SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4185 of 16 July, 2015

LEGAL NOTICE NO. 113 OF 2015.

INTERPRETATION AND GENERAL CLAUSES ACT

COMPANIES ACT 2014 (AMENDMENT) REGULATIONS 2015

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to transpose, in part, into the law of Gibraltar Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, the Government has made the following Regulations–

Title and commencement.

1.(1) These Regulations may be cited as the Companies Act 2014 (Amendment) Regulations 2015 and come into force on 20 July 2015.

(2) These Regulations have effect in relation to financial years beginning on or after 1 January 2016.

(3) In determining whether a company or group qualifies as small or medium-sized under section 293 and Schedule 9 of the Companies Act 2014 in relation to a financial year in relation to which the amendments made by these Regulations have effect, the company or group is to be treated as having qualified as small or medium-sized (as the case may be) in any previous year in which it would have so qualified if amendments to the same effect as the amendments made by these Regulations had had effect in relation to that previous year.

Amendment of Act.

2.(1) The Companies Act 2014 (the “Act”) is amended in accordance with this regulation.

(2) In section 180–

(a) in subsection (1)(e) for "Schedule 17" substitute "Article 2(14) of Directive 2013/34/EU"; and

(b) after subsection (3) insert the following subsection–

"(4) In this section Directive 2013/34/EU has the meaning prescribed in section 237 of this Act.".

(3) In section 237–

(i) for subsection (1) substitute the following–

"(1) In this Part, except where the context otherwise requires–

"affiliated undertaking" means any two or more undertakings within a group;

"annual accounts" of a company are the balance sheet, the profit and loss account together with any other primary statements and the notes on the accounts, and these documents shall constitute a composite whole;

"associated undertaking" has the meaning given in paragraph 17 of Schedule 21;

"balance sheet" in relation to a company that prepares IAS accounts, includes a statement of financial position or other equivalent financial statement required to be prepared by international accounting standards;

"Directive 2013/34/EU" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, as amended from time to time;

"fixed assets" has the meaning given in paragraph 15 of Schedule 15;

"group" means a parent undertaking and its subsidiary undertakings;

"group undertaking" has the meaning given by section 277 and "participating interest" has the meaning given by section 278;

"IAS accounts" means accounts prepared in accordance with international accounting standards;

"IAS Regulation" means Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards;

"international accounting standards" means International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related Interpretations (SIC-IFRIC interpretations), subsequent amendments to those standards and related interpretations, future standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB) within the meaning of the IAS Regulation, adopted from time to time by the European Commission in accordance with the Regulation;

"investment property" means land and/or buildings held to earn rent or for capital appreciation;

"mainstream companies" shall be construed in accordance with subsection (2);

"material" means the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking; and the materiality of individual items shall be assessed in the context of other similar items;

"medium-sized company" and "small company" have the meanings given in Schedule 9;

"net turnover" has the meaning given in Schedule 9;

"Non-IAS accounts" means accounts prepared in accordance with section 243;

"parent undertaking" has the meaning given in section 276;

"profit and loss account", in relation to a company that prepares IAS accounts, includes an income statement or other equivalent financial statement required to be prepared by international accounting standards;

"primary currency" means any one currency out of the Gibraltar Pound, the Great British Pound, US Dollar, the Euro, the Japanese Yen, the Swiss Franc;

"public-interest entity" has the meaning given in Schedule 9;

"purchase price" has the meaning given in paragraph 11 of Schedule 15;

"production cost" has the meaning given in paragraph 11 of Schedule 15;

"regulated market" means a regulated market as defined in the Financial Services (Markets in Financial Instruments) Act 2006 where that regulated market is in Gibraltar or an EEA State;

"related party" has the meaning given in the IAS Regulation;

"specified company" means a company which falls within one of paragraphs (i) to (iii) of subsection (2);

"subsidiary undertaking" has the meaning given in section 276;

"value adjustment" has the meaning given in paragraph 14 of Schedule 15."; and

(ii) delete subsections (6) and (7).

(4) Insert the following section after section 237–

“**Public-interest entity excluded from exemptions.**

237A. Unless expressly stated, a company is not entitled to take advantage of any simplifications or exemptions as set out in this Part if it was at any time within the financial year in question a public-interest entity.”.

(5) In section 240(3) insert “in respect of companies other than small companies,” before “there shall be attached to every such balance sheet”.

(6) In section 243–

(a) after subsection (1) insert the following subsection–

“(1A) Non-IAS accounts must state–

(a) that the company is registered in Gibraltar;

(b) the company’s name and registered number;

(c) the legal form of the company including whether the company is a public or a private company and whether it is limited by shares or by guarantee;

(d) the address of the company’s registered office, and

(e) where appropriate, the fact that the company is being wound-up.”;

(b) in subsection (6) insert “on the assets, liabilities, financial position and profit or loss of the company” after “its effect”; and

(c) in subsection (7) insert “in order to give a true and fair view of the undertaking’s assets, liabilities, financial position and profit or loss" after "in exceptional cases".

