SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3498 of 27 October, 2005

LEGAL NOTICE NO. 142 OF 2005.

COMPANIES ORDINANCE

INSURANCE COMPANIES (ACCOUNTS DIRECTIVE) (AMENDMENT) REGULATIONS 2005

In exercise of the powers conferred on him by section 315 of the Companies 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 Insurance Companies (Accounts Directive) (Amendment) Regulations 2005.

(2) These Regulations have effect as respects insurance 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 Insurance Companies (Accounts Directive) Regulations.

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

Amendment of regulation 1.

3. In regulation 1, after "date" insert–

“; but the amendments made by the Insurance Companies (Accounts Directive) (Amendment) Regulations 2005 apply to the accounts of a company 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.”

Interpretation.

4.(1) In regulation 2(1) (Interpretation)–

(a) 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;”;

(b) in the definition of “fellow subsidiary undertakings” for “2(2) of the Ordinance” substitute “3(4) of the Companies (Consolidated Accounts) Ordinance, 1999”;

(c) in the definition of “group undertaking” for “2(2) of the Ordinance” substitute “3(5) of the Companies (Consolidated Accounts) Ordinance, 1999”;

(d) in the definition of “parent company” for “2(34(c) of the Ordinance” substitute “2 of the Companies (Consolidated Accounts) Ordinance, 1999”;

(e) in the definition of “parent undertaking”, for “2(32) of the Ordinance” substitute “2 of the Companies (Consolidated Accounts) Ordinance, 1999”;

(f) in the definition of “participating interest”, for “2(37) of the Ordinance” substitute “4 of the Companies (Consolidated Accounts) Ordinance, 1999”;

(g) in the definition of “subsidiary undertaking”, for “2(32) of the Ordinance” substitute “2 of the Companies (Consolidated Accounts) Ordinance, 1999”; and

(h) in the definition of “undertaking”, for “2(2) of the Ordinance” substitute “3 of the Companies (Consolidated Accounts) Ordinance, 1999”.

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

(3) After regulation 2(10), insert–

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

(a) in the case of Insurance 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.

(12) 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.

(13) 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 must 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 ("Insurance 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 Insurance 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.

Insurance Regulations accounts.

3A.(1) Insurance 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) Insurance 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 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 of an insurance group 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 ("Insurance 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 Insurance 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).

Insurance Regulations group accounts.

4A.(1) Insurance 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) Insurance 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 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 Insurance Accounts Directive (91/674/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 Insurance Regulations group accounts, subject”;

(ii) omit “or required”;

(b) in each of sub-regulations (2) and (3), after “consolidation” insert “in Insurance Regulations group accounts”;

(c) in sub-regulation (3)(c), omit from “and the undertaking” to the end;

(d) omit sub-regulation (4);

(e) 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 Insurance Regulations group accounts.”.

Amendment of regulation 8.

9. In regulation 8(5)(b), omit “or (4)”.

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 must for each financial year prepare a report (a “directors’ report”) complying with the general requirements of regulation 11A and containing the business review specified in regulation 11B.

(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 regulations 11A and 11B, 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 regulations 11A and 11B 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.

11A.(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.

11B.(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.”.

Disclosures in relation to financial instruments.

13.(1) After regulation 11B, insert–

“Financial instruments.

11C.(1) In relation to the use of financial instruments by a company and by its subsidiary undertakings, the directors’ report must contain an indication of–

(a) the financial risk management objectives and policies of the company and its subsidiary undertakings included in the consolidation, including the policy for hedging each major type of forecasted transaction for which hedge accounting is used; and

(b) the exposure of the company and its subsidiary undertakings included in the consolidation to price risk, credit risk, liquidity risk and cash flow risk,

unless such information is not material for the assessment of the assets, liabilities, financial position and profit or loss of the company and its subsidiary undertakings included in the consolidation.

(2) In sub-regulation (1) the expressions "hedge accounting", "price risk", "credit risk", "liquidity risk" and "cash flow risk" have the same meaning as they have in 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.".

Amendment of regulation 12.

14. 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.

15.(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.

16. 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 15.

17. In regulation 15(1), for “6 and 7” substitute “12 and 13”.

Amendment of regulation 17.

18. 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).”.

Amendment of Schedule 1.

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

General Rules.

20. In Schedule 1, Chapter I, Section A, after paragraph 6 insert–

“6A. 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.”

