

Subsidiary Legislation made under s.487.

Companies (Reports by Extractive and Logging Industries) Regulations 2015

LN.2015/116

Commencement **20.7.2015**

Transposing:

Directive 78/660/EEC

Directive 83/349/EEC

Directive 2006/43/EC

Directive 2013/34/EU

ARRANGEMENT OF REGULATIONS

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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 Companies (Reports by Extractive and Logging Industries) 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.

Application.

3. These Regulations do not apply to not-for-profit undertakings.

Interpretation.

4. In these Regulations—

“the Act” means the Companies Act 2014;

“affiliated undertakings” means any two or more undertakings within a group;

“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;

“director” means—

(a) in relation to a company, a director of the company as defined in the Act; or

(b) in relation to a partnership, a partner;

“financial year” means—

- (a) in relation to a company, the financial year determined in accordance with section 240 of the Act; or
- (b) in relation to a partnership, the financial year as defined in Partnerships and Unlimited Companies (Accounts) Regulations 2015;

“government” means any national, regional or local authority in Gibraltar, a Member State or a third country and includes a department, agency or company controlled by that authority as if that authority were a parent undertaking;

“large undertaking” means an undertaking that meets at least two of the three following criteria—

- (a) the amount of its net turnover exceeded £36 million;
- (b) its balance sheet total exceeded £18 million;
- (c) the average number of employees during the financial year to which the balance sheet relates exceeds 250;

“Member State” means a Member State of the European Economic Area;

“parent undertaking” means an undertaking which controls one or more subsidiary undertakings;

“payment” means an amount paid, whether in money or in kind, for relevant activities, where the payment is any of the following types—

- (a) production entitlements;
- (b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
- (c) royalties;
- (d) dividends;

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- (e) signature, discovery and production bonuses;
- (f) licence fees, rental fees, entry fees and other consideration for licenses or concessions; and
- (g) payments for infrastructure improvements;

“project” means the operational activities that are governed by-

- (a) a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government; or
- (b) multiple agreements mentioned in paragraph (a) that are substantially interconnected;

“public interest entity” means an undertaking–

- (a) whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;
- (b) that is a credit institution as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions other than those referred to in Article 2 of that Directive;
- (c) that is an insurance undertaking within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings; or
- (d) that is designated as a public interest entity;

“relevant activities” means–

- (a) activities involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits and other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2; and

- (b) activities as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No 1893/2006, in primary forests;

“subsidiary undertaking” means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;

“undertaking” means—

- (a) a limited company;
- (b) a limited partnership, each of whose members is a limited company;
- (c) a partnership, each of whose partners is a limited company;
- (d) an unlimited company, each of whose members is a limited company;

“undertaking active in the extractive industry” means an undertaking with any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits and other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2;

“undertaking active in the logging of primary forests” means an undertaking with activities as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No 1893/2006, in primary forests.

(2) Where—

- (a) an undertaking has been a large undertaking for the purposes of these Regulations, but
- (b) it subsequently ceases to be a large undertaking because it no longer meets at least two of the criteria in the definition of “large undertaking”,

it does not cease to be a large undertaking for the purposes of these Regulations unless it fails to meet the criteria in question for two consecutive financial years.

Obligation to prepare and file report.

5.(1) The directors of an undertaking must prepare a report annually on payments made to governments for each financial year if that undertaking is-

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- (a) a large undertaking or a public interest entity; and
- (b) an undertaking active in the extractive industry or in the logging of primary forests.

(2) The report prepared under subregulation (1) must be delivered to the Registrar by the directors of the undertaking within 11 months of the end of the financial year.

Content of report.

6.(1) For each financial year, the report prepared under regulation 5 must state the following information in relation to the relevant activities of the undertaking—

- (a) the total amount of payments made to each government;
- (b) the total amount per type of payment made to each government; and
- (c) where those payments have been attributed to a specific project, the total amount per type of payment made for each project and the total amount of payments for each such project.

(2) Where a payment is made by the undertaking in respect of obligations imposed at the entity level, this may be disclosed at entity level rather than at project level.

(3) Where payments in kind are made to a government, the report must state the value of such payments in kind and, where applicable, the volume, and the directors must provide supporting notes to explain how the value has been determined.

