor.

311. Orders and certificates of Governor or Deputy Governor to be evidence

All documents purporting to be orders or certificates made or issued by the Governor for the purposes of this Ordinance or to be signed by the Governor or the Deputy Governor or any person authorized in that behalf by the Governor, shall be received in evidence and deemed to be such orders or certificates without further proof, unless the contrary is shown.

312. Mode of payment of fees

All fees and percentages payable in pursuance of this Ordinance or in pursuance of any rules of court made under this Ordinance shall be payable in stamps and the provisions of the Fees (Collection) Ordinance shall apply to fees payable under this Ordinance.

313. Power to alter tables and forms

(1) The Governor may by order alter Table A, the forms in Schedule 1 and the table of fees in the Eighth Schedule, and may alter or add to Tables B, C, D and E in the First Schedule, and the forms in the Fifth Schedule.

(2) Omitted.

(3) Repealed by Ordinance No. 30 of 1991.

314. Designation of capital

Notwithstanding anything to the contrary in this Ordinance contained, the capital of a company may be expressed in a currency other than sterling.

315. European Economic Community Law

(Added by No. 48 of 1990)

(1) The Governor may make regulations to give effect in Gibraltar to the law of the European Economic Community's relating to any of the matters contained in this Ordinance, or having as its intention the regulation of companies and their affairs.

(2) Regulations made under this section may make provision for the repeal or modification of any provision of this Ordinance where such provision is:

- (a) in conflict with;
- (b) made unclear by; or
- (c) rendered unnecessary by, a regulation made hereunder.

SCHEDULE 1

TABLE A. REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Preliminary

1.

(1) In these regulations:

"The Ordinance" means the Companies Ordinance.

(2) When any provision of the Ordinance is referred to, the reference is to that provision as modified by any statute for the time being in force.

(3) Unless the context otherwise requires, expressions defined in the Ordinance or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Shares

2.

Subject to the provisions (if any) in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3.

If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three- fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall mutatis mutandis apply but so that the necessary quorum shall be two persons at least holding or representing by proxy one- third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

4.

Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5.

If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee (if any) not exceeding five pence, and on such terms (if any) as to evidence and indemnity, as the directors think fit.

6.

No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 45(1) of the Ordinance.

Lien

7.

The company shall have a lien on every share (not being a fully- paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully- paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien (if any) on a share shall extend to all dividends payable thereon.

8.

The company may sell, in such manner as the directors think fit, any shares on which the company has a lien but- no sale shall be made unless some sum in respect of which the lien exists is presently payable , nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share , or the person entitled thereto by reason of his death or bankruptcy.

9.

For giving effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10.

The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable , and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

11.

The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one- fourth of the nominal amount of the share , or be payable at less than one month from the last call ; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

12.

The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13.

If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of U per cent per annum from the day appointed for the payment thereof to the time of the actual payment , but the directors shall be at liberty to waive payment of that interest wholly or in part.

14.

The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non- payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15.

The directors may make arrangements on the issue of shares for difference between the holders in the amount of calls to be paid and in times of payment.

16.

The directors may , if they think fit , receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him ; and upon all or any of the

moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares

17.

The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18.

Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve:-

"I, A.B., of _____, in consideration of the sum of L _____, paid to me, by C.D. of (hereinafter called 'the said transferee') do hereby transfer to the said transferee the share [or shares] numbered _____ in the undertaking called the _____ Company Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same: and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the

day of

Witness to the signatures of

etc."

19.

The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognize any instrument of transfer unless:

- (a) a fee not exceeding thirteen pence is paid to the company in respect thereof; and
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20.

The legal personal representatives of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognized by the company as having any title to the share.

21.

Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of

being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22.

A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares

23.

If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

24.

The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25.

If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

26.

A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27.

A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

28.

A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration (if any) given for the share on any sale or disposition thereof and may execute a transfer of the share in favor of the person to whom the share is sold or disposed of and h\

shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29.

The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock

30.

The company may by ordinary resolution convert any paid-up shares into stock and reconvert any stock into paid-up shares of any denomination.

31.

The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32.

The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33.

Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

Alteration of Capital

34.

The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35.

Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not

accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

36.

The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, and forfeiture and otherwise as the shares in the original share capital.

37.

The company may by ordinary resolution:

- (a) Consolidate and divide all or any of its share capital into shares or larger amount than its existing shares;
- (b) Sub- divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of Section 50(1)(d) of the Ordinance;
- (c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38.

The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorized, and consent required, by law.

General Meetings

39.

A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

40.

The above- mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

41.

The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by Section 106 of the Ordinance. If at any time there are not in Gibraltar sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

42.

Subject to the provisions of Section 109(2) of the Ordinance relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43.

The accidental omission to give notice of a meeting to, or the non- receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings

44.

All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45.

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

46.

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

47.

The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

48.

If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose someone of their number to be chairman.

49.

The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the

meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

50.

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than fifteen percent of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favor of, or against, that resolution.

51.

If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

52.

In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53.

A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

54.

On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55.

In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56.

If a member is suffering from mental disorder, a person authorized in that behalf under section 47 of the Mental Health Ordinance or a receiver appointed under section 49 of that Ordinance may vote on behalf of the member, either on a show of hands or on a poll.

57.

No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58.

On a poll votes may be given either personally or by proxy.

59.

The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

60.

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty- eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

61.

An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve:

".....Company Limited.

I, of, of, as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the day of, and at any adjournment thereof.

Signed this day of"

62.

The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings

63.

Any corporation which is a member of the company, may by resolution of its directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

64.

The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

65.

The remuneration of the directors shall from time to time be determined by the company in general meeting.

66.

The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors

67.

The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the Ordinance, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulations of these articles, to the provisions of the Ordinance, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

68.

The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

69.

The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70.

The directors shall cause minutes to be made in books provided for the purpose:

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal

71.

The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors

72.

The office of director shall be vacated if the director:

- (a) ceases to be a director by virtue of Section 133 of the Ordinance; or
- (b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
- (c) becomes bankrupt; or
- (d) becomes prohibited from being a director by reason of any order made under Section 200 or 251 of the Ordinance; or
- (e) is suffering from mental disorder; or
- (f) resigns his office by notice in writing to the company; or
- (g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company:

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by Section 141 of the Ordinance, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors

73.

At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one- third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

74.

The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

75.

A retiring director shall be eligible for re- election.

76.

The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re- elected unless at such meeting it is resolved not to fill up such vacated office.

77.

The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

78.

Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79.

The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at the meeting as an additional director.

80.

The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

81.

The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

82.

The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three, be three, and when the number of directors does not exceed three, be two.

83.

The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

84.

The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

85.

The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

86.

A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87.

A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

88.

All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve

89.

The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

90.

The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91.

No dividend shall be paid otherwise than out of profits.

92.

Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93.

The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94.

If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95.

Any dividend may be paid by check or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such check or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

96.

No dividend shall bear interest against the company.

