P R O C E E D I N G S O F T H E

G I B R A L T A R P A R L I A M E N T

MORNING SESSION: 11.10 a.m. – 1.02 p.m.

Gibraltar, Friday, 30th May 2014

Business transacted

The Gibraltar Parliament

The Parliament met at 11.10 a.m.

[MR SPEAKER: Hon. A J Canepa GMH OBE *in the Chair*]

[SUBSTITUTE CLERK TO THE PARLIAMENT: M L Farrell Esq RD *in attendance*]

Order of the Day

BILLS
FIRST AND SECOND READING

Companies Bill 2014 –
First Reading approved

Substitute Clerk: Sitting of Parliament, Friday 30th May 2014.

Bills – First and Second Reading.

A Bill for an Act to re-enact, with amendments, the provisions of the Companies Act (1930-07) as amended; to incorporate the Companies (Accounts) Act 1999 and the Companies (Consolidated Accounts) Act 1999; to take account of the effect of the Insolvency Act; to incorporate amendments proposed by a Law Reform Committee of the Gibraltar Finance Centre Council; and for connected purposes.

The Hon. the Minister for Education, Telecommunications and Justice.

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I have the honour to move that a Bill for an Act to re-enact, with amendments, the provisions of the Companies Act (1930-07) as amended; to incorporate the Companies (Accounts) Act 1999 and the Companies (Consolidated Accounts) Act 1999; to take account of the effect of the Insolvency Act; to incorporate amendments proposed by a Law Reform Committee of the Gibraltar Finance Centre Council; and for connected purposes, be read a first time.

Mr Speaker: I think this is probably the shortest Bill that I have seen in the last 40 years. *(Laughter)*

I now put the question which is that a Bill for an Act to re-enact, with amendments, the provisions of the Companies Act (1930-07) as amended; to incorporate the Companies (Accounts) Act 1999 and the Companies (Consolidated Accounts) Act 1999; to take account of the effect of the Insolvency Act; to incorporate amendments proposed by a Law Reform Committee of the Gibraltar Finance Centre Council; and for connected purposes, be read a first time.

Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Companies Act 2014.

Companies Bill 2014 –
Second Reading approved

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to move that the Bill for a new Companies Act be read for a second time.

The Bill brings the Government's manifesto commitment in this area closer to completion by providing a much needed and thorough review of the present Companies Act and related legislation. It has been felt throughout the industry that the current Act is in need of a wholesale review to update it in line with the needs of the Gibraltar Finance Centre industry.

As Parliament is aware, the review involved consideration of proposals put forward by the Company Law Reform Committee, set up by the Finance Centre Council, and a consultation process which culminated in the publication of a Command Paper.

The Bill before Parliament today incorporates a number of issues which were also raised during the Command Paper consultation period. The process has involved input from the Association of Trust and Company Managers (ATCOM), Companies House, the Financial Services Commission, the Gibraltar Society of Accountants, Gibraltar Funds and Investments Association and a number of fund administrators, as well as individual legal practitioners.

Since the Bill was published, further representations have been received from the Gibraltar Funds and Investments Association relating to the filing requirements of certain regulated entities, and I will deal with that particular point later.

The aim of the Bill, Mr Speaker, is to consolidate and codify existing practices, as well as to modernise the current Act in preparation for, amongst other things, electronic filing at Companies House. The Bill is made up of 18 parts, 490 clauses and 29 schedules, and rather than go through these provisions one by one, the House will, I am sure, be very happy that I shall only refer to occasions where changes have been made to the existing provisions in the current Companies Act.

Mr Speaker, Part II of the Bill deals with formation of companies. This part of the Bill includes provision:

(1) Expressly allowing a company limited by guarantee and an unlimited company to have a share capital, which is current practice but not expressly provided in the law.

(2) Reducing the number of persons required for the formation of a public company from seven to one.

(3) Including a statutory definition of a public company.

(4) Removing the requirement for object clauses in a Memorandum of Association, resulting in a shorter form of memorandum. This follows from the presumption in clause 21(3), that a company is authorised to carry on any type of lawful business making redundant the requirement to list the types of authorised business in the memorandum.

(5) Allowing a company that is a collective investment scheme the option to formally notify the Registrar that it is a CIS within 30 days of establishment of the scheme. This option is based on submission received from the Gibraltar Funds and Investments Association. A further amendment was proposed by GFIA after the Bill was published and will be presented at Committee Stage. A letter setting out the proposed amendments has been sent to Mr Speaker and I understand circulated to all Members. It will be proposed that clause 18 be amended to include a subclause (2) which provides that any notification given pursuant to section 18 shall confirm whether the company is a private scheme as defined in section 2(1) of the Financial Services (Collective Investment Schemes) Act 2011.The reason for this is that there are distinct exemptions which apply, depending on whether it is a private scheme or otherwise. Collective Investment Schemes, which are not private schemes, are afforded more exemptions.

(6) Removing the current 50 member maximum for a private company, bringing our legislation in line with the equivalent UK Act. Section 369 of the current Act is also being repealed, so that a partnership with more than 20 members is no longer required to be incorporated as a company.

(7) Removing the requirement to file a statement of incorporation containing details of the first directors before the company may be incorporated.

(8) Setting out clearly the documents to be included in the company's application for registration. These include: a statement of capital and initial shareholdings, if applicable; a statement of guarantee, also if applicable; a statement of proposed officers; a statement of the intended address of the registered office; and a copy of the proposed Articles of Association.

Mr Speaker, Part III of the Bill deals with the Companies Constitution and powers. This part includes the following provisions:

(1) Defining a company's constitution as including a company's articles and any relevant resolutions and agreements. The current Act refers to Companies Constitution throughout, but without a definition.

(2) Providing that the validity of an Act done by a company shall not be called into question on the ground of lack of capacity of such company. The reason behind this change is that those dealing with the company should not bear the risk of the company claiming that dealings in question are *ultra vires* and therefore void.

(3) Empowering the Minister by regulations to prescribe model Articles of Association for companies. The current tables A to E will be replaced by model articles, which will only apply to companies incorporated after the introduction of those model articles. Clause 488 provides that until the model articles are introduced by regulation, tables A to E containing schedule 1 of the current Act will continue to have effect.

(4) Changing the time limit for sending amended Articles of Association to Companies House. This has changed from 15 days to 30 days, so as to standardise time periods throughout the Bill. A number of additional variations are made to this part regarding the changing of the company status, such as private

company to public company and vice versa. This conversion is currently possible, but is not expressly provided in the current Act. Public company to unlimited private company, company limited by shares to company limited by guarantee having a share capital, company limited by guarantee having a share capital to company limited by shares, and limited company to a company limited by shares or guarantee. There is also clarification as to the requirements to be satisfied by a company when executing deeds and documents.

Part IV of the Bill, Mr Speaker, deals with prospectuses, share capital and debentures. These include the following new provisions… or amended provisions:

(1) For an exception to collective investment schemes, which means that this type of company is not required to file returns of allotment at Companies House, there is a proposed amendment to this clause or clauses 188 and 189 of the Bill, pursuant to representations made by GFIA. In order to ensure that all collective schemes are caught, we have made reference to section 18, which is the obligation to notify the Registrar. This section captures all in Collective Investment Schemes (CIS).

(2) Amending the current prohibition on financial assistance so as to enable the company to give financial assistance for the purchase of its shares by another entity, so long as certain provisions are complied with. A private company can give financial assistance under the Bill 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. A company looking to provide financial assistance, unless it is a wholly-owned company, will be required to (1) pass a special resolution; (2) cause the directors to make a statutory declaration; and (3) engage an auditor to prepare an auditor's report confirming the statutory declaration.

It should be noted that: (1) the definition of what constitutes 'financial assistance' has been tightened to reflect the position under the UK's 1985 Act by the inclusion of the words 'or any of its subsidiaries'; (2) the proposal is to reflect the position, as I have said, under the 1985 Act, in spite of the fact that in 2006 the prohibition was relaxed in the UK. This, Mr Speaker, is an area on which I have had some correspondence with the Hon. Mr Damon Bossino, and I have explained the rationale for the decision that has been taken to introduce what are essentially termed 'white-wash provisions', rather than removing the prohibition of financial assistance altogether, and I will be happy to deal with any other points that Mr Bossino may raise in connection with this in my response; (3) a CIS will no longer be required to deliver a return to the Registrar when purchasing its own shares; (4) all companies having a share capital will be able to use fractional shares, unless prohibited under its constitution; (5) creating an exemption for CIS's in relation to the need for a notice to the Registrar of consolidation of share capital and conversion of shares into stock – again, there is a proposed amendment to this clause at Committee Stage; (6) the introduction of a new type of protection for Members against being unfairly prejudiced. A Member or the Minister may apply to the Court where such Member feels that the company's affairs have been conducted or are proposed to be conducted in a manner that is unfairly prejudicial to the interest of Members, generally or some part of the Members. Clause 147 sets out the type of order that the Court may make if it finds the petition to be successful, including ordering the company to refrain from doing any act complained of. These clauses have been largely taken from the UK Act. The reason for this change is to bring the protection of Members in line with that which exists in the UK; (7) a new requirement is introduced that all companies, except for a company which is a CIS, file the prescribed form at Companies House within 30 days of any change in its members or in any of the particulars contained in the register of members. Currently there is no statutory provision for the filing of a change of members; (8) a statutory basis is created formalising the current practice of allowing the redenomination… no. *(Interjections)* (**A Member:** Re-domiciliation.) The redenomination of share capital… it is not domiciliation. *(Interjections)* It was the other one. *(Laughter and interjections)*; (9) the removal of all references to bearer shares as a result of the abolition of share warrants to bearer implemented by the Companies, Partnerships and Trusts (Miscellaneous Amendments) Act 2012.

