

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4185 of 16 July, 2015

LEGAL NOTICE NO. 115 OF 2015.

COMPANIES ACT 2014

**INSURANCE COMPANIES (ACCOUNTS
DIRECTIVE)(AMENDMENT) REGULATIONS 2015**

In exercise of the powers conferred upon him by section 487 of the Companies Act 2014, 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 Insurance Companies (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 Insurance Companies (Accounts Directive) Regulations 1997 are amended in accordance with the provisions of this regulation.

(2) In regulation 2(1)—

(a) after the definition of “capitalisation”, 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;”; and

- (b) after the definition of “fungible 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;”.

- (3) After regulation 2(2), insert the following subregulation–

“(2A) Words and phrases defined in Part VII of the Companies Act 2014 shall have the same meaning in these Regulations.”.

- (4) Delete regulation 2(5).

- (5) In regulation 2(8)–

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

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

(c) after paragraph (c), insert the following–

“(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.”.

- (6) In regulation 3A(1)–

- (a) in paragraph (a), delete “and”;
- (b) in paragraph (b), for “.”, substitute “; and”; and
- (c) after paragraph (b), insert–

“(c) notes to the accounts;

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

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

(8) After regulation 3A(2), insert–

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

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

(10) 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) Insurance Regulations group accounts must state the information prescribed under section 282(1ZA) of the Companies Act 2014.”; and

- (c) in subregulation (3), after “Insurance Regulations group accounts must” insert “be drawn up clearly and”.

(11) 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 the following–

“(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) after paragraph (b), insert the following proviso–

That notice must be served at least 6 months before the end of the financial year before that to which it relates.”.

(12) 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 Directive (83/349/EEC) where applicable as modified by the Insurance Accounts Directive (91/674/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)”.

(13) 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”.

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

(15) 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 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 6 months before the end of the financial year before that to which it relates.”.

(16) 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 Insurance Accounts Directive (91/674/EEC), or in a

manner equivalent to consolidated accounts and consolidated annual reports so drawn up;”, substitute–

“-

- (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;”;
- (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”.

(17) 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”.

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

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

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

(21) In regulation 11C(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”, substitute “Directive 2013/34/EU”.

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

(23) In regulation 12–

- (a) in subregulation (4), insert “and the directors’ report or group directors’ report” after “copy of the annual accounts”; and
- (b) in subregulation (6)(b)–
 - (i) delete “free of charge”; and
 - (ii) insert “at a price not exceeding its administrative cost” after “upon request”.

(24) 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”.

(25) 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.”.

(26) 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.”.

(27) In regulation 15–

- (a) in subregulation (1)(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.”.

(28) 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 Schedule 1.

4.(1) Schedule 1 to The Insurance Companies (Accounts Directive) Regulations 1997 is amended in accordance with this regulation.

(2) After paragraph 6A, insert–

“6B. Where an asset or liability relates to more than one item in the balance sheet, the relationship of such asset or liability to the relevant items must be disclosed either under those items or in the notes to the accounts.”

(3) In paragraph 15, insert “and measurement bases” after “Accounting policies”.

(4) In paragraph 16–

- (a) in subparagraph (a), delete “and” after “account;”;
- (b) in subparagraph (b), for “.”, substitute “; and”; and
- (c) after subparagraph (b), insert–

“(c) all provisions for diminution of value must be recognised, whether the result of the financial year is a profit or a loss.”.

(5) After paragraph 18, insert–

“18A. The opening balance sheet for each financial year shall correspond to the closing balance sheet for the preceding financial year.”.

(6) After paragraph 28A(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.”.

(7) In paragraph 28D—

(a) in subparagraph 1—

(i) in subparagraph (b), for “,” substitute “.”;

(ii) delete “that, under international accounting standards, may be included in accounts at fair value”;

(b) in subparagraph (3), for “relevant international accounting standards” substitute “generally accepted accounting principles or practice”.

(8) In paragraph 28G(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”, substitute “Directive 2013/34/EU”.

(9) After paragraph 32(4), insert—

“(5) Subparagraph (4) shall not apply to value adjustments made in respect of goodwill.”.

(10) After paragraph 33, insert—

“Development Costs.

33A.(1) Where this is in accordance with generally accepted accounting principles or practice, development costs may be included under assets item B (intangible assets) 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.

33B.(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 sub-paragraph (2) must not exceed ten 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.”.

(11) Delete paragraphs 34 and 35.

(12) In paragraph 38(1), insert “and then subtracting any incidental reductions in the cost of acquisition” after “incidental to its acquisition”.

(13) In paragraph 39(2)(d), for “similar to any of the methods mentioned above” substitute “reflecting generally accepted best practice”.

(14) In paragraph 53(1), delete “(if not given in the company's accounts)”.

(15) After paragraph 53(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.”.

(16) In paragraph 61(1), insert “in tabular form” after “included in the same item”.

(17) In paragraph 65–

(a) for subparagraphs (1) to (6), substitute–

“65.(1) Particulars must be given of any charge on the assets of the company to secure the liabilities of any person including the amount secured.

(2) Particulars and the total amount of any financial commitments, guarantees and contingencies (excluding those which arise out of insurance contracts) that are not included in the balance sheet must be disclosed.

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

(4) The total amount of any commitments within subparagraph (2) concerning pensions must be separately disclosed.

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

(6) Where any commitment within subparagraph (4) or (5) relates wholly or partly to pensions payable to past directors of the company, separate particulars must be given of that commitment.

(7) The total amount of any commitments, guarantees and contingencies within subparagraph (2) 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.”;
- (b) re-number subparagraph (7) as subparagraph (8), and subparagraph (8) as subparagraph (9);
 - (c) in the new subparagraph (8) delete “: 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”; and
 - (d) in the new subparagraph (9), delete “, as defined in the IAS Regulation”.
- (18) In paragraph 67(3), for “ECUs”, substitute “euros”.
- (19) For paragraph 72(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.”.
- (20) In paragraph 73—
- (a) in subparagraph (1), for “28A or 28C”, substitute “28A, 28C or 28D”;
 - (b) for subparagraphs (2) to (5), 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) in the case of financial instruments, their purchase price, the items affected and the basis of valuation;
 - (c) 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
 - (d) 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.”.

(21) Before paragraph 77, insert—

“Appropriations.

76A. 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.

76B. 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.

Fees.

76C. 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.”.

Amendments to Schedule 2.

5.(1) Schedule 2 to The Insurance Companies (Accounts Directive) Regulations 1997 is amended in accordance with 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 Chapter II Section A of Schedule 1.”.

(4) In paragraph 15,—

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

(b) for ““Minority interests””, substitute ““Non-controlling interest”” wherever it appears.

(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—

“Deferred tax balances.

20A. 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.

Related party transactions.

20B. Paragraph 65(9) 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.”.

Amendments to Schedule 3.

6.(1) Schedule 3 to The Insurance Companies (Accounts Directive) Regulations 1997 is amended in accordance with this regulation.

(2) In paragraph 1(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)”.

(3) In paragraph 7(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)”.

(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 “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)”.

(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)–
- (a) 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)”; and
 - (b) delete “;” after “and”.

Dated 16th July, 2015.

F R PICARDO,
Minister with responsibility for finance.

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.