Accounts

97.

The directors shall cause proper books of account to be kept with respect to:

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company.

98.

The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99.

The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

100.

The directors shall from time to time in accordance with Section 115 of Ordinance, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

101.

A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the Auditors' report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit

102.

Auditors shall be appointed and their duties regulated in accordance with Sections 124, 125 and 126 of the Ordinance.

Notices

103.

A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in Gibraltar) to the address (if any) in Gibraltar supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty- four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104.

If a member has no registered address in Gibraltar and has not supplied to the company an address in Gibraltar for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in Gibraltar shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

105.

A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

106.

A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address (if any) in Gibraltar supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107.

Notice of every general meeting shall be given in some manner herein- before authorized to every member except those members who (having no registered address in Gibraltar) have not supplied to the company an address in Gibraltar for the giving of notices to them, and also to every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

TABLE B. FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1st. The name of the company is "The Eastern Steam Packet Company, Limited".

2nd. The registered office of the company will be situate in Gibraltar.

3rd. The objects for which the company is established are, the conveyance of passengers and goods in ships or boars between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object.

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Number of Shares Taken

Descriptions of Subscribers by each Subscriber

1. John Jones of Gibraltar Merchant			200
2. John Smith of	"	"	25
3. Thomas Green of	"	"	30
4. John Thompson of	"	"	40
5. Caleb White of	"	"	15
6. Andrew Brown of	"	"	5
7. Caesar White of	"	"	10

	Total shares taken		325

Dated the day of .19

Witness to the above signatures,

A.B., No. 13, Main Street, Gibraltar

TABLE C. FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

1st. The name of the company is "The Kent School Association, Limited".

2nd. The registered office of the company will be situate in Gibraltar.

3rd. The objects for which the company is established are the carrying on a school for boys in Gibraltar and the doing all such other things as are incidental or conducive to the attainment of the above object.

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding 10 pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers

1. John Jones of Gibraltar Schoolmaster
2. John Smith of " "
3. Thomas Green of " "
4. John Thompson of " "
5. Caleb White of " "
6. Andrew Brown of " "
7. Caesar White of " "

Dated the day of . 19. .

Witness to the above signatures,

A.B., No. 13, Main Street, Gibraltar.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

Preliminary

1.

(1) In these regulations:

"The Ordinance" means the Companies Ordinance.

(2) When any provision of the Ordinance is referred to the reference is to such provision as modified by any law for the time being in force.

(3) Unless the context otherwise required, expressions defined in the Ordinance or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Members

2.

The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3.

The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings

4.

The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5.

A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6.

The above- mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

7.

The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by Section 106 of the Ordinance. If at any time there are not in Gibraltar sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

8.

Subject to the provisions of Section 109(2) of the Ordinance relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

9.

The accidental omission to give notice of a meeting to, or the non- receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings

10.

All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

11.

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

12.

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

13.

The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

14.

If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose someone of their number to be chairman.

15.

The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting, from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16.

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favor of, or against, that resolution.

17.

If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

18.

In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

19.

A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

20.

Every member shall have one vote.

21.

If a member is suffering from a mental disorder, a person authorized in that behalf under section 47 of the Mental Health Ordinance or a receiver appointed under section 49 of that Ordinance may vote on behalf of the member, either on a show of hands or on a poll.

22.

No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23.

On a poll votes may be given either personally or by proxy.

24.

The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the seal, or under the hand of an officer or attorney so authorized. A proxy need not be a member of the company.

25.

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty- eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

26.

An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve:

" Company, Limited. I, of being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of .

27.

The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings

28.

Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the

company and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

29.

The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

30.

The remuneration of the directors shall from time to time be determined by the company in general meeting.

Powers and Duties of Directors

31.

The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Ordinance, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Ordinance, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32.

The directors shall cause minutes to be made in books provided for the purpose:

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal

33.

The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors

34.

The office of director shall be vacated, if the director:

- (a) without the consent of the company in general meeting holds any other office of profit under the company; or
- (b) becomes bankrupt; or
- (c) becomes prohibited from being a director by reason of any order made under Section 200 or 251 of the Ordinance;
- (d) is suffering from a mental disorder; or
- (e) resigns his office by notice in writing to the company; or
- (f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by Section 141 of the Ordinance.

A director shall not vote in respect of any contract in which he is interested or any matter arising there out, and if he does so vote his vote shall not be counted.

Rotation of Directors

35.

At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one- third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one- third, shall retire from office.

36.

The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

37.

A retiring director shall be eligible for re- election.

38.

The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re- elected unless at such meeting it is resolved not to fill up such vacated office.

39.

The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

40.

Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

41.

The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

42.

The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

43.

The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

44.

The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three and shall, when the number of directors does not exceed three, be two.

45.

The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

46.

The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

47.

The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

48.

A committee may elect a chairman of its meetings; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

49.

A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

50.

All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Accounts

51.

The directors shall cause proper books of account to be kept with respect to:

- (a) all sums of money received and expended by the company and the matter in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

52.

The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

53.

The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

54.

The directors shall from time to time in accordance with section 115 of the Ordinance, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

55.

A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit

56.

Auditors shall be appointed and their duties regulated in accordance with Sections 124, 125 and 126 of the Ordinance.

Notices

57.

A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in Gibraltar) to the address (if any) in Gibraltar supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of twenty- four hours after the letter containing the same was posted.

58.

If a member has no registered address in Gibraltar and has not supplied to the company an address in Gibraltar for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in Gibraltar shall be deemed to be duly given to him on the day on which the advertisement appears.

59.

Notice of every general meeting shall be given in some manner hereinbefore authorized to every member except those members who (having no registered address in Gibraltar) have not supplied to the company an address in Gibraltar for the giving of notices to them. No other persons shall be entitled to receive notices of general meeting.

Names, Addresses and Descriptions of Subscribers

1. John Jones of Gibraltar Schoolmaster
2. John Smith of " "
3. Thomas Green of " "
4. John Thompson of " "
5. Caleb White of " "
6. Andrew Brown of " "
7. Caesar White of " "

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 20, Main Street, Gibraltar.

SCHEDULE 5.

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

Annual Return of the _____ Company Limited, made up to the _____ day of _____ (being the fourteenth day after the date of the first extraordinary general meeting in 19_____ .

The address of the registered office of the company is as follows:

Summary of Share Capital and Shares

Nominal Share Capital of _____ divided) shares of _____
into* _____)each
_____)shares of _____
_____)each

*(Where there are shares of different kinds or amount (e.g. Preference and Ordinary or 1 pound and 5 pence) state the number and nominal values separately.)

Total number of shares taken up* to the day of 19..., being the date of the return (which number must agree with the total shown in the list as held by existing members).

Number of shares issued subject to payment wholly in cash.

Number of shares issued as fully paid up otherwise than in cash.

Number of shares issued as partly paid up to the extent of per share otherwise than in cash.

Number of (if any) issued at a discount. (If the shares are of different kinds, state them separately.)

