

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4185 of 16 July, 2015

LEGAL NOTICE NO. 117 OF 2015.

FINANCIAL SERVICES (BANKING) ACT

**BANKING (ACCOUNTS DIRECTIVE)(AMENDMENT)
REGULATIONS 2015**

In exercise of the powers conferred upon him by section 79 of the Financial Services (Banking) Act, 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-

Short title.

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

Amendment of Regulations 2 to 16.

3.(1) Regulations 2 to 16 of The Banking (Accounts Directive) Regulations 1997 are amended in accordance with the provisions of this regulation.

(2) In regulation 2(1)-

(a) after the definition of “company”, insert the following definition-

““Directive 2013/34/EU” means 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, as amended from time to time;”;

- (c) after the definition of “financial fixed assets”, insert the following definition-

““fixed assets” means assets of a company which are intended for use on a continuing basis in the company’s activities, and “current assets” means assets not intended for such use;”;

- (d) in the definition of “parent company” for “means a parent undertaking which is a company”, substitute “shall be construed in accordance with section 276 of the Companies Act 2014”;

- (e) for the definition of “parent undertaking”, substitute-

““parent undertaking” shall be construed in accordance with section 276 of the Companies Act 2014;”;

- (f) in the definition of “subsidiary undertaking”, for “shall be construed in accordance with the definition of “parent undertaking”, substitute “shall be construed in accordance with section 276 of the Companies Act 2014”; and

- (g) after “Words and phrases defined in the Financial Services (Banking) Act 1992”, insert “or Part VII of the Companies Act 2014”.

- (3) In regulation 2(7)–

- (a) in paragraph (b), after “description;”, delete “and”;

- (b) in paragraph (c), for “.”, substitute “;” and

(c) after paragraph (c), insert–

“(d) at the balance sheet date, a provision must represent the best estimate of the expenses likely to be incurred or, in the case of a liability, of the amount required to meet that liability; and

(e) provisions must not be used to adjust the value of assets.”.

(4) In regulation 3A(1)–

(a) in paragraph (a), delete “and”;

(b) in paragraph (b), for “.”, substitute “; and”;

(c) after paragraph (b), insert–

“(c) notes to the accounts;

and these documents together shall constitute a composite whole.”.

(5) In regulation 3A(2) insert “and the notes to the accounts” after “The balance sheet”.

(6) After regulation 3A(2), insert–

“(2A) Banking Regulations accounts must state the information prescribed under section 243(1A) of the Companies Act 2014.”.

(7) In regulation 3A(3), after “Banking Regulations accounts must” insert “be drawn up clearly and”.

(8) In regulation 4A–

(a) in subregulation (1)–

(i) in paragraph (a), delete “and”,

(ii) in paragraph (b), for “.”, substitute “; and”,

(iii) after paragraph (b), insert–

- “(c) notes to the group accounts;
and these documents together shall constitute a composite whole.”;
- (b) after subregulation (2), insert–
- “(2A) Banking Regulations group accounts must state the information prescribed under section 243(1A) of the Companies Act 2014.”;
- (c) in subregulation (3), after “Banking Regulations group accounts must” insert “be drawn up clearly and”;
- (d) in subregulation (7), for “171, 178 and 182 of the Companies Act” substitute “240, 242 and 257 of the Companies Act 2014”; and
- (e) in subregulation (8), for “177 of the Companies Act”, substitute “241 of the Companies Act 2014”.
- (9) In regulation 5(1)–
- (a) after paragraph (a), insert–
- “(aa) where that parent undertaking holds 90 per cent or more of the shares in the company and the remaining shareholders have approved the exemption;”;
- (b) for paragraph (b), substitute–
- “(b) where that parent undertaking holds more than 50 per cent (but less than 90 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 total at least 5 per cent of the total shares in the company.”; and
- (c) for the proviso, substitute–
- “That notice shall be served at least 6 months before the end of the financial year to which it relates.”.