Mr Speaker, Part V deals with the registration of charges. In this part there are amendments to the time period for registration of charges created by companies registered in Gibraltar.

Clauses 168 and 171 extend the period for registration of charges by companies registered in Gibraltar from 21 days to 30 days. The period for charges over property situated outside Gibraltar has also been extended from 21 days to 30 days after the date on which the instrument could have been posted. The Bill still contains a discretion given to the Registrar in cases of late filing of documents received from abroad.

Clause 168 also clarifies the law which emanates from the Slavenburg case.

Section 128 of the current Act requires registration of every charge created by a company registered in Gibraltar. This includes companies registered in Gibraltar under Part X, which is a place of business registration, or Part XIV, which is branch registration.

Since the Slavenburg case, it has also become common practice to present for registration charges over present or future property in Gibraltar created by overseas companies which do not have an established place of business or branch in Gibraltar. If the company is not registered as a branch or place of business in Gibraltar, Companies House will make note of the documents sent and return them to the sender with a standard form of letter as proof of delivery, but the documents will not be registered. This practice was also carried out in the UK, but was removed as a result of section 105(2) of the UK Act.

Clause 168(11) makes it clear that only charges which are created at a time where the company is registered in Gibraltar shall require registration.

Currently there is no statutory procedure for the registration of charges by a company which re-domiciles into Gibraltar from another jurisdiction, with existing charges or mortgages registered against the company.

Clause 168(8) of the Bill includes provision for the registration of existing charges of re-domiciled companies and clarifies that the time period for registration commences the day after the company is registered in Gibraltar.

Mr Speaker, Part VI of the Bill deals with management and administration. Provisions under this part include the following:

(1) Formalising the current practice of the filing of statements at Companies House in relation to the authority of a company to use a registered address. There is currently a form which can be filed at Companies House, entitled 'Statement that the company does not have authority to maintain a registered address at specific premises'. There is, however, no statutory authority to allow for this notice. We are therefore plugging this gap.

(2) Amending the requirement that a company display its name outside its office to require such display at every office – in other words, not necessarily outside the office.

(3) Regarding annual returns, clause 188 of the Bill remains largely unchanged from the equivalent section 153 of the current Act, except that it provides an extended period of six months instead of 30 days after the date on which the return is made up for Collective Investment Schemes to deliver the annual return to the Registrar. Amendment exempting certain CIS's from certain obligations in relation to annual returns will also be proposed at Committee stage. These amendments are, as I have mentioned, the result of representations made by GFIA and they have followed discussions with Companies House.

As I have already mentioned, Mr Speaker, GFIA made a number of proposals following which, and after extensive deliberation with leading individuals in the Fund industry, it has been decided that the following amendments be considered at Committee stage: (a) subclause 188(6) introduces an exemption for Collective Investment Schemes which are not private schemes. These funds will be exempt from the requirement to provide the information listed in clause 188(4) in relation to its members in the annual return; and (b) an exception has been inserted at clause 189(2) so that only private schemes are required to submit a statement of allotment, redemption and purchase of its own shares.

GFIA's reasoning for these proposed amendments is that EIFs and other such funds are regulated by the Financial Services Commission and as such they are already under an obligation to submit information to the Commission in relation to their members. CIS's which are not regulated are under no obligation to submit information and therefore should submit the same information under the Bill as non-CIS companies, and the Government has agreed with the proposals submitted by GFIA and with a reasoning and rationale for those proposals. That is why we are making those amendments to the Bill which are set out in the letter.

Mr Speaker, clause 197 of the Bill has been taken directly from section 309 of the UK Act, which sets out the requirement where a company wishes to notify the members of a meeting via website. The reason for this change is to bring the Bill in line with the UK Act and give companies the option to use technology as a means of communication with its members. There are similar provisions, including allowing for members to signify written approval by electronic means, allowing for the sending of documents relating to written resolutions by electronic means, and for the publication of written resolutions on websites.

(5) The current Act refers to ordinary resolution throughout, but does not provide a definition of the term. Clause 200 of the Bill codifies the definition which is actually used in practice, namely a resolution passed by members representing a simple majority of the total voting rights of the members.

(6) Clause 205 provides that where a company's articles prohibit the company from passing a resolution in the form of a written resolution, such provision in the articles shall be void.

(7) The time limit for the filing of resolutions is increased from 15 days to 30 days from the date of the resolution.

(8) Clause 231 of the Bill provides a new power to any person, not including the company, to indemnify a director 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 guilty in relation to the company.

Additionally, clause 231 allows companies to purchase insurance for a director of the company, which is in addition to the existing power of a company to indemnify any director against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted. This clause clarifies that the rule against indemnifying an officer of the company does not preclude the company from taking out directors' and officers' liability insurance.

The new powers contained in clause 231 are not provided in the current Act. This change is as a result of one of the many proposals put forward by the Company Law Reform Committee of the Gibraltar Finance Centre Council.

(9) Clauses 232 to 236 create a statutory basis for the remedy of a derivative action. I know the Hon. Sir Peter Caruana was particularly interested in this area. These new clauses allow a member to 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 a director of the company. In order to bring a derivative action under the Bill, a member must apply to the court on behalf of the company for permission to continue such action. A derivative action may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving, as I have said, negligence, default, breach of duty or breach of trust by a director of the company.

Mr Speaker, Part VII of the Bill deals with accounts and audit. This part consolidates the Companies (Accounts) Act and the Companies (Consolidated Accounts) Act, within the Companies Act. It seeks to remove any ambiguity which existed between these Acts and the current Act, as well as removing any inconsistency which existed with any other legislation, notably the Income Tax Act 2010.

Part X of the Bill deals with liquidation. This part is divided into two chapters: voluntary liquidation and other liquidation provisions. Mr Speaker, as a result of the new Insolvency Act 2011 and the Insolvency (Consequential Provisions) Bill, which I will be moving later on in this session, all of the insolvency provisions in the current Act have been transferred to the new Insolvency Act 2011. The Companies Act will therefore only cover voluntary liquidations. Where a voluntary liquidation becomes an insolvent liquidation, the Bill provides that at that stage the Insolvency Act will apply.

Under clause 362(2) and (3) of the Bill, the directors of a company are required to comply with the following requirements when making a statutory declaration of solvency: (1) They must make the declaration within five weeks before the date of the passing of the resolution for the appointment of a voluntary liquidator; and (2) they must deliver the declaration to the Registrar for registration within 15 days after the date on which the resolution for winding up is passed.

Clause 362(4) of the Bill introduces an offence with a penalty of up to two years' imprisonment where a director makes a declaration without having reasonable grounds for giving such a declaration. This offence is inserted so as to ensure that directors do not sign the declaration, which is a declaration which could have very serious consequences for the company, without considering its content and validity fully.

Part XI, Mr Speaker, of the Bill deals with general provisions as to registration.

Clause 413 provides for a new requirement whereby the directors of a company must state in an application to strike off a company that the company has no assets or liabilities. This change clarifies the procedure for voluntarily striking off a company and is in line with common practice.

Clause 421 of the Bill introduces new requirements in relation to the authentication of a document sent to the Registrar.

Clause 421(3) details how a company is to authenticate a document supplied in electronic form. This clause is introduced so that companies may take advantage of the e-filing platform being developed by Companies House.

Clause 422 of the Bill allows the Registrar to impose requirements as to form, authentication and manner of delivery of documents which are to be delivered to the Registrar.

Part XII of the Bill deals with companies incorporated outside Gibraltar, carrying on business within Gibraltar.

Clauses 436 to 438 of the Bill clarify the requirements in respect of the execution of documents by foreign companies. These allow foreign companies to execute documents and deeds by (a) affixing its common seal; or (b) by any person who, in accordance with the laws of the territory in which the company is incorporated, is authorised to do so.

Part XVIII of the Bill deals with miscellaneous provisions. This part includes provisions regarding the sending or supplying of documents or information setting out requirements that need to be fulfilled, be it in a document sent in hard copy or electronically, creating a right for a member to request a hard copy of a document and setting out the requirements for the authentication of documents – again being in hard copy or electronic format.

