

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3757 of 15 January, 2010

LEGAL NOTICE NO. 10 OF 2010.

FINANCIAL SERVICES (BANKING) ACT

**BANKING (ACCOUNTS DIRECTIVE) (AMENDMENT)
REGULATIONS 2010**

In exercise of the powers conferred on me by section 79 of the Financial Services (Banking) Act, and in order to transpose into the law of Gibraltar Article 3 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, and matters connected thereto, I have made the following Regulations—

Title and commencement.

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

Amendments to the Banking (Accounts Directive) Regulations 1997.

2.(1) The Banking (Accounts Directive) Regulations 1997 are amended in accordance with the provisions of this regulation.

(2) The following is inserted after regulation 11ZZA—

“Director’s report: corporate governance requirements.

11ZZAA.(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 sub-regulation (1)(a) and (b) apply, the company shall also indicate where the relevant texts are publicly available and where sub-regulation (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 sub-regulation (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 sub-regulation (1)(a) or (b), it shall explain its reasons for doing so.
- (4) The statement referred to in sub-regulation (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 regulation 12 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 sub-regulation (4)(b) is made available.
 - (6) Companies to which Schedule 1 paragraph 1(1) of the Companies (Accounts) Act 1999 applies may choose not to apply the provisions of sub-regulation (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 regulation.
 - (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 sub-regulations (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.”.
- (3) Regulation 11 is amended as follows–
- (a) sub-regulation (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 regulation 11ZZA containing the business review specified in regulation 11ZZB and, when provided separately, the

corporate governance statement specified in regulation 11ZZAA.”;

- (b) in sub-regulation (2) after the reference to “11ZZB,” there shall be inserted “and, when provided separately, regulation 11ZZAA,”;
- (c) in sub-regulation (4) the reference to “regulations 11ZZA and 11ZZB” shall be replaced by a reference to “regulations 11ZZA, 11ZZB and, when provided separately, regulation 11ZZAA”.

(4) The following is inserted after regulation 11A–

“Director’s duties.

“11B. 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 regulation 11ZZAA are drawn up and filed with the Registrar or made available to the public in accordance with the requirements of these Regulations, and, where applicable, in accordance with the international accounting standards adopted in accordance with the IAS Regulation.”.

Dated 15th January, 2010.

P R CARUANA QC,
Chief Minister.

EXPLANATORY MEMORANDUM

These Regulations amend the Banking (Accounts Directive) Regulations 1997 in order to transpose Article 3 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) GAAP¹ 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.

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