(10) In regulation 5(2)–

- (a) in paragraph (a), before “included in consolidated accounts”, for “is”, substitute “and all of its subsidiary undertakings are”;
- (b) in paragraph (b), for “the Seventh Company Law Directive (83/349/EEC) where applicable as modified by the Bank Accounts Directive (86/635/EEC)”, substitute “Directive 2013/34/EU”;
- (c) in paragraph (c), insert “the notes to” after “discloses in”; and
- (d) in paragraph (d)–
 - (i) insert “the notes to” after “that the company states in”; and
 - (ii) in subparagraph (i), for “the country in which it has its registered office, if that is outside Gibraltar”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

(11) In regulation 5(3), for “of any EEA State within the meaning of Council Directive 93/22/EEC on investment services in the securities field”, substitute “as defined in the Financial Services (Markets in Financial Instruments) Act 2006 where that regulated market is in Gibraltar or an EEA State”.

(12) In regulation 5(5), after “sub-regulation (1)”, insert “(aa) and”.

(13) In regulation 5A(1)–

- (a) in the frontispiece, before “an EEA State”, insert “Gibraltar or”;
- (b) after paragraph (a), insert–
 - “(aa) where that parent undertaking holds 90 per cent or more of the shares in the company and the remaining shareholders have approved the exemption;”;
- (c) for paragraph (b), substitute–

“(b) where that parent undertaking holds more than 50 per cent (but less than 90 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 at least 5 per cent of the total shares in the company.”; and

(d) for the proviso, substitute–

“Such notice must be served at least six months before the end of the financial year to which it relates.”.

(14) In regulation 5A(2)–

(a) in paragraph (b), for “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;” substitute–

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(i) in accordance with the provisions of Directive 2013/34/EU;

(ii) in accordance with international accounting standards;

(iii) in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up; or

(iv) in a manner equivalent to international accounting standards as determined in accordance with Commission Regulation (EC) No 1569/2007 of 21 December establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council;” and

- (b) in paragraph (e)(i), for “if it is incorporated outside Gibraltar, the country in which it is incorporated”, substitute “the address of the undertaking’s registered office”.

(15) In regulation 5A(3), for “of any EEA State within the meaning of Council Directive 93/22/EEC on investment services in the securities field”, substitute “as defined in the Financial Services (Markets in Financial Instruments) Act 2006 where that regulated market is in Gibraltar or an EEA State”.

(16) In regulation 5A(5), insert “(aa) and” after “sub-regulation (1)”.

(17) In regulation 6(3)(b), insert “extremely rare circumstances mean that” before “the information necessary”.

(18) Delete subregulations (5), (6) and (7) of regulation 8.

(19) In regulation 11A(2), for “Council Directive 78/660/EEC on the annual accounts of certain types of companies, and in Council Directive 83/349/EEC on consolidated accounts, as amended”, substitute “Directive 2013/34/EU”.

(20) In regulation 11B, insert “, the group directors’ report” after “the directors’ report”.

(21) In regulation 12–

- (a) in subregulations (1) and (2), for “section 177(1) of the Companies Act”, substitute “section 241 of the Companies Act 2014”;

- (b) in subregulation (4), insert “and the directors’ report or group directors’ report” after “a copy of the annual accounts”; and

- (c) in subregulation (6)(b)–

- (i) delete “free of charge”; and

- (ii) insert “at a price not exceeding its administrative cost” after “upon request”.

