

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,060 of 20th August, 1998

**AUDITORS APPROVAL AND REGISTRATION ORDINANCE
1998**

ARRANGEMENT OF SECTIONS

GENERAL

Section

1. Title and commencement.
2. Interpretation.
3. Auditors Registration Board.
4. Immunity.
5. Establishment and maintenance of Register.

PART II

STATUTORY AUDITORS AND THE REGISTER

6. Entry in the Register.
7. Requirements as to professional integrity, etc.
8. Removal from the Register.
9. Appeal from decision of the Board.
10. Restoration to the Register.
11. Effect of ineligibility.
12. Offences.

PART III

MISCELLANEOUS

13. Power to prescribe fees.
14. Transitional arrangements.
15. Repeals.
16. Consequential amendments.

**SCHEDULE 1 - PARENT AND SUBSIDIARY UNDERTAKINGS:
SUPPLEMENTARY PROVISIONS**

1. Introduction.
2. Voting rights in an undertaking.

3. Right to appoint or remove a majority of the directors.
4. Right to exercise dominant influence.
5. Rights which are exercisable only in certain circumstances temporarily incapable of exercise.
- 6 to 7. Rights held by one person on behalf of another.
8. Rights attached to shares held by way of security.
9. Rights attributed to parent undertaking.
10. Disregard of certain rights.
11. Supplementary.

SCHEDULE 2 - consequential amendments



I ASSENT,
M J ROBINSON,
ACTING GOVERNOR.

20th August, 1998.



GIBRALTAR

No. 39 of 1998

AN ORDINANCE to provide for the approval and registration of auditors, for the establishment of the Auditors Registration Board, for the keeping of the Register of auditors, for transposing into the law of Gibraltar Council Directive 84/253/EEC on the approval of persons responsible for carrying out the statutory audits of accounting documents and for matters connected therewith and ancillary thereto.

ENACTED by the Legislature of Gibraltar.

PART I

GENERAL

Title and commencement.

1. This Ordinance may be cited as the Auditors Approval and Registration Ordinance 1998 and shall come into effect on such day as the Government may appoint by notice in the Gazette and different days may be so appointed for different purposes and in such notice the Government may make such transitional provisions as in its opinion are necessary for the purpose of bringing the Ordinance into effect.

Interpretation.

2. In this Ordinance, unless the context otherwise requires -

“address” means –

- (a) in relation to a natural person, his usual residential or business address; and
- (b) in relation to a firm, its registered or principal office;

“approved auditor” means a person entered in Part III of the Register;

“auditor” means a person entered in the Register;

“authorised auditor” means a person entered in Part I or Part II of the Register;

“Board” means the Auditors Registration Board established under section 3;

“Commissioner” means the person from time to time appointed under section 8 of the Financial Services Commission Ordinance 1989;

“the Directive” means the Eighth Council Directive 84/253/EEC on the Approval of Persons Responsible for Carrying out the Statutory Audits of Accounting Documents;

“Financial Services Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Ordinance 1989;

“firm” means a body corporate or a partnership;

“Gibraltar Society of Chartered and Certified Accountancy Bodies” means the body in Gibraltar representing chartered and certified accountants;

“member” includes the Chairman;

“the Minister” means the Minister with responsibility for Trade and Industry;

“Register” means the Register established and maintained under section 5 and “registered” in relation to a person, means a person whose name has been entered in and is in the Part of the Register specified in respect of that person;

“Secretary” means the Secretary to the Board;

“statutory auditor” means a person appointed auditor in pursuance of any enactment which by virtue of any requirement of any instrument of the European Community authorises or requires the appointment as an auditor in respect of the activities listed in section 5(1) only of an auditor or auditors entered in the Register and “statutory audit” means the audit carried out by a statutory auditor in observance of the requirements of such an enactment.

Auditors Registration Board.

3.(1) There is hereby established a Board, to be called the Auditors Registration Board, which shall be the competent authority in Gibraltar for the purposes of the Directive.

(2) The Board shall consist of the Commissioner and persons appointed by the Commissioner after consultation with the Gibraltar Society of Chartered and Certified Accountancy Bodies and with such other persons or bodies as he considers appropriate. The number of persons appointed to the Board by the Commissioner shall be at least two and not more than four.

