

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3498 of 27 October, 2005

LEGAL NOTICE NO. 143 OF 2005.

BANKING ORDINANCE

**BANKING (ACCOUNTS DIRECTIVE) (AMENDMENT)
REGULATIONS 2005**

In exercise of the powers conferred on him by section 79 of the Banking Ordinance, and all other enabling powers, the Governor has made the following Regulations 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.

Title.

1.(1) These Regulations may be cited as the Banking (Accounts Directive) (Amendment) Regulations 2005.

(2) These Regulations have effect as respects companies' financial years which begin on or after 1 January 2005 but which have not ended before the date on which these Regulations come into operation.

Amendment of the Banking (Accounts Directive) Regulations.

2. The Banking (Accounts Directive) Regulations 1997 are amended as follows.

Amendment of regulation 1.

3. For regulation 1(2), substitute—

“ (2) These Regulations apply to all licensed credit institutions whose financial year ends on or after that date; but the amendments made by the

Banking (Accounts Directive) (Amendment) Regulations 2005 apply to the accounts of such institutions in respect of each financial year beginning on or after 1 January 2005 but which have not ended before the date that those Regulations came into operation.

(3) The Commissioner acting with the consent of the Minister with responsibility for financial services may exempt in whole or in part branches of credit institutions formed or incorporated outside the EEA.”

Interpretation.

4(1). In regulation 2(1) (Interpretation) 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;”.

(2) In regulation 2(2), for “115” substitute “171”.

(3) After regulation 2(9), insert–

“ (10) References in these Regulations to accounts giving a “true and fair view” are references–

(a) in the case of Banking Regulations accounts, to the requirement under regulation 3A to give a true and fair view;

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

(11) Information required by these Regulations to be given in notes on the accounts may be contained in the accounts or in a separate document annexed to the accounts.

(12) References in these Regulations to a company's 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 these Regulations or international accounting standards, and required or allowed by any such provision to be given in a note to company accounts."

Preparation of individual and group accounts in accordance with IAS Regulation.

5. For regulations 3 and 4 (duty to prepare individual and group accounts), substitute—

“Duty to prepare individual accounts.

3.(1) The directors of every company shall prepare accounts for the company for each of its financial years.

Those accounts are referred to in these Regulations as the company's “individual accounts”.

(2) A company's individual accounts may be prepared—

- (a) in accordance with regulation 3A (“Banking Regulations accounts”); or
- (b) in accordance with international accounting standards (“IAS accounts”).

This sub-regulation is subject to the following provisions of this regulation and regulation 4C (consistency of accounts).

(3) After the first financial year in which the directors of a company prepare IAS accounts (the “first IAS year”), all subsequent individual

accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance.

(4) 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; or
- (c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market.

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

(5) If, having changed to preparing Banking Regulations accounts following a relevant change of circumstance, the directors again prepare IAS accounts for the company, sub-regulations (3) and (4) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

Banking Regulations accounts.

3A.(1) Banking Regulations accounts must 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) Banking Regulations accounts must comply with the provisions of Schedule 1 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 the provisions of that Schedule, and the other provisions of these Regulations as to the matters to be included in a company's accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or a note to them.

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

IAS accounts.

3B. Where the directors of a company prepare IAS individual accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with international accounting standards.

Duty to prepare group accounts.

4.(1) If at the end of a financial year a company is a parent company the directors, as well as preparing individual accounts for the year, shall prepare consolidated accounts for the group for the year.

Those accounts are referred to in these Regulations as the company's "group accounts".

(2) The group accounts of certain parent companies are required by Article 4 of the IAS Regulation to be prepared in accordance with international accounting standards ("IAS group accounts").

(3) The group accounts of other companies may be prepared—

- (a) in accordance with regulation 4A ("Banking Regulations group accounts"); or
- (b) in accordance with international accounting standards ("IAS group accounts").

This sub-regulation is subject to the following provisions of this regulation.

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

(5) 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 group accounts;
- (b) the company ceases to be a company with securities admitted to trading on a regulated market; or
- (c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market.

In this sub-regulation "regulated market" has the same meaning as it has in Council Directive 93/22/EEC on investment services in the securities field.

(6) If, having changed to preparing Banking Regulations group accounts following a relevant change of circumstance, the directors again prepare IAS group accounts for the company, sub-regulations (4) and (5) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

(7) This regulation is subject to the exemptions provided by regulations 5 (exemption for parent companies included in accounts of larger group), 5A (parent companies included in non-EEA group accounts) and 6(5) (all subsidiary undertakings excluded from consolidation).

Banking Regulations group accounts.

4A.(1) Banking Regulations group accounts must comprise—

- (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings; and

- (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.

(2) The accounts must give a true and fair view of the state of affairs as at the end of the financial year, and 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.

(3) Banking Regulations group accounts must comply with the provisions of Schedule 2 as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts.

(4) Where compliance with the provisions of that Schedule, and the other provisions of these Regulations as to the matters to be included in a company's group accounts or in notes to those 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 special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors 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 provisions of sections 171, 178 and 182 of the Companies Ordinance apply to consolidated balance sheets and consolidated profit and loss accounts.