(22) In regulation 13(1), insert–

- (a) “and directors’ report or group directors’ report” after “the annual accounts”; and
 - (b) “full” before “copy of the report”.
- (23) After regulation 13(1), insert–
- “(1A) The annual accounts and directors’ report delivered under sub-regulation (1) must be delivered in the same layout and with the same text as that used by the person responsible for auditing the accounts when drawing up his opinion.”.
- (24) For regulation 13(3), (4) and (5) substitute–
- “(3) In addition to the information required by section 257 of the Companies Act 2014, the auditors’ report must comply with the requirements of section 258 of the Companies Act 2014.”.
- (25) In regulation 15–
- (a) in subregulation (1)–
 - (i) in the frontispiece, for “6 and 7”, substitute “12 and 13”, and
 - (ii) in paragraph (a), for “13” substitute “12”; and
 - (b) for subregulation (2), substitute–
 - “(2) If the relevant financial year is the company’s first, the period allowed is 12 months after the end of the financial year.”.
- (26) In regulation 16–
- (a) in the title, for “ECUs”, substitute “euros”;
 - (b) in subregulations (1) and (2), for “ECUs”, substitute “euros”; and
 - (c) delete subregulation (6).

Amendment to Chapter I of Schedule 1.

4.(1) Chapter I of Schedule 1 to The Banking (Accounts Directive) Regulations 1997 is amended in accordance with the provisions of this regulation.

(2) In paragraph 10–

- (a) in subparagraph (3), insert “and measurement bases” after “Accounting policies”;
- (b) in subparagraph (4)(a), delete “and” after “profit and loss account”;
- (c) in subparagraph (4)(b), for “section 177 of the Companies Act.”, substitute “section 241 of the Companies Act 2014, and”;
- (d) after subparagraph (4)(b), insert–
 - “(c) all provisions for diminution of value must be recognised, whether the result of the financial year is a profit or loss.”; and
- (e) after subparagraph (6), insert–
 - “(7) The opening balance sheet for each financial year shall correspond to the closing balance sheet for the preceding financial year.”.

(3) In paragraph 13(3) and (4), for “any such provisions which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts”, substitute “provisions made under this paragraph must be charged to the profit and loss account and disclosed separately in a note to the accounts if they have not been shown separately in the profit and loss account”.

(4) In paragraph 13(5), for “which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts”, substitute “must be recognised in the profit and loss account and disclosed separately in a note to the accounts if not shown separately in the profit and loss account”.

(5) After paragraph 13(5), insert–

“(6) Subparagraph (5) shall not apply to value adjustments made in respect of goodwill.”.

(6) After paragraph 13, insert–

“Development costs.

13A.(1) Where this is in accordance with generally accepted accounting principles or practice, development costs may be included under assets item 9 in the balance sheet format.

(2) If any amount is included in a company’s balance sheet in respect of development costs, the note on accounting policies must include the following information–

- (a) the period over which the amount of those costs originally capitalised is being or is to be written off; and
- (b) the reasons for capitalising the development costs in question.

Intangible assets.

13B.(1) Intangible assets must be written off over the useful economic life of the intangible asset.

(2) Where in exceptional cases the useful life of intangible assets cannot be reliably estimated, such assets must be written off over a period chosen by the directors of the company.

(3) The period referred to in subparagraph (2) must not exceed 10 years.

(4) There must be disclosed in a note to the accounts the period referred to in subparagraph (2) and the reasons for choosing that period.

(5) In this paragraph, intangible assets include goodwill.”.

- (7) Delete paragraphs 14 and 15.
- (8) In paragraph 21, insert “and then subtracting any incidental reductions in the cost of acquisition”.
- (9) In paragraph 22(2)(d), for “mentioned in paragraphs (a) to (c)”, substitute “reflecting generally accepted best practice”.
- (10) Delete paragraph 25(4).
- (11) In paragraph 27–
- (a) in subparagraph (2), for “a note to the accounts”, substitute “the note on accounting policies”; and
 - (b) for subparagraph (3), substitute–
 - “(3) In the case of each balance sheet item affected, the comparable amounts determined according to the historical cost accounting rules must be shown in a note to the accounts.”.
- (12) In paragraph 28(2), delete “, but need not be shown under that name”.
- (13) After paragraph 30(3), insert–
 - “(3A) Financial instruments which under international accounting standards may be included in accounts at fair value, may be so included, provided that the disclosures required by such accounting standards are made.”.
- (14) In paragraph 32A–
- (a) in subparagraph (1)(b), for “,”, substitute “.”;
 - (b) in subparagraph (1), delete “that, under international accounting standards, may be included in accounts at fair value.”; and
 - (c) in subparagraph (3), for “relevant international accounting standards”, substitute “generally accepted accounting principles or practice”.