Clauses 488 to 490 of the Bill set out the transitional provisions, consequential amendments and repeals arising from the provisions of the Bill.

Mr Speaker, I move to schedules. The schedules to the Bill are largely the same as those in the current Act, with a few exceptions, and includes those schedules taken from the Companies (Accounts) Act and the Companies (Consolidated Accounts) Act, which are being repealed.

Schedule 5 deals with annual return. The form of annual return has been amended so that a company must also confirm the main activity of the company, the size of the company, the number of employees and its financial year end.

Schedule 9 deals with definition of a small, medium and large company. The definitions of these companies have been amended to be brought in line with EU definitions.

Schedule 23 deals with powers of a voluntary liquidator. This schedule is taken from clause 54 of the Insolvency (Consequential Provisions) Bill, which I will be moving later, and sets out the powers of a voluntary liquidator.

Schedule 28 deals with index of defined expressions. This schedule contains a table which sets out where to find definitions of terms used throughout the entire Bill.

Mr Speaker, that concludes my run through of the Bill, in particular the new provisions of the Bill and what this actually does. It is in fact, Mr Speaker, very satisfying for the Government to see the vast amount of work, which has been put in over more than two years, approach fruition by the consideration of this Bill by Parliament today.

I mentioned at the outset, the Second Reading of this Bill, the various organisations which had been involved in this process and I would like to publically thank them all. It would simply not have been possible to undertake this task without their expertise and effort. In particular, I would thank those involved in the Company Law Reform Committee of the Finance Centre Council, who initially set out to consider the existing Companies Act and to make a substantial number of proposals to improve our legislation and that is precisely what we are doing today. We will now have a modern, up-to-date and comprehensive Companies Act, which will give all practitioners the tools required to service the needs of a finance centre in a jurisdiction that can be regarded as a model of excellence for the whole world.

Finally, I wish to thank all practitioners, both in Government and the team at Hassans led by Ian Felice and Gemma Vasquez, who have put this Bill together in an extensive drafting exercise. They have had to endure numerous requests by me for explanations and clarifications as we painstakingly went through each provision of the Bill.

Mr Speaker, it will be clear to hon. Members that this is not just a re-enactment of the current Companies Act with a few tweaks or amendments. This is a complete overhaul by way of a new Act. The Government recognises that it will take some time for practitioners to get to grips with the full effect of the Act. It is therefore now the Government's intention – apart from the fact that the Bill was published some time ago and a Command Paper was also published – that practitioners should be given around three months to fully familiarise themselves with the legislation and the related insolvency legislation before they are commenced. We are therefore proposing to commence the legislation, both this and the insolvency legislation, on 1st September 2014.

Mr Speaker, I commend the Bill to the House. *(Banging on Desks)*

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill?

Hon. D J Bossino: Yes, Mr Speaker.

This is a bit of a baptism of fire, given that I was only given responsibility for financial services on my appointment by the Leader of the Opposition as Deputy Leader about a month or two ago. Some would say that it is a hospital pass, given that this is a Bill which runs into almost 900 pages. But, Mr Speaker, simply to be... the introductory comment would be that I am grateful to the Hon. Minister for going through this very lengthy piece of legislation in summary form, in redacted form. I think that is something which will be welcomed by everybody in this House, and highlighting simply those changes to the current Bill, which in fact originally dates from 1930, based on the 1929 legislative provisions in England and Wales.

I would also, Mr Speaker, like to associate myself with the comments made at the end by the Minister, in terms of acknowledging the assistance provided by the Law Reform Committee and other groups, such as ATCOM that he mentioned at the beginning, Companies House and the Financial Services Commission. He talked about the Gibraltar Accounts Association and others, and indeed, those professional competitors in Hassans, who I see sitting behind the Government benches now, to also acknowledge their assistance in this.

Mr Speaker, this is certainly welcome from the Opposition benches as a legislative initiative on behalf of this Government, one which I am sure will also be welcomed by many practitioners in the field, such as myself as somebody who deals in company matters, if I can put it in the broadest terms possible.

The Minister is absolutely right in saying that this is a particular area of the law which is crucial to one of those central sectors of our economic activity that is the finance centre and obviously all the ancillary services which are provided to it. They are very important services provided by the legal profession, accounting professions and I can think of corporate service providers and fund managers, for example.

The introduction of this Bill into our Statute Books is very positive and indeed complements in a very useful way, I think. I think it has to be acknowledged by everybody the sister legislation to this particular Act or Bill, which is the Insolvency Act, which was introduced by the Leader of the Opposition when he was Minister for Justice when we were on the other side of the House, which is also another very important piece of legislative initiative in this particular area of activity.

I would highlight a few of the points. One of them has already been acknowledged by the Minister in his address and I would welcome in his reply any further comments he may wish to make in relation to financial assistance.

But if I could deal first with the provisions – he and I have discussed this behind the Speaker's Chair in recent days – set out in clauses 72 onwards, under the heading '*Execution of documents by companies*'. I have had some difficulty when reading those provisions, although I derive comfort from the fact that it appears that this wording is already the subject of settled interpretative law in that, as I understand it, there is – and I have not read the Act in any detail – a Supreme Court decision of England and Wales which deals with this matter. I just found it rather strange, Mr Speaker, the provisions, particularly if I could highlight Clause 72(1) and then the subclause to that which is (2). Clause 72(1) states that a contract may be made (a) by a company, by writing under its common seal or on *behalf* of a company – not by a company. The wording is slightly different and I raise that because that featured in the Supreme Court decision which I referred to earlier and which was referred indeed rather hopefully by the Minister to me when we have had these discussions. So on behalf of a company, by a person *acting* under its authority, express or implied. Presumably that is a contract, as I see it, which would be entered into orally, for example; however, it may not necessarily exclusively deal with that and I see that the Hon. Minister shakes his head.

If a contract is then reduced to writing and therefore becomes – I am just reading on the face of the language of the Bill – a document, under clause 72(2) it says a document is validly executed by a company if it is signed on behalf of the company (a) by two authorised signatories, or; (b) by a director of the company – and this is the important bit, Mr Speaker – in the presence of a witness who attests the signature. Those of us who deal in this area of law and have to provide opinions to banks and other clients, the position – and I think it is correct advice that I have certainly been providing – is that if it is an ordinary contract, i.e. if it is not a contract which is entered into, for example, by way of deed, then the signature of a director, or indeed an authorised signatory, is sufficient without the requirement of that signature being witnessed. I see that as an added burden, which does not currently exist in the Companies Act which we have today, and that is something I would welcome the Hon. Minister's views on to be placed on record across the floor of the House, because I am sure that that will be of assistance to those of us who deal in this area of the law.

Mr Speaker, moving on swiftly to clause 100, I believe it is, under the Bill, which deals with the prohibition of financial assistance. This is also a point which I raise with the Hon. Minister and the point I raise is that in England, under the 2006 Act currently in force in England and Wales, the prohibition has actually been removed insofar as it impacts on private companies. As I understand it, the position in respect of plc's – public limited companies – still exists, but as far as private companies are concerned, Mr Speaker, it has been removed.

The information that I received is that that was a reaction by the legislators in the United Kingdom to complaints made by those petitioners in the field as to the expense in complying with the white-wash provisions which now apply under this Bill, i.e. the Minister went through it… the requirement to have a shareholders' resolution, the requirement to have a statutory declaration, presumably in relation to solvency and also the requirement in particular of having an auditor's report. Those did not exist in our current legislation. They do not exist in our current legislation. They have been introduced in this Bill and in fact they have now been removed as a result of the 2006 Act in the United Kingdom.

From speaking to the Hon. Minister, I am sure he will not mind if I say so, the decision-making process which has influenced him in coming up with the wording in the current Bill is not as a result of any Government policy decision, but in fact simply responding to the various representations which he has received. He has explained to me and I would give him… certainly welcome him to explain the position, no doubt far better than I, that what was placed in the balance in England was that there was a codification of directors' duties, directors' duties which were in any event prevalent there as a result of developments of the common law, but they were actually formally codified in the legislation in England in the 2006 Act. If that had been done… if that particular route had been taken by the Government on this occasion, it would also have required the imposition of offences and that is something which is placed in the balance and therefore it was felt that it was better to retain the pre-2006 position in England and Wales and retain the whitewash provisions, despite the alleged cumbersome nature of them, because there was a reticence to impose offences in relation to those directors' duties. I would welcome the Hon. Minister's contribution in relation to that particular point.

And simply to mention finally two minor points. One is very close to my heart, in terms of the area of law ID, the codification of the Slavenburg register, and I think that is something which is going to be very much welcomed for those practitioners in this field. I think that if Companies House has had a difficulty when we as a matter of practice have tried to follow the route, which is now codified from my understanding of the Bill and what the Minister has explained… they have had a difficulty in accepting those notifications from practitioners. Now it is clearly set out and it is clear for all to see that that is the

procedure set out in statute and I very much welcome that, certainly from a personal perspective as somebody who deals in matters like this.