Total amount of discount on the issue of shares which has not been written off at the date of this Return. Pounds

There has been called up on each ofshares Pounds
(Where various amounts have been called, or there are shares ofdifferent kinds, state them separately.)

There has been called up on each of shares Pounds
(Where various amounts have been called, or there are shares ofdifferent kinds, state them separately.)

There has been called up on each of shares Pounds
(Where various amounts have been called, or there are shares of

.....different kinds, state them separately.)

Total amount of calls received, including payments on application and allotment Pounds

(Include what has been received on forfeit as well as on existing shares.)

Total amount (if any) agreed to be considered as paid on shares Pounds
which have been issued as fully paid up otherwise than in cash.

Total amount (if any) agreed to be considered as paid on shares Pounds
which have been issued as partly paid up to the extent of per share,
otherwise than in cash.

Total amount of calls unpaid Pounds

Total amount of the sums (if any) paid by way of commission in respect Pounds
of any shares or debentures or allowed by way of discount in respect of
any debentures since the date of the last Return.

Total number of shares forfeited

Total amount paid (if any) on shares forfeited Pounds

Total amount of share warrants to bearer issued: Issued Pounds
and surrendered respectively since the date of the last Return: Pounds
Surrendered

Number of shares comprised in each share warrant to bearer.

Total amount of the indebtedness of the company in respect of all Pounds
mortgages and charges of the kind which are required to be registered
with the Registrar of Companies under the Companies Ordinance.

Copy of Last Audited Balance Sheet of the Company

Note: - Except where the company is a private company within the meaning of section 26 of the Companies Ordinance, this Return must include a written copy, certified by a director or by a manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

SCHEDULE 8

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF COMPANIES BY OR IN RESPECT OF COMPANIES HAVING A SHARE CAPITAL; COMPANIES NOT HAVING A SHARE CAPITAL; AND COMPANIES TO WHICH PART IX OF THE ORDINANCE APPLIES.

(Amended by Legal Notice No. 139 of 1991; effective Oct. 1, 1991)

(a) Incorporation, registration, (including registration under Part IX of the Ordinance), or submission of any change in status of a company, that is to say, the fact of its being public or private or limited or unlimited (except from public limited to private or from limited to unlimited) - regardless of share capital - £50

(b) Registration of a company as re-domiciled in Gibraltar under Part IXA - £100

(c) Registration of change in status from public limited to private or limited to unlimited - £50

(d) Registration of change of name - £10

(e) Registration of Prospectus - £100

- (f) Lodging of Annual Return for the current year - £20
- (g) Lodging of late Annual Return - £50
- (h) Inspection of documents:
 - (i) if available in written form - £1
 - (ii) microfiche copy of company record - £7
 - (iii) microfiche copy of company record made within the day - £20
- (i) Certified copy of a certificate:
 - (i) if available from the original record - £2
 - (ii) 1st copy (produced from microfiche record) - £10
 - (iii) each subsequent copy supplied on the same occasion and of the same company (produced from microfiche record) - £5
- (j) Certified copy of any other document (if available from the original record) - 20p per page and search fee of £1
- (k) Certified copy of any other document (produced from microfiche record) - £10 per document
- (l) Lodging document to substitute other document in file - £5
- (m) Lodging prescribed particulars for registration of a charge or any other forms of security - £5
- (n) Lodging of particulars of directors or any change of directors - £5
- (o) Connection or reconnection of telephone/computer links with the Registry - £50
- (p) Annual telephone/computer links subscription (payable in advance) - £100
- (q) Postal Search (microfiche copy of company record) - £10
- (r) Photocopy of any single page of any document (if available from the original record) - 10p per page and search fee of £1
- (s) Photocopy of any single page of any document (produced from microfiche record) - £5
- (t) Certificate of Good Standing - £15.

SCHEDULE 10

INVESTIGATION OF COMPANIES AND THEIR AFFAIRS;

REQUISITION OF DOCUMENTS

(Added by Companies (Amendment) Ordinance, 1988)

Appointment and Functions of Inspectors

1.

Investigation of a company on its own application or that of its members. (1) The Governor may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.

(2) The appointment may be made:

(a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued,

(b) in the case of a company/not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and

(c) in any case, on application of the company.

(3) The application shall be supported by such evidence as the Governor may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(4) The Governor may, before appointing inspectors, require the applicant or applicants to give security to such amount as he may by order specify, for payment of the costs of the investigation.

2.

Other company investigations (1) The Governor shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as he directs, if the court by order declares that its affairs ought to be so investigated.

(2) The Governor may make such an appointment if it appears to him that there are circumstances suggesting:

(a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or

(b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or

(c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or

(d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect, or

(e) that the company's affairs are being or have been conducted in a manner detrimental to the reputation of Gibraltar as a financial centre or otherwise contrary to the public interest.

(3) Subparagraphs (1) and (2) are without prejudice to the powers of the Governor under paragraph 1; and the power conferred by subparagraph (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

(4) The reference in subparagraph (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

3. Inspectors' powers during investigation

(1) If inspectors appointed under paragraph 1 or 2 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

(2) Inspectors appointed under either paragraph may at any time in the course of their investigation, without the necessity of making an interim report, inform the Governor of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

4. Production of documents and evidence to inspectors

(1) When inspectors are appointed under paragraph 1 or 2, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under paragraph 3(1):

- (a) to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,
- (b) to attend before the inspectors when required to do so, and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) If the inspectors consider that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, they may require that person to produce to them any books or documents in his custody or power relating to the company or other body corporate, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in subparagraph (2), in relation to the affairs of the company or other body, and may administer an oath accordingly.

(4) In this paragraph a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and "agents", in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this paragraph (whether as it has effect in relation to an investigation under any of paragraphs 1 to 3, or as applied by any other paragraph in this Schedule) may be used in evidence against him.

5. Power of inspector to call for directors' bank accounts

If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Gibraltar or elsewhere), into or out of which there has been paid:

- (a) the emoluments or part of the emoluments of his office as such director particulars of which have not been disclosed to the shareholders of the company or other body corporate, or

(b) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement, entered into by the company or other body corporate and which has not been recorded in the annual accounts, or

(c) any money which has been in any way connected with an act or omission, or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

6. Obstruction of inspectors treated as contempt of court

(1) When inspectors are appointed under paragraph 1 or 2 to investigate the affairs of a company, the following applies in the case of:

(a) any officer or agent of the company,

(b) any officer or agent of another body corporate whose affairs are investigated under paragraph 3,

(c) any such person as is mentioned in paragraph 4(2).

Paragraph 4(4) applies with regard to references in this subparagraph to an officer or agent.

(2) If that person:

(a) refuses to produce any book or document which it is his duty under paragraph 4 or 5 to produce, or

(b) refuses to attend before the inspectors when required to do so, or

(c) refuses to answer any question put to him by the inspectors with respect to the affairs of the company or other body corporate (as the case may be),

the inspectors may certify the refusal in writing to the court.

