

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,706 of 9th April, 2009

B. 10/09

BILL

FOR

AN ACT to transpose into the law of Gibraltar article 49(1) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC as amended by Directive 2008/30/EC, and matters connected thereto.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Companies (Accounts) (Amendment) (No.2) Act 2009 and comes into operation on a date appointed by the Minister responsible for finance.

Amendments to the Companies (Accounts) Act, 1999.

2.(1) The Companies (Accounts) Act, 1999 is amended in accordance with the provisions of this section.

(2) Schedule 7 is amended in paragraph 1 by inserting after indent (o), the following indent—

“(p) separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of annual accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services. The Minister may make by regulations provide that this requirement shall not

apply where the company is included within the consolidated accounts required to be drawn up under the provisions of the Companies (Consolidated Accounts) Act, provided that such information is given in the notes to the consolidated accounts.”.

(3) paragraph 5 of Schedule 7 is replaced by the following–

“Small and medium sized companies may draw up abridged notes on their accounts without the information required in Part 1 of Schedule 11 (corresponding to article 43(1)(5) to (12), (14)(a) and (15) of Directive 78/660.) However, the notes must disclose the information specified in Part 2 of Schedule 11 (corresponding to Article 43(1)(6) of that Directive) in total for all the items concerned.”.

(4) paragraph 4 of Schedule 7 is replaced by the following–

“4. Disclosures required under paragraph 1(i) of Schedule 11 may be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings to they relate. Any such omission must be disclosed in the notes on the accounts.

Small and medium sized companies may omit disclosure of the information specified in paragraph 1(a) and (i) of Schedule 11. Small and medium sized companies may omit disclosure of the information specified in paragraph 2(b) of Schedule 11 provided that such information is subject to public oversight pursuant to the provisions of the Financial Services (Auditors) Act 2009.”.

(5) The following is inserted after Schedule 10–

“SCHEDULE 11

**ABRIDGED NOTES FOR SMALL AND MEDIUM SIZED
COMPANIES: MATTERS SUPPLEMENTARY TO SCHEDULE 7**

PART 1

1. In addition to the information required under other provisions of this Act, the notes on the accounts must set out information in respect of the following matters at least–

- (a) the valuation methods applied to the various items in the annual accounts, and the methods employed in calculating the value adjustments. For items included in the annual accounts which are or were originally expressed in foreign currency, the bases of conversion used to express them in local currency must be disclosed;
- (b) the existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;
- (c) amounts owed by the company becoming due and payable after more than five years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security. This information must be disclosed separately for each creditors item, as provided for in the layouts prescribed in this Act;
- (d) the total amount of any financial commitments that are not included in the balance sheet, in so far as this information is of assistance in assessing the financial position. Any commitments concerning pensions and affiliated undertakings must be disclosed separately;
- (e) the nature and business purpose of the company's arrangements that are not included in the balance sheet and the financial impact on the company of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of

such risks or benefits is necessary for assessing the financial position of the company.

For the purposes of this paragraph, small and medium sized companies may limit the information required to be disclosed by this point to the nature and business purpose of such arrangements;

- (f) transactions which have been entered into with related parties by the company, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the company, if such transactions are material and have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company.

Small and medium sized companies may omit the disclosures prescribed in this point unless those companies are of a type referred to in Article 1(1) of Directive 77/91/EEC, in which case disclosures may be limited to, as a minimum, transactions entered into directly or indirectly between—

- (g) the company and its major shareholders, and
- (h) the company and the members of the administrative, management and supervisory bodies.

Transactions entered into between two or more members of a group are exempted from this provision provided that subsidiaries which are party to the transaction are wholly owned by such a member.

“Related party” has the same meaning as in international accounting standards adopted in accordance with Regulation (EC) No 1606/2002;

- (i) the net turnover within the meaning of this Act, broken down by categories of activity and into geographical markets in so

far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organized, these categories and markets differ substantially from one another;

- (j) the average number of persons employed during the financial year, broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the financial year, broken down as provided for in this Act;
- (k) the extent to which the calculation of the profit or loss for the financial year has been affected by a valuation of the items which was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on future tax charges is material, details must be disclosed;
- (l) the difference between the tax charged for the financial year and for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;
- (m) the amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies by reason of their responsibilities, and any commitments arising or entered into in respect of retirement pensions for former members of those bodies, with an indication of the total for each category.

2. Where valuation at fair value of financial instruments has not been applied in accordance with this Act—

- (a) for each class of derivative financial instruments—
 - (i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in this Act;
 - (ii) information about the extent and the nature of the instruments;

- (b) separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of annual accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.

This requirement shall not apply where the company is included within the consolidated accounts required to be drawn up under Financial Services (Consolidated Accounts) Act, provided that such information is given in the notes to the consolidated accounts.

PART 2

3. In addition to the information required under other provisions of this Act, the notes on the accounts must set out information in respect of the following matters at least—

- (a) the valuation methods applied to the various items in the annual accounts, and the methods employed in calculating the value adjustments. For items included in the annual accounts which are or were originally expressed in foreign currency, the bases of conversion used to express them in local currency must be disclosed;
- (b) amounts owed by the company becoming due and payable after more than five years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security. This information must be disclosed separately for each creditors item, as provided for in the layouts prescribed in this Act.”.

EXPLANATORY MEMORANDUM

This Bill amends the Companies (Accounts) Act, 1999 to transpose into the law of Gibraltar article 49(1) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC as amended by Directive 2008/30/EC.

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