Also, I found very interesting the new clause 197, which adopts the practice in England, in relation to the publication of notice of meetings on a website. I am sure that is also something which will be welcomed by practitioners.

Mr Speaker, that is the end of my contribution. I am not sure if the hon. the backbencher wants to say anything.

Mr Speaker: The Hon. the Leader of the Opposition.

Hon. D A Feetham: Mr Speaker, just to say this, that in the past I have said that I could not have hoped for a better successor as Minister for Justice than the hon. Gentleman. I think that the work that he has done in that area justifies the view that I have expressed publically within the House. I commend him for the work.

It is one of the quirks of politics and living in a small community, such as Gibraltar, that effectively when the hon. Gentleman opposite won the last election, that the hon. Gentleman, Mr Licudi, and myself effectively switched roles. I inherited his legal practice within Hassans and he inherited my role as Minister for Justice. Just as I am bringing hopefully to a successful conclusion many of the cases that he began when he was a legal practitioner, I congratulate the hon. Gentleman too for bringing to a successful conclusion some of the work that we had commenced when we were in Government and I was Minister for Justice. Not only has he done so in commencing the Criminal Procedure and Evidence Act and also the Crimes Act, but also now this particular Act enables him to commence the Insolvency Act. I wish to just stand up and recognise it and commend the hon. Gentleman for it.

Mr Speaker: Does any other hon. Member wish to contribute before I call on the mover to reply?

Minister for Financial Services and Gaming (Hon. A J Isola): Mr Speaker, very briefly as Minister for Financial Services and working with the sector as closely as I do, I have to say that I am absolutely delighted by the presentation of this Bill by my Hon. and Learned Friend. I think he does a quite stunning job in bringing together not just the private sector by itself – in other words, all the individual component parts that are often pushing in different directions – but to bring the regulator on board, to bring Companies House on board, to bring all the different facets all in almost unanimous praise of the work that he has done, I think is quite a staggering achievement.

This Bill is hugely important to the industry, because it provides them with clarity, it provides them with certainty and as the Hon. the Shadow Minister for Financial Services has said, quite rightly, it is a key component part of the work and one of the tools that the sector relies on to be able to go about its business. To bring it up to date, to consolidate it and at the same time to bring amendments, which the sector has specifically requested, is an example of the partnership that we are all trying to engage in with the private sector that we work in to bring about the necessary tools for them to go about doing their business.

So I certainly commend the Bill and I congratulate my Hon. and Learned Friend for the quite fabulous work that he and his team have done in bringing us this Bill today.

Mr Speaker: The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, very often in this Parliament we have had to endure in the past 30 months – this is, I think, our 23rd meeting of Parliament since we were elected – calls from the hon. Gentlemen to look at where we have made progress in our manifesto and where we have not. So I think it is incumbent on me to raise the point they might have been raising if we were at the last meeting of the lifetime of this Parliament and we had not brought this Bill, which would have been on page 66 of our manifesto. We say that we are committed to revising our company legislation and adopting a new, consolidated and revised Act as soon as possible and this is in full compliance with that commitment. It reflects yet another one of the commitments that we acquired at the General Election fulfilled, and fulfill House, Mr Speaker, as I think the House unanimously agrees, in fantastic and excellent fashion.

Mr Speaker, apart from giving the Hon. the Deputy Chief Minister another good reason to tick a box and issue a detailed press release reminding Members opposite and the rest of our community just how much progress we are making in the delivery of our manifesto, this Bill demonstrates also of course something else. Gilbert Licudi is not just, in my view, a worthy successor to those who have come before, he is undoubtedly and without a shadow of a doubt one of the greatest Ministers for Justice that Gibraltar will ever see.

But *(Laughter)* he is not Minister for Financial Services at the moment, Mr Speaker, and neither is he Minister for Finance, and yet this is a Bill that he started working on when he was Minister for Financial

Services. He brings it to the House a year after having moved on from that portfolio, demonstrating the collegiate way in which this Government works, in a cross-Ministerial way, always ensuring that we deliver for our community in the best possible way and in our collegiate fashion with full Cabinet responsibility being something that all of us are very much aware of.

Mr Speaker, I want to say a few words about some of the people who have been in his team. They are the lawyers I have been working with since they arrived at Hassans as baby lawyers and they have done an excellent job in working with Mr Licudi on this.

I commend, of course, the Bill to the House. I will be very pleased to see the House support this Bill unanimously.

Mr Speaker: The Hon. Mr Gilbert Licudi.

Hon. G H Licudi: Mr Speaker, I am very grateful for the comments that have been made today in the House and in fact very flattered to receive those comments, not just from my colleagues in Government, but also from the Opposition benches.

It is true, as I mentioned at the beginning, that this is not the work of one man or one Minister, by a long, long shot. This is the collective work of not just the professionals, who have assisted in actually putting it together, but a great many individuals, practitioners and professionals, who have been involved for two and a half years in the process of consultation, collaboration, advice and assistance for the Governor, and once again, I express my gratitude to them all. It is really a tribute to them that in a Bill that we have before the House, which runs to almost 1,000 pages, that does not just re-enact the current legislation that brings in substantial new provisions and amendments, that in all of those there should be so little – in fact nothing between us – but so little by way of comment or issues that need clarification. It really is a testament to the excellent work that has been done by those who have put this together. It is a tribute to them that that is indeed the position.

The hon. Member opposite, Mr Bossino, has raised in particular two issues, and those are the same two issues that we have already been in correspondence with. I have provided explanations for the views taken by the Government on this and I will be happy to provide those again. The two issues he raises are in relation to the execution of documents provisions at clause 72, etc, and in relation to financial assistance provisions at clause 100.

In relation to the execution of documents, as the hon. Member has acknowledged, this has been taken from the equivalent provisions in a UK Act – not the most recent provisions that exist in the UK. Those are reflected in the 2006 Act which remove…sorry, that is in relation to financial assistance, but this is taken from the 2006 Act, the execution of documents provisions. The 2006 Act. So they do reflect the most up-to-date practice, legislative practice in the UK. They have been in place since 2006. So for eight years now the UK has had these provisions and, from what I am told, they work well and do not impose any particular onerous burden.

It is also worth mentioning that this was one of the specific proposals that was made by the company Law Reform Committee of the Finance Centre Council. They proposed that these particular provisions from the 2006 Act be adopted and taken for Gibraltar. Not only was it a proposal from the industry, but following publication of the Bill, and also in relation to the Command Paper when we published a draft of the Bill and invited comments, we did not have any particular issues of concern raised as this creating an added burden.

I am assured that this creates a clearer scenario as to what is required to be done in relation to the execution of documents. I know, and certainly from discussions with my colleague, the Minister for Financial Services, I know that he has had issues as a practitioner in the past as to what the current provisions in the Companies Act and what the current practice actually should be and there has been some disagreement between practitioners. So there was a need and that is why the proposal was made in the first place. There was a need to clarify the position and make it crystal clear. Given that this was a proposal by the Committee, it was a proposal that I accepted. It seemed to make sense and I asked that the drafters include this in the draft bill that was presented to me. When I saw it, I must say that I raised exactly the same points that the hon. Member has raised in relation to these provisions, because it did seem to me at first blush that the requirement for certain documents to be signed by a director with a witness may, in certain circumstances, be more onerous. In response to the raising of that issue, a specific paper was prepared for me in relation to these provisions and I have in fact shared that paper that was prepared for me a number of months ago. I have shared that paper with the hon. Member and that paper refers to the decision in the UK Court which sets out the jurisprudence which has been developed as a result of these provisions.

The crucial issue which arises from that jurisprudence and in fact it is on the face of the sections, or the provisions, is the distinction as to whether a document is signed by a company or on behalf of a company. I am assured that as a result of what the provisions say, the statutory provisions, the interpretation of those provisions by the Court already in England is that for the most part most of the documents, including

contracts, and not just oral contracts, written contracts by a company are signed on behalf of a company, although it is true that the judges do say in that case that sometimes it is an artificial distinction as to whether something is done by a company or on behalf of a company, it is always done on behalf of a company because you cannot get a company with a pen and write itself. A company officer can put a seal and that signifies that it has been done by the company, but if something is done without a seal, signed by somebody on behalf of the company, in the main will be regarded as a document signed on behalf of the company, even if it is signed by a director.

There is provision in section 72 that where a document or contract – it does not distinguish between oral and written, so it must include written contracts – is signed on behalf of a company, as long as that person has authority to sign and expressly it is provided that that authority can be expressed or implied in the normal course of events and we are all familiar with those provisions, as long as that is the case, it is sufficient for one person, the authorised person, to sign that contract on behalf of the company. That is the analysis that has been made for me. As I have said, this originates from the industry. It is already established practice in the UK. It seems to be working well and therefore we have decided, for the sake of certainty, to produce that.