(7) In section 244(2)–

(a) in paragraph (b) insert "and measurement bases" after "accounting policies";

(b) in paragraph (c)–

(i) for "the amount" substitute "the recognition and measurement of the amount";

(ii) in subparagraph (iii) for "depreciation" substitute "negative value adjustments";

(c) for paragraph (d) substitute the following paragraphs-

"(d) amounts recognised in the balance sheet and profit and loss account shall be computed on the accrual basis;

(da) the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year;";

(d) in paragraph (g)–

(i) delete the "and" at the end of subparagraph (ii); and

(ii) delete subparagraph (iii); and

(e) for the full stop at the end of paragraph (i) substitute a semi-colon and insert the following paragraph after paragraph (i)–

"(j) the requirements set out in this Part regarding recognition, measurement, presentation, disclosure and consolidation need not be complied with when the effect of complying with them is immaterial.".

(8) In section 245–

(a) in subsection (2)–

(i) insert “separately and in the order provided,” after “shall show”; and

(ii) for “any one” substitute “either”;

(b) after subsection (2) insert the following subsections–

“(2A) The balance sheet or profit and loss account of a company may show a more detailed subdivision of the items listed in the formats in Schedule 11 or 12, provided that the relevant format is adhered to.

(2B) The balance sheet or profit and loss account of a company may include the addition of new items and subtotals, provided that the contents of such new items are not covered by any of the items listed in the formats in Schedule 11 or 12.

(2C) The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by Arabic numbers shall be adapted where the special nature of an undertaking so requires.”; and

(c) for subsection (7) substitute the following subsections-

“(7A) The layout of the balance sheet of a company may be adapted from either of the formats in Schedule 11 so as to distinguish between current and non-current items in a different way, provided that–

(a) the information given is at least equivalent to that which would have been required by the use of such format had it not been adapted, and

(b) the presentation of those items is in accordance with generally accepted accounting principles or practice.

(7B) The layout of the profit and loss account of a company may be adapted from either of the formats in Schedule 12, provided that–

(a) the information given is at least equivalent to that which would have been required by the use of such format had it not been thus adapted, and

(b) the presentation is in accordance with generally accepted accounting principles or practice.".

(9) In section 246–

(a) in subsection (2) delete ",as a minimum,"; and

(b) in subsection (3) insert "and must be presented in the order in which the items to which they relate are presented in the balance sheet and in the profit and loss account" after "annexed to the accounts".

(10) In section 247–

(a) in subsection (2) for "this section" substitute "subsection (1)(b) and subsection (4)"; and

(b) in subsection (4) for ",or any of them, are stated elsewhere in the company's accounts" substitute "are disclosed separately in the profit and loss account".

(11) For section 248 substitute the following section–

"248.(1) IAS accounts must state–

(a) that the company is registered in Gibraltar;

(b) the company's name and registered number;

(c) the legal form of the company including whether the company is a public or a private company and whether it is limited by shares or by guarantee;

(d) the address of the company's registered office, and

(e) where appropriate, the fact that the company is being wound-up.

(2) The notes to the accounts must state that the accounts have been prepared in accordance with international accounting standards.”.

(12) In section 250–

(a) in subsection (3) delete paragraph (a);

(b) in subsection (4) insert “reasons for the acquisition and” before “information”; and

(c) in subsection (6) insert “(4) and” after “subsection”.

(13) In section 251–

(a) in subsection (1)–

(i) insert “, where applicable” after “reference to”; and

(ii) delete the “or” at the end of paragraphs (a) and (b);

(b) in subsection (2) for “(1)(a) and (b)” substitute “(1)(a) or (b)”;

(c) for subsection (7) substitute the following subsections–

“(6A) In relation to a group directors’ report, the information set out in subsection 5(a) shall refer to the main features of the internal controls and risk management systems for the undertakings included in the consolidation taken as a whole.

(7) The statutory auditor or audit firm shall express an opinion in accordance with section 258(2A) regarding the information prepared under subsection (1)(a) and (b), and shall check that the information referred to in subsections (1), (3), (4), (5a) and (d) has been provided.”; and

(d) in subsection (8) for “subsections (1) to (3),(4)(c) and(d)” substitute “paragraphs (a) to (c) of subsection (1), subsections (2) to (4) and subsection (5)(c) and (d)”.

(14) In section 252(7) insert “small or” before “medium”.

(15) In section 253–

(a) in subsection (1) delete–

(i) “and by its subsidiary undertakings” after “mainstream company”; and

(ii) “and its subsidiary undertakings included in the consolidation” in the three places where it occurs;

(b) insert the following subsection after subsection (1)-

“(1A) In relation to a group directors’ report, subsection (1) has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.”; and

(c) for “Council Directive 78/660/EEC on the annual accounts of certain types of companies, and in Council Directive 83/349/EEC on consolidated accounts, as amended” substitute “Directive 2013/34/EU”.

(16) In section 254–

(a) in subsection (2) for “,in respect of each financial year” substitute “within a reasonable period not exceeding 12 months after the balance sheet date, and in respect of each financial year”; and

(b) for subsection (5)(b) substitute–

“(b) it is possible to obtain a copy of all of it upon request at a price not exceeding its administrative cost.”.