(3) Of the persons appointed under sub-section (2) at least one shall be a person who is a member of the Gibraltar Society of Chartered and Certified Accountancy Bodies.

(4) The Commissioner shall be the Chairman of the Board.

(5) Every member of the Board appointed by the Commissioner shall hold office for three years, unless he dies or resigns or the Commissioner in his discretion terminates his appointment or his office otherwise becomes vacant, in any of which events, the Commissioner may appoint another person to the vacancy.

(6) Members of the Board appointed by the Commissioner shall be eligible for reappointment.

(7) Two members of the Board, one of whom shall be the Chairman, shall form a quorum.

(8) The Secretary to the Board shall be appointed by the Commissioner.

(9) The Board may establish standing or special committees, which expression shall include sub-committees, and may refer to any such committee any matters for consideration, enquiry or management including without prejudice to the foregoing any enquiries or consideration which may be required for the purposes of satisfying the Board that any particular person making an application to be entered in the Register complies with the provisions of section 6(2).

(10) The Board shall establish rules of procedure for such committees.

(11) The Board may appoint as a member of any committee established under sub-section (9) any person who in its opinion appears to be qualified to be a member of the committee, whether that person is a member of the Board or not.

(12) Every appointment under sub-section (11) may be revoked by the Board at any time.

(13) A committee established under sub-section (9) may elect any of its members to be the Chairman and shall conduct its business in accordance with the rules of procedure referred to in sub-section (10).

Immunity.

4. The Chairman, any member of the Board or a committee established under section 3(9), the Secretary and any person acting as an officer or servant of the Board shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of the duties of the Board under this Ordinance unless it is shown that the act or omission complained of was done in bad faith.

Establishment and maintenance of Register.

5.(1) The Board shall establish and maintain a register of auditors which shall be divided as follows –

- (a) Part I of the Register shall consist of natural persons entitled to carry out the following activities, that is to say –
 - (i) carrying out the statutory audits of the accounts and balance sheets of companies and firms and verifying that the reports are consistent with those accounts in so far as such audits and such verification are required by law; and
 - (ii) carrying out statutory audits of the consolidated accounts of bodies or undertakings and verifying that the consolidated reports are consistent with those consolidated accounts in so far as such audits and such verification are required by law, and
 - (iii) carrying out such audits and verifications to which the Directive by virtue of any instrument of an institution of the European Union, is applied such that those audits and verifications fall to be dealt with only by such persons;
- (b) Part II of the Register shall consist of firms entitled to carry out the activities referred to in paragraph (a);
- (c) Part III of the Register shall consist of natural persons registered under Part II of the Register of Auditors kept under the Auditors Registration Ordinance immediately before the day on which this part of the Ordinance comes into effect.

(2) Subject to sub-section (3), the Register shall be in such form as the Board may decide.

(3) The Register shall contain –

- (a) the name and address of every person entered in the Register;
- (b) in the case of a firm entered in the Register by virtue of compliance with section 6(1)(c), –
 - (i) the name and address of each person who is a member of or shareholder in the firm; and
 - (ii) each person who,
 - (aa) in the case of a partnership, is a partner; or
 - (bb) in the case of a company, is a director.

(4) The Board shall be responsible for the Register which shall be maintained by the Secretary and an accurate copy thereof shall be kept at the offices of the Financial Services Commission and shall be open to inspection by members of the public free of charge during usual office hours.

PART II

STATUTORY AUDITORS AND THE REGISTER

Entry in the Register.

6.(1) Subject to the provisions of this section, the Board shall, on application by the person concerned and payment of the prescribed fee by or on behalf of that person, enter –

- (a) in Part I of the Register a natural person who is –
 - (i) an individual member of a supervisory body, within the meaning given to that expression in sub-section (1) of section 30 of the Companies Act 1989 of the

United Kingdom, recognised for the time being in accordance with Schedule 11 of that Act, and