It also provides, as I have mentioned to the hon. Member that although we could take issues on board and say, 'Well, let's make it even clearer. Let's change a word here or a word there', that may well destroy the jurisprudence that comes out of the UK if we do not reflect the wording that is being interpreted by Courts in the UK. So it is always useful. We do not have to slavishly follow what the UK does in any Act, but when we are adopting those provisions, it is useful to follow the words because then the jurisprudence from the Courts will be applied equally in Gibraltar and that is always a useful provision. So the Government is satisfied that this is what the industry wants and that it works well. It has been shown to work well and so we have no particular concerns about those added burdens that the hon. Member mentions.

The other point is in relation to financial – *(Interjection)*

I am happy to, yes.

Hon. D J Bossino: Yes, Mr Speaker, I am grateful to the Hon. Minister for giving way.

Simply to point out the point that I intended to make when I made my contribution, but it escaped me, and acknowledge that other than the issue that I have raised in relation to clauses 72, etc, in relation to execution of documents, acknowledge that what is there now is by far a huge improvement to what is the position in the current Act, which is, I think, section 47. I think it does provide for clarity, which is certainly not there under the current legislation. I am grateful.

Mr Speaker: I now put the question –

Hon. G H Licudi: Sorry, Mr Speaker, I have not finished dealing with –

Mr Speaker: Sorry.

Hon. G H Licudi: I just gave way to the hon. Member.

I was just seeking clarification on one particular point, if I may?

Mr Speaker, the other point that the hon. Member raised is the question of financial assistance and that is an issue that has been live with practitioners for a number of years and what changes should be made to that. We pondered on the various options. The options that we had available was to adopt the provisions that are currently contained in the 1985 Act in the UK which are essentially what is generally called the white-wash provisions, whereby a procedure can be followed to make things right, or to remove the prohibition on financial assistance altogether as they have done in the 2006 Act.

The advice that I was given, which I have also shared with the hon. Member in terms of what I was told, was that coupled with the removal in 2006 was a codification, as the hon. Member has already alluded to, of directors' duties in the UK Act – in Gibraltar we have not gone as far as codifying all directors' duties and we will continue to rely on common law provisions – and because there were specific statutory duties, it appears that in the UK it was felt that that should be sufficient protection and therefore there was no need to keep the prohibition on financial assistance. That is why they moved down that route in 2006.

In Gibraltar, we have had consultation with practitioners. We have looked at the provision extensively and eventually we decided that the better option was to go for what they had previously because we are not codifying those directors' duties in the Act and therefore we are following the 1985 Act. As the hon. Member has said, this is not something specifically as a matter of policy of the Government. There is no particular policy; it is just doing what is best for the jurisdiction and for practitioners and what works well. We will now have a provision which will allow the white-wash procedure, subject to certain steps being taken. And, yes, it is true, as the hon. Member has said, that certain steps will have to be taken and that will

incur some time and sometimes some expense, but that is what we have felt is the best option for the industry in Gibraltar, having regard to what they have done in the UK more recently and the reasons why they did it and we have not followed fully what they have done in the UK in this. So that is the explanation in relation to financial assistance.

It simply remains for me again to thank all hon. Members for their contribution, for their very positive contribution to this and for the fact that this has been welcomed by the whole House.

Mr Speaker: I now put the question, which is that a Bill for an Act to re-enact, with amendments, the provisions of the Companies Act (1930-07) as amended; to incorporate the Companies (Accounts) Act 1999 and the Companies (Consolidated Accounts) Act 1999; to take account of the effect of the Insolvency Act; to incorporate amendments proposed by a Law Reform Committee of the Gibraltar Finance Centre Council; and for connected purposes, be read a second time.

Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Companies Act 2014.

Companies Bill 2014 –
Committee Stage and Third Reading to be taken at this sitting

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of this Bill be taken later today, if all hon. Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of this Bill be taken today? (**Members:** Aye.)

Insolvency (Amendment) Bill 2014 –
First Reading approved

Substitute Clerk: A Bill for an Act to amend the Insolvency Act 2011.

The Hon. the Minister for Education, Telecommunications and Justice.

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Insolvency Act 2011 be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Insolvency Act 2011 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Insolvency (Amendment) Act 2014.

Insolvency (Amendment) Bill 2014 –
Second Reading approved

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker**,** I beg to move that a Bill for an Act to amend the Insolvency Act 2011 be read a second time.

Mr Speaker, as we have already heard this morning, this arises from a need to make certain changes, minor changes to an Act, which was passed by Parliament in 2011. The Insolvency Act is also an extensive Act, which was passed by my predecessor, the Hon. the Leader of the Opposition, when he was Minister for Justice and certainly a great deal of work went into putting that together as well and that must be acknowledged today.

The Bill was passed, as I seem to recall, in June 2011, but it has not been commenced yet, and it has not been commenced for a number of reasons. Firstly, there was a need to finalise the drafting of a number of pieces of regulations and rules. There are in fact six Rules and Regulations – I will go through them later – which required to be finalised, and those are now just about in the final form. There was a need also to pass, apart from this Bill, the other related Bill which I will be moving today, which is the Insolvency

(Consequential Provisions) Bill. That, in the form that it was previously, made amendments, necessarily made amendments to the existing Companies Act and we felt that it made no sense when we were overhauling the Companies Act, for the sake of saving one or two months… or three or four months, to introduce these provisions and to commence the Insolvency Act, make wholesale amendments to the Companies Act as it is and then come back to Parliament a couple of months later and make all those amendments again to reflect the changes in the new Companies Act. So that did not make sense. It made sense, we felt, to put it all together as one overall revision of companies and insolvency legislation. Part of it had already been enacted in 2011 and the rest we are doing today.

In the same way as it is proposed that the Companies Act be commenced on 1st September 2011, we will be publishing very shortly the various pieces of regulations – not commencing them, but just publishing for public knowledge – and again to give practitioners the opportunity to get to grips with the whole new regime, the whole new insolvency regime, which will commence at the same time as the new Companies Act on 1st September this year. In relation to this particular Bill, Mr Speaker, this is in the main a housekeeping Bill in that it introduces changes, which are necessary or desirable to the Insolvency Act 2011 as a result of the provisions of the Companies Act which we are enacting today, and in order to make a number of minor corrections to the Insolvency Act 2011.

The Bill also introduces a number of changes arising from decisions which we have taken since we have been in Office, following consultation with the practitioners in the field of insolvency.

The amendments consequent to the enactment of the Companies Act consists simply of updating of references in the Insolvency Act to the new Companies Act because the existing Companies Act clearly was done having regard to the existing Companies Act and some of the terminology will need to be changed. So what we are doing is generally ensuring that there is consistency of terminology between the two pieces of legislation – the existing Insolvency Act and the new Companies Act.

There are also a number of corrections to the Insolvency Act consisting primarily of rectifying cross-referencing errors and a number of typographical errors which we noted. There are, as I have said, also a number of changes to the Insolvency Act which are being made, and these have followed consultation. I will go through the various changes. There are essentially four changes.

The first, Mr Speaker, is to provide for the licensing of insolvency practitioners by the Financial Services Commission. The Insolvency Act 2011 provides for this function to be exercised by the Minister with responsibility for Financial Services. The Act in fact distinguishes in relation to insolvency practitioners, between the licensing of insolvency practitioners, which is a responsibility given to the Minister, and the supervision of insolvency practitioners, which is a responsibility given to the Financial Services Commission.

The Act in fact allows the Minister to designate another person or entity as essentially the licensing authority. The Government has decided that that function should not be exercised by the Minister, but by the Commission. The licensing function should be exercised by the Commission. Although it is true that this could have been done by designation under the existing provisions, we were in any event, as a result of the Companies Act, bringing an amendment to the Insolvency Act and the Government's decision is not that the primary power under statute should be held by the Minister, subject to a designation, but that the statutory power should be held by the Commission itself; therefore, we felt that it was best to do this by bringing this amendment to the Act.

Secondly, Mr Speaker, we have widened the scope of what is currently contained in section 136(3) of the Insolvency Act. This provides that where there is any inconsistency between the Act and legislation transposing EU Directives on collateral arrangements and securities, the EU provisions naturally prevail. However, section 136(3), which is the current provision which reflects this, is limited to set-offs. The amendment makes it clear that this applies to all arrangements and transactions caught by the relevant collateral and securities laws.

Thirdly, we have placed the responsibility for distributing the report on the outcome of a creditors meeting on the interim supervisor. We have done this because it is the interim supervisor and not the Chairman. At the moment under the Act it is the responsibility of the Chairman, but it is the interim supervisor who prepares the report on the creditors meeting and we felt that the interim supervisor would be better placed to have the obligation to distribute that report.

Fourthly, we have provided when considering the appointment of a liquidator on a public interest ground, the Court must include the interests of the public outside Gibraltar. We have done this because we have been advised that it has previously been argued in proceedings that 'public' may only mean or should only mean the public in Gibraltar, and if that were to be the case, it could possibly undermine the confidence of overseas' investors in Gibraltar companies if we do not take their interests into account or the Court was not to take their interests into account.