(3) The court may thereupon enquire into the case; and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

7. Inspectors' reports

(1) The inspectors may, and if so directed by the Governor shall, make interim reports to the Governor, and on the conclusion of their investigation shall make a final report to him, and shall forward a copy of every such report to the Attorney-General.

Any such report shall be written or printed, as the Governor directs.

(2) If the inspectors were appointed under paragraph 2 in pursuance of an order of the court, the Governor shall furnish a copy of any report of theirs to the court.

(3) In any case the Governor may, if he thinks fit:

(a) forward a copy of any report made by the inspectors to the company's registered office,

(b) furnish a copy on request and on payment of the prescribed fee to:

- (i) any member of the company or other body corporate which is the subject of the report,
 - (ii) any person whose conduct is referred to in the report,
 - (iii) the auditors of that company or body corporate,
 - (iv) the applicants for the investigation,
 - (v) any other person whose financial interests appear to the Governor to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and
- (c) cause any such report to be printed and published.

8. Power to bring civil proceedings on company's behalf

(1) If, from any report made under paragraph 7 or from information or documents obtained under paragraph 15 or 16 below, it appears to the Attorney-General that any civil proceedings ought in the public interest to be brought by any body corporate, he may himself bring such proceedings in the name and on behalf of the body corporate.

(2) The Attorney-General shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this paragraph.

9. Expenses of investigating a company's affairs

(1) The expenses of and incidental to an investigation by inspectors appointed by the Governor shall, in the first instance, be a charge to the Consolidated Fund; but shall be recoverable from the persons mentioned in the following four subparagraphs, to the extent there specified.

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under paragraph 8, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A body corporate in whose name proceedings are brought under that paragraph is liable to repay to the Consolidated Fund the amount or value of any sums or property recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this subparagraph is a first charge on the sums or property recovered.

(4) A body corporate dealt with by the inspectors' report, where the inspectors were appointed otherwise than of the Governor's own motion, is liable except where it was the applicant for the investigation to repay to the Consolidated Fund the full amount of those expenses except so far as the Governor otherwise directs.

(5) The applicant or applicants for the investigation, where the inspectors were appointed under paragraph 1, is or are liable to repay to the Consolidated Fund the full amount of those expenses except so far as the Governor otherwise directs.

(6) The report of inspectors appointed otherwise than of the Governor's own motion may, if they think fit, and shall if the Governor so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under subparagraph (4) or (5) above.

(7) For purposes of this paragraph, any costs or expenses charged to the Consolidated Fund in or in connection with proceedings brought under paragraph 8 (including expenses incurred under subparagraph (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(8) Any liability to repay to the Consolidated Fund imposed by subparagraphs (2) and (3) above is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under subparagraphs (4) and (5); and any such liability imposed by subparagraph (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subparagraph (3).

(9) A person liable under any one of those subparagraphs is entitled to contribution from any other person liable under the same subparagraph, according to the amount of their respective liabilities under it.

10. Power of Governor to present winding-up petition

If in the case of a body corporate liable to be wound up under this Ordinance it appears to the Governor from a report made by inspectors under paragraph 7, or from information or documents obtained under paragraphs 15 or 16 below, that it is expedient in the public interest that the body should be wound up, he may (unless the body is already being wound up by the court) present a petition for it to be so wound up if the court thinks it just and equitable for it to be so.

11. Inspectors' report to be evidence

(1) A copy of any report of inspectors appointed under paragraph 1 or 2, certified by the Governor to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

(2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

Other Powers of Investigation Available to the Governor

12. Power to investigate company ownership

(1) Where it appears to the Governor that there is good reason to do so, he may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

(2) The appointment of inspectors under this paragraph may define the scope of their investigation (whether as respects the matter or the period to which it is to extend or otherwise) and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) If application for an investigation under this paragraph with respect to particular shares or debentures of a company is made to the Governor by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of inspectors under paragraph 1(2)(a) and (b):

(a) the Governor shall appoint inspectors to conduct the investigation (unless he is satisfied that the application is vexatious), and

(b) the inspectors' appointment shall not exclude from the scope of their investigation any matter which the application seeks to have included, except insofar as the Governor is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

13. Provisions applicable on investigation under paragraph 12

(1) For purposes of an investigation under paragraph 12, paragraphs 3(1), 4, 6 and 7 apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to the following subparagraphs.

(2) Those paragraphs apply to:

- (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others), and
- (b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation,

as they apply in relation to officers and agents of the company or the other body corporate (as the case may be).

(3) If the Governor is of opinion that there is good reason for not divulging any part of a report made by virtue of paragraph 12 and this paragraph, he may under paragraph 7 disclose the report with the omission of that part; and he may cause to be kept by the Registrar of Companies a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

(4) The expenses of an investigation under paragraph 12 shall be defrayed by the Consolidated Fund.

14. Power to obtain information as to those interested in shares, etc.

(1) If it appears to the Governor that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Governor.

(2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who fails to give information required of him under this paragraph, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is liable to imprisonment for 5 years and fine.

Requisition and Seizure of Books and Papers

15. Governor's power to require production of documents

(1) The powers of this paragraph are exercisable in relation to the following bodies:

- (a) a company, formed and registered under this Ordinance;
- (b) an unregistered company as defined in section 282 having its principal place of business in Gibraltar; and

(c) a body corporate, whether or not registered under Part IX of this Ordinance which is carrying on business in Gibraltar or has at any time carried on business in Gibraltar.

(2) The Governor may at any time, if he thinks there is good reason to do so, give directions to any such body requiring it, at such time and place as may be specified in the directions, to produce such books or papers as may be so specified.

(3) The Governor may at any time, if he thinks there is good reason to do so, authorise a public officer to require any such body to produce to him (the officer) forthwith any books or papers which the officer may specify, provided that such officer shall, if required by such a body, produce evidence of his authority.

(4) Where by virtue of subparagraph (2) or (3) the Governor or public officer has power to require the production of books or papers from any body, he or the officer has the like power to require production of those books or papers from any person who appears to him or the officer to be in possession of them; but where any such person claims a lien on books or papers produced by him, the production is without prejudice to the lien.

(5) The power under this paragraph to require a body or other person to produce books or papers includes power:

(a) if the books or papers are produced:

(i) to take copies of them or extracts from them, and

(ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, the body in question, to provide an explanation of any of them;

(b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If the requirement to produce books or papers or provide an explanation or make a statement is not complied with, the body or other person on whom the requirement was so imposed is guilty of an offence and liable to a fine.

(7) However, where a person is charged with an offence under subparagraph (6) in respect of a requirement to produce any books or papers, it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) A statement made by a person in compliance with such a requirement may be used in evidence against him.

16. Entry and search of premises

(1) The following applies if a justice of the peace is satisfied on information on oath laid by a public officer authorised under paragraph 15(3), that there are reasonable grounds for suspecting that there are on any premises any books or papers of which production has been required under paragraph 15 and which have not been produced in compliance with that requirement.