(4) The disclosure of payments must reflect the substance, rather than the form, of each payment, activity or project concerned.

(5) Payment and activities may not be artificially split or aggregated to avoid the application of these Regulations.

(6) Any payment, whether made as a single payment or as a series of related payments within a financial year, need not be taken into account in the report if it is below £86,000.

Exemption for subsidiaries or parent undertakings.

7. The directors of an undertaking that is a subsidiary undertaking or a parent undertaking are exempt from preparing a report in accordance with regulation 5 where both of the following conditions are fulfilled—

- (a) the parent undertaking is subject to the law of Gibraltar or to the law of a Member State;
- (b) the payments to governments made by the undertaking are included in the consolidated report on payments to governments drawn up by that parent undertaking.

Duty to prepare consolidated report.

8.(1) The directors of a parent undertaking must prepare a consolidated report annually on payments made to governments for each financial year if that undertaking is–

- (a) a large undertaking or public interest entity; and
- (b) an undertaking active in the extractive industry or in the logging of primary forests; and
- (c) obliged to prepare group accounts.

(2) A parent undertaking is considered to be active in the extractive industry or in the logging of primary forests if any of its subsidiary undertakings are active in the extractive industry or in the logging of primary forests.

(3) The report prepared under subregulation (1) must be delivered to the Registrar by the directors of the parent undertaking within 11 months of the end of the financial year.

Content of consolidated report.

9.(1) For each financial year, the report prepared under regulation 8 must state the following information in relation to relevant activities of the undertaking–

- (a) the total amount of payments made to each government;
- (b) the total amount per type of payment made to each government; and
- (c) where those payments have been attributed to a specific project, the total amount per type of payment made for each project and the total amount of payments for each such project.

(2) In this regulation, the relevant activities are those of–

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- (a) the parent undertaking; and
 - (b) any subsidiary undertaking included in the group accounts of the parent undertaking.
- (3) Where a payment is made by the undertaking in respect of obligations imposed at the entity level, this may be disclosed at the entity level rather than at project level.
- (4) The consolidated report must only include payments resulting from relevant activities.
- (5) Where payments in kind are made to a government, the report must state the value of such payments in kind and, where applicable, the volume, and the directors must provide supporting notes to explain how the value has been determined.
- (6) The disclosure of payments must reflect the substance, rather than the form, of each payment, activity or project concerned.
- (7) Payments and activities may not be artificially split or aggregated to avoid the application of these Regulations.
- (8) Any payment, whether made as a single payment or as a series of related payments within a financial year, need not be taken into account in the report if it is below £86,000.

Exemption from duty to prepare a consolidated report.

10. The obligation to draw up a consolidated report under regulation 8 does not apply to directors of—

- (a) a parent undertaking of a small group, except where any affiliated undertaking is a public interest entity;
- (b) a parent undertaking of a medium-sized group, except where any affiliated undertaking is a public interest entity; or
- (c) a parent undertaking which is also a subsidiary undertaking, if its own parent undertaking is governed by the laws of a Member State.

Exemption from inclusion in consolidated report.

11.(1) Payments made by an undertaking need not be included in a consolidated report where—

- (a) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;
- (b) in extremely rare cases, the information necessary for the preparation of the consolidated report cannot be obtained without disproportionate expense or undue delay; or
- (c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

(2) The parent undertaking may only exclude an undertaking under paragraph (1) where the exemption is also used to exclude the undertaking from the group accounts.

Exemption from duty to prepare reports: equivalence.

12.(1) The directors of an undertaking are exempt from preparing a report or a consolidated report if—

- (a) the undertaking is subject to reporting requirements that have been identified as equivalent under Article 47 of Directive 2013/34/EU; and
- (b) the payments to governments made by the undertakings are included in a report prepared in accordance with those equivalent reporting requirements.

(2) The directors of an undertaking that is exempt from preparing a report or consolidated report must deliver to the Registrar a copy of any report or consolidated report prepared in accordance with the equivalent reporting requirements identified under Article 47 of Directive 2013/34/EU within 28 days of the report being made publicly available under the equivalent reporting requirements.

(3) If the copy of the report or consolidated report delivered under subregulation (2) is in a language other than English, the undertaking shall annex to the copy delivered a translation of it into English, certified in accordance with rule 5 of the Companies Rules to be a correct translation.