(15) In paragraph 35(3), for “Council Directive 78/660/EEC on the annual accounts of certain types of companies and 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions, as amended”, substitute “Directive 2013/34/EU”.

Amendment to Chapter III of Schedule 1.

5.(1) Chapter III of Schedule 1 to The Banking (Accounts Directive) Regulations 1997 is amended in accordance with the provisions of this regulation.

(2) In paragraph 1–

(a) in subparagraph (1), delete “, unless otherwise provided”; and

(b) after subparagraph (1), insert–

“(1A) These notes must be presented in the order in which, where relevant, the items to which they relate are presented in the balance sheet and in the profit and loss account.”.

(3) In paragraph 11(1), insert “in tabular form” after “in the same item”.

(4) For paragraph 18, substitute–

“18.(1) Particulars and the total amount of any financial commitments, guarantees and contingencies that are not included in the balance sheet must be disclosed.

(2) An indication of the nature and form of any valuable security given by the company in respect of commitments, guarantees and contingencies within subparagraph (1) must be given.

(3) The total amount of any commitments within subparagraph (1) concerning pensions must be separately disclosed.

(4) Particulars must be given of pension commitments which are included in the balance sheet.

(5) Where any commitment within subparagraph (3) or (4) relates wholly or partly to pensions payable to past directors of the

company separate particulars must be given of that commitment.

- (6) The total amount of any commitments, guarantees and contingencies within subparagraph (1) which are undertaken on behalf of or for the benefit of—
- (a) any parent undertaking or fellow subsidiary undertaking of the company,
 - (b) any subsidiary undertaking of the company, or
 - (c) any undertaking in which the company has a participating interest ,

must be separately stated and those within each of paragraphs (a), (b) and (c) must also be stated separately from those within any other of those paragraphs.

- (7) There must be disclosed the nature and amount of any contingent liabilities and commitments included in Memorandum items 1 and 2 which are material in relation to the company's activities.”.

- (5) For paragraph 31(2), substitute—

“(2) The amount, nature and effect of any individual items of income or expenditure which are of exceptional size or incidence must be stated.”.

- (6) In paragraph 32—

- (a) in subparagraph (1), for “30 or 32”, substitute “30, 32 or 32A”; and
- (b) for subparagraphs (2) and (3), substitute—

“(2) There must be stated—

- (a) the significant assumptions underlying the valuation models and techniques used to determine the fair value of the financial instruments or other assets;

- (b) for each category of financial instrument or other asset, the fair value of the assets in that category and the changes in value—
 - (i) included in the profit and loss account; or
 - (ii) credited to or (as the case may be) debited from the fair value reserve, in respect of those assets; and
- (c) for each class of derivatives, the extent and nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows.
- (3) Where any amount is transferred to or from the fair value reserve during the financial year, there must be stated in tabular form—
 - (a) the amount of the reserve as at the date of the beginning of the financial year and as at the balance sheet date respectively;
 - (b) the amount transferred to or from the reserve during the year; and
 - (c) the source and application respectively of the amounts so transferred.”.

(7) After paragraph 34A, insert—

“Appropriations.

34B. Particulars must be given of the proposed appropriation of profit or treatment of loss or, where applicable, particulars of the actual appropriation of the profits or treatment of the losses.

Post balance sheet events.

34C. The nature and financial effect of material events arising after the balance sheet date which are not reflected in the profit and loss account or balance sheet must be stated.”.

(8) In paragraph 36–

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

(b) in the proviso delete–

“(a) companies referred to in paragraph 2 of this Schedule 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”.