- (ii) eligible for appointment as a company auditor, within the meaning given to that expression in Parts I and II of that Act;
- (b) in Part I of the Register a natural person who –
- (i) holds an approved overseas qualification; and
 - (ii) complies with paragraph (a)(ii);
- (c) in Part II of the Register for the calendar year in which the application is made a firm of auditors –
- (i) in which the partners holding the majority of the voting rights are natural persons entered in Part I of the Register by virtue of paragraph (a) or (b); or
 - (ii) which is a company carrying out audit work in which-
 - (aa) the majority of the voting rights of the members are held by natural persons entered in Part I of the Register by virtue of paragraph (a) or (b), and
 - (bb) the majority of the directors are natural persons, entered in Part I of the Register by virtue of paragraph (a) or (b);

provided that where, at the effective date of this section, the firm of auditors does not comply with the requirements of this paragraph it shall take such steps as are necessary to so comply within a period of one year of that date;

- (d) in Part III of the Register for the calendar year in which the application is made a natural person who was registered –

- (i) immediately before the 1st day of January 1990 under Part II of the Register of Auditors kept under the Auditors Registration Ordinance; and
- (ii) was so registered immediately before the day on which this Part of the Ordinance comes into effect.

(2) The Board shall enter in the Register –

- (a) a person falling within paragraphs (a), (b), (c) or (d) of sub-section (1) only if it is satisfied that the person is of good repute and is not carrying on any activity which under the law of Gibraltar is incompatible with the statutory auditing of the documents referred to in section 5(1)(a);
- (b) in the case of a person falling within paragraph (a) or (b) of sub-section (1), that person only if it is satisfied that the person has adequate knowledge of the areas of the law of Gibraltar referred to in Article 6(b) of the Directive,

and the Board may satisfy itself that the person has the knowledge required by paragraph (b) by having regard to the recommendations of any committee established for that purpose under section 3(9).

(3) If the Board refuses to enter a person in the Register under this section it shall record its decision, with its findings and reasons, in writing and the Secretary shall furnish that person with a copy thereof within 14 days of the date of the decision.

(4) An application to be entered in the Register may be made by a person at any time and on payment of the prescribed fee for the calendar year in which the application is made.

(5) A person registered in the Register shall continue to be so registered provided that he –

- (a) continues to comply with -
 - (i) the requirements of sub-section (1) relevant to that person, and
 - (ii) the requirements of sub-section (2); and

(b) has paid the prescribed fee.

(6) The Board may be satisfied that a person to whom sub-section (5) applies complies with the requirements of sub-section (1) if the Board is satisfied that either –

- (a) there has been no change in the information on which it relied at the time of entry of that person into the Register for the purpose of determining that that person complied with the requirements of subsection (1) relevant to that person; or
- (b) if there has been a change, that change does not materially effect the compliance by that person with the requirement relevant to that person,

and for the purposes of this sub-section the Board shall be entitled to rely, in the absence of any other evidence to the contrary, on written confirmation as the facts furnished by that person, in the form determined by the Board.

(7) A certificate signed by or on behalf of the Secretary that any person is or was at any date or is not or was not at any date entered in the Register shall be prima facie evidence in all courts of law as to the facts stated in that certificate.

(8) A person entered in the Register shall inform the Board of any material change in any of the information provided to the Board at the time of his application under subsection (1) and shall do so within one month of the event occurring, and for the purposes of this sub-section a change of address is a material change.

(9) In this section “approved overseas qualification” has the meaning given to that expression in section 33(1) of the Companies Act 1989 of the United Kingdom.

Requirements as to professional integrity, etc.

7.(1) Persons entered in the Register shall –

- (a) carry out statutory audits with professional integrity; and

- (b) only be entitled to carry out a statutory audit if entered in the Register prior to the date up to which accounts are made up in respect of that statutory audit and has continued to be so registered up to such time as that statutory audit is signed off.

(2) For the purpose of determining the requirements of subsection (1) (a) the Board may prescribe standards of professional integrity and for this purpose may prescribe that the rules of professional conduct of a supervisory body, as defined in section 6(1)(a), shall be the prescribed standard.

(3) Notwithstanding that a person is entered in the Register, such person shall not carry out the activities listed in section 5(1)(a) if he is –

- (a) a director, officer or employee; or
- (b) a partner or employee of a person falling within paragraph (a) or of a partnership in which such a person is a partner,

in or of the company, firm, undertaking or body in respect of which he is carrying out a statutory audit or in or of any firm, undertaking or body which is associated with such a firm, undertaking or body.

(4) An auditor of a firm, undertaking or body shall not thereby be regarded as an employee or officer of that firm, undertaking or body for the purpose of sub-section (3).

