

Subsidiary Legislation made under s.487.

Partnerships and Unlimited Companies (Accounts) Regulations 2015

LN.2015/114

Commencement **20.7.2015**

Transposing:

Directive 78/660/EEC

Directive 83/349/EEC

Directive 2006/43/EC

Directive 2013/34/EU

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In exercise of the powers conferred upon him by section 487 of the Companies Act 2014, 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 Minister has made the following Regulations—

Title.

1. These Regulations may be cited as the Partnerships and Unlimited Companies (Accounts) Regulations 2015.

Commencement.

2.(1) These Regulations come into force on 20 July 2015.

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

Interpretation.

3. In these Regulations—

“the Act” means the Companies Act 2014;

“the accounts” means the accounts, directors’ report and the auditors’ report required by regulation 6;

“dealt with on a consolidated basis” means dealt with by the method of full consolidation, the method of proportional consolidation or the equity method of accounting;

“Directive 2013/34/EU” means Council Directive 2013/34/EU 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;

“financial year” means—

- (a) in relation to a company, the financial year determined in accordance with section 240 of the Act; or

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- (b) in relation to a partnership, means any period of not more than 18 months in respect of which a profit and loss account of the partnership is required to be made up by or in accordance with its constitution or, failing any such requirement, each period of 12 months beginning with 1st July;

“general partner” has the same meaning as in the Limited Partnerships Act;

“limited company” means a company limited by shares or limited by guarantee;

“limited partnership” means a partnership formed in accordance with the Limited Partnerships Act;

“qualifying company” has the meaning given by regulation 5; and

“qualifying partnership” has the meaning given by regulation 4;

and other expressions have the meanings ascribed to them by the Act.

Qualifying partnerships.

4.(1) A “qualifying partnership” is a partnership formed under the law of Gibraltar each of whose members or, in the case of a limited partnership, each of whose general partners is—

- (a) a limited company; or
- (b) an unlimited company each of whose members is a limited company.

(2) The references in these Regulations to the members, or any member, of a qualifying partnership are to be construed as follows—

- (a) where the qualifying partnership is a limited partnership its members are—
 - (i) its general partners (irrespective of their place of incorporation or the law under which they were formed); and
 - (ii) where any of its general partners is an unlimited company, the limited companies which are members of that unlimited company;
- (b) where the qualifying partnership is not a limited partnership its members are—
 - (i) its members (irrespective of their place of incorporation or the law under which they were formed); and

- (ii) where any of its members is an unlimited company, the limited companies which are members of that unlimited company.

(3) The requirements of these Regulations apply without regard to any change in the members (or in the members of any member) of a qualifying partnership which does not result in it ceasing to be such a partnership.

(4) Any reference in subregulation (1) to a limited company or an unlimited company includes a reference to any comparable undertaking incorporated in or formed under the law of any country or territory outside Gibraltar.

Qualifying companies.

5.(1) A “qualifying company” is an unlimited company incorporated in Gibraltar each of whose members is—

- (a) a limited company; or
- (b) another unlimited company each of whose members is a limited company.

(2) Any reference in subregulation (1) to a limited company, or another unlimited company, includes a reference to any comparable undertaking incorporated in or formed under the law of any country or territory outside Gibraltar.

Preparation of accounts.

6.(1) Subject to regulation 9, the persons who are members of a qualifying partnership at the end of any financial year of the partnership must, in respect of that year—

- (a) prepare the like accounts and directors’ report; and
- (b) cause to be prepared such an auditors’ report,

as would be required under Part VII of the Act if the partnership were a company to which that Part applied.

(2) Subject to regulation 9, the directors of a qualifying company must—

- (a) prepare the like accounts and directors’ report; and
- (b) cause to be prepared such an auditors’ report;

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as would be required under Part VII of the Act if it were a company to which that Part applied.

(3) The accounts required by this regulation—

- (a) must be prepared within a period of 12 months beginning immediately after the end of the financial year; and
- (b) must state that they are prepared under this regulation.

(4) Accounts and reports prepared under this regulation must comply with the Act as to the content subject to any necessary modifications in respect of partnerships to take account of the fact that partnerships are unincorporated.

(5) In relation to a qualifying partnership, a “directors’ report” means a report of the members or general partners of the partnership.

(6) Any provision under the Act in relation to eligibility for appointment as auditors applies to auditors appointed for the purposes of these Regulations as if a qualifying partnership or qualifying company was a company to which those provisions applied, subject to any necessary modifications to take account of the fact that partnerships are unincorporated.

Delivery of accounts to Registrar.

7.(1) Subject to regulation 9, each limited company which is a member of—

- (a) a qualifying partnership; or
- (b) qualifying company,

at the end of any financial year of the partnership or company, as the case may be, must append to the copy of its accounts and reports which is next delivered to the Registrar in accordance with section 254 of the Act a copy of the accounts of the partnership or the company prepared for that year under regulation 6.

(2) Subject to regulation 9, a limited company which is a member of a qualifying partnership or qualifying company must supply to any person upon request—

- (a) the name of each member of the partnership or company, as the case may be, which is to deliver, or has delivered, a copy of the latest accounts of the partnership or company to the Registrar under subregulation (1); and

- (b) the name of each member of the partnership or company, as the case may be, incorporated in an EEA State which is to publish, or has published, the latest accounts for the partnership in accordance with the provisions of Directive 2013/34/EU.

Publication of accounts.