(17) In section 258–

(a) in subsection (1)–

(i) insert “and directors’ report” after “annual accounts”; and

(ii) insert “full” before “copy”;

(b) insert the following subsection after subsection (1)–

“(1A) The annual accounts and directors’ report delivered under subsection (1) must be delivered in the same layout and with the same text as that used by the person responsible for auditing the accounts when drawing up his opinion.”;

(c) in subsection (2) insert “and whether the directors’ report has been properly prepared in accordance with this Part” after “those accounts”;

(d) after subsection (2) insert the following subsection–

“(2A) The auditors must also state in their report whether, in light of the knowledge and understanding of the company, and its environment obtained in the course of the audit, they have identified material misstatements in the directors’ report and shall give an indication of the nature of any such misstatements.”;

(e) for subsection (3) substitute the following–

“(3) In addition to the information required by section 257, the auditors’ report must comply with the requirements of section 28 of the Financial Services (Auditors) Act 2009.”; and

(f) delete subsections (4) and (5).

(18) In section 259 delete subsection (3).

(19) In section 270–

(a) insert “the directors’ report” after “Non –IAS accounts”;

(b) in paragraph (a) for “a member State in the European Union” substitute “Gibraltar or an EEA State”; and

(c) in paragraph (e) for "Council Directive 83/349/EEC as amended or in accordance with international accounting standards" substitute "Directive 2013/34/EU".

(20) Delete section 271.

(21) In section 272–

(a) in subsection (1)(a) for "13 months" substitute "12 months"; and

(b) for subsection (2) substitute the following–

"(2) If the relevant financial year is the company's first, the period allowed is 12 months after the end of the financial year.".

(22) In section 273(2) insert ", other than in the case of a small company," after "In such cases".

(23) In section 276 insert the following subsection after subsection (6)-

"(7) Schedule 20 contains provisions explaining expressions used in this section and otherwise supplementing this section.".

(24) In section 279(1) insert "and must be presented in the order in which the items to which they relate are presented in the balance sheet and in the profit and loss account" after "annexed to the accounts".

(25) In section 281(2) insert ", the group directors' report" after "the duty to ensure that the consolidated accounts".

(26) In section 282–

(a) insert the following subsection before subsection (1)–

"(A1) Chapter 3 accounts must state, in respect of the parent company–

(a) that the company is registered in Gibraltar;

(b) the company's name and registered number;

(c) the legal form of the company including whether the company is a public or a private company and whether it is limited by shares or by guarantee;

(d) the address of the company's registered office, and

(e) where appropriate, the fact that the company is being wound-up.";

(b) in subsection (5) insert "on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidated" after "its effect"; and

(c) for subsection (7) substitute the following–

"(7) In addition to the requirements of section 281(9), the provisions of sections, 243(7), 244, 245(2) to (2C), 245(4), 245(6) to (8), 246 and 247 apply to group accounts prepared under this section.".

(27) For section 283 substitute the following–

"283.(1) IAS group accounts must state, in respect of the parent company–

(a) that the company is registered in Gibraltar;

(b) the company's name and registered number;

(c) the legal form of the company including whether the company is a public or a private company and whether it is limited by shares or by guarantee;

(d) the address of the company's registered office, and

(e) where appropriate, the fact that the company is being wound-up.

(2) The notes to the accounts must state that the accounts have been prepared in accordance with international accounting standards.".

(28) In section 285–

(a) in subsection (1)–

(i) for "a member State in the European Union" substitute "Gibraltar or an EEA State";

(ii) for paragraph (b) substitute the following paragraphs-

"(aa) that parent undertaking holds 90 per cent or more of the shares in the company and the remaining shareholders of the company have approved the exemption; or

(b) that parent undertaking holds more than 50 per cent (but less than 90 per cent) of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in total at least –5 per cent of the total shares in the company.

The notice shall be served at least 6 months before the end of the financial year to which it relates.";

(b) in subsection (2)–

(i) for paragraph (a) substitute the following-

"(a) the company and all of its subsidiary undertakings are included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking established under the law of Gibraltar or an EEA State";

(ii) in paragraph (b) for "Council Directive 83/349/EEC as amended" substitute "Directive 2013/34/EU";

(iii) in paragraph (c) insert "the notes to" before "its individual accounts";

(iv) in paragraph (d) insert "the notes to" before "its individual accounts"; and

(v) for paragraph (d)(i) substitute the following–

"(i) the address of the undertaking's registered office"; and

(c) for subsection (3) substitute the following–

"(3) The exemption under subsection (1) shall apply to a public-interest entity unless it is a company whose securities are admitted to trading on a regulated market."; and

(d) in subsection (5) for "(1)(b)" substitute "(1)(aa) and (b)".

(29) In section 286–

(a) In subsection (1)–

(i) insert "Gibraltar or" after "law of"; and

(ii) for paragraph (b) substitute the following paragraphs–

"(aa) where that parent undertaking holds 90 per cent or more of the shares in the company and the remaining shareholders have approved the exemption; or

(b) where that parent undertaking holds more than 50 per cent (but less than 90 per cent) of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate at least 5 per cent of the total shares in the company.

Such a notice must be served at least 6 months before the end of the financial year to which it relates.";

(b) in subsection (2) for paragraph (b) substitute the following–

"(b) that those accounts and, where appropriate, the group's annual report, are drawn up–

(i) in accordance with the provisions of Directive 2013/34/EU;

(ii) in accordance with international accounting standards;

(iii) in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up; or

(iv) in a manner equivalent to international accounting standards as determined in accordance with Commission Regulation (EC) No 1569/2007 of 21 December establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council;";

(c) in subsection (2) for paragraph (e)(i) substitute the following–

"(i) the address of the undertaking's registered office; and";

(d) for subsection (3) substitute the following–

"(3) The exemption under subsection (1) shall apply to a public-interest entity unless it is a company whose securities are admitted to trading on a regulated market."; and

(e) in subsection (5) for "(1)(b)" substitute "(1)(aa) and (b)".

