

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4320 of 1 December, 2016

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LEGAL NOTICE NO. 236 OF 2016.

## COMPANIES ACT 2014

### COMPANIES ACT (AMENDMENT) REGULATIONS 2016

In exercise of the powers conferred upon him by section 487(1) of the Companies Act 2014, and in order to transpose, in part, Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, the Minister has made the following Regulations-

#### **Title.**

1. These Regulations may be cited as the Companies Act (Amendment) Regulations 2016.

#### **Commencement and application.**

2.(1) These Regulations come into operation on the 6 December 2016.

(2) The amendments made by these regulations apply in relation to the financial years of companies and qualifying partnerships beginning on or after 1 January 2017.

#### **Interpretation.**

3. In these Regulations-

“qualifying partnerships” has the meaning given by regulation 4 of the Partnerships and Unlimited Companies (Accounts) Regulations 2015.

#### **Amendments to the Companies Act 2014.**

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

- (2) Section 249 of the Act is amended as follows-
- (a) in subsection (1) after “252” insert “, where applicable the non-financial information statement specified in section 252A”;
  - (b) in subsection (2) for “250 and 252” substitute “250, 252 and 252A”; and
  - (c) in subsection (4) for “250 and 252” substitute “250, 252 and 252A”.
- (3) Section 251(5) of the Act is amended as follows-
- (a) in paragraph (c) after the semicolon delete “and”;
  - (b) in paragraph (d) for the full stop substitute “; and”; and
  - (c) insert the following paragraph after paragraph (d)-
    - “(e) a description of the diversity policy applied in relation to the company’s administrative, management and supervisory bodies with regard to aspects such as, for instance age, gender or education and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. If no such policy is applied, the statement shall contain an explanation as to why this is the case.”.
- (4) For section 251(7) of the Act substitute-
- “(7) The statutory auditor or audit firm shall express an opinion in accordance with section 258(2A) regarding the information prepared under subsection (5)(a) and (5)(b), and shall check that the information referred to in subsections (1), (2), (3), (4), (5)(c), (5)(d) and (5)(e) has been provided.”.
- (5) In section 251(8) of the Act for “subsection (5)(c) and (d)” substitute “subsections (5)(c), (5)(d) and (5)(e)”.
- (6) After section 251(8) of the Act insert-

“(9) Notwithstanding section 237A, subsection (5)(e) shall not apply to small and medium sized companies.”.

(7) After section 252 of the Act insert-

**“Directors’ report: Non-financial information statement.**

252A.(1) Subject to subsection (2), a large company which is a public-interest entity shall-

- (a) in the directors’ report include a non-financial information statement; or
- (b) in the group directors’ report, a consolidated statement (a “group non-financial information statement”) relating to the companies included in the consolidation.

(2) Subsection (1) applies where-

- (a) the company is not a parent company in that financial year, the company employs 500 or more employees; or
- (b) the company is a parent company at any time within that financial year, the aggregate number of employees for a group headed by that company in that financial year is 500 or more.

(3) The number of employees means the average number of persons employed by the company in the year, determined as follows-

- (a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not);
- (b) add together the monthly totals; and
- (c) divide by the number of months in the financial year.

- (4) The aggregate number of employees for a group is ascertained by aggregating the relevant figures determined in accordance with subsection (3) for each member of the group.
- (5) Subsections (1) and (2) do not apply if the company is a subsidiary company at the end of that financial year and is included in-
  - (a) a directors' group report of a parent company of the company that satisfies the requirements in subsection (6); or
  - (b) a report that satisfies the requirements in subsection (7).
- (6) The requirements in this subsection are that-
  - (a) the directors' group report relates to companies that include the company and its subsidiary companies, if any;
  - (b) the report is prepared for a financial year of the parent company that ends at the same time as, or before the end of, the company's financial year; and
  - (c) the report includes a group non-financial information statement in respect of all the companies included in the consolidation.
- (7) The requirements in this subsection are that-
  - (a) the report is-
    - (i) a consolidated management report under article 29 of Directive 2013/34/EU; or
    - (ii) such separate report as is referred to in article 19a(3) or article 29a(3) of Directive 2013/34/EU;
  - (b) the report is the report of a parent company of the company established under the law of a Member State;

- (c) the report relates to companies that include the company and its subsidiary companies, if any; and
  - (d) the report includes such information as is required by article 19a (non-financial statement) or article 29a (consolidated non-financial statement), as the case may be.
- (8) A company to which subsections (1) and (2) do not apply may include a non-financial information statement in its directors' report or, as the case may be, a group non-financial information statement in its group directors' report.

**Contents of the non-financial information statement.**

252B.(1) The non-financial information statement referred to in section 252A shall provide information to the extent necessary for an understanding of the company's-

- (a) development;
  - (b) performance; and;
  - (c) position and impact of its activity.
- (2) The information required by subsection (1) shall include information relating to-
- (a) environmental matters (including the impact of the company's business on the environment);
  - (b) the company's employees;
  - (c) social matters;
  - (d) respect for human rights; and
  - (e) anti-corruption and anti-bribery matters.
- (3) The statement shall include-
- (a) a brief description of the company's business model;

- (b) a description of the policies pursued by the company in relation to the matters mentioned in subsection (2) and any due diligence processes implemented by the company in pursuance of those policies;
  - (c) a description of the outcome of those policies;
  - (d) a description of the principal risks relating to the matters mentioned in subsection (2) arising in connection with the company's operations and, where relevant and proportionate-
    - (i) a description of its business relationships, products and services which are likely to cause adverse impacts in those areas of risk; and
    - (ii) a description of how it manages the principal risks; and
  - (e) a description of the non-financial key performance indicators relevant to the company's business.
- (4) In subsection 3(e), "key performance indicators" means factors by reference to which the development, performance or position of the company's business, or the impact of the company's activity, can be measured effectively.
- (5) If the company does not pursue policies in relation to one or more of the matters mentioned in subsections (2) and (3), the non-financial information statement must provide a clear and reasoned explanation for the company not doing so.
- (6) The non-financial information statement shall, where appropriate, include references to, and additional explanations of, amounts included in the company's annual accounts.
- (7) If information required by subsections (1) to (6) to be included in the non-financial information statement is published by the company by means of a national, EU-based or international reporting framework, the non-financial information statement must specify the framework or frameworks used, instead of including that information.

- (8) If a non-financial information statement complies with subsections (1) to (7), the directors' report of which it is part is to be treated as complying with the requirements in-
- (a) section 252(3); and
  - (b) section 252(4), so far as relating to the provision mentioned in paragraph (a).
- (9) In relation to a group non-financial information statement, this section has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.
- (10) Nothing in this section requires the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the commercial interests of the company, provided that the non-disclosure does not prevent a fair and balanced understanding of the company's development, performance or position or the impact of the company's activity."
- (8) In section 254(1) of the Act after "directors' report" insert ", where applicable the non-financial information statement,".
- (9) After section 258(2A) of the Act insert-
- "(2B) The auditor's report referred to in subsection (2) is not required to contain information related to the non-financial information statement."
- (10) In section 281(2) of the Act after "directors' report" insert ", where applicable the group non-financial information statement,".
- (11) In Schedule 9 to the Act after paragraph 2A insert-
- "2B. A company is a "public-interest entity" if-
- (a) any of its transferable securities are admitted to trading on a regulated market of a Member State

within the meaning of the Financial Services (Markets in Financial Instruments) Act 2006; or

- (b) it has been designated by the Minister under the Financial Services (Auditors) Act 2009 as a public-interest entity.”.

Dated 1st December, 2016.

F R PICARDO,  
Minister with responsibility for finance.

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#### **EXPLANATORY MEMORANDUM**

These Regulations in part transpose Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. In particular in relation to; qualifying partnerships, companies and those designated as public interest entities under the Financial Services (Auditors) Act 2009 by the Minister.