Amendment to Balance Sheet Format.

21. In Schedule 1, Chapter I, Section B in the Balance Sheet Format, under the heading “LIABILITIES”, for “Provisions for other risks and charges” substitute “Provisions for other risks”.

Accounting Principles.

22. In Schedule 1, Chapter II, Section A, in paragraph 16(b) (extent to which liabilities and losses to be taken into account) omit “and losses” and “or are likely to arise”.

Valuation.

23.(1) In Schedule 1, Chapter II, Section A after paragraph 19, insert–

“19A.(1) The amounts to be included in respect of assets of any description mentioned in paragraph 21 (valuation of assets: general) are determined either–

(a) in accordance with that paragraph and paragraph 23 (but subject to paragraphs 26 to 28); or

(b) so far as applicable to an asset of that description, in accordance with Section BA (valuation at fair value).

(2) The amounts to be included in respect of assets of any description mentioned in paragraph 23 (alternative valuation of fixed income securities) may be determined–

(a) in accordance with that paragraph (but subject to paragraphs 26 to 28); or

(b) so far as applicable to an asset of that description, in accordance with Section BA.

(3) The amounts to be included in respect of assets which–

(a) are not assets of a description mentioned in paragraph 21 or 22; but

(b) are assets of a description to which Section BA is applicable,

may be determined in accordance with that Section.

(4) Subject to sub-paragraphs (1) to (3), the amounts to be included in respect of all items shown in a company's accounts are determined in accordance with Section C."

(2) In Schedule 1, Chapter II, Section B, omit paragraph 20 (preliminary paragraph on current value accounting rules).

Fair Value Accounting.

24.(1) In Schedule 1, Chapter 1, after section B insert–

"SECTION BA - FAIR VALUE ACCOUNTING

Inclusion of financial instruments at fair value.

28A.(1) Subject to sub-paragraphs (2) to (4), financial instruments (including derivatives) may be included at fair value.

(2) Sub-paragraph (1) does not apply to financial instruments which constitute liabilities unless–

(a) they are held as part of a trading portfolio; or

(b) they are derivatives.

(3) Except where they fall to be included under Assets item D (assets held to cover linked liabilities), sub-paragraph (1) does not apply to–

(a) financial instruments (other than derivatives) held to maturity;

(b) loans and receivables originated by the company and not held for trading purposes;

(c) interests in subsidiary undertakings, associated undertakings and joint ventures;

(d) equity instruments issued by the company;

(e) contracts for contingent consideration in a business combination;

(f) other financial instruments with such special characteristics that the instruments, according to generally accepted accounting principles or practice, should be accounted for differently from other financial instruments.

(4) If the fair value of a financial instrument cannot be determined reliably in accordance with paragraph 28B, sub-paragraph (1) does not apply to that financial instrument.

(5) In this paragraph–

"associated undertaking" has the meaning given by paragraph 18 of Schedule 2;

"joint venture" has the meaning given by paragraph 17 of Schedule 2.

Determination of fair value.

28B.(1) The fair value of a financial instrument is determined in accordance with this paragraph.

(2) If a reliable market can readily be identified for the financial instrument, its fair value is determined by reference to its market value.

(3) If a reliable market cannot readily be identified for the financial instrument but can be identified for its components or for a similar instrument, its fair value is determined by reference to the market value of its components or of the similar instrument.

(4) If neither sub-paragraph (2) nor (3) applies, the fair value of the financial instrument is a value resulting from generally accepted valuation models and techniques.

(5) Any valuation models and techniques used for the purposes of sub-paragraph (4) must ensure a reasonable approximation of the market value.

Inclusion of hedged items at fair value.

28C. A company may include any assets and liabilities that qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, at the amount required under that system.

Other assets that may be included at fair value.

28D.(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.

Accounting for changes in value.

28E.(1) This paragraph applies where a financial instrument is valued in accordance with paragraph 28A or 28C or an asset is valued in accordance with paragraph 28D.

(2) Notwithstanding paragraph 16 of Chapter II of Schedule 1 (Accounting principles), and subject to sub-paragraphs (3) and (4) below, a change in the value of the financial instrument or of the investment property or living animal or plant must be included in the profit and loss account.