(30) In section 287–

(a) in subsection (3)–

(i) insert ", including a public-interest entity," after "Any parent undertaking"; and

(ii) delete ", without prejudice to Articles 4(2), 5 and 6 of Council Directive 83/349 EEC,";

(b) in subsection (4)–

(i) insert ",including a public-interest entity," after "a subsidiary undertaking"; and

(ii) in paragraph (b) insert "in extremely rare cases" before "the information necessary"; and

(c) in subsection (6) insert ", including a public-interest entity," after "A parent company".

(31) In section 288 for subsection (3) substitute the following–

"(3) The exemption conferred by this section shall be disclosed in the notes to the company's annual accounts and the group accounts."

(32) In section 289–

(a) in subsection (2) insert ", other than a small company," after "Where the company"; and

(b) delete subsections (6), (7) and (8).

(33) Delete section 291.

(34) In section 292 for subsections (2) and (3) substitute the following–

"(2) A group is ineligible if any of its members is–

(a) a company any of whose securities are admitted to trading on a regulated market;

(b) an authorised institution under the Financial Services (Banking) Act;

(c) an insurance company to which the Financial Services (Insurance Companies) Act applies; or

(d) any other entity designated by the Minister under the Financial Services (Auditors) Act 2009 as a public-interest entity.

(3) If the directors of a company in relation to which the group headed by that company qualifies as a medium-sized group propose to take advantage of the exemption conferred by this section, it is the auditors' duty to provide them with a report stating whether in their opinion the company is entitled to the exemption.".

(35) For section 293, including the section heading, substitute the following–

"**Qualification of group as small, medium-sized or large.**

293.(1) A group is small, medium-sized or large in relation to a financial year if the qualifying conditions are met–

(a) in the case of the parent company's first financial year, in that year; and

(b) in the case of any subsequent financial year, in that year and the preceding year.

(2) A group shall be treated as qualifying as small, medium-sized or large in relation to a financial year–

(a) if it so qualified in relation to the previous financial year under subsection (1); or was treated as so qualifying under paragraph (b); or

(b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.

(3) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements–

Small group.

1. Total turnover	Not more than £10.2 million net (£12.2 million gross)
2. Aggregate balance sheet total	Not more than £5.1 million net (£6.1 million gross)
3. Total number of employees	Not more than 50

Medium-sized group.

1. Total turnover	Not more than £36 million net (£43.2 million gross)
2. Aggregate balance sheet total	Not more than £18 million net (£21 million gross)
3. Total number of employees	Not more than 250

Large group.

1. Total turnover	More than £36 million net (£43.2 million gross)
2. Aggregate balance sheet total	More than £18 million net (£21 million gross)
3. Total number of employees	More than 250

(4) The total figures shall be ascertained by aggregating the relevant figures determined in accordance with Schedule 9 for each member of the group.

(5) In relation to the total figures for turnover and balance sheet, "net" means with the set-offs and other adjustments required

by Schedule 21 in the case of group accounts and "gross" means without those set-offs and adjustments; and a company may satisfy the relevant requirements on the basis of either the net or the gross figure.

(6) The figures for each subsidiary undertaking are to be those included in its accounts for the relevant financial year, that is–

(a) if its financial year ends with that of the parent company, that financial year; and

(b) if not, its financial year ending last before the end of the financial year of the parent company.

(7) If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures must be taken.".

(36) Insert the following section after section 294–

"**Transmission of Information.**

294A. The Minister shall ensure that the following information is transmitted to the European Commission within a reasonable period–

(a) changes in the types of undertakings in Gibraltar law that may affect the accuracy of Annex I or II of Directive 2013/34/EU; and

(b) any additional information required in accordance with paragraph 6 of Article 4 of Directive 2013/34/EU.".

(37) In Schedule 9–

(a) for the heading substitute the following–

"**DEFINITION OF MICRO-ENTITY, SMALL, MEDIUM-SIZED AND LARGE COMPANIES**"

(b) insert the following paragraph before paragraph 1–

"1ZA. Subject to paragraph 3 in respect of any financial year ("the relevant year") a company is a micro-entity if, in respect of the year or years specified in paragraph 4(2), the entity satisfied at least two of the following conditions-

(a) that the amount of the entity's net turnover did not exceed £632,000;

(b) that its balance sheet total did not exceed £316,000;

(c) that the average number of persons employed by the entity in each year did not exceed 10.";

(c) in paragraph 1–

(i) in subparagraph (a) for "£6.5 million" substitute "£10.2 million"; and

(ii) in subparagraph (b) for "£3.26 million" substitute "£5.1 million";

(d) in paragraph 2–

(i) insert "was not a micro-entity or small company and" before "satisfied";

(ii) in subparagraph (a) for "£25.9 million" substitute "£36 million"; and

(iii) in subparagraph (b) for "£12.9 million" substitute "£18 million";

(e) insert the following paragraph after paragraph 2–

2A. In respect of any financial year ("the relevant year") a company is a large company if, in respect of the year or years specified in paragraph 4(2), the company satisfied at least two of the following conditions–

(a) that the amount of its net turnover exceeded £36 million;

(b) that its balance sheet total exceeded £18 million;

(c) that the average number of persons employed by the company in each year exceeded 250.";

(f) in paragraph 3 insert "micro-entity, a" before "small company";

(g) in paragraph 4 for subparagraph (2) substitute the following-

"(2) The following years are specified for the purposes of paragraphs 1ZA, 1, 2 or 2A–

(a) the relevant year, if that is the company's first financial year; or

(b) if a micro-entity, small, medium-sized or large company exceeds or ceases to exceed the limits of more than one of the conditions in paragraphs 1ZA, 1, 2 or 2A in a financial year, that fact will not affect its qualification as a micro-entity, small, medium-sized or large company for the relevant year unless it occurs in 2 consecutive years."; and

(h) in paragraph 5 for "traditional" substitute "Non-IAS".

(38) In schedule 11–

(a) in Balance Sheet Format 1 for item K.IV.4 substitute–

"4. Other reserves, including the fair value reserve";

(b) in Balance Sheet Format 2–

(i) for the heading "LIABILITIES" substitute-

"CAPITAL, RESERVES AND LIABILITIES"; and

(ii) under that heading, for item A.IV.4 substitute-

"4. Other reserves, including the fair value reserve";

(iii) under the same heading, item B for "Provisions for liabilities (15 and 16)" substitute "Provisions for liabilities (16)";

(c) in "**Notes on the balance sheet formats**"–

(i) for note (7) substitute–

"(7) Prepayments and accrued income

(Formats 1 and 2, items C.II.6 and D)

This item may be shown in either of the two positions given in Formats 1 and 2."; and

(ii) for paragraph (11) substitute the following-

"(11) Accruals and deferred income

(Format 1, items E.9, H.9 and J and Format 2, items C.9 and D)

The two positions given for this item in Format 1 at E.9 and H.9 are an alternative to the position at J, but if the item is not shown in a position corresponding to that at J it may be shown in either or both of the other two positions (as the case may require).

The two positions given for this item in Format 2 are alternatives.";

(d) delete note (15);

(e) for notes (16) and (17) substitute the following–

"(16)(1) Provisions for liabilities are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise. At the balance sheet date, a provision must represent the best estimate of the expenses likely to be incurred or, in the case of a liability, of the amount required to meet that liability.

(2) Provisions for liabilities may not be used to adjust the values of assets.

(17)(1) Where an asset or liability relates to more than one layout item, its relationship to other items must be disclosed either under the item where it appears or in the notes on the accounts.

(2) Own shares and shares in affiliated undertakings must be shown only under the items prescribed for that purpose.”.

(39) In Schedule 12–

(a) in Format 1–

(i) in item 12 for “charges” substitute “expenses”;

(ii) in item 13 delete “on ordinary activities”;

(iii) in item 14 delete “on ordinary activities”; and

(iv) delete items 15, 16, 17 and 18;

(b) in Format 2–

(i) in item 5(b) for “charges” substitute “expenses”;

(ii) in item 7(b) insert “, to the extent that they exceed write-offs which are normal in the undertaking concerned” after “current assets”;

(iii) in item 8 for “charges” substitute “expenses”;

(iv) in item 14 for “charges” substitute “expenses”;

(v) in item 15 delete “on ordinary activities”;

(vi) in item 16 delete “on ordinary activities”;

(vii) delete items 17, 18, 19 and 20;

(c) delete Format 3; and

(d) in the Notes on the profit and loss accounts formats–

(i) in note (19) delete "and Format 3, items A.1, 2 and 3";

(ii) in note (20) delete "Format 3 items B.5 and 6: Format 4 items B.7 and 8";

(iii) in note (21) for "charges" substitute "expenses" and delete ":Format 3, item A.5: Format 4, item A.7";

(iv) for note (22) substitute the following-

"(22) Format 1

The amount of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under item 7(a) in Format 2 must be disclosed in a note to the accounts in any case where the profit and loss account is prepared by reference to Format 1."; and

(iv) delete note (23).

(40) In Schedule 13 Part II Small company balance sheet formats Format 2, for the heading "LIABILITIES" substitute "CAPITAL, RESERVES AND LIABILITIES".

(41) In Schedule 14 in paragraph 1–

(a) for the semi-colon after "Format 2" substitute a full stop; and

(b) delete "Items A1, B1 and B2 in Format 3;" and "Items A1, A2 and B1 to B4 in Format 4."

(42) In Schedule 15–

(a) for paragraphs 3, 4, 5 and 6 substitute the following–

"3.(1) Where a fixed asset investment of a description falling to be included under item B.III of any of the balance sheet formats set out in Schedule 11 has diminished in value, provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and those provisions must be charged to the profit and loss account and disclosed separately in a note to the accounts if not shown separately in the profit and loss account.

(2) Provisions for diminution in value must be made in respect of any fixed asset which has diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not), and the amount to be included in respect of it will be reduced accordingly; and those provisions must be charged to the profit and loss account and disclosed separately in a note to the accounts if not shown separately in the profit and loss account.

(3) Where the reasons for which any provision was made in accordance with subparagraph (1) or (2) have ceased to apply to any extent, that provision will be written back to the extent that it is no longer necessary; and any amounts written back under this subparagraph must be recognized in the profit and loss account and disclosed separately in a note to the accounts if not shown separately in the profit and loss account.

(4) Subparagraph (3) shall not apply to value adjustments made in respect of goodwill.

Development Costs.

4.(1) Where this is in accordance with generally accepted accounting principles or practice, development costs may be included in "other tangible assets" under "fixed assets" in the balance sheet formats set out in Schedule 11.

(2) If any amount is included in a company's balance sheet in respect of development costs, the note on accounting policies must include the following information–

(a) the period over which the amount of those costs originally capitalized is being or is to be written off, and

(b) the reasons for capitalizing the development costs in question.

(3) If any amount is included in a company's balance sheet under "Assets" in respect of development costs, and insofar as development costs have not been completely written off, no distribution of profits may take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the cost not written off.

Intangible Assets.

5.(1) Intangible assets must be written off over the useful economic life of the intangible asset.

(2) Where in exceptional cases the useful life of intangible assets cannot be reliably estimated, such assets must be written off over a period chosen by the directors of the company.

(3) The period referred to in subparagraph (2) must not exceed 10 years.

(4) There must be disclosed in a note to the accounts the period referred to in subparagraph (2) and the reasons for choosing that period.

Formation expenses.

6.(1) Formation expenses included under "Assets" must be written off within a maximum period of 5 years.

(2) Insofar as formation expenses have not been completely written off, no distribution of profits can take place unless the amount of the reserves available for distribution and profits

brought forward is at least equal to that of the expenses not written off.";

(b) delete paragraph 10;

(c) in paragraph 11–

(i) in subparagraph (1), insert "minus any incidental reductions in the cost of acquisition" after "acquisition"; and

(ii) for subparagraph (4) substitute the following–

"(4) Distribution costs may not be included in production costs."

(d) in paragraph 12–

(i) for subparagraph (1) substitute the following–

"(1) Subject to subparagraph (2), the purchase price or production cost of–

(a) any assets which fall to be included under any item shown in a company's balance sheet under the general item "stocks"; and

(b) any assets which are fungible assets (including investments),

may be determined by the application of any of the methods mentioned in subparagraph (3) below in relation to any such assets of the same class."

(ii) for subparagraph (3)(d) substitute the following-

"(d) any other method reflecting generally accepted best practice.";

(iii) delete subparagraph (4).

(e) Insert the following paragraph after paragraph 13–

"13A.(1) Participating interests may be accounted for using the equity method.

(2) If participating interests are accounted for using the equity method–

(a) the proportion of profit or loss attributable to a participating interest and recognized in the profit and loss account may be that proportion which corresponds to the amount of any dividends, and

(b) where the profit attributable to a participating interest and recognized in the profit and loss account exceeds the amount of any dividends, the difference must be placed in a reserve which cannot be distributed to shareholders.

(3) The reference to "dividends" in subparagraph (2) includes dividends already paid to those whose payment can be claimed.";

(f) for paragraph 14 substitute the following–

"14. Value adjustments comprise all adjustments intended to take account of changes in the values of individual assets established at the balance sheet date whether that change is final or not.";

(g) for paragraph 15(3) substitute the following–

"(3) The following information must be given in the notes to the accounts for the various fixed asset items–

(a) the purchase price or production cost or, where an alternative basis of measurement has been followed, the fair value or revalued amount at the beginning and end of the financial year;

(b) additions, disposals and transfers during the financial year;

(c) the accumulated value adjustments at the beginning and end of the financial year;

(d) value adjustments charged during the year;

(e) movements in accumulated value adjustments in respect of additions, disposals and transfers during the financial year; and

(f) where interest is capitalized in accordance with paragraph 11(3)(b) above, the amount capitalized during the financial year."

(h) delete subparagraphs (4) and (5) of paragraph 15.

(i) In paragraph 17 delete subparagraphs (4) and (5);

(j) in paragraph 19–

(i) in subparagraph (2) for "a note to the accounts" substitute "note on accounting policies";

(ii) for subparagraph (3) substitute the following–

"(3) In the case of each balance sheet item affected, the comparable amounts determined according to the historical cost accounting rules must be shown in a note to the accounts.";

(k) in paragraph 20(2)–

(i) insert "under Capital and Reserves" before "in Format 1 or 2"; and

(ii) delete "but need not be shown under that name";

(l) in paragraph 22(5) delete "by the European Commission on or before 5th September 2006";

(m) in paragraph 23 insert the following subparagraph after subparagraph (5)–

"(6) Financial instruments that cannot be measured reliably by any of the methods described in this paragraph shall, so far as possible, be included at purchase price or production cost.";

(n) in paragraph 28(2) for "Directive 78/660/EEC on the annual accounts of certain types of companies, as amended" substitute "Directive 2013/34/EU".

(43) In Schedule 16–

(a) in paragraph 1–

(i) for subparagraphs (a), (b) and (c) substitute the following–

"(a) the accounting policies adopted;

(b) the name and registered office of each of the undertakings in which the company, either itself or through a person acting in his own name but on the company's behalf, holds a participating interest showing the proportion of the capital held, the amount of capital and reserves, and the profit and loss for the latest financial year of the undertaking concerned for which accounts have been adopted.

The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and is not controlled by the company;

(c) the name, the head or registered office and the legal form of each of the undertakings of which the company or firm is a member having unlimited liability;";

(ii) for paragraphs (g), (h) and (i) substitute the following–

"(g) amounts owed by the company becoming due and payable after more than 5 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;

(h) the total amount of any financial commitments, guarantees or contingencies that are not included in the balance sheet, and an indication of the nature and form of any valuable security that has been provided.

Any commitments concerning pensions and affiliated or associated undertakings must be disclosed separately;

(i) 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;";

(iii) in subparagraph (j) delete "are material";

(iv) delete subparagraph (l);

(v) for subparagraph (m) substitute the following–

"(m) where a provision for deferred tax is recognized in the balance sheet, the deferred tax balances at the end of the financial year, and the movement in those balances during the financial year;"

(vi) in subparagraph (o) insert "written off or waived," after "any amounts repaid";

(vii) insert the following subparagraphs after subparagraph (p)–

"(q) the amount and nature of individual items of income or expenditure which are of exceptional size or incidence;

(r) the proposed appropriation of profit or treatment of loss, or where applicable, particulars of the appropriation of the profit or treatment of the loss;

(s) the nature and the financial effect of material events arising from the balance sheet date which are not reflected in the profit and loss account or balance sheet.";

(b) for paragraphs 2 to 5 substitute the following–

"2.(1) Sub-paragraph (j) of paragraph 1 has effect subject to the following provisions–

(a) medium-sized companies may limit disclosure to, as a minimum, transactions entered into directly or indirectly with–

(i) shareholders that have a participating interest in the company,

(ii) undertakings in which the company itself has a participating interest; and

(iii) the members of the administrative, management and supervisory bodies of the company;

(b) transactions entered into between two or more members of a group are exempt from the provisions of paragraph (j) provided that subsidiaries which are party to the transaction are wholly owned by such a member; and

(c) In relation to group accounts, paragraph 1(j) applies to transactions which the parent company, or other undertakings included in the consolidation, have entered into with related parties, unless they are intra-group transactions.

3. Small companies may omit the disclosure of information required under–

(a) paragraphs 1(b), (c), (d), (e), (f), (i), (j), (k), (m), (n), (q) and (r) and paragraphs 8, 9 and 10 of this Schedule; and

(b) paragraph 15(3) of Schedule 15.

3A. Medium-sized companies may omit the disclosure of information required under paragraphs 1(k) and (p).

4. Where disclosure in accordance with paragraph 1(n) makes it possible to identify the position of a specific person the disclosure is not mandatory.

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

5A. A parent company may omit the information required under paragraph 1(b) where–

(a) the undertaking in which that parent company holds a participating interest for the purposes of paragraph 1(b) is included in the consolidated accounts drawn up by the parent company, or in the consolidated accounts of a larger body of undertakings as referred to in section 285; or

(b) that participating interest has been dealt with by that parent company in its annual accounts in accordance with paragraph 13A of Schedule 15, or in the consolidated accounts drawn up by that parent company in accordance with paragraph 19 of Schedule 21.

5B. Disclosures required under paragraph 1(k) of this Schedule may be omitted where disclosure of that information would be seriously prejudicial to the undertaking provided that any such omission shall be disclosed in the notes to the accounts.";

(c) delete paragraph 6;

(d) for paragraphs 7, 8 and 9 substitute the following–

“7.(1) This paragraph applies where financial instruments have been valued in accordance with paragraphs 22, 24 or 25 of Schedule 15.

(2) There must be stated–

(a) where the fair value of the instruments has been determined in accordance with paragraph 23(4) of Schedule 15, the significant assumptions underlying the valuation models and techniques used;

(b) for each category of financial instrument or other asset, the fair value of the instruments or assets in that category and the changes in value–

(i) included directly in the profit and loss account, and

(ii) credited to or (as the case may be) debited from the fair value reserve, in respect of those instruments or other assets; and

(c) for each class of derivatives, the extent and nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows.

(3) Where any amount is transferred to or from the fair value reserve during the financial year, there must be stated in tabular form–

(a) the amount of the reserve as at the date of the beginning of the financial year and as at the balance sheet date respectively; and

(b) the amount transferred to or from the reserve during that year.

8. Where the company has derivatives that have been measured at purchase price or production cost, there must be stated for each class of such derivatives–

(a) the fair value of the derivatives, if such a value can be determined in accordance with paragraph 23(2) or (3) of Schedule 15; and

(b) the extent and nature of the derivatives.

9.(1) Sub-paragraph (2) applies if–

(a) the company has financial fixed assets that have been measured at purchase price or production cost; and

(b) the amount at which those assets are included under any item in the company's accounts is in excess of their fair value.

(2) There must be stated–

(a) the amount at which either the individual assets or appropriate groupings of those individual assets are included in the company's accounts;

(b) the fair value of those assets or groupings; and

(c) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the amount at which they are stated in the accounts will be recovered.";

(e) after paragraph 10 insert the following paragraph–

“10A.(1) This paragraph applies where fixed assets are measured at revalued amounts.

(2) Where this paragraph applies, the following information must be given in tabular form–

(a) movements in the revaluation reserve in the financial year, with an explanation of the tax treatment of items therein; and

(b) the carrying amount in the balance sheet that would have been recognized had the fixed assets not been revalued.”.