(8) The provisions of section 177 of the Companies Ordinance apply to a consolidated balance sheet.

IAS group accounts.

4B. Where the directors of a parent company prepare IAS group accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with international accounting standards.

Consistency of accounts.

4C.(1) The directors of a parent company must secure that the individual accounts of—

- (a) the parent company; and
- (b) each of its subsidiary undertakings,

are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so.

(2) Sub-regulation (1) does not apply if the directors do not prepare group accounts for the parent company.

(3) Sub-regulation (1) only applies to accounts of subsidiary undertakings that are required to be prepared under these Regulations.

(4) Sub-regulation (1)(a) does not apply where the directors of a parent company prepare IAS group accounts and IAS individual accounts.”

Exemption for parent companies included in accounts of larger group.

6. In regulation 5—

- (a) in sub-regulation (2)(b), at the end, insert “or in accordance with international accounting standards”
- (b) for sub-regulation (3), substitute—

“ (3) The exemption does 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.”.

Exemption for parent companies included in accounts of larger non-EEA group.

7. After regulation 5, insert—

“Exemption for parent companies included in non-EEA group accounts.

5A.(1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its parent undertaking is not established under the law of an EEA State, in the following cases—

- (a) where the company is a wholly-owned subsidiary of that parent undertaking;
- (b) where that parent undertaking holds more than 50 per cent of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate—
 - (i) more than half of the remaining shares in the company; or
 - (ii) 5 per cent of the total shares in the company.

Such notice must be served not later than six months after the end of the financial year before that to which it relates.

(2) Exemption is conditional upon compliance with all of the following conditions—

- (a) that the company and all of its subsidiary undertakings are included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking;
- (b) that those accounts and, where appropriate, the group's annual report, are drawn up in accordance with the provisions of the Seventh Directive (83/349/EEC) as modified by the provisions of the Bank Accounts Directive (86/635/EEC), or in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up;
- (c) that the consolidated accounts are audited by one or more persons authorised to audit accounts under the law under which the parent undertaking which draws them up is established;

- (d) that the company discloses in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;
- (e) that the company states in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and—
 - (i) if it is incorporated outside Gibraltar, the country in which it is incorporated; and
 - (ii) if it is unincorporated, the address of its principal place of business;
- (f) that the company delivers to the Registrar, within the period allowed for delivering its individual accounts, copies of the group accounts and, where appropriate, of the consolidated annual report, together with the auditors' report on them; and
- (g) that if any document comprised in accounts and reports delivered in accordance with paragraph (f) is in a language other than English, there is annexed to the copy of that document delivered a translation of it into English, certified to be a correct translation.

(3) The exemption does 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.

(4) Shares held by directors of a company for the purpose of complying with any share qualification requirement are disregarded in determining for the purposes of sub-regulation (1)(a) whether the company is a wholly-owned subsidiary.

(5) For the purposes of sub-regulation (1)(b), shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, are attributed to the parent undertaking.

(6) In sub-regulation (3), "securities" includes—

- (a) shares and stock;
- (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness;
- (c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b); and
- (d) certificates or other instruments which confer—
 - (i) property rights in respect of a security falling within paragraph (a), (b) or (c);
 - (ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates; or
 - (iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.”.

Subsidiary undertakings included in consolidation.

8. In regulation 6 (Subsidiary undertakings included in the consolidation)—
- (a) in sub-regulation (1)—
 - (i) at the beginning, for “Subject” substitute “In the case of Banking Regulations group accounts, subject”;
 - (ii) omit “or required”;
 - (b) in each of sub-regulations (2) and (3), after “consolidation” insert “in Banking Regulations group accounts”;
 - (c) in sub-regulation (3)(c), omit from “and the undertaking” to the end;
 - (d) for sub-regulation (5) substitute—

“ (5) A parent company is exempt from the requirement to prepare group accounts if under sub-regulation (2) or (3) all of its subsidiary undertakings could be excluded from consolidation in Banking Regulations group accounts.”;

(e) omit sub-regulation (6).

Amendment of regulation 8.

9. In regulation 8(5)(b), omit “or (5)”.

Insertion of regulation 8A.

10. After regulation 8 insert–

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

8A.(1) The following information with respect to the employees of the company must be given in 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 sub-regulation (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 sub-regulation (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 sub-regulation (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 for the purposes of sub-regulation (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 sub-regulation (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) This regulation applies in relation to group accounts as if the undertakings included in the consolidation were a single company."

Accounts of subsidiary undertakings to be appended in certain cases.

11. Omit regulation 9.

Directors' reports.

12. For regulation 11 substitute—

“Duty to prepare directors' reports.

11.(1) The directors of a company shall for each financial year prepare a report (a “directors' report”) complying with the general requirements of regulation 11ZZA and containing the business review specified in regulation 11ZZB.

(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

regulations 11ZZA and 11ZZB, 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 regulations 11ZZA and 11ZZB 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.

11ZZA.(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;
- (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 sub-regulation (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 sub-regulation (5).

(5) Where sub-regulation (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.

Directors' report: business reviews.