(2) The justice may issue a warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books or papers appearing to be such books or papers as are mentioned above, or to take, in relation to any books or papers so appearing, any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) A warrant so issued continues in force until the end of one month after the date on which it is issued.

(4) Any books or papers of which possession is taken under this paragraph may be retained:

(a) for a period of 3 months, or

(b) if within that period there are commenced any such criminal proceedings as are mentioned in paragraph 17(1)(a) or (b) (being proceedings to which the books or papers are relevant), until the conclusion of those proceedings.

(5) A person who obstructs the exercise of a right of entry or search conferred by a warrant issued under this paragraph, or who obstructs the exercise of a right so conferred to take possession of any books or papers, is guilty of an offence and liable to a fine.

17. Provision for security of information obtained

(1) No information or document relating to a body which has been obtained under paragraph 15 or 16 shall, without the previous consent in writing of that body, be published or disclosed, except to a competent authority, unless the publication or disclosure is required:

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings for an offence entailing misconduct in connection with the management of the body's affairs or misapplication or wrongful retainer of its property;

(b) for the purposes of the examination of any person by inspectors appointed under paragraph 1, 2 or 12 in the course of their investigation;

(c) for the purpose of enabling the Governor or any other public officer to exercise, in relation to that or any other body, any of his functions under this Ordinance or any other law;

(d) for the purposes of proceedings under paragraph 16.

(2) A person who publishes or discloses any information or document in contravention of this paragraph is guilty of an offence and liable to imprisonment for 2 years and a fine.

(3) For purposes of this paragraph in relation to information or a document relating to a body, each of the following is a competent authority:

(a) an inspector appointed by the Governor under this Schedule,

(b) the Attorney-General,

(c) the Financial and Development Secretary and any officer authorised by him,

(d) the Commissioner of Banking and the Banking Supervisor,

(e) the Commissioner of Insurance and the Insurance Supervisor,

(f) the Registrar of Companies, and

(g) any police officer.

18. Punishment for destroying, mutilating, etc., company documents

(1) A person, being an officer of any such body as is mentioned in sub-paragraphs (a) to (c) of paragraph 15(1) who:

(a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the body's property or affairs, or

(b) makes, or is privy to the making of, a false entry in such a document,

is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of the body or to defeat the law.

(2) Such a person as above mentioned who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, is guilty of an offence.

(3) A person guilty of an offence under this paragraph is liable to imprisonment for 10 years and a fine.

19. Punishment for furnishing false information

A person who, in purported compliance with a requirement imposed under paragraph 15 to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false, is guilty of an offence and liable to imprisonment for 10 years and a fine.

Supplementary

20. Privileged information

(1) Nothing in paragraphs 1 to 14 requires the disclosure to the Governor or to an inspector appointed by him:

(a) by any person of information which he would in an action in the Supreme Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client,

(b) by a company's bankers (as such) of information as to the affairs of any of their customers other than the company.

(2) Nothing in paragraphs 15 to 19 compels the production by any person of a document which he would in an action in the Supreme Court be entitled to refuse to produce on grounds of legal professional privilege, or authorises the taking of possession of any such document which is in the person's possession.

(3) The Governor shall not under paragraph 15 require, or authorise a public officer to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to the Governor that it is necessary to do so for the purpose of investigating the affairs of the first-mentioned person, or the customer is a person on whom a requirement has been imposed under that section, or under section 98 of the Insurance Companies Ordinance, 1987.

(4) (Added by No. 30 of 1991) Subject to the provisions of this paragraph, any requirement or direction made under paragraphs 4 or 15, or any duty or obligation imposed by the provisions of either paragraph, shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information or the production of documents imposed by legislation, contract or otherwise.

21. Investigation of overseas companies

Paragraphs 2 to 7, 9, 11 and 20(1) apply to all bodies corporate incorporated outside Gibraltar which are carrying on business in Gibraltar or have at any time carried on business there as if they were

companies under this Ordinance, but subject to such (if any) adaptations and modifications as may be specified by regulations made by the Governor.

OPEN-ENDED INVESTMENT COMPANIES

An open-ended investment company is defined by Schedule 3, Part I, paragraph 6, subparagraph (4) of the Companies Ordinance as a company:

- (a) the sole object of which is to invest its funds in property of any description, including money, with the aim of spreading investment risk and giving its shareholders the benefit of the results of the management of those funds by, or on behalf of, the company; and
- (b) which gives to the holders of redeemable preference shares in the company the right to have such shares redeemed by or out of the funds of the company at a price related to the net asset value of the company, for the purposes of which it has established regular dealing days.

Subparagraph (3) of the same paragraph concerns the statements to be made on the prospectus of an open-ended investment company (which differs from that of a regular company).

"(3) The prospectus of an open-ended investment company inviting the public to subscribe for the company's redeemable preference shares shall:

- (a) in the case of the first such prospectus issued by the company state:
 - (i) the period during which the subscription lists for the shares being offered shall remain open ("the initial subscription period"); and
 - (ii) the amounts payable on application and allotment on each share offered during the initial subscription period; and
- (b) in the case of any subsequent prospectus issued by the company state:
 - (i) the number of shares offered for subscription on each previous issue made within the two preceding years; and
 - (ii) the number of shares of the company remaining unallotted or unredeemed on a date not earlier than 14 days prior to the date on which such prospectus was published; and
- (c) in either case shall specify the method by which the amount payable on the redemption of the company's shares will be determined."

COMPANIES TAXATION AND CONCESSIONS ORDINANCE

No. 13 of 1983

(Amended by No 4 of 1984, No. 14 of 1985, No. 16 of 1987, No. 22 of 1988, No. 39 of 1990, No. 13 of 1993, No. 6 of 1999)

An ordinance to provide for concessions in relation to income tax and estate duties in respect of certain companies registered in Gibraltar, and for the imposition of a flat annual tax, and for matters relating thereto.

1. Short title

This Ordinance may be cited as the Companies (Taxation and Concessions) Ordinance.

2. Interpretation

(1) (Amended by Ordinance No. 6 of 1999) In this Ordinance, unless the context otherwise requires:

"exempt company" means a company in respect of which there is for the time being in force an exemption certificate issued under section 5 by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette;

"Gibraltarian" (Amended by Ordinance 13 of 1962) means a person registered as a Gibraltarian under the Gibraltarian Status Ordinance, or a person who is entitled to be so registered under that Ordinance, but does not mean:

- (a) a person in respect of whom there is in force an order of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette under section 16 that such person shall not be treated as a Gibraltarian for the purposes of this Ordinance; or
- (b) an exempt company;

"ordinarily resident in Gibraltar" (Amended by Ordinance 11 of 1952) has the same meaning as it has for the purposes of the Income Tax Ordinance;

"resident of Gibraltar" includes:

- (a) a person ordinarily resident in Gibraltar; or
- (b) a company, not ordinarily resident in Gibraltar, in whose shares (other than shares of a class quoted on a recognised stock exchange) any Gibraltarian or resident of Gibraltar is interested;

but does not include:

- (i) a person in respect of whom there is in force an order of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry as the Minister with responsibility for Trade and Industry may from time to time designate by notice in the Gazette under section 16 that such person shall not be treated as resident or ordinarily resident in Gibraltar; or
- (ii) an exempt company (whether or not ordinarily resident in Gibraltar);

"share" means a share in the share capital of a company, and also means stock except where a distinction between stock and shares is expressed or implied.

(2) For the purposes of this Ordinance, a person shall be deemed to be interested in a share, loan or debenture if:

- (a) he holds any interest therein (other than as a bare nominee or trustee thereof) either directly or indirectly or through a company or series of companies, and whether such interest is equitable, legal or contractual; or
- (b) by reason of any agreement or arrangement with any other person he has the right to acquire an interest therein as herein defined or the power to enjoy a dividend or other benefit thereof.

(3) Notwithstanding subsection (2), a person shall not be deemed to be interested in a share, loan or debenture by reason of his holding the same or any interest therein acting in a representative or fiduciary capacity only, even though he may be entitled to remuneration for so acting or may have a charge or lien thereon for such remuneration.

3. Requirements for "exempt company" status

For the purposes of this Ordinance, a company shall be eligible to be an exempt company if, but only if, all of the following requirements are fulfilled in respect of it:

- (a) it is registered in Gibraltar under the Companies Ordinance:
- (b) the paid-up share capital of the company is not less than £100, or, where that share capital is expressed in any other currency, is not less than an amount equivalent to £100 at the ruling rate of exchange in the London foreign exchange market:
- (c) (Amended by Ordinance 6 of 1999) the company does not, without the approval of The Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette, carry on or transact any trade or business in Gibraltar, unless that trade or business is such that all receipts and income arising from it in the ordinary course of the trade or business arise either outside Gibraltar or from dealings with other exempt companies and originate from persons other than Gibraltarians or residents of Gibraltar; for which purpose only, the holding and managing of investments or property shall be treated as a trade or business:

Provided always that the company may in Gibraltar buy, sell, deal in, or hold and manage investments and property outside Gibraltar, or shares or debentures or other interests in other exempt companies, or debts or other choses in action owed or created by or enforceable against persons other than Gibraltarians or residents of Gibraltar, and may in Gibraltar promote services to be performed for other exempt companies, or services to be performed outside Gibraltar by and for persons other than Gibraltarians or residents of Gibraltar, without contravening this requirement:

- (d) the company:
 - (i) where it is not registered under Part IX of the Companies Ordinance, does not keep and is prohibited by its memorandum or articles of association from keeping any register of shares outside Gibraltar; and
 - (ii) (Amended by Ordinance 6 of 1999) where it is registered under Part IX of that Ordinance, and is not a public company whose shares are quoted in a manner approved by The Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette, keeps in Gibraltar a certified true copy of every share register kept by the company outside Gibraltar:
- (e) no Gibraltarian or resident of Gibraltar is interested in any of its shares, other than as a shareholder in a public company:

(i) that is registered under a law, of a country other than Gibraltar, relating to the registration or incorporation of bodies corporate; and

(ii) the shares of which are quoted on a recognised stock exchange;

(f) the company, where it is registered under Part IX of the Companies Ordinance, is not of a class for the time being prescribed for the purposes of this paragraph;

(g) (Added by Ordinance 39 of 1990) the Company has notified to the Commissioner of Income Tax the terms of any loan to it made by a Gibraltarian or a resident in Gibraltar.

4. Application for status of exempt company

(Amended by Ordinance 6 of 1999)

Any person wishing to acquire for an existing company or for a company to be formed under the Companies Ordinance the status of an exempt company may make application in writing in the prescribed form to The Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette for the grant of an exemption certificate under this Ordinance.

5. Issue and duration of exemption certificate

(1) (Amended by Ordinance 6 of 1999) The Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette, where he is satisfied that a company complies with the requirements of section 3, may in his absolute discretion register such company as an exempt company and issue under his hand an exemption certificate subject to such conditions and restrictions as he may think fit, and the company shall be an exempt company as from such date as may be stated in the certificate.

(2) Subject to sections 6 and 15, an exemption certificate shall remain in force for a period of 25 years after the date so stated in it.

(3) (Amended by Ordinance 6 of 1999) The Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette may at any time demand from any person such information and evidence in support thereof as he thinks fit to ensure compliance with all or any of the provisions and requirements of this Ordinance, including any conditions and restrictions imposed by the exemption certificate.

(4) (Amended by Ordinance 13 of 1993) A person who without lawful excuse fails to give such information or supply such evidence is guilty of an offence and is liable on conviction to a fine at level 3 on the standard scale.

6. Restrictions to be observed by exempt companies

Subject to section 15, an exempt company shall cease to be an exempt company if:

(a) the company reduces its nominal share capital to a sum below the amount specified in section 3(b) in respect of that company; or

(b) (Amended by Ordinance 6 of 1999) the company alters its memorandum or articles of association without the prior consent in writing of The Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may

from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette; or

- (c) the company makes or gives effect (by registration or otherwise) to any dealing or purported dealing with its shares contrary to section 7, or section 11(2) is contravened in respect of the company; or
- (d) any of the requirements that apply to the company under section 3 (other than paragraph (f) ceases to be fulfilled in respect of the company; or
- (e) (Amended by Ordinance 13 of 1993) the company fails to pay annual tax payable by it in accordance with section 10(3); or
- (f) the company makes default in complying with any condition or restriction imposed by the exemption certificate; or
- (g) the company or any of its directors or (except in the case of a public company) any of its shareholders is convicted of an offence against section 5(4) or section 17;
- (h) (Added by Ordinance 39 of 1990 and Amended by Ordinance 6 of 1999) there is a failure to submit to The Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette within three months of the end of each accounting year, a certificate, signed by both the secretary and a director, at least one of which is a resident of Gibraltar, confirming that the requirements of section 3 have been complied with during that period.

7. Restrictions on transactions in shares of exempt company

(1) (Amended by Ordinance 6 of 1999) Where an exempt company is not a public company whose shares are quoted in a manner approved by The Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette:

- (a) the exempt company shall not without the approval of The Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette allot or issue any of its shares; and
- (b) no person holding any shares in the company or any interest therein shall transfer or attempt to transfer or sell or enter into any legally binding commitment to sell such shares, without first submitting to the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette the prescribed particulars, in respect of the proposed transferee or purchaser or beneficiary of the shares or interest therein, and obtaining the approval in writing of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette for the proposed transaction-but in the case of an exempt company:
 - (i) the shares of which are registered in the names of trustees; and

(ii) which does not in the course of its trade or business accept deposits of money or other assets from the public or from any section of the public-nothing in this subsection shall apply to the acquisition (by transfer or sale or any other means) of an interest by a new or substituted beneficiary under the trust administered by those trustees unless the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette in any particular case so directs where he is apprehensive that a person has acquired or is about to acquire an interest, being a person who would not have been acceptable to the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette as a shareholder on the application by the company under section 4 for registration as an exempt company.

(2) (Amended by Ordinance 6 of 1999) Unless otherwise directed by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette, where an exempt company is a public company whose shares are quoted in a manner approved by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette, no person shall issue any share or register the transfer of any share unless there is delivered to the person issuing the share or registering the transfer a statutory declaration signed by the allottee or transferee of the share stating that no Gibraltarian or resident of Gibraltar thereby acquires an interest in the share or transfer.

(3) Any dealing with a share contrary to this section shall be null and void.

8. Exemptions from taxation for exempt companies

(1) Subject to subsections (2), (3) and (4), but notwithstanding the provisions of the Income Tax Ordinance, while an exemption certificate remains in force in respect of an exempt company, it shall enjoy the following benefits:

(a) no tax under the Income Tax Ordinance shall be charged on or payable on the profits of the company; and

(b) (Amended by Ordinance 16 of 1987) no tax under that Ordinance shall be charged on or payable on any dividend, interest, director's fee, annual payment or other sum payable by the company to any person who is not either a permitted individual or a resident of Gibraltar; and

(c) the company shall be under no liability to deduct tax from the amount of any dividend, interest, fee, annual payment or other sum specified in paragraph (b); and

(d) neither of sections 14 and 15 of the Income Tax Ordinance shall apply to the company.

(2) (Amended by Ordinance 6 of 1999) An exempt company shall be liable to tax under the Income Tax Ordinance in respect of income arising from any trade or business or the holding of any investments or property in respect of which the approval of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette is required under section 3(c) in the same manner as if it were not an exempt company and the provisions of section 39 of the Income Tax Ordinance relating to the deduction of tax on dividends shall apply to an exempt company to the extent of any tax payable pursuant to this section.

(3) The provisions of section 40 of the Income Tax Ordinance relating to the deduction of tax from interest paid by certain companies shall apply to an exempt company in respect of any mortgage, or debenture interest or interest on any loan advanced to the company where the interest is payable to a Gibraltarian or a resident of Gibraltar or is interest on principal money secured upon any immovable property situate in Gibraltar, and the company shall account for such tax to the Commissioner of Income Tax under the provisions of that Ordinance.

(4) Nothing in this section shall exempt any rent or other periodical sum payable in respect of, or payable for the use or occupation of, or charged on, immovable property situate in Gibraltar (whether or not payable to a Gibraltarian or a resident of Gibraltar) from tax under the Income Tax Ordinance.

9. Exemptions from estate duty and stamp duty for exempt companies

(1) Subject to subsection (2), but notwithstanding the provisions of the Estate Duties ordinance:

- (a) all shares in, loans made to, debentures held in and policies of life assurance issued by an exempt company shall be exempt from estate duty; and
- (b) the value of the shares, loans, debentures and policies specified in paragraph (a) shall not be taken into account or aggregated with any other property for the purpose of determining the rate at which estate duty is payable on any other property.

(2) Subsection (1) shall not apply to:

- (a) any loan or debenture:
 - (i) in which any Gibraltarian or resident of Gibraltar is interested; or
 - (ii) which is secured upon any immovable property situated in Gibraltar; or
- (b) any policy of life assurance issued on the life of any Gibraltarian or resident of Gibraltar.

(3) (Amended by Ordinance 14 of 1985) Subject to subsection (4), but notwithstanding the provisions of the Stamp Duties Ordinance no stamp duty shall be payable by an exempt company upon the several instruments specified in the Schedule to the Stamp Duties Ordinance.

(4) (Added by Ordinance 14 of 1985) Subsection (3) shall not apply to:

- (a) any instrument either under hand or seal conveying, transferring, assigning, mortgaging, charging, releasing, surrendering, disposing of or in any manner dealing with immovable property situate in Gibraltar.
- (b) Capital duty payable:
 - (i) on the nominal share capital or any increase thereof of an exempt company; or
 - (ii) on the loan capital of an exempt company.

9A. Further exemption from stamp duty

(Added by Ordinance 16 of 1987)

No stamp duty shall be payable by any person on any document relating to the issue, allotment, renunciation, transfer, assignment or disposition of shares in an exempt company.

10. Taxation of exempt companies

(1) (Amended by Ordinance 13 of 1993) Subject to subsections (2), (3) and (4), there shall be payable by every exempt company in respect of every year of assessment during which it continues to be an exempt company and rateable on a monthly basis for every month or part thereof for which it shall continue to be an exempt company an annual tax, at the following rate:

- (a) in the case of an exempt company that is ordinarily resident in Gibraltar, but is not registered under Part IX of the Companies Ordinance, £225 per annum:

(b) in the case of an exempt company that is not ordinarily resident in Gibraltar, and is not registered under Part IX of the Companies Ordinance, £200 per annum;

(c) (Amended by Ordinance 4 of 1984) in the case of a company that is registered under Part IX of the Companies Ordinance, £300 per annum.

(2) Notwithstanding subsection (1) of this section, where the activities of an exempt company are limited solely and exclusively to the holding of securities in respect of which income tax has been deducted at the source and in respect of which relief would be granted from tax in Gibraltar under section 44 of the Income Tax Ordinance if the company had not been an exempt company, the annual tax payable by that company shall be payable at half the rate applicable to the company under subsection (1) of this section.

(3) (Amended by Ordinance 13 of 1993) The annual tax payable in accordance with sub-section (1) or (2), as the case may be, shall be payable:

(a) on the date of application for the issue of a certificate in the first year;

(b) thereafter, in advance, on the 1st day of April in each year of assessment.

(4) (Amended by Ordinance 6 of 1999) An exempt company ordinarily resident in Gibraltar for the purposes of the Income Tax Ordinance may by notice in writing addressed to the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette and received by him not later than the end of any year of assessment, elect to pay income tax under the provisions of the Income Tax Ordinance for the time being in force, and in such case until the election so made is revoked by the company by subsequent notice in writing addressed to the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette:

(a) so much of subsection (3) of section 8 as provides that no tax under the Income Tax Ordinance shall be charged on or payable upon the profits of the company, or on any dividend payable by the company, and that the company shall not be liable to deduct tax from any such dividend, shall cease to have effect as from the beginning of that year of assessment (but without prejudice to the continued operation of the other provisions of the said subsection (3)); and

(b) annual tax shall be payable by the company at the same rates as if it were not so ordinarily resident (but only for the period after the notice of election is received); and

(c) annual tax paid by the company for any year of assessment during which the election is in force shall be treated for all tax purposes as on account of the tax payable by the company under the Income Tax Ordinance for that year of assessment.

(5) A revocation of an election under subsection (4) shall not take effect until the end of the year of assessment in which the notice or revocation is received.

(6) Where an election has been made under subsection (4) to pay income tax under the Income Tax Ordinance, annual tax shall be payable at the rate specified in paragraph (b) of that subsection notwithstanding that the amount of income tax payable is nil or is less than the amount of annual tax.

