

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3757 of 15 January, 2010

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LEGAL NOTICE NO. 11 OF 2010.

**COMPANIES ACT**

**INSURANCE COMPANIES (ACCOUNTS DIRECTIVE)  
(AMENDMENT) REGULATIONS 2010**

In exercise of the powers conferred on me by section 385 of the Companies Act, and in order to transpose into the law of Gibraltar Article 4 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 Insurance Companies (Accounts Directive) (Amendment) Regulations 2010 and come into operation on the day of publication.

**Amendments to the Insurance Companies (Accounts Directive) Regulations, 1997.**

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

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

**“Director’s report: corporate governance requirements.**

11BA.(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 regulation–

(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 11A containing the business review specified in regulation 11B and, when provided

separately, the corporate governance statement specified in regulation 11BA.”;

(b) in sub-regulation (2) after the reference to “11B,” there shall be inserted “and, when provided separately, regulation 11BA,”;

(c) in sub-regulation (4) the reference to “regulations 11A and 11B” shall be replaced by a reference to “regulations 11A, 11B and, when provided separately, regulation 11BA”;

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

**“Director’s duties.**

“11D. 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.”.

(5) Paragraph 65 of Schedule 1 is amended by inserting after sub-paragraph (6) the following sub-paragraphs–

“(7) There must be provided particulars relating to the nature and business purpose of the company’s arrangements that are not included in the balance sheet and the financial impact on the company of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the company: provided that companies referred to in paragraph 2 of Schedule 1 may limit the information required to be disclosed by this paragraph to the nature and business purpose of such arrangements.

- (8) There must be provided particulars relating to transactions which have been entered into with related parties, as defined in the IAS Regulation, by the company, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the company, if such transactions are material and have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company.”.

Dated 15th January, 2010.

P R CARUANA QC,  
Chief Minister.

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### EXPLANATORY MEMORANDUM

These Regulations amend the Banking (Accounts Directive) Regulations 1997 in order to transpose Article 4 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) GAAP<sup>1</sup> 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.

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