8.(1) Subject to subregulation (2) and regulation 9, this regulation applies where—

- (a) the head office of a qualifying partnership; or
- (b) the registered office of a qualifying company,

is in Gibraltar and each of its members is an undertaking comparable to a limited company which has its registered office in a country or territory outside Gibraltar.

(2) Subregulation (1) does not apply where any member of a qualifying partnership or qualifying company is—

- (a) an undertaking comparable to a limited company which is incorporated in an EEA State; and
- (b) the latest accounts of the qualifying partnership or, as the case may be, qualifying company have been or are to be appended to the accounts of any member of the qualifying partnership or qualifying company and published under the law of that EEA State and in accordance with the provisions of Directive 2013/34/EU.

(3) The members of the qualifying partnership or, in respect of a qualifying company, the directors of the company,—

- (a) must make the latest accounts available for inspection by any person, without charge and during business hours, at the head office of the partnership or, in respect of a qualifying company, at its registered office; and
- (b) if any document comprised in those accounts is in a language other than English, must annex to that document a translation of it into English certified in accordance with rule 3 of the Companies (Certification of Documents) Rules 2014 to be a correct translation.

(4) A member of the qualifying partnership or, in respect of a qualifying company, a director of the company, must supply to any person upon request—

- (a) a copy of the accounts required by subregulation (3)(a) to be made available for inspection; and
- (b) a copy of any translation required by subregulation (3)(b) to be annexed to any document comprised in those accounts,

at a price not exceeding the administrative cost of making the copy.

Exemption from regulations 6 to 8 where accounts consolidated.

9.(1) The members of a qualifying partnership are exempt from the requirements of regulations 6 to 8 if the partnership is dealt with on a consolidated basis in group accounts prepared by—

- (a) a member of the partnership which is established under the law of Gibraltar or an EEA State; or
- (b) a parent undertaking of such a member which is so established,

and (in either case) the conditions mentioned in subregulation (3) are complied with.

(2) The directors of a qualifying company are exempt from the requirements of regulations 6 and 7, and the members of the qualifying company are exempt from the requirements of regulation 8, if the qualifying company is dealt with on a consolidated basis in group accounts prepared by—

- (a) a member of the company which is established under the law of Gibraltar or an EEA State; or
- (b) a parent undertaking of such a member which is so established,

and (in either case) the conditions mentioned in subregulation (3) are complied with.

(3) The conditions are—

- (a) that the group accounts are prepared and audited under the law of Gibraltar or the EEA State concerned in accordance with Directive 2013/34/EU; and
- (b) the notes to those accounts disclose that advantage has been taken of the exemption conferred by this regulation.

(4) Where advantage is taken of the exemption conferred by this regulation, the qualifying partnership or qualifying company, as the case may be, must disclose on request the name of the member or parent undertaking in whose group accounts the qualifying partnership or qualifying company has been or is to be dealt with on a consolidated basis.

Offences.

10.(1) If in respect of a qualifying partnership, the requirements of regulation 6(1) are not complied with within the period referred to in subregulation (3) of that regulation, every person who was a member of the partnership or a director of such a member at the end of that year is guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

(2) If the accounts of a qualifying partnership—

- (a) a copy of which is delivered to the Registrar under regulation 7; or
- (b) which are made available for inspection under regulation 8,

do not comply with the requirements of regulation 6(1), every person who at the time when the copy was so delivered or (as the case may be) the accounts were first made available for inspection, was a member of the partnership or a director of such a member is guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

(3) If a member of a qualifying partnership fails to comply with regulation 7, 8 or 9(4), that member and any director of that member is guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

(4) If in respect of a qualifying company, the requirements of regulation 6(2) are not complied with within the period referred to in subregulation (3) of that regulation, the company and every director of the company is guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

(5) If the accounts of a qualifying company, a copy of which is delivered to the Registrar under regulation 7 do not comply with the requirements of regulation 6(2), the limited company and any director of that company is guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

(6) If the accounts of a qualifying company which are made available under regulation 8 do not comply with the requirements of regulation 6(2), the company and every director of the company is guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

(7) If a member of a qualifying company fails to comply with regulation 7, that member and every director of that company is guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

(8) If the directors of a qualifying company fail to comply with regulations 8 or 9(4), every director is guilty of an offence and liable on summary conviction to a fine up to level 3 on the standard scale.

Proceedings, etc.

11.(1) It is a defence for a person charged with an offence under regulation 10 to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(2) Proceedings for an offence under regulation 10 alleged to have been committed by an unincorporated body may be brought in the name of that body (and not in that of any of its members) and for the purposes of any such proceedings any rules of court relating to the service of documents apply as if that body were a corporation

(3) A fine imposed on an unincorporated body on its conviction of such an offence must be paid out of the funds of that body.

(4) Sections 178 and 179 of the Criminal Procedure and Evidence Act 2011 apply in a case where an incorporated body is charged with an offence under regulation 10 as they apply in the case of a corporation.

(5) Where an offence under regulation 10 is committed by a corporate body and it is proved to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on the part of an officer, the officer as well as the corporate body commits the offence and is liable to be proceeded against and punished accordingly.

(6) Where an offence under regulation 10 committed by a partnership is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

Revocation.

12.(1) The Partnerships and Unlimited Companies (Accounts) Regulations, 1999 are revoked subject to subregulation (2).

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(2) In the case of a qualifying partnership and a qualifying company with a financial year beginning after 19 July 2015 but before 1 January 2016, the Partnerships and Unlimited Companies (Accounts) Regulations, 1999 shall apply notwithstanding their revocation, for the purposes of that financial year.