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Companies Act 2014



The Companies Act previously in force in Gibraltar (the “1930 Companies Act”) is based almost exclusively on the 1929 Companies Act of England and Wales. The financial services industry has long felt that the law should be updated in line with the requirements of modern practice. The task of modernising the Companies Act began in 2010, as an initiative of the Association of Trust and Company Managers, which was picked up and developed into a consultation paper by a Companies Act Reform Committee set up under the auspices of the Gibraltar Finance Centre Council.

A draft Companies Bill was issued as a command paper on 2nd December 2013 and subsequently published in the Gazette on 3rd April 2014. The Bill received parliamentary assent on 30th May 2014 and the Companies Act 2014 came into force on 1st November 2014.

A team from Hassans led by Ian Felice and including Gemma Vasquez, Chloe Oppenheimer and Gian Massetti was involved in the process of drafting the Companies Act 2014.

The Companies Act 2014 comprises a raft of amendments, intended to streamline and improve Gibraltar company law in line with the needs of the industry’s various constituency bodies including Companies House, the Gibraltar Society of Accountants, the Gibraltar Funds & Investments Association, as well as individual legal practitioners and the financial services industry generally. The Companies Act 2014 also incorporates certain provisions equivalent to those in the 2006 Companies Act of England and Wales (the “UK Act”), as well as EU Directives and also codifies certain procedures which were already occurring as a matter of practice.

This briefing sets out the most significant of these alterations and seeks to highlight the major differences between the position under the 1930 Companies Act and the position under the Companies Act 2014.

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Formation of companies and basic company powers

Memorandum

The requirements as to a company's memorandum of association have been brought in line with those of the UK Act. There is now a shorter form of memorandum which includes the name, registered office and authorised share capital of the company as well as the liability of the members. It is to be signed by the subscribers to the memorandum. The objects of the company no longer form part of the memorandum, there being a presumption that the company's objects are unrestricted.

Articles of association

The position as regards articles of association is similarly based on the provisions of the UK Act. The Minister is given the power to prescribe model articles of association for companies, which came into force simultaneously with the Companies Act 2014. The current Tables A - E are replaced by the Model Articles which have been brought into force by regulation. Companies already formed, however, will not have to amend their articles of association.

Change of status

The provisions concerning the change of a company's status by re-registration are more comprehensive under the Companies Act 2014, with any of the following alterations permitted on a one-off basis:

- re-registration of private company as public;
- re-registration of public company as private limited company;
- re-registration of private limited company as unlimited;
- re-registration of unlimited company as limited;
- re-registration of public company as private and unlimited;
- re-registration of company limited by shares as company limited by guarantee and not having a share capital;
- re-registration of company limited by shares as company limited by guarantee and not having a share capital;
- re-registration of company limited by guarantee and not having share capital as company limited by shares; or
- re-registration of company limited by guarantee and having share capital as a company limited by shares.

Fractional shares

All companies having a share capital are now able to issue fractional shares unless this is specifically prohibited by their articles.



The introduction of certain UK provisions is based on a desire to bring Gibraltar corporate law up to date with the practices and realities of the modern commercial world.

Execution of documents

A significant practical change is the manner in which documents and deeds may be executed, which under the Companies Act 2014 is largely the same as the position in the UK and less onerous than previously was the case. The 1930 Companies Act is ambiguous as to whether a deed may be executed by a director in the presence of a witness. It is now specifically provided that a deed, or other document requiring execution by a company, may be executed by a director and a witness or by two authorised signatories (a definition for which is provided in the Companies Act 2014).

A simple contract, being a contract which is not a deed, guarantee or real estate agreement, can be entered into by any person on behalf of a company, on the condition that that person has the necessary implied or express authority. Furthermore, a company may be given authority to execute documents as a deed under a power of attorney, which is a common practice for which previously there was no statutory provision.

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Given that the sections are based on those in the UK, we envisage that UK case law will be highly persuasive in determining whether a document has been properly executed.

Financial Assistance

The Companies Act 2014 adopts what were referred to as the “whitewash” provisions in the UK in relation to financial assistance. The new provisions reflect the position under the 1985 Companies Act of England and Wales, with the definition of financial assistance having been tightened. This means that the practice of creating a holding company with which to provide financial assistance to its parent company is no longer possible. The only manner in which financial assistance is possible under the Companies Act 2014 is through the “whitewash” provisions.

A private company can give financial assistance under the Companies Act 2014 if its net assets are not thereby reduced, or, to the extent that they are reduced, if the assistance is provided out of distributable profits.



