

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3757 of 15 January, 2010

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LEGAL NOTICE NO. 8 OF 2010.

**INTERPRETATION AND GENERAL CLAUSES ACT**

**COMPANIES (ACCOUNTS) (AMENDMENT)  
REGULATIONS 2010**

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to amend the Companies (Accounts) Act 1999 so as to transpose into the law of Gibraltar Article 1 of Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, the Government has made the following Regulations.

**Title and commencement.**

1. These Regulations may be cited as the Companies (Accounts) (Amendment) Regulations 2010 and shall come into operation on the day of publication.

**Amendments to the Companies (Accounts) Act 1999.**

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

(2) Section 8 is amended as follows—

(a) subsection (1) shall be replaced by the following—

“The directors of a company shall for each financial year prepare a report (a “directors’ report”) complying with the general requirements of section 8ZZA containing the business review specified in section 8ZZB and, when provided separately, the corporate governance statement specified in section 8ZZAA.”;

- (b) in subsection (2) after the reference to “8ZZB,” there shall be inserted “and, when provided separately, section 8ZZAA,”;
  - (c) in subsection (4) the reference to “sections 8ZZA and 8ZZB” shall be replaced by a reference to “sections 8ZZA, 8ZZB and, when provided separately, section 8ZZAA”;
- (3) The following is inserted after section 8A–

**“Director’s duties.**

“8B. The Directors of a company have collectively the duty to ensure that the annual accounts, the directors’ report and, when provided separately, the corporate governance statement to be provided pursuant to section 8ZZAA are drawn up and filed with the Registrar in accordance with the requirements of this Act, and, where applicable, in accordance with the international accounting standards adopted in accordance with the IAS Regulation.”.

- (4) The following is inserted after section 8ZZA–

**“Director’s report: corporate governance requirements.**

8ZZAA.(1) A company whose securities are admitted to trading on a regulated market within the meaning of the Financial Services (Markets in Financial Instruments) Act 2007 shall include a corporate governance statement in the directors’ report. That statement shall be included as a specific section of the directors’ report and shall contain at least a reference to–

- (a) the corporate governance code to which the company is subject; or
- (b) the corporate governance code which the company may have voluntarily decided to apply; or
- (c) all relevant information about the corporate governance practices applied beyond the requirements under Gibraltar law.

- (2) Where subsection (1)(a) and (b) apply, the company shall also indicate where the relevant texts are publicly available and where subsection (1)(c) applies, the company shall make its corporate governance practices publicly available.
- (3) To the extent to which a company departs from a corporate governance code referred to under subsection (1)(a) or (b), it shall provide an explanation as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to under subsection (1)(a) or (b), it shall explain its reasons for doing so.
- (4) The statement referred to in subsection (1) shall, in addition, contain the following matters—
  - (a) a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;
  - (b) the information required pursuant to section 18 (1)(c), (d), (f), (h) and (i) of the Financial Services (Takeover Bids) Act 2006, where the company is subject to that Act;
  - (c) unless the information is already fully provided for, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised; and
  - (d) the composition and operation of the administrative, management and supervisory bodies and their committees.
- (5) The information required by this section—
  - (a) may be set out in a separate report delivered to the Registrar under section 9 together with the directors' report or by means of a reference in the directors' report where such document is publicly available on the company's website;

- (b) in the event of a separate report, may contain a reference to the directors' report in the corporate governance statement where the information required in subsection (4)(b) is made available.
- (6) Companies to which Schedule 1 paragraph 1(1) applies may choose not to apply the provisions of subsection (4)(a) and (b). Subject to the foregoing, the statutory auditor shall check that the corporate governance statement has been produced in respect of the remaining information required by this section.
- (7) Companies which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of the Financial Services (Markets in Financial Instruments) Act 2007, may choose not to apply the provisions of subsections (1) to (3), (4)(c) and (d), unless such companies have issued shares which are traded in a multilateral trading facility, within the meaning of the Financial Services (Markets in Financial Instruments) Act 2007.”.
- (5) The following is inserted after section 13–
- “Availability of exemptions to companies trading in regulated markets.**
- 13A. The exemptions set out in section 8ZZA(6) and 8ZZB(7), section 11, Schedule 4, Schedule 5 and Schedule 7 paragraph 1 indents (ha) and (hb), are not available in the case of companies whose securities are admitted to trading on a regulated market within the meaning of the Financial Services (Markets in Financial Instruments) Act 2007.”.
- (6) Paragraph 1(a) of Schedule 1 is amended by substituting for “£4.8million”, “£6.5 million”.
- (7) Paragraph 1(b) of Schedule 1 is amended by substituting for “£2.4million”, “£3.26 million”.
- (8) Paragraph 2(a) of Schedule 1 is amended by substituting for “£19.2million”, “£25.9 million”.

(9) Paragraph 2(b) of Schedule 1 is amended by substituting for “£9.6million”, “£12.9 million”.

(10) Schedule 6, paragraph 22 is amended by inserting the following after sub-paragraph (4)–

“(4A) Financial instruments that, under international accounting standards adopted by the European Commission on or before 5th September 2006 in accordance with the IAS Regulation, may be included in accounts at fair value, may be so included, provided that the disclosures required by such accounting standards are made.”.

(11) Paragraph 1 of Schedule 7 is amended by inserting after sub-paragraph (h) the following sub-paragraphs–

“(ha) 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: provided that companies referred to in paragraph 2 of Schedule 1 may limit the information required to be disclosed by this paragraph to the nature and business purpose of such arrangements;

(hb) transactions which have been entered into with related parties, as defined in the IAS Regulation, 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:

provided that–

- (a) companies referred to in paragraph 2 of Schedule 1 may omit the disclosures prescribed in this paragraph unless those companies are public companies limited by shares or public companies limited by guarantee and having a share capital, in which case disclosure may be limited to, as a minimum, transactions entered into directly or indirectly between—
- (i) the company and its major shareholders; and
- (ii) the company and the members of the administrative, management and supervisory bodies; and
- (b) transactions entered into between two or more members of a group are exempt from the provisions of this paragraph provided that subsidiaries which are party to the transaction are wholly owned by such a member.”.

Dated 15th January, 2010.

P R CARUANA QC,  
Chief Minister.

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#### **EXPLANATORY MEMORANDUM**

These Regulations amend the Companies (Accounts) Act 1999 in order to transpose Article 1 of Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006.

The Directive introduces a number of amendments intended to enhance confidence in financial statements and annual reports published by European companies. The following are the principal provisions of the Directive—

- An extension of the Member State option to permit/require fair value accounting for financial instruments in local (non-IFRS) GAAP<sup>1</sup> to all instruments permitted to be fair valued in accordance with International Financial Reporting Standards;

- New disclosure requirements in relation to off-balance sheet arrangements and related party transactions;
- A requirement for companies admitted to trading on a regulated market to produce an annual corporate governance statement;
- A requirement that the directors are collectively responsible for preparing and publishing the annual accounts and the annual (directors') report;
- A Member State option to increase the maximum thresholds for availing of various reporting exemptions for small and medium-sized companies and groups to new maximum amounts.

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<sup>1</sup> Reference to International Financial Reporting Standards (IFRS)/International Accounting Standards (IAS)