Mr Speaker, the existing Companies Act provides for certain offences for both solvent and insolvent liquidations. We consider that offences in the new Companies Act should apply only to solvent liquidations

and the equivalent offences for insolvent liquidations should be placed in the Insolvency Act. The Bill before this House gives effect to this.

Finally, Mr Speaker, we have given notice by letter to Mr Speaker of a further amendment which we will be proposing at Committee Stage. I understand hon. Members have a copy of the letter with the proposed amendment. The purpose of the amendment is to introduce a new provision in the Insolvency Act which reflects the current section 42A of the Bankruptcy Act and as Members know, the Bankruptcy Act will be repealed when the Insolvency Act is commenced.

Section 42A of the Bankruptcy Act contains provisions relating to Asset Protection Trusts. These are not used to any particularly great extent, as I understand it; however, there have been regulations made under section 42A, and that is the Bankruptcy (Register of Dispositions) Regulations, and a number of dispositions are in fact registered under the existing regulations. We have received representations from the industry that it would be desirable to keep the equivalent of section 42A in the new Insolvency Act. The Government has agreed and we will therefore be proposing at Committee a new clause to the Bill which will give effect to that.

Mr Speaker, as with the Companies Act, as I have already indicated, it is the Government's intention to commence all the legislation on 1st September 2014. At the same time a number of Rules and Regulations will be commenced, having previously been published and these are the Insolvency Rules, the Insolvency (Transitional Provisions) Regulations, the Insolvency Partnership Regulations, the Insolvency (Administration of Insolvent Estates) Regulations, the Insolvency Practitioner Regulations and the Cross-Border Insolvency Regulations.

Once again, Mr Speaker, I wish to thank all those who have been involved and assisted and advised the Government in putting together the various strands of this undoubtedly complex process. In particular, I would thank members of what we call the Insolvency Group, who are a group of practitioners in insolvency work who have for the last two years been involved with myself and the Minister for Financial Services in consultation, advice and have reviewed various drafts, in particular the drafts of the Rules and Regulations which are necessary to give effect to the provisions of the Insolvency Act.

I would also extend the Government's appreciation for their input to the Financial Services Commission, in particular, the Commission's Chief Executive Samantha Barrass.

Mr Speaker, I commend the Bill to the House. *(Banging on Desks)*

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of this Bill?

The Hon. the Leader of the Opposition.

Hon. D A Feetham: Mr Speaker, just to say that the Opposition will be supporting this Bill. This Bill is introduced in order to allow four amendments of the Insolvency Act, which the Hon. the Minister for Justice has acknowledged was introduced into this Parliament by us when we were in Government, not only to enable it to be commenced, but also they made a number of amendments.

Whilst perhaps we would have dealt with certain issues differently and indeed, in terms of the amendments to the licensing regime, we took a conscious decision to deal with it in a different way, the reality is that there is more than one way to skin a cat and simply because we decided to deal with it differently does not mean that there is anything wrong with the way that the hon. Gentleman has sought to deal with this particular issue through these amendments.

So the Opposition will be supporting the Bill for those reasons.

Mr Speaker: Does the hon. mover wish to…?

Hon. Sir P R Caruana: Yes, Mr Speaker, there is just one minor point on which… I am grateful to the Hon. Minister for handing me the Act as it stands. I was a little bit concerned when he said that the effect of the amendment to section 229 was to define the public interest, including the public interest of a place *outside* of Gibraltar. I think that might be a happy misspeaking on his part because I think in fact it does something slightly different in that it defines 'public' as being the public both within and without Gibraltar, which is slightly different to defining the public interest. I think it would be dangerous, as a matter of generality, to define the public interest in the laws of Gibraltar as the public interest of every country in the world. The public interest of some countries is that Gibraltar should not have a finance centre, should not have laws to encourage people and therefore I think as a matter of general statutory provision, it would need very careful thought before the definition of 'public interest' were broadened in that way. I do not think that that is the effect, even though that is how he has described it. I do not think on a very quick reading that is the effect of this amendment, which is simply to do probably what is already the position and that is simply where it says 'public', as in members of the public. It means members of the public who are both in and out

of Gibraltar and that must be true, that a creditor of the Gibraltar company is a member of the public in Gibraltar for that purpose already.

On that basis there is a provision in clause 229 that refers to the public interest, the Court is of the opinion that it is in the public interest for a liquidator to be appointed. The amendment is, public, includes public within and outside of Gibraltar. Whether that would influence the interpretation of the word 'public', whether the reference to the 'public' in that sense would influence the interpretation of the phrase 'public interest', which includes the word 'public', I do not know. But I do not think it is hugely important in the context. In any event, I do not think it would be hugely important in the context of this legislation, but I think it is worth just bearing in mind perhaps in other legislation where it might be more sensitive, to perhaps focus on this point.

Hon. G H Licudi: Mr Speaker, I agree entirely with the clarification and the interpretation given by the hon. Member Sir Peter Caruana. Certainly it is not our intention to signal that the Government considers that any reference to public interest is anything other than the public interest in Gibraltar. There is a particular provision here in relation to the public and what that means and public must necessarily for insolvency purposes. We are only dealing with this and therefore we are making no wider statement than what is contained in this particular Bill. We are simply clarifying that 'public' for these purposes, means the public in Gibraltar and outside because of the interests of people outside Gibraltar in Gibraltar companies who may be affected by this. Therefore, I am happy to agree with the clarification which has been put forward and I am in fact very grateful for it.

Mr Speaker: I now put the question, which is that a Bill for an Act to provide for the repeal and amendment of certain enactments consequent on the enactment of the Insolvency Act 2011 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Insolvency (Amendment) Act 2014.

Insolvency (Amendment) Bill 2014 –
Committee Stage and Third Reading to be taken at this sitting

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

Insolvency (Consequential Provisions) Bill 2014 –
First Reading approved

Substitute Clerk: A Bill for an Act to provide for the repeal and amendment of certain enactments consequent on the enactment of the Insolvency Act 2011.

The Hon. the Minister for Education, Telecommunications and Justice.

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I have the honour to move that a Bill for an Act to provide for the repeal and amendment of certain enactments consequent on the enactment of the Insolvency Act 2011 be read a first time.

Mr Speaker: I now put the question which is that a Bill for an Act to provide for the repeal and amendment of certain enactments consequent on the enactment of the Insolvency Act 2011 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Insolvency (Consequential Provisions) Act 2014.

Insolvency (Consequential Provisions) Bill 2014 –
Second Reading approved

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to move that the Insolvency (Consequential Provisions) Bill 2014 be read a second time.

This Bill makes amendments to various Acts, Regulations and Rules arising from the enactment of the Insolvency Act 2011, as amended by the Bill which we have just considered.

As the name of the Bill implies, the intention is to give effect through this Bill to changes which are necessary or desirable simply as a consequence of the enactment of the Insolvency Act. As hon. Members are well aware, the Insolvency Act 2011 introduces the concept of administration of companies. This makes it necessary for various statutory provisions to be amended to reflect the fact that companies, apart from being placed into liquidation, may also now be placed into administration. As an example, Mr Speaker, the application of the Crime (Money Laundering and Proceeds) Act 2007 and the Drug Trafficking Offences Act 1995 is extended to assets held by companies which are subject to administration under the new procedure.

A number of amendments are also being made to the Protected Cell Companies Act. Although special provisions apply in relation to the liquidation of a protected cell company, there is no reason to exclude the Insolvency Act completely. However, in relation to individual cells, the Protected Cell Companies Act provides for the appointment of an administrator and this is a self-contained procedure within that Act and the proposed new section 2A of that Act therefore excludes the administration provisions in the Insolvency Act because the Act already has its own procedure. Other amendments are also made to this Act to reflect the change in terminology in the Insolvency Act.

Mr Speaker, the other pieces of legislation which are amended by this Bill are the Deposit Guarantee Scheme Act 1997, Financial Markets and Insolvency (Settlement Finality) Regulations 2011, Financial Services Commission Act 2007, Financial Services (Temporary Administration of Companies) Act 2010 and a Supreme Court Rules 2000.

Mr Speaker, I commend this Bill to the House.

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill?

I will now put the question which is that a Bill for an Act to provide for the repeal and amendment of certain enactments consequent on the enactment of the Insolvency Act 2011 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Insolvency (Consequential Provisions) Act 2014.

Insolvency (Consequential Provisions) Bill 2014 –
Committee Stage and Third Reading to be taken at this sitting

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today if all hon. Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

COMMITTEE STAGE

The Companies Bill 2014;
The Insolvency (Amendment) Bill 2014;
The Insolvency (Consequential Provisions) Bill 2014.

Substitute Clerk: Committee Stage.

The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: the Companies Bill 2014; the Insolvency (Amendment) Bill 2014; and the Insolvency (Consequential Provisions) Bill 2014.