(7) (Amended by Ordinance 6 of 1999) Upon final settlement of the liability of an exempt company for annual tax and any tax under the Income Tax Ordinance for any year of assessment (including payment in full of any tax payable), the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette shall, on application made by the company, certify in writing either that the company was or (as the case may be) that the company was not ordinarily resident in Gibraltar for the purposes of the Income Tax Ordinance during the whole or some part of the year of assessment (according to the basis on which

the said liability was settled), and any certificate so given shall be conclusive as to the facts so certified.

(8) The provisions of sections 79 to 81 inclusive, 86 and 89 of the Income Tax Ordinance (relating to appeals against assessments and to recovery, remission and repayment of tax) shall, subject to the provisions of this Ordinance, apply mutatis mutandis to annual tax as they apply to tax under the Income Tax Ordinance.

11. Issue of bearer certificates and coupons by exempted company

(1) Any exempt company, not being a public company registered under the Companies Ordinance, may issue bearer certificates or coupons (as defined in section 2 of the Exchange Control Ordinance) or convert its share capital to bearer certificates provided that:

- (a) (Amended by Ordinance 6 of 1999) the bearer certificates and coupons remain deposited in Gibraltar or elsewhere with a bank on behalf of the persons approved by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette as shareholders; and
- (b) (Amended by Ordinance 6 of 1999) no other person has any interest in any such shares except as may be approved in writing by the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette.

(2) Except as provided in subsection (1), no exempt company may issue bearer certificates or coupons or convert its share capital to bearer certificates.

12. Banks not to Part with possessions of bearer certificates and coupons without permission

(1) (Amended by Ordinance 6 of 1999) A bank shall not part with possession of bearer certificates or coupons deposited with it under section 11 without the prior permission in writing of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette which may be either general or special to any particular case.

(2) (Amended by Ordinance 6 of 1999) Except with the permission of the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette, a bank shall not do any act whereby it recognises or gives effect to the substitution of one person for another as the person from whom it receives instructions in relation to a certificate of title or coupon, unless there is produced to it the prescribed evidence that it is not by so doing giving effect to any transaction which is prohibited by this Ordinance.

(3) (Amended by Ordinance 13 of 1993) A bank that contravenes the provisions of this section is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

13.

Repealed by Ordinance 39 of 1990.'

14. Secrecy

(1) (Amended by Ordinance 6 of 1999) Subject to the provisions of this section, the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette and every person having any official duty in the administration of this Ordinance shall regard and deal with all documents, information and declarations relating to the identity of the beneficial owners or persons interested in any shares, or bearer certificates or coupons issued under the provisions of this Ordinance as secret and confidential.

(2) (Amended by Ordinance 22 of 1988 and Ordinance 13 of 1993) A person having possession of or control over any document, information or declaration relating to the identity of the beneficial owners of or persons interested in any share or bearer certificates or coupons issued under the provisions of this Ordinance (other than the person or all the persons to whose identity the document, information or declaration relates or some person thereunto authorized by him or them) who at any time communicates or attempts to communicate such information or anything contained in any such document or declaration to any person otherwise than for the purposes of this Ordinance or the Income Tax Ordinance or the Estate Duties Ordinance or the Exchange Control Ordinance or the provisions of Schedule 10 of the Companies Ordinance or for the purposes of any criminal or civil proceedings in which such shares or bearer certificates or coupons are material is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

(3) (Amended by Ordinance 22 of 1988) No person employed in carrying out the provisions of this Ordinance shall be required to produce in any court or before any authority or person for any purpose whatsoever any document or declaration made in pursuance of this Ordinance or to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under this Ordinance except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance or the Income Tax Ordinance or the Estate Duties Ordinance or the Exchange Control Ordinance or the provisions of Schedule 10 of the Companies Ordinance or for the purposes of any criminal or civil proceedings in which such document, declaration, matter or thing is material.

15. Consequences of failure to comply with Ordinance

(1) (Amended by Ordinance 13 of 1993 and Ordinance 6 of 1999) In case of any such act or default by or in respect of an exempt company as is mentioned in paragraphs (a) to (h) inclusive of section 6, the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette may in his discretion certify that the act or default was excusable and made or allowed without intent to defeat the provisions of this Ordinance, and if the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette so certifies the exempt company shall not cease to be an exempt company by reason only of that act or default; but subject thereto and without prejudice to the liability of any other person in respect of income tax or estate duty, a company ceasing to be an exempt company in consequence of any such act or default and every officer thereof who is knowingly responsible for the act or default without lawful excuse shall be jointly and severally liable for all taxes due from or deducted by the company consequent upon its ceasing to be an exempt company together with interest thereon at the rate of three per cent per annum from the date of the act or default.

(2) (Amended by Ordinance 13 of 1993 and Ordinance 6 of 1999) If the default was a failure to pay annual tax, the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette shall not certify in accordance with the provisions of subsection (1):

(a) where the annual tax was that payable under section 10(3)(a);

(b) where the annual tax was that payable under section 10(3)(b), unless:

(i) a fee of the amount of tax specified in respect of the company in sub-section (1) or (2) of section 10, as the case may be, is paid in respect of each year of default; and

(ii) all arrears of annual tax are paid:

Provided that the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette may, in his discretion, waive such part of the amount provided for in this paragraph as he, taking account of the circumstances of the default and in his discretion, considers fit.

16. Residence for purposes of Ordinance and exemptions

(1) (Amended by Ordinance 6 of 1999) the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette may by order declare that any person registered as a Gibraltarian under the Gibraltarian Status Ordinance or a person entitled to be so registered under that Ordinance, shall not, for the purposes of this Ordinance, be treated as a Gibraltarian.

(2) (Amended by Ordinance 6 of 1999) the Finance Centre Director or such other public officer of the Ministry of Trade and Industry may from time to time designate by notice in the Gazette may by order declare that any person ordinarily resident in Gibraltar for the purposes of the Income Tax Ordinance shall not, for the purposes of this Ordinance, be treated as resident or ordinarily resident in Gibraltar.

17. Penalties for incorrect information

(Amended by Ordinance 13 of 1993)

A person who without reasonable excuse gives any incorrect information, such information being required of him for the purpose of obtaining exemption for a company or otherwise carrying this Ordinance into effect, is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale and double the amount of tax or duty which would have been chargeable if the information given had been correct or, if any such incorrect information is given willfully and with intent to evade or to assist any other person in evading any tax or duty, to a fine of twice the amount at level 3 on the standard scale and treble the amount of such tax or duty, and to imprisonment for 3 years.

18. Rules

The Governor may from time to time make rules for all or any of the following purposes:

- (a) providing for the returns to be submitted and the information to be furnished for the purpose of claiming exemption under this Ordinance;
- (b) prescribing any matters required by this Ordinance to be prescribed;
- (c) generally for giving effect to the purposes of this Ordinance.

19.

Omitted.