Unfair prejudice and derivative actions

Unfair prejudice

Under the Companies Act 2014, a member of a company may apply to the court where such member feels that the company's affairs are being, have been conducted, or are proposed to be conducted in a manner that is unfairly prejudicial to the interests of members. It is important to note that this action is brought on the behalf of the member itself and not on behalf of the Company. If the court finds the application to be successful, it can order the company to refrain from doing any act complained of, authorise civil proceedings, or make a compulsory share purchase order.

Derivative actions

A member may also bring an action on behalf of the company in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by director of the company.

Voluntary liquidations

The insolvency provisions, or those relating to a “creditors’ winding up”, currently contained within the 1930 Companies Act have been transferred to the new Insolvency Act 2011, which came into force at the same time as the Companies Act 2014. Only provisions relating to voluntary liquidation are covered in the Companies Act 2014. Where a voluntary liquidation becomes an insolvent liquidation, reference is made directly to the Insolvency Act 2011.

The new voluntary liquidation provisions are based on the 1930 Companies Act but include, from the UK Act, the notably stricter requirements as to the statutory declaration of solvency made by the directors on the commencement of a voluntary liquidation. Under the new provisions, making such a declaration without having reasonable grounds to do so is an offence, with the director liable to up to two years imprisonment.

Accounts

The Companies (Accounts) Act and the Companies (Consolidated Accounts) Act have been consolidated within the Companies Act 2014, also removing any ambiguity and inconsistency between these acts and the 1930 Companies Act, and indeed any other inconsistencies with other legislation. Penalties faced by directors for not drawing up, signing or circulating the accounts are now applicable to both IAS Accounts and Non-IAS Accounts, rectifying an inconsistency between the Companies (Accounts) Act and the 1930 Companies Act which meant that such penalties were previously applicable only to the latter. Similarly, the requirement to produce audited accounts for Companies House has been reconciled with the Income Tax Act 2010, so that where a company is not required to provide audited accounts under that act, it is not required to do so under the Companies Act 2014.

The provisions relating to accounts have also been modernised generally, following consultation with the Gibraltar Society of Accountants. For instance, directors are now permitted to voluntarily revise accounts which they subsequently realise have not complied with any relevant requirement. Accounts may also be delivered to Companies House in numerous primary currencies, which include US Dollars, Euros, Japanese Yen and Swiss Francs.

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Collective Investment Schemes

A company that is a Collective Investment Scheme ("CIS") may, but is not required to, notify the Registrar that it is a CIS. Under the Companies Act 2014, a CIS is afforded certain exemptions, the extent of which depend on whether it is a private scheme under the Financial Services (Collective Investment Schemes) Regulations 2011 or otherwise. A CIS is not required to file returns of allotment or deliver a return when allotting or purchasing its own shares but is required to file an annual return. After extensive deliberation with leading individuals in the fund industry, a CIS not being a private scheme is exempted from a requirement to disclose its shareholders in its annual return, whereas a private scheme must do so. A private scheme is also obliged to submit a Statement of Allotment, Redemption and Purchase of Own Shares to the Registrar together with each annual return.

Companies House

Time periods

Following a proposal from Companies House, many of the time periods for submitting documents to the Registrar have been changed to thirty days in an attempt to standardise time periods throughout the Companies Act 2014. While some periods remain as they were, such as the fourteen days to deliver a prospectus on re-registration as a public company or the fourteen days to provide notification of a change in the register of directors, the thirty day period has been applied to the majority of documents to be filed.

To provide the most noteworthy examples, the time period for registration of charges has been increased from twenty-one days to thirty days, as has the period for filing resolutions for voluntary winding up, which is fifteen days under the 1930 Companies Act.

E-filing

Perhaps the most obvious example of the modernisation of the 1930 Companies Act is the inclusion of "e-filing" and the ability for companies to publish certain information on websites. Communications from a company to its shareholders, and vice versa, may also be made electronically, with the intention that all such contact be both quicker and more straightforward. The Registrar has the ability to impose requirements as to the form, authentication and manner of delivery of documents to the Registrar.

The Companies Act 2014 constitutes a major overhaul of the law governing Gibraltar companies, and brings it into line with the Gibraltar's reputation as a modern, leading finance centre.

Extensive work has gone into its preparation and, given our own involvement in the consultation process, Hassans are extremely well placed to provide guidance and advice as to the content and the practical consequences of the Companies Act 2014.



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