In Committee of the whole Parliament

Companies Bill 2014 –
Clauses considered and approved

Substitute Clerk: A Bill for an Act to re-enact, with amendments, the provisions of the Companies Act (1930-07) as amended; to incorporate the Companies (Accounts) Act 1999 and the Companies (Consolidated Accounts) Act 1999; to take account of the effect of the Insolvency Act; to incorporate amendments proposed by a Law Reform Committee of the Gibraltar Finance Centre Council; and for connected purposes.

Clauses 1 to 17.

Mr Chairman: Stand part of the Bill.

Substitute Clerk: Clause 18.

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Chairman, I have given notice in a letter, which I understand hon. Members have, of various amendments to this Bill, including an amendment to clause 18. I am happy to go through the various amendments or for the record to show that these amendments are formally put before the Committee.

Mr Chairman: Do all hon. Members agree that having regard to the fact that it has been circulated in detail, we dispense with the need to actually read them out? Agreed.

Clause 18, as amended, stands part of the Bill.

Substitute Clerk: Clauses 19 to 85.

Mr Chairman: Stand part of the Bill.

Substitute Clerk: Clause 86.

Mr Chairman: The Hon. Mr Licudi. No?

Substitute Clerk: There are amendments, but they are covered by the general amendment. If you could say that it is covered by the general memorandum. *(Interjection)*

Hon. G H Licudi: Mr Chairman, I understand that all the amendments have been accepted and therefore it is clause 86, as amended, should stand part of the Bill.

Mr Chairman: Clause 86, as amended, stands part of the Bill.

Substitute Clerk: Clauses 87 to 113.

Mr Chairman: Stand part of the Bill.

Substitute Clerk: Clause 114.

Mr Chairman: Again, there is an amendment which has been circulated.

Clause 114, as amended, stands part of the Bill.

Substitute Clerk: Clauses 115 to 130.

Mr Chairman: Stand part of the Bill.

Substitute Clerk: Clause 131.

Mr Chairman: Clause 131, as amended, stands part of the Bill.

Substitute Clerk: Clauses 132 to 187.

Mr Chairman: Stand part of the Bill.

Substitute Clerk: Clause 188.

Mr Chairman: Clause 188, as amended, stands part of the Bill.

Substitute Clerk: Clause 189.

Mr Chairman: Clause 189, as amended, stands part of the Bill.

Substitute Clerk: Clauses 190 and 191.

Mr Chairman: Stand part of the Bill.

Substitute Clerk: Clause 192.

Mr Chairman: Clause 192, as amended, stands part of the Bill.

Substitute Clerk: Clauses 193 to 490.

Mr Chairman: Stand part of the Bill.

Substitute Clerk: Schedules 1 to Schedule 29.

Mr Chairman: Stand part of the Bill.

Substitute Clerk: The long title.

Mr Chairman: Stands part of the Bill.

Insolvency (Amendment) Bill 2014 –
Clauses considered and approved

Substitute Clerk: A Bill for an Act to amend the Insolvency Act 2011.
Clause 1.

Mr Chairman: Stands part of the Bill.

Substitute Clerk: Clause 2.

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Chairman, I have given notice by letter of a proposed amendment to clause 2 to introduce a new 35A and the details are set out in the letter which I understand has been circulated to the hon. Members opposite. As I explained during the Second Reading, this is to re-introduce the provisions relating to asset protection trusts.

Mr Chairman: Is it agreed that clause 2, as amended in the terms the hon. Member has given notice, stands part of the Bill?
Clause 2, as amended, stands part of the Bill.

Substitute Clerk: The long title.

Mr Chairman: Stands part of the Bill.

Insolvency (Consequential Provisions) Bill 2014 –
Clauses considered and approved

Substitute Clerk: A Bill for an Act to provide for the repeal and amendment of certain enactments consequent on the enactment of the Insolvency Act 2011.

Clauses 1 to 3 and the long title.

Mr Chairman: Stand part of the Bill.

FIRST AND SECOND READING

Criminal Procedure and Evidence (Amendment) Bill 2014 –
First Reading approved

Substitute Clerk: A Bill for an Act to amend the Criminal Procedure and Evidence Act 2011.

Mr Speaker: The report…?

Substitute Clerk: We report at the end. *(Interjection)* Yes.

A Bill for an Act to amend the Criminal Procedure and Evidence Act 2011.

The Hon. the Minister of Education, Telecommunications and Justice.

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Criminal Procedure and Evidence Act 2011 be read a first time.

Mr Speaker: I now put the question that a Bill for an Act to amend the Criminal Procedure and Evidence Act 2011 be read a first time.

Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Criminal Procedure and Evidence Act 2011.

Criminal Procedure and Evidence (Amendment) Bill 2014 –
Second Reading approved

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to move that the Bill for an Act to amend the Criminal Procedure and Evidence Act 2011 be read a second time.

Mr Speaker, this Bill introduces a number of amendments to the Act so as to increase the range of sentences to which rehabilitation attaches and to decrease the rehabilitation period in respect of certain sentences.

The provisions regarding the rehabilitation of offenders introduced in the Criminal Procedure and Evidence Act 2011 aim to give those with convictions or cautions the chance, in certain circumstances, to have their convictions or cautions regarded as spent after a specified period of time, known as the rehabilitation period. The length of that specified period depends on how the individual concerned was dealt with, including the length of prison sentence where such a sentence has been imposed.

Prison sentences of over 30 months are excluded from the scope of the Act and can therefore never become spent, subject of course to the possibility of a review, which is an amendment we have previously introduced. The rehabilitation periods for other types of sentence vary according to the person's age and whether the person was cautioned or convicted, and if the latter, the type of sentence imposed. Once the conviction or caution becomes spent, the offender is regarded as rehabilitated and for most purposes is treated as if he had never committed the offence.

The amendments included in this Bill are based on recent changes in the United Kingdom made to the Rehabilitation of Offenders Act and these amendments came into force on 10th March 2014. As a result of the amendment in the UK, there is now a very wide gap between rehabilitation periods in the UK and those in Gibraltar. As an example, someone sentenced to six months imprisonment in the UK has a rehabilitation

period of four years; whereas someone sentenced to the same period of imprisonment in Gibraltar, has a rehabilitation period of 10 years – in other words more than double.

The UK regime was amended following criticism as to it being inconsistent with contemporary sentencing practice, with the result that it failed in its aim to help reformed offenders resettle into society. It was suggested that the rehabilitation periods were too long and did not reflect the point at which re-offending tails off following a conviction. When these changes were introduced in the UK in March of this year, a number of reports also suggested that studies have shown that shorter rehabilitation periods made a critical difference on whether or not an offender was able to find employment and turn his or her life around. That in turn also reflected on re-offending rates. Shorter periods of rehabilitation resulted therefore in offenders being more likely to find employment and in turn less likely to re-offend.

That does not of course mean or lead to the conclusion that rehabilitation periods should be eliminated altogether. It is necessary to have rehabilitation periods. The question is simply what those periods should be. The UK has now pitched those periods at a level considerably shorter than those which currently apply in Gibraltar. There appears to the Government to be sound public policy, criminal justice policy and social policy reasons for these shorter periods. We have therefore decided to follow the periods recently set in the UK.

The changes in the Bill involve two key matters. The first change is to extend the scope of the Act to cover custodial sentences of up to 48 months and the second is to change the length of some of the rehabilitation periods and the manner in which they are calculated. These changes will result in a simpler system which will no doubt help in a more realistic opportunity being given to offenders to get on the right path and contribute to society. That is in line with Government policy as reflected in our manifesto where we set out the importance of rehabilitation of offenders provisions. Other changes are simply to simplify the system in line with current UK practice.

Mr Speaker, I commend the Bill to the House. *(Banging on Desks)*

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of this Bill?

The Hon. the Leader of the Opposition.

Hon. D A Feetham: Mr Speaker, this Bill seeks to amend legislation that we introduced into this House… I think it was in 2011, in the Criminal Procedure and Evidence Bill, which introduced for the very first time into Gibraltar the concept of rehabilitation of offenders.

Mr Speaker, I recall from the debate in relation to that Bill that in fact the hon. Gentleman, when he was shadowing me, he raised a number of concerns about the shortness of the rehabilitation periods. He also raised some concerns as well as to the schedule annexed to the Bill, which listed all those professions. He may recall all those professions that had actually been excluded. I told him then that really the question of rehabilitation of offenders was very much work in progress and that it may well have been that at some point in the future a future Gibraltar Government would have to review the rehabilitation periods, and indeed also the exclusions, the list of professions that were excluded from being… or people working in those professions were excluded from being rehabilitated at some point in the future.

The hon. Gentleman has decided to do this at this point in time because what he is doing is, he is following UK amendments to the legislation in the UK. I think that it is something that actually ought to be kept under constant review and it is something that may well in the future lend itself to Gibraltar going down a different path to the United Kingdom, particularly too in relation to re-examination of all those professions that are excluded from being rehabilitated.