(5) Where an auditor is a firm –

- (a) the natural person carrying out a statutory audit on behalf of that firm shall be entered in Part I of the Register; and
- (b) any natural person who, in the case of a partnership, is a partner or, in the case of a company, is a shareholder or director and who is not entered in Part I of the Register shall not intervene in the execution of a statutory audit in any way that may jeopardise the independence of the natural person or persons carrying out that audit on behalf of the firm.

(6) Where, in exercise of its power in sub-section (2), the Board has prescribed that the rules of professional conduct of a supervisory body or supervisory bodies shall be the prescribed standard for the purpose of sub-

section (1), the Board shall make such rules, and any amendment thereto, available to members of the public during usual office hours and at no cost.

(7) In this section “associated”, in relation to a firm, undertaking or body, means a parent or subsidiary of that firm, undertaking or body, as the case may be, or a parent or subsidiary of such a parent or subsidiary and, unless the context shall otherwise require, –

- (a) a firm, undertaking or body is a parent firm, undertaking or body, as the case may be, in relation to another firm, undertaking or body, a subsidiary firm, undertaking or body, if-
 - (i) it holds a majority of the voting rights in the firm, undertaking or body, or
 - (ii) it is a member of the firm, undertaking or body and has the right to appoint or remove a majority of its board of directors, or
 - (iii) it has the right to exercise a dominant influence over the firm, undertaking or body –
 - (aa) by virtue of provisions contained in the memorandum or articles of the firm, undertaking or body, or
 - (bb) by virtue of a control contract; or
 - (iv) it is a member of the firm, undertaking or body and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in the firm, undertaking or body;
- (b) for the purpose of paragraph (a), a firm, undertaking or body shall be treated as a member of another firm, undertaking or body, as the case may be, –
 - (i) if any of its subsidiary firms, undertakings or bodies is a member of that firm, undertaking or body, or

- (ii) if any shares in that other firm, undertaking or body are held by a person acting on behalf of the firm, undertaking or body or any of its subsidiary firms, undertakings or bodies;
- (c) a firm, undertaking or body is also a parent firm, undertaking or body, as the case may be, in relation to another firm, undertaking or body, a subsidiary firm, undertaking or body, if it has a participating interest in the firm, undertaking or body and –
 - (i) it actually exercises a dominant influence over it, or
 - (ii) it and the subsidiary firms, undertakings or bodies are managed on a unified basis; and
- (d) a parent firm, undertaking or body shall be treated as the parent firm, undertaking or body, as the case may be, of firms, undertakings or bodies in relation to which any of its subsidiary firms, undertakings or bodies are, or are to be treated as, parent firms, undertakings or bodies, and references to its subsidiary firms, undertakings or bodies shall be construed accordingly.

(8) Schedule 1 contains provisions explaining expressions used in this section and otherwise supplementing this section.

Removal from the Register.

8.(1) If any person entered in the Register –

- (a) dies;
- (b) fails to pay the prescribed fee;
- (c) ceases to comply with the requirements of section 6(1) relevant to that person;
- (d) is wound up;
- (e) is dissolved;

- (f) is put into liquidation or receivership; or
- (g) voluntarily ceases to be a statutory auditor;

the Board shall remove or cause to be removed his name from the Register.

(2) If a person registered in the Register –

- (a) is convicted of an offence punishable with imprisonment for 2 years or more, or of an offence under section 12;
- (b) is after due inquiry judged by the Board to have been guilty of conduct disgraceful to him in his capacity as an auditor; or
- (c) is after due inquiry judged by the Board to have –
 - (i) ceased to comply with the requirements of section 6(2)(a),
 - (ii) breached any standards which may have been prescribed under section 7(2), or
 - (iii) acted contrary to section 7(3);

the Board may, if it sees fit, caution or censure such registered person or suspend him from practice as a statutory auditor or order his name to be removed from the Register.

(3) Where the Board makes any inquiry under this section the person concerned shall be first informed of the nature of the allegation, and shall be entitled to appear in person or by legal representative before the Board and be heard thereon.

(4) Where after due inquiry the Board decides to order the name of any person to be removed from the Register, or any person to be suspended from practice as a statutory auditor, notice of the decision of the Board so to do shall be served on such person by the Secretary either personally, or, if such person cannot be found, by posting by registered post to the address last entered in the Register in respect that person.