(9) After paragraph 36, insert–

“Fees.

36A. The total fees for the financial year charged by each statutory auditor or audit firm for the statutory audit of the annual accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services shall be stated.”.

Amendment to Schedule 2.

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

(2) After paragraph 2(1), insert–

“(1A) Group accounts must be drawn up as at the same date as the accounts of the parent company.”.

(3) After paragraph 9(5), insert–

“(6) Negative goodwill may be transferred to the consolidated profit and loss account where such a treatment is in accordance with the principles and rules of Part II of Chapter I of Schedule 1.”.

(4) In paragraph 15–

(a) in the paragraph heading, for “Minority interests”, substitute “Non-controlling interests”;

(b) in subparagraphs (2), (3) and (4), for ““minority interests””, substitute ““Non-controlling interests””; and

(c) in subparagraph (3), for “extraordinary”, substitute “ordinary”.

(5) After paragraph 17(2), insert–

“(3) In addition to the disclosure of the average number of employees employed during the financial year, there must be a separate disclosure in the notes to the accounts of the average number of employees employed by undertakings that are proportionately consolidated.”.

(6) After paragraph 20, insert–

“Related party transactions.

20A. Paragraph 36(b) of Chapter III of Schedule 1 applies to transactions which the parent company, or other undertakings included in the consolidation, have entered into with related parties, unless they are intra-group transactions.”.

(7) After paragraph 22, insert–

“Deferred tax balances.

23. Deferred tax balances must be recognised on consolidation where it is probable that a charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.”.

Amendment to Schedule 3.

7.(1) Schedule 3 to The Banking (Accounts Directive) Regulations 1997 is amended in accordance with the provisions of this regulation.

(2) In paragraph 1(b)(i), for “if it has its registered office outside the United Kingdom or Gibraltar, the country in which it has its registered office”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

(3) In paragraph 7(1)(b), for “if the undertaking has its registered office outside Gibraltar, the country in which it has its registered office”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

(4) After paragraph 8, insert—

“Membership of certain undertakings.

8A.(1) The information required by this paragraph shall be given where at the end of the financial year the company is a member of an undertaking having unlimited liability.

(2) There shall be stated—

- (a) the name and legal form of the undertaking; and
- (b) the address of the undertaking’s registered office (whether in or outside Gibraltar) or, if it does not have such an office, its head office (whether in or outside Gibraltar).

(3) Information otherwise required by subparagraph (2) need not be given if it is not material.”.

(5) In paragraph 9(2)(b), for “if the undertaking has its registered office outside Gibraltar, the country in which it has its registered office”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

(6) In paragraph 13(1)(b), for “the country in which it has its registered office, if that is outside Gibraltar”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

(7) In paragraph 17(1)(b), for “the address of the principal place of business of the undertaking”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

(8) In paragraph 18(1)(b), for “the country in which it has its registered office, if that is outside Gibraltar”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

(9) In paragraph 20(1)(b), for “the country in which the undertaking has its registered office, if that is outside Gibraltar”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

(10) In paragraph 23(1)(b), for “the country in which the undertaking has its registered office, if that is outside Gibraltar”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

(11) After paragraph 24, insert—

“Membership of certain undertakings.

24A.(1) The information required by this paragraph shall be given where at the end of the financial year the company is a member of an undertaking having unlimited liability.

(2) There shall be stated—

- (a) the name and legal form of the undertaking; and
- (b) the address of the undertaking’s registered office (whether in or outside Gibraltar) or, if it does not have such an office, its head office (whether in or outside Gibraltar).

(3) Information otherwise required by subparagraph (2) need not be given if it is not material.”.

(12) In paragraph 25(2)(b), for “the country in which it has its registered office, if that is outside Gibraltar”, substitute “the address of the undertaking’s registered office (whether in or outside Gibraltar)”.

Dated 16th July, 2015,

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Regulations 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.