I will just explain, for the benefit of viewers, that there is a list of professions annexed to the Criminal Evidence and Procedures Act, as it now is, and anybody wanting to work in those professions will never be rehabilitated. In other words, a conviction will always – no matter how spent the conviction would have become – would always weigh effectively against that person when that person wanted to work in those professions, and of course that makes sense in relation to, for example, professions such as people working with children or with vulnerable people; but indeed, the list is a very wide list indeed. We chose to follow the UK because at the time we thought that that was appropriate, but I think that is something that also ought to be re-examined by the Government and I urge him as part of this continuing process, of course, of keeping our laws updated that he should look at that, but other than that Mr Speaker, the Opposition will certainly be supporting this Bill.

Mr Speaker: Does the hon. mover wish to reply?

Hon. G H Licudi: Yes Mr Speaker.

The hon. Member mentions certain issues which are raised at the Second Reading of the Bill in 2011. I have no independent recollection of that, but be that as it may, I do agree that this legislation, as many other

pieces of legislation, needs to be kept under constant review. The review that we have done now in relation to the periods do arise because of changes in the UK. The hon. Member has mentioned – and again he is correct, as I acknowledged earlier in the context of a separate Bill – that we should not and we do not need to follow slavishly in Gibraltar whatever happens in the UK. So it is not that it is a reaction to a change in the UK, but a consequence of consideration of the reasons why those changes have been made, the studies that have led and the criticisms of the longer periods that have led to those changes. And after some consideration of those reasons – and those changes were only made in March of this year – we have felt that it made sense to move in that particular direction, but I do acknowledge that there may well be local circumstances which may make us in the future go down a different direction to the UK.

I also agree that the list of professions, which is quite extensive needs to be kept under review. We have not decided at this stage that we should make any particular changes, but it is something that certainly needs to be kept under review as we see how the effect of the changes of the introduction in the first place, and let us recall that although this was introduced in Parliament in 2011, it did not actually come into effect until November, as I recall, of 2000… sorry, the whole Act came into effect in November 2012, but very early on in 2012, we introduced the Rehabilitation of Offenders Provisions as a commencement of a part on its own.

So this is not something that has been around for years and years and we have learnt from the practice as to what it actually means to people who have come out of jail and end their rehabilitation periods. In the main part, people who have been subject to rehabilitation periods since the commencement have not had the opportunity of having that period end and then be rehabilitated. This will certainly help because it will automatically mean that somebody who is currently subject to a longer rehabilitation period, who is caught by the new provisions, will have that period automatically shortened and therefore that person may well now find, as a result of this commencement, that that conviction becomes spent and has those extra opportunities which is what we all want to achieve.

Certainly this is a matter that needs to be kept under review and I am certainly grateful on this occasion that the Opposition is supporting the changes we are making.

Mr Speaker: I now put the question which is that a Bill for an Act to amend the Criminal Procedure and Evidence Act 2011 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Criminal Procedure and Evidence (Amendment) Act 2011.

Criminal Procedure and Evidence (Amendment) Bill 2014 –
Committee Stage and Third Reading to be taken at this sitting

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today. (**Members:** Aye.)

Prison (Amendment) Bill 2014 –
First Reading approved

Substitute Speaker: A Bill for an Act to amend the Prison Act 2011.
The Hon. the Minister for Education, Telecommunications and Justice.

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Prison Act 2011 be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Prison Act 2011 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Prison (Amendment) Act 2014.

Prison (Amendment) Bill 2014 –
Second Reading approved

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker**,** I beg to move that the Bill for an Act to amend the Prison Act 2011 be read a second time.

Mr Speaker, we seem to be dealing with a number of amendments to Acts which were passed by this Parliament in 2011. For some reason –

A Member: Very welcome.

Hon. G H Licudi: Yes, certainly very welcome Acts, but for some reason there seems to have been a flurry of activity in 2011 *(Laughter)* to get some legislation through Parliament. But this, of course, is certainly a welcome amendment… a welcome provision and updating of the Prison Act, which as I recall was welcomed by all.

Mr Speaker, this Bill includes a number of amendments to the Prison Act 2011 which can be split into three groups. The first set of amendments is contained in clauses 2 and 3. These deal with the position of prisoners aged 17 and their classification under the Act. The changes ensure that persons aged 17 are treated as juveniles during the judicial process under the Criminal Procedure and Evidence Act and also under the Prison Act. At present, special treatment is required under the Prison Act for those aged *under* 17 – this does not of course include 17-year-olds.

Hon. Members will recall that I explained, in answer to a question from the Hon. Selwyn Figueras in March of this year, how juveniles who are detained at HM Prison are dealt with. It became apparent during the course of preparing the answer to that question that whereas in prison 17-year-olds are treated as adults – because it is only under-17's that are given that special treatment… so in prison 17-year-olds are treated as adults and under the Criminal Procedure and Evidence Act, 17-year-olds are treated as juveniles. This discrepancy exists as a result of the commencement of the Criminal Procedure and Evidence Act in 2012, which changed the age at which young persons become adults from 17 to 18. This discrepancy in fact, Mr Speaker, was also highlighted in a recent case before the Court, which was reported by the *Gibraltar Chronicle* on 5th April this year. As a result, Mr Speaker, the Government considers that it is right that 17-year-olds should be treated as juveniles for all purposes under the Criminal Justice System. It is therefore necessary to amend the Prison Act to bring the classification of 17-year-olds in line with the definition of 'juveniles' in the Criminal Procedure and Evidence Act.

Mr Speaker, the second area being amended by this Bill is contained in clause 4. This amendment clarifies the way in which a sentence of imprisonment is defined for the purposes of release on licence. The amendment reflects the current practice, that terms in default for the non-payment of fines are for the purposes of releasing persons on licence treated as sentences of imprisonment and that consecutive terms of imprisonment are to be treated as one term. This arises where a prisoner is serving a sentence of imprisonment and separately has to serve a term, say, of 30 days in default for non-payment of fines. The question that arises is how the parole eligibility date is calculated? Is it only by reference to the first sentence with a term in default served separately or is there a requirement to put the two terms together as one term and calculate parole eligibility date by reference to that whole term? The legislation Mr Speaker, I was advised was not clear, although the practice was to treat the sentences as one term. The amendment we are making does not change the current practice; it simply clarifies the law.

The final amendments made by this Bill are by clause 5, Mr Speaker. These are amendments to section 64 of the Prison Act 2011 to create a new offence of possession without authorisation of a device capable of transmitting or receiving images, sounds or information by electronic communications in a prison. This includes mobile telephones, as well as other devices which are capable of accessing the internet or are otherwise capable of sending or receiving data.

There is already, under the Prison Act, the offence of introducing such a device into the prison. This requires evidence of who introduced the device to the prison, but does not assist where someone is in possession of the device, but it is not known how or by whom the device was introduced to the prison. It was felt that this creates a lacuna in our legislation which we are correcting with this new offence. The new offence will also extend to the possession of any component part or article designed or adapted for use with such a device, such as a SIM card or a charger for a mobile telephone.

Mr Speaker, I commend the Bill to the House.

Mr Speaker: I put the question, does any hon. Member wish to speak on the general principles and merits of this Bill?

Hon. D A Feetham: Yes, Mr Speaker.

Mr Speaker: The Hon. the Leader of the Opposition.

Hon. D A Feetham: Mr Speaker, yes.

Mr Speaker, in the mutual back-slapping that has characterised this particular session this morning, it was the first ungenerous comment by the hon. Gentleman to suggest that we had delayed all these Bills – the Insolvency Act, the Criminal Evidence and Procedure, the Crimes Act and the Prison Act – all seminal pieces of legislation until the very end. Of course the reality is, as he well knows because of the work that he has done in relation to the Companies Act, that dealing with legislations of this nature is not like, I suppose, frying an egg. Although, I have to say, I have very little experience of frying eggs or frying anybody else… sorry, *anything* else *(Laughter)* much to my wife's complaints.

But, Mr Speaker, these are just simply amendments. One of the amendments deals with an anomaly that has arisen or that attention has been drawn to an anomaly as a consequence of a recent case in the Supreme Court. I happen to read the case. It is logical that the Government comes to Parliament in order to introduce an amendment that will effectively make the provisions in the Prison Act compatible with the provisions in other pieces of legislation.

For all those reasons, Mr Speaker, the Opposition will be supporting this Bill.

Hon. G H Licudi: Mr Speaker, just to say that I was not trying to be ungenerous. I was simply remarking on a fact. In fact I was implicitly trying to commend the Member for bringing all those, as he has often described them, as seminal pieces of legislation, before he was, unfortunately for him, ousted out of office.

Mr Speaker: I now put the question which is that a Bill for an Act to amend the Prison Act 2011 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Substitute Clerk: The Prison (Amendment) Act 2014.

Chief Minister (Hon. F R Picardo): Mr Speaker, may I now, bang on one o'clock, invite the House to recess until 2.30 p.m. this afternoon?

Mr Speaker: The House will now recess until 2.30 p.m. this afternoon.

The House recessed at 1.02 p.m. and resumed its sitting at 2.35 p.m.