(44) Delete Schedules 17, 18 and 19.

(45) In Schedule 21–

(a) in paragraph 2 after subparagraph (1) insert the following–

“(1A) Group accounts must be drawn up as at the same date as the accounts of the parent company.”;

(b) in paragraph 6 delete subparagraphs (3) and (5);

(c) in paragraph 9 insert the following after subparagraph (5)-

“(6) Negative goodwill may be transferred to the consolidated profit and loss account where such a treatment is in accordance with the principles and rules of section 244 and schedule 15.”;

(d) for paragraph 15, including the paragraph heading, substitute the following–

“**Non-controlling interests**.

15.(1) The formats in Schedules 11 and 12 have effect in relation to group accounts with the following additions.

(2) In the Balance Sheet Formats a further item headed “Non-controlling interests” is added–

(a) in Format 1, either after item J or at the end (after item K); and

(b) in Format 2, under the general heading "CAPITAL RESERVES AND LIABILITIES", between items A and B,

and that item shall include the amount of capital and reserves attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent company and its subsidiary undertakings.

(3) In the Profit and Loss Account Formats a further item headed "Non-controlling interests" is added–

(a) in Format 1, after item 14; and

(b) in Format 2, after item 16;

and that item shall include the amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent company and its subsidiary undertakings.";

(e) in paragraph 16 for subparagraph (2) substitute the following subparagraphs–

"(2) The provisions of this Schedule relating to the preparation of consolidated accounts and section 287(3), (4) and (6) apply, with any necessary modifications, to proportional consolidation under this paragraph.

(3) In addition to the disclosure of the average number of employees employed during the financial year, there shall be a separate disclosure in the notes to the accounts of the average number of employees employed by undertakings that are proportionately consolidated."

(f) for paragraph 18 substitute the following paragraph–

"18.(1) The formats set out in Schedules 11 and 12 have effect in relation to group accounts with the following modifications.

(2) In the Balance Sheet Formats the items headed "Participating interest", that is–

(a) in Format 1, item B.III.3; and

(b) in Format 2, item B.III.3 under the heading "ASSETS,

are replaced by two items, "Interests in associated undertakings" and "Other participating interests".

(3) In the Profit and Loss Account Formats, the items headed "Income from participating interests", that is–

(a) in Format 1, item 8; and

(b) in Format 2, item 10,

are replaced by two items, "Income from interests in associated undertakings" and "Income from other participating interests.";

(g) after paragraph 19 insert the following paragraph–

"Deferred tax balances.

20. Deferred tax balances must be recognized on consolidation where it is probable that a charge to tax will arise within the forseeable future for one of the undertakings included in the consolidation.".

(46) In Schedule 22–

(a) in paragraph 11(2) for paragraph (b) substitute-

"(b) the address of the undertaking's registered office; and";

(b) in paragraph 15(1) for paragraph (b) substitute–

"(b) the address of the undertaking's registered office; and";

(c) in paragraph 16 for subparagraph (2) substitute-

"(2) There must be stated–

(a) the identity of each class of shares held; and

(b) the proportion of the nominal value of the shares of that class represented by those shares.";

(d) in paragraph 21(1)–

(i) for paragraph (b) substitute-

"(b) the address of the undertaking's registered office;"; and

(ii) in paragraph (d) insert "or on behalf of" after "held by";

(e) in paragraph 22(1) for paragraph (b) substitute–

"(b) the address of the undertaking's registered office; and";

(f) in paragraph 23–

(i) for "significant holding" substitute "participating interest"; and

(ii) delete subparagraph (2).

(g) in paragraph 24(1) for paragraph (b) substitute-

"(b) the address of the undertaking's registered office; and";

(h) in paragraph 25–

(i) in subparagraph (1) for "Where the company has a significant holding in an undertaking amounting to 20 per cent or more of the nominal value of the shares in the undertaking, the accounts" substitute "The accounts";

(ii) in subparagraph (2) delete the "and" at the end of paragraph (a) and delete paragraph (b); and

(iii) delete subparagraph (3);

(i) in paragraph 26–

(i) in subparagraph (1) for "significant holding" substitute "participating interests"; and

(ii) delete subparagraph (2);

(j) in paragraph 27(1) for paragraph (b) substitute–

"(b) the address of the undertaking's registered office; and";

(k) in paragraph 28–

(i) in subparagraph (1) for "Where the holding of the group amounts to 20 per cent or more of the nominal value of the shares in the undertaking, there" substitute "There";

(ii) in subparagraph (2) delete the "and" at the end of paragraph (a) and delete paragraph (b); and

(iii) delete subparagraph (3);

(l) in paragraph 30(2) for paragraph (b) substitute-

"(b) the address of the undertaking's registered office; and";

(m) delete paragraph 33; and

(n) for paragraphs 1 to 5 of Part III substitute the following–

"1. When applying subparagraphs (n) and (o) of paragraph 1 of Schedule 16 to group accounts, only the amounts granted to the directors of the parent company by the parent company and any of its subsidiary undertakings must be disclosed in the notes to the accounts.".

Dated 16th July, 2015.

F R PICARDO,
Minister with responsibility for finance,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose, in part, into the law of Gibraltar, Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.