(3) Where–

(a) the financial instrument accounted for is a hedging instrument under a hedge accounting system that allows some or all of the change in value not to be shown in the profit and loss account; or

(b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity, the amount of the change in value must be credited to or (as the case may be) debited from a separate reserve (the “fair value reserve”).

(4) Where the instrument accounted for–

(a) is an available for sale financial asset; and

(b) is not a derivative,

the change in value may be credited to or (as the case may be) debited from the fair value reserve.

The fair value reserve.

28F.(1) The fair value reserve must be adjusted to the extent that the amounts shown in it are no longer necessary for the purposes of paragraph 28E(3) or (4).

(2) The treatment for taxation purposes of amounts credited or debited to the fair value reserve must be disclosed in a note to the accounts.

Interpretation of paragraphs 28A to 28F.

28G.(1) This paragraph applies for the purposes of the interpretation of paragraphs 28A to 28F of this Schedule.

(2) References to “derivatives” include commodity-based contracts that give either contracting party the right to settle in cash or in some other financial instrument, except when such contracts–

(a) were entered into for the purpose of, and continue to meet, the company’s expected purchase, sale or usage requirements;

(b) were designated for such purpose at their inception; and

(c) are expected to be settled by delivery of the commodity.

(3) The expressions listed in sub-paragraph (4) have the same meaning as they have in 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.

(4) Those expressions are “available for sale financial asset”, “business combination”, “commodity-based contracts”, “derivative”, “equity instrument”, “exchange difference”, “fair value hedge accounting system”, “financial fixed asset”, “financial instrument”, “foreign entity”, “hedge accounting”, “hedge accounting system”, “hedged items”, “hedging instrument”, “held for trading purposes”, “held to maturity”, “monetary item”, “receivables”, “reliable market” and “trading portfolio”.”.

(2) In Schedule, 1 Chapter II, Section C, omit paragraph 29 (preliminary paragraph on historical cost accounting rules).

(3) In Schedule 1, Chapter III (Notes to the Accounts), after paragraph 72 insert–

“Information about fair value of assets and liabilities.

73.(1) This paragraph applies where financial instruments have been valued in accordance with paragraphs 28A or 28C of this Schedule.

(2) The items affected and the basis of valuation adopted in determining the amounts of the financial instruments must be disclosed.

(3) The purchase price of the financial instruments must be disclosed.

(4) There must be stated–

(a) where the fair value of the instruments has been determined in accordance with paragraph 28B(4) of this Schedule, the significant assumptions underlying the valuation models and techniques used;

(b) for each category of financial instrument, the fair value of the instruments 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 instruments; 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.

(5) 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 that year; and

(c) the source and application respectively of the amounts so transferred.

74. Where the company has derivatives that it has not included at fair value, there must be stated for each class of such derivatives–

(a) the fair value of the derivatives in that class, if such a value can be determined in accordance with paragraph 28B of this Schedule; and

(b) the extent and nature of the derivatives.

75.(1) Sub-paragraph (2) applies if–

(a) the company has financial fixed assets that could be included at fair value by virtue of paragraph 28A of this Schedule;

(b) the amount at which those assets are included under any item in the company's accounts is in excess of their fair value; and

(c) the company has not made provision for diminution in value of those assets in accordance with paragraph 32(2) of this Schedule.

(2) There must be stated–

(a) the amount at which either the individual assets or appropriate groupings of those individual assets are included in the company's accounts;

(b) the fair value of those assets or groupings; and

(c) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the amount at which they are stated in the accounts will be recovered.

76.(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 28D 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 sub-paragraph (3), references in relation to any item to the comparable amounts determined in accordance with that sub-paragraph 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.

77. Where used in this Chapter, the expressions defined in paragraph 28G of this Schedule have the same meaning as in that paragraph.".

Provisions for other risks.

25. In Schedule 1, Chapter 3, paragraph 61(1)(b) and (c) (transfers to or from provisions), for "provisions for other risks and charges" substitute "provisions for other risks".

Particulars of staff.

26. In Schedule 1, Chapter 3, omit paragraph 71.

Amendment of Schedule 2.

27. In Schedule 2–

(a) after the main heading "SCHEDULE 2", in the subheading, for "4" substitute "4A";

(b) omit paragraph 16.

Dated the 27th day of October, 2005.

By Command,

P. R. BARTON,

Deputy Governor.

EXPLANATORY MEMORANDUM

These Regulations amend the Insurance Companies (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.