11ZZB.(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
- (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 regulation, "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 regulation has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.”

Amendment of regulation 12.

13. In regulation 12–

- (a) in sub-regulations (1) and (2), for “121” substitute “177”;
- (b) in sub-regulation (3), after “these Regulations” insert “or, where applicable, of Article 4 of the IAS Regulation”;
- (c) in sub-regulation (4), omit “in accordance with Schedule 1”.

Content of auditors report.

14.(1) In regulation 13(1), omit, “Subject to sub-regulation (2),”.

(2) For regulation 13(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.”.

(3) After regulation 13(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 these Regulations (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–
 - (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.”.

Amendment of regulation 14.

15. In regulations 14(2), 14(3) and 14(4), after “these Regulations”, insert “(or, where applicable, of Article 4 of the IAS Regulation)”.

Amendment of regulation 17.

16. In regulation 17(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 regulation 13(2).”.

Branch Accounts.

17.(1) After regulation 17, insert–

“Branch accounts.

17A.(1) This regulation shall apply to all recognised institutions under the Ordinance and those licensees exempted by the Commissioner from producing accounts under regulation 1(3).

(2) Branches of credit institutions and financial institutions having their head offices in an EEA State shall publish, in accordance with Article 44 of Directive 86/635/EEC the documents referred to therein (annual accounts, consolidated accounts, annual report, consolidated report, opinions of the person responsible for auditing the annual accounts and consolidated accounts).

(3) The documents referred to in sub-regulation (2) shall be drawn up and audited in the manner required by the law of the State in which the credit institution or financial institution has its head office in accordance with Directive 86/635/EEC.

(4) Branches of credit institutions and financial institutions having their head office in an EEA State shall not be required to publish annual accounts relating to their own activities.

(5) Branches of credit institutions and financial institutions having their head offices other than in an EEA State shall publish the documents specified in sub-regulation (2), drawn up and audited in the manner required by the law of the State of the head office, in accordance with the provisions set out therein.

(6) Where the documents referred to in sub-regulation (5) are in conformity with, or equivalent to, documents drawn up in accordance with Directive 86/635/EEC and the condition of reciprocity for EEA credit institutions and financial institutions is fulfilled in the state in which the

head office is situated, branches of credit institutions and financial institutions having their head office in that state shall not be required to publish annual accounts relating to their own activities.

(7) In cases other than those referred to in sub-regulation (6), branches shall publish annual accounts relating to their own activities in accordance with the provisions, in so far as is practicable, these Regulations.

(8) The documents provided for in this Regulation shall be available to the general public in the English language and the cost of providing such copies shall not exceed the administrative cost of producing that copy.”.

(2) The Banking Ordinance (Branch Accounts) Regulations 1995 are revoked.

Amendment of Schedule 1.

18. In Schedule 1, after the main heading “SCHEDULE 1” in the subheading, for “3” substitute “3A”.

General Rules.

19. In Schedule 1, Chapter I, after paragraph 7 insert–

“7A. 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.”

Accounting principles.

20. In Schedule 1, Chapter I, in paragraph 10(4)(b) (extent to which liabilities and losses to be taken into account)–

- (a) omit “and losses” and “or are likely to arise”;
- (b) for “121” substitute “177”.

Fair Value Accounting.

21.(1) In Schedule 1, Chapter I, after paragraph 32, insert–

“Other assets that may be included at fair value.

32A.(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 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 33—

- (a) in subparagraph (1), after “32” insert “or an asset is valued in accordance with paragraph 32A”; and
- (b) in subparagraph (2), after “financial instrument” insert “or of the investment property or living animal or plant”.

Amendment of Balance Sheet Format.

22. In Schedule 1, Chapter II, in the Balance Sheet Format, under the heading “Liabilities”, for “Provisions for liabilities and charges” substitute “Provisions for liabilities”.

Reserves and provisions.

23. In Schedule 1, Chapter III, paragraph 11(1)(b) and (c) (transfers to or from provisions), for “provisions for liabilities and charges” substitute “provisions for liabilities”.

Particulars of staff.

24. In Schedule I, Chapter III, omit paragraph 27.

Fair Value Accounting – Notes to the Accounts.

25. In Schedule 1, Chapter III, after paragraph 34, insert–

“34A.(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 32A of Chapter I of Part IV of this Schedule.

(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.

(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.”.

Amendment of Schedule 2.

26.(1) In Schedule 2, after the main heading “SCHEDULE 2” in the subheading, for “4” substitute “4A”.

(2) Omit paragraph 16.

Dated the 27th day of October, 2005.

By Command,
P. R. BARTON,
Deputy Governor.

EXPLANATORY MEMORANDUM

These Regulations amend the Banking (Accounts Directive) Regulations 1997 on accounts and audit 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.

These Regulations implement the Member State option in article 5 of the IAS Regulation by permitting (subject to certain conditions) companies to prepare their individual accounts using adopted international accounting standards.

- Implement Directive 2003/51/EEC 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.
- Include in the Banking (Accounts Directive) Regulations 1997 the requirements of Council Directive 89/117/EEC of 13 February 1989 on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents.