

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3504 of 1st December, 2005



I ASSENT,
FRANCIS RICHARDS,
GOVERNOR.

24th November, 2005.



GIBRALTAR

No. 57 of 2005

AN ORDINANCE to amend the Companies (Accounts) Ordinance, 1999 in order to ensure the effective application of, and implement Member State options in, EC Regulation No.1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards; and to implement into the law of Gibraltar Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings.

ENACTED by the Legislature of Gibraltar.

Companies (Accounts) (Amendment) Ordinance 2005
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Title and commencement.

1.(1) This Ordinance may be cited as the Companies (Accounts) (Amendment) Ordinance 2005.

(2) This Ordinance comes into operation on the date of publication.

(3) This Ordinance has effect as respects companies' financial years which begin on or after 1 January 2005 but which have not ended before the date of publication.

Amendment of the Companies (Accounts) Ordinance.

2. The Companies (Accounts) Ordinance, 1999 is amended as follows.

Long title.

3. For the long title substitute—

“AN ORDINANCE TO PROVIDE FOR THE PREPARATION OF COMPANY ACCOUNTS IN ACCORDANCE WITH THE REQUIREMENTS OF EU LAW AND MODERN ACCOUNTING PRACTICE”.

Amendment of section 1: application.

4. In section 1(2), after “1st April, 2000” insert—

“; but the amendments made by the Fair Value Accounting Ordinance 2005 and the Companies (Accounts) (Amendment) Ordinance 2005 apply to the accounts of a company in respect of each financial year beginning on or after 1 January 2005 but which have not ended before—

- (a) 31 March 2005 in the case of the amendments made by the Fair Value Accounting Ordinance 2005; and
- (b) the date of publication of the Companies (Accounts) (Amendment) Ordinance 2005 in the case of the amendments made by that Ordinance”.

Interpretation.

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5(1). In section 2(1)–

- (a) the definition of “the Directive” is omitted;
- (b) at the appropriate places insert–

“the “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 the international accounting standards, 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 held to earn rent or for capital appreciation;

“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;”;

- (c) in the definition of “investment company” and “financial holding company” for “the Directive” substitute “Directive 78/660/EEC as amended”.

(2) In section 2(1) the definition of “the Minister” is amended by the deletion of the words “trade and industry” and their substitution by the words “financial services”.

(3) After section 2(2), insert–

“(3) References in this Ordinance to accounts giving a “true and fair view” are references–

- (a) in the case of Companies (Accounts) Ordinance accounts, to the requirement under section 4 to give a true and fair view;

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- (b) in the case of IAS accounts, to the requirement under international accounting standards that such accounts achieve a fair presentation.”.

Preparation of annual accounts in accordance with the IAS Regulation.

6. For section 3, substitute—

“Preparation of annual accounts.

3.(1) A company’s annual accounts may be prepared—

- (a) in accordance with section 4 (“Companies (Accounts) Ordinance accounts”); or
- (b) in accordance with international accounting standards (“IAS accounts”).

This subsection is subject to the following provisions of this section and section 7C of the Companies (Consolidated Accounts) Ordinance, 1999 (consistency of accounts).

(2) After the first financial year in which the directors of a company prepare IAS accounts (the “first IAS year”), all subsequent annual accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance.

(3) There is a relevant change of circumstance if, at any time during or after the first IAS year—

- (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IAS accounts;
- (b) the company ceases to be a company with securities admitted to trading on a regulated market;
- (c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market.

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In this subsection “regulated market” has the same meaning as it has in Council Directive 93/22/EEC on investment services in the securities field.

(4) If, having changed to preparing Companies (Accounts) Ordinance accounts following a relevant change of circumstance, the directors again prepare IAS accounts for the company, subsections (2) and (3) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.”.

Amendment of section 4.

7. For section 4, substitute—

“Companies (Accounts) Ordinance accounts.

4.(1) Companies (Accounts) Ordinance accounts must be drawn up clearly and comprise—

- (a) a balance sheet as at the last day of the financial year; and
- (b) a profit and loss account.

(2) The balance sheet must give a true and fair view of the state of affairs of the company as at the end of the financial year; and the profit and loss account must give a true and fair view of the profit or loss of the company for the financial year.

(3) Companies (Accounts) Ordinance accounts must comply with the provisions of sections 5 to 7 as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.

(4) Where compliance with subsection (3), and the other provisions of this Ordinance as to the matters to be included in Companies (Accounts) Ordinance accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.

(5) If in exceptional circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors

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must depart from that provision to the extent necessary to give a true and fair view.

(6) Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

(7) The layout of the balance sheet and of the profit and loss account, and in particular the format adopted for their presentation, must not be changed from one financial year to the next, save in exceptional cases provided that such departure is disclosed in the notes on the accounts together with an explanation of the reasons for it.”.

Amendment of section 5.

8.(1) In section 5, for “company’s annual accounts”, substitute “Companies (Accounts) Ordinance accounts”.

(2) In section 5(c)(ii), omit “and losses” and “or are likely to arise”.

(3) In section 5(h) after “items” insert—

“;

- (i) the directors of a company must, in determining how amounts are presented within items in the profit and loss account and balance sheet, have regard to the substance of the reported transaction or arrangement, in accordance with generally accepted accounting principles or practice”.

Amendment of section 6.

9. After section 6(7), insert—

“ (8) This section applies where a company prepares Company (Accounts) Ordinance accounts.”.

Amendment of section 7.

10.(1) In section 7(1), at the beginning, for “In” substitute, “In the case of Companies (Accounts) Ordinance accounts, in”.

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(2) After section 7(2), insert—

“ (3) References in this Ordinance to a company’s annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts giving information which is required by any provision of this Ordinance or international accounting standards, and required or allowed by any such provision to be given in a note to company accounts.”.

Insertion of section 7A and 7B.

11. After section 7, insert—

“Disclosure required in notes to annual accounts: particulars of staff.

7A.(1) The following information with respect to the employees of the company must be given in the notes to the company’s annual accounts—

- (a) the average number of persons employed by the company in the financial year; and
- (b) the average number of persons so employed within each category of persons employed by the company.

(2) The average number required by subsection (1)(a) or (b) is determined by dividing the relevant annual number by the number of months in the financial year.

(3) The relevant annual number is determined by ascertaining for each month in the financial year—

- (a) for the purposes of subsection (1)(a), the number of persons employed under contracts of service by the company in that month (whether throughout the month or not);
- (b) for the purposes of subsection (1)(b), the number of persons in the category in question of persons so employed;

and, in either case, adding together all the monthly numbers.

(4) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number

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for the purposes of subsection (1)(a) there must also be stated the aggregate amounts respectively of—

- (a) wages and salaries paid or payable in respect of that year to those persons;
- (b) social security costs incurred by the company on their behalf; and
- (c) other pension costs so incurred.

This does not apply in so far as those amounts, or any of them, are stated elsewhere in the company's accounts.

(5) For the purposes of subsection (1)(b), the categories of person employed by the company are such as the directors may select, having regard to the manner in which the company's activities are organised.

(6) In this section "social security costs" means any contributions by the company to any Government social security or pension scheme, fund or arrangement.

(7) In this section "pension costs" includes any costs incurred by the company in respect of any pension scheme established for the purpose of providing pensions for persons currently or formerly employed by the company, any sums set aside for the future payment of pensions directly by the company to current or former employees and any pensions paid directly to such persons without having first been set aside.

(8) Where in respect of a financial year a company qualifies as a small company, the requirements of this section do not apply to that company.

IAS annual accounts.

7B. Where the directors of a company prepare IAS accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with international accounting standards."

Directors' reports.

12. For section 8, substitute—

“Duty to prepare directors’ reports.

8.(1) The directors of a company shall for each financial year prepare a report (a “directors’ report”) complying with the general requirements of section 8ZZA and containing the business review specified in section 8ZZB.

(2) For a financial year in which—

- (a) the company is a parent company; and
- (b) the directors of the company prepare group accounts;

the directors’ report must be a consolidated report (a “group directors’ report”) relating, to the extent specified in the following provisions of sections 8ZZA and 8ZZB, to the company and its subsidiary undertakings included in the consolidation.

(3) A group directors’ report may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation, taken as a whole.

(4) If a directors’ report does not comply with the provisions of sections 8ZZA and 8ZZB relating to the preparation and contents of the report, every director of the company who—

- (a) knew that it did not comply or was reckless as to whether it complied; and
- (b) failed to take all reasonable steps to secure compliance with the provision in question,

is guilty of an offence and liable to a fine.

Directors’ report: general requirements.

8ZZA.(1) The directors’ report for a financial year must state—

- (a) the names of the persons who, at any time during the financial year, were directors of the company;

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- (b) the principal activities of the company in the course of the year; and
- (c) the amount (if any) that the directors recommend should be paid by way of dividend.

(2) In relation to a group directors' report subsection (1)(b) has effect as if the reference to the company was a reference to the company and its subsidiary undertakings included in the consolidation.

(3) The report must give an indication of—

- (a) any important events which have occurred since the end of the last financial year;
- (b) the company's likely future developments;
- (c) activities in the field of research and development; and
- (d) the existence of any branches of the company.

(4) Where in a financial year any shares in the company—

- (a) are acquired by the company by forfeiture or surrender in lieu of forfeiture; or
- (b) are made subject to a lien or other charge lawfully taken (whether expressly or otherwise) by the company,

the directors' report for that year shall give the information required by subsection (5).

(5) Where subsection (4) applies, the report must give—

- (a) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances and so charged respectively during that year;
- (b) the maximum number and nominal value of shares which having been so acquired by the company, acquired by another person in such circumstances or so charged (whether or not

during that year), are held at any time by the company or that other person during that year;

- (c) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year) which are disposed of by the company or that other person or cancelled by the company during that year;
- (d) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding paragraphs, the percentage of the called up share capital which shares of that description represent;
- (e) where any of the shares have been so charged, the amount of the charge in each case; and
- (f) where any of the shares have been disposed of by the company or the persons who acquired them in such circumstances for money or money's worth, the amount or value of the consideration in each case.

(6) With respect to a financial year in which a company is a small company a directors' report need not contain the information mentioned in this section provided that any information required by subsection (5) is given in a note to the accounts.

Directors' report: business reviews.

8ZZB.(1) The directors' report for a financial year must contain—

- (a) a fair review of the business of the company; and
- (b) a description of the principal risks and uncertainties facing the company.

(2) The review required is a balanced and comprehensive analysis of—

- (a) the development and performance of the business of the company during the financial year; and

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(b) the position of the company at the end of the year,

consistent with the size and complexity of the business.

(3) The review must, to the extent necessary for an understanding of the development, performance or position of the business of the company, include—

- (a) analysis using financial key performance indicators; and
- (b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

(4) The review must, where appropriate, include reference to, and additional explanations of, amounts included in the annual accounts of the company.

(5) In this section, “key performance indicators” means factors by reference to which the development, performance or position of the business of the company can be measured effectively.

(6) In relation to a group directors’ report this section has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.

(7) With respect to a financial year in which a company is a medium sized company, the directors’ report for the year need not comply with the requirements of section 8ZZB(3) so far as they relate to non-financial information.”.

Amendment of section 9.

13.(1) For section 9(1), substitute—

“The directors of a company shall, in respect of each financial year deliver to the Registrar a copy of the company’s annual accounts, prepared in accordance with this Ordinance or international accounting standards, together with a copy of the director’s report for that year and a copy of the auditors’ report on those accounts. The copy of the auditors’ report that is

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delivered to the Registrar shall state the names of the auditors and be signed by them."

(2) Omit sections 9(2) and 9(3).

(3) In section 9(4), omit “, (2) and (3)”.

(4) In sections 9(5) and 9(6), at the beginning, for “The” substitute, “In the case of Companies (Accounts) Ordinance accounts, the”.

Content of auditors’ report.

14.(1) For section 10(2), substitute—

“ (2) The auditors must state in their report whether in their opinion the information given in the directors’ report for the financial year for which the annual accounts are prepared is consistent with those accounts.”.

(2) After section 10(2) insert—

“ (3) In addition to the information required by section 182 of the Companies Ordinance, the auditors’ report must include—

- (a) an introduction identifying the annual accounts that are the subject of the audit and the financial reporting framework that has been applied in their preparation;
- (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted;
- (c) a clear statement as to whether in the auditors’ opinion the annual accounts have been properly prepared in accordance with the requirements of this Ordinance (and, where applicable, Article 4 of the IAS Regulation);
- (d) a clear statement as to whether the annual accounts give a true and fair view, in accordance with the relevant financial reporting framework—

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- (i) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year;
- (ii) in the case of an individual profit and loss account, of the profit or loss of the company for the financial year;
- (iii) in the case of group accounts, of the state of affairs as at the end of the financial year and of the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(4) The auditors' report—

- (a) must be either unqualified or qualified; and
- (b) must include a reference to any matters to which the auditors wish to draw attention by way of emphasis without qualifying the report.

(5) The auditors' report shall state the names of the auditors and be signed and dated by them.”.

Exemption for small companies.

15.(1) For the heading to section 11 substitute—

“Exemption for small companies.”

(2) In section 11(1), at the beginning, for “Subject” substitute, “In the case of Companies (Accounts) Ordinance accounts, subject”.

(3) After section 11(3) insert—

“ (4) The exemptions contained in subsection (1), section 6(3), section 6(4), section 8ZZA(5), section 8ZZB, section 9(5), section 9(6) and section 13 do not apply to a company any of whose securities are admitted to trading on a regulated market of any EEA State within the meaning of Council Directive 93/22/EEC on investment services in the securities field.”.

Offences.

16. In section 12(7), after “this Ordinance” insert “(or, where applicable, of Article 4 of the IAS Regulation)”.

Amendment of section 13.

17. In section 13, for “annual accounts” insert “Companies (Accounts) Ordinance accounts”.

Amendment of section 16.

18. In section 16(3) (Requirements for auditors’ report published with accounts) for paragraph (d) substitute—

- “(d) whether any such auditors’ report—
 - (i) was qualified or unqualified, or included a reference to any matters to which the auditors drew attention by way of emphasis without qualifying the report; or
 - (ii) contained a statement under section 10(2)”.

Amendment of Schedule 1.

19. In Schedule 1, for paragraph 4 substitute—

“4. In this Schedule, balance sheet total means, in relation to any financial year of a company—

- (a) in the case of Companies (Accounts) Ordinance accounts—
 - (i) the aggregate of the amounts shown in the balance sheet under the headings corresponding to items A to D of Format I set out in Schedule 2; or
 - (ii) if Format 2 is adopted, the aggregate of the amounts shown under the general heading “ASSETS”;

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- (b) in the case of IAS accounts, the aggregate of the amounts shown as assets in the balance sheet.”.

Amendment of Schedule 2.

20.(1) In Schedule 2, after the main heading “SCHEDULE 2”, in the subheading, for “Sections 6(1) and 9(1), (2) and (3)” substitute “Section 6(1)”.

(2) In the Balance Sheet Formats and the notes on the Balance Sheet Formats, for “provisions for liabilities and charges”, wherever occurring, substitute “provisions for liabilities”.

Amendment of Schedule 3.

21. In Schedule 3, after the main heading “SCHEDULE 3”, in the subheading, omit “and 9(1) and (2)”.

Amendment of Schedule.

22. In Schedule 4, in the Balance Sheet Formats, for “provisions for liabilities and charges”, wherever occurring, substitute “provisions for liabilities”.

Amendment of Schedule 6.

23.(1) In Schedule 6, after paragraph 24 insert—

“Other items that may be included at fair value.

24A.(1) This paragraph applies to—

- (a) investment property; and
- (b) living animals and plants,

that, under international accounting standards, may be included in accounts at fair value.

(2) Such investment property and such living animals and plants may be included at fair value, provided that all such

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investment property or, as the case may be, all such living animals and plants are so included where their fair value can reliably be determined.

(3) In this paragraph, “fair value” means fair value determined in accordance with relevant international accounting standards.”.

(2) In paragraph 25—

- (a) in subparagraph (1), after “24”, insert “or an asset is valued in accordance with paragraph 24A”;
- (b) in subparagraph (2), after “financial instrument” insert “or of the investment property or living animal or plant”.

Amendment of Schedule 7.

24.(1) In Schedule 7, in paragraph 1 omit subparagraph (j).

(2) After paragraph 8, insert—

“8A.(1) This paragraph applies where the amounts to be included in a company’s accounts in respect of investment property or living animals and plants have been determined in accordance with paragraph 24A of Schedule 6.

(2) The balance sheet items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each such item must be disclosed in a note to the accounts.

(3) In the case of investment property, for each balance sheet item affected there must be shown, either separately in the balance sheet or in a note to the accounts—

- (a) the comparable amounts determined according to the historical cost accounting rules; or
- (b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item.

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(4) In subparagraph (3), references in relation to any item to the comparable amounts determined in accordance with that subparagraph are references to—

- (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
- (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.”.

Passed by the Gibraltar House of Assembly on the 9th day of November, 2005.

D. J. REYES,

Clerk to the Assembly.

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