(5) The Board shall not cause the name of any person to be removed from the Register or any person to be suspended from practice as a statutory

auditor until one month has elapsed since the date of the service of the notice referred to in sub-section (4) and it has been ascertained that no appeal under the provisions of section 9 has been lodged, or, if an appeal has been lodged, until the determination thereof.

(6) If, in exercise of its powers under sub-section (2), the Board suspends any person from practice as a statutory auditor or orders his name to be removed from the Register, it shall record its decision, with its findings and reasons, in writing and the Secretary shall serve that person with a copy of the decision.

(7) The Board may appoint one or more inspectors to make any enquiry under this section and to report to the Board in such a manner as the Board may direct.

(8) The Board may require the Secretary to cause the name and address of every person whose name is removed from the Register or who is suspended from practice to be published in the Gazette.

(9) The Minister may make regulations prescribing the powers of inspectors appointed under sub-section (7) and generally for the purpose of carrying this Ordinance into effect, and in particular but without prejudice to the generality of the foregoing such regulations may provide –

- (a) for the production of documents and evidence to inspectors;
- (b) for the creation of offences in respect of the obstruction of inspectors, destroying documents and evidence, furnishing false information and for the imposition of penalties in respect of such offences;
- (c) for inspectors to bring civil proceedings on the Board's behalf;
- (d) for the seizure of documents and evidence by inspectors;
- (e) for the entry and search of premises by inspectors;
- (f) for the making of orders requiring any person entered in the Register to pay the costs of any inquiry made against them by inspectors appointed for that purpose by the Board.

Appeal from decision of the Board.

9.(1) Any person whose application for registration under section 6 is refused or whose name has been ordered by the Board to be removed from the Register, or who has been suspended from practice as a statutory auditor, under section 8(2) may, within 21 days of the date of the service upon him of the notice of the decision of the Board, appeal in manner provided by rules of court to the Supreme Court, and upon any such appeal the court may confirm or reverse the decision appealed against, and the decision of the Supreme Court thereon shall be final and conclusive.

(2) The Chief Justice may make rules of court for prescribing forms and fees and generally regulating appeals under this section.

Restoration to the Register.

10. Any person whose name has been removed from the Register, or who has been suspended from practice as a statutory auditor, under section 8 may apply to the Board for the restoration of his name to the Register or for the suspension to be revoked, as the case may be, and the Board in its absolute discretion may either allow or refuse the application.

Effect of ineligibility.

11.(1) No person shall act as a company auditor if he is ineligible for appointment to the office.

(2) If during his term of office a company auditor becomes ineligible for appointment to the office, he shall thereupon vacate office and shall forthwith give notice in writing to the company concerned that he has vacated it by reason of ineligibility.

Offences.

12.(1) A person who procures or attempts to procure himself to be registered in the Register by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either verbally or in writing, is guilty of an offence.

- (2) A person who –
- (a) not being registered in the Register, holds himself out as qualified for appointment as a statutory auditor for the purposes of a statutory audit or undertakes such a statutory audit is guilty of an offence;
 - (b) not being registered in Part I or Part II of the Register, holds himself out as an authorised auditor is guilty of an offence;
 - (c) not being registered in Part III of the Register, holds himself out as an approved auditor is guilty of an offence.
- (3) A person who, being entered in the Register, fails without reasonable excuse to inform the Board of a material change in accordance with section 6(8) is guilty of an offence.
- (4) A person who acts in contravention of section 7(5)(b) is guilty of an offence.
- (5) A person who acts as company auditor in contravention of section 11(1), or fails to give notice of vacating his office as required by section 11(2), is guilty of an offence.
- (6) A person who is guilty of an offence -
- (a) under sub-section (1) or (2) is liable on summary conviction to imprisonment for six months and to a fine up to level 4 on the standard scale and in the case of an offence under sub-section (2) to a further fine of up to one tenth of the amount at level 4 on the standard scale for every day during which such offence continues after conviction therefor;
 - (b) under sub-section (3), (4), or (5) is liable on summary conviction to a fine up to level 3 on the standard scale and in the case of an offence under sub-section (5) to a further fine of up to one tenth of the amount at level 3 on the standard scale for every day during which such offence continues after conviction therefor.

(7) In proceedings against a person for an offence under sub-section (5) it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment.

PART III

MISCELLANEOUS

Power to prescribe fees.

13.(1) The Minister may make regulations prescribing the fees payable in respect of applications for registration, continued registration and any other matter for which a prescribed fee is referred to in this Ordinance.

(2) The fees payable under such regulations shall be paid to, and form part of the revenue of, the Financial Services Commission.

Transitional arrangements.

14.(1) Notwithstanding the provisions of this or any other Ordinance, a person who, immediately before the day on which this Ordinance shall have come into effect, was registered under –

- (i) Part I the Auditors Registration Ordinance shall be deemed to be entered in Part I of the Register;
- (ii) Part II of the Auditors Registration Ordinance shall be deemed to be entered in Part III of the Register.

(2) A person deemed to be entered in the Register by virtue of subsection (1) shall be subject to the provisions of sub-section (2)(a) of section 6 as if he were a person referred to in that sub-section.

Repeals.

15. The Auditors Registration Ordinance and the Auditors (Approval and Regulation) Ordinance 1992 are repealed.

Consequential Amendments.

16. The consequential amendments set out in Schedule 2 have effect.

SCHEDULE 1

Section 7 (8)

**PARENT AND SUBSIDIARY UNDERTAKINGS:
SUPPLEMENTARY PROVISIONS**

Introduction.

1. The provisions of this Schedule explain expressions used in section 7 and otherwise supplement that section.

Voting rights in an undertaking.

2.(1) In section 7(7)(a)(i) and (iv) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(2) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the reference to holding a majority of the voting rights in the undertaking is to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

Right to appoint or remove a majority of the directors.

3.(1) In section 7(7)(a)(ii) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(2) An undertaking has the right to appoint a directorship if –

(a) a person's appointment to it follows necessarily from his appointment as director of the undertaking; or

(b) the directorship is held by the undertaking itself.

(3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person will be left out of account unless no other

person has a right to appoint or, as the case may be, remove in relation to that directorship.

Right to exercise dominant influence.

4.(1) For the purposes of section 7(7)(a)(iii) an undertaking will not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking with which its directors are obliged to comply, whether or not they are for the benefit of that other undertaking.

(2) A “control contract” means a contract in writing conferring such a right which –

- (a) is of a kind authorised by the memorandum or articles of the undertaking in relation to which the right is exercisable; and
- (b) is permitted by the law under which that undertaking is established.

(3) This paragraph will not be read as affecting the construction of the expression “actually exercises a dominant influence” in section 7(7)(c)(i).

Rights which are exercisable only in certain circumstances or temporarily incapable of exercise.

5.(1) Rights which are exercisable only in certain circumstances will be taken into account only –

- (a) when the circumstances have arisen, and for as long as they continue to exist; or
- (b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise will continue to be taken into account.

Rights held by one person on behalf of another.

6. Rights held by a person in a fiduciary capacity will be treated as not held by him.

7.(1) Rights held by a person as nominee for another will be treated as held by the other.

(2) Rights will be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent.

Rights attached to shares held by way of security.

8.(1) Rights attached to shares held by way of security will be treated as held by the person providing the security –

- (a) where, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions; and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

Rights attributed to parent undertaking.

9.(1) Rights will be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in paragraph 7 or 8 will be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purpose of paragraph 8 rights will be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

Disregard of certain rights.

10. The voting rights in an undertaking must be reduced by any rights not held by the undertaking itself.

Supplementary.

11. References in any provision of paragraphs 6 to 10 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.

SCHEDULE 2

Section 16

CONSEQUENTIAL AMENDMENTS

1. Replace section 47(1)(a) of the Insurance Companies Ordinance by “registered in Part I or II of the Register maintained under the provisions of the Auditors Approval and Registration Ordinance”.
2. In section 15(3) of the Financial Services Commission Ordinance, for the words after “registered in”, substitute “Part I or II of the Register maintained under the provisions of the Auditors Approval and Registration Ordinance”.
3. In section 124(1A) of the Companies Ordinance, for the words after “unless”, substitute “he is or the firm is registered in Part I, II or III of the Register maintained under the provisions of the Auditors Approval and Registration Ordinance”.
4. Section 125(1)(c) and (2) of the Companies Ordinance are repealed.

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

D J REYES,

Clerk to the Assembly.

