

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3504 of 1st December, 2005



I ASSENT,
FRANCIS RICHARDS,
GOVERNOR.

24th November, 2005.



GIBRALTAR

No. 56 of 2005

AN ORDINANCE to amend the Companies (Consolidated Accounts) Ordinance, 1999 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.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Ordinance may be cited as the Companies (Consolidated Accounts) (Amendment) Ordinance 2005.

(2) This Ordinance comes into operation on the date of publication.

(3) This Ordinance has effect as respects companies' financial years which begin on or after 1 January 2005 but which have not ended before the date of publication.

Amendment of the Companies (Consolidated Accounts) Ordinance.

2. The Companies (Consolidated Accounts) Ordinance, 1999 is amended as follows.

Long title.

3. For the long title substitute—

“AN ORDINANCE TO PROVIDE FOR THE PREPARATION OF THE CONSOLIDATED ACCOUNTS OF COMPANIES IN ACCORDANCE WITH THE REQUIREMENTS OF EU LAW AND MODERN ACCOUNTING PRACTICE”

Amendment of section 1.

4. In section 1(2), after “1st April, 2000” insert—

“;but the amendments made by the Fair Value Accounting Ordinance 2005 and the Companies (Consolidated Accounts) (Amendment) Ordinance 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—

- (a) 31 March 2005 in the case of the amendments made by the Fair Value Accounting Ordinance 2005; and
- (b) the date of publication of the Companies (Consolidated Accounts) (Amendment) Ordinance

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2005 in the case of the amendments made by that Ordinance”.

Amendment of section 2.

5. In section 2(4)–

- (a) omit “it has a participating interest in the undertaking and”;
and
- (b) for paragraph (a) substitute—
“(a) it has the power to exercise, or actually exercises, dominant influence or control over it; or”

Amendment of section 4.

6. In section 4, omit subsection (5).

Amendment of section 5.

7. In section 5(2), after “Companies Ordinance” insert “or international accounting standards”.

Definitions.

8.(1) In section 6(1), at the appropriate place insert–

“IAS Regulation” means EC Regulation 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;

“profit and loss account”, in relation to a company that prepares IAS group accounts, includes an income statement or other equivalent financial statement required to be prepared by international accounting standards;”.

(4) After section 6(3), insert—

“(4) References in this Ordinance to accounts giving a “true and fair view” are references—

- (a) in the case of Companies (Consolidated Accounts) Ordinance accounts, to the requirement under section 7A that such accounts give a true and fair view; and
- (b) in the case of IAS group accounts, to the requirement under international accounting standards that such accounts achieve a fair presentation.”.

Duty to prepare group accounts.

9. For section 7, substitute—

“Preparation of group accounts.

7.(1) If at the end of a financial year a company is a parent company 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 this Ordinance 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 section 7A (“Companies (Consolidated Accounts) Ordinance accounts”); or
- (b) in accordance with international accounting standards (“IAS group accounts”).

This subsection is subject to the following provisions of this section.

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(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 subsection, “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 group accounts in accordance with section 7A following a relevant change of circumstance, the directors again prepare IAS group accounts for the company, subsections (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 section is subject to the exemptions provided by sections 8 (exemption for parent companies included in accounts of larger group), 8A (parent companies included in non-EEA group accounts), 9(5) (all subsidiary undertakings excluded from consolidation) and 13 (small and medium sized groups).

Companies (Consolidated Accounts) Ordinance Accounts.

7A.(1) Companies (Consolidated Accounts) Ordinance accounts must be drawn up clearly and comprise—

- (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings; and

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(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) Companies (Consolidated Accounts) Ordinance 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 with the provisions of Schedule 3 in relation to additional information to be provided in notes to the accounts.

(4) Where compliance with the provisions of Schedules 2 and 3, and the other provisions made by or under this Ordinance, 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 shall be given in the accounts or a note to them.

(5) If in exceptional circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.

Details of any such departure, the reasons for it and its effect shall be given in a note to the accounts.

(6) The directors of a parent company shall secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company's own financial year.

(7) Sections 171, 178 and 182 of the Companies Ordinance apply to the consolidated balance sheets and consolidated profit and loss accounts.

(8) Section 177 of the Companies Ordinance applies to a consolidated balance sheet.

(9) Sections 4(7), 7, 8, 8A, 9, 10, 14, 15 and 16 of the Companies (Accounts) Ordinance, 1999 apply to group accounts prepared under this section.”.

Insertion of sections 7B and 7C.

10. After section 7A insert—

“IAS group accounts.

7B. 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.

7C.(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) Subsection (1) does not apply if the directors do not prepare group accounts for the parent company.

(3) Subsection (1) only applies to accounts of subsidiary undertakings that are required to be prepared under the Companies (Accounts) Ordinance 1999.

(4) Subsection (1)(a) does not apply where the directors of a parent company prepare IAS group accounts and IAS individual accounts under the Companies (Accounts) Ordinance, 1999.”.

Amendment of section 8.

11. In section 8—

- (a) in subsection 2(b) at the end insert “or in accordance with international accounting standards”; and

(b) for subsection (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.”.

Insertion of section 8A.

12. After section 8 (Exemption for parent companies included in accounts of larger group), insert–

“Exemption for parent companies included in non-EEA group accounts.

8A.(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

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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 amended, 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

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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 subsection (1)(a) whether the company is a wholly owned subsidiary.

(5) For the purposes of subsection (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 subsection (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.

13. In section 9 (Subsidiary undertakings included in the consolidation)—

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- (a) in subsection (1)–
 - (i) at the beginning, for “Subject” substitute “In the case of Companies (Consolidated Accounts) Ordinance accounts, subject”;
 - (ii) omit “or required”;
- (b) in each of subsections (2) and (3), after “consolidation” insert “in Companies (Consolidated Accounts) Ordinance accounts”;
- (c) in subsection (3)(c), omit from “, and the undertaking” to the end;
- (d) omit subsection (4); and
- (e) for subsection (5) substitute–
 - “(5) A parent company is exempt from the requirement to prepare group accounts if under subsection (2) or (3) all of its subsidiary undertakings could be excluded from consolidation in Companies (Consolidated Accounts) Ordinance accounts.”.

Amendment of section 11.

14. In section 11(5)(b), omit “or (4)”.

Insertion of section 11A.

15. After section 11, insert

“Disclosure required in notes to annual accounts: particulars of staff.

11A A company’s group accounts must contain the disclosure required by section 7A of the Companies (Accounts) Ordinance as if all the undertakings included in the consolidation were a single company.”.

Accounts of subsidiary undertakings to be appended in certain cases.

16. Omit section 12.

Exemption for small and medium sized companies.

17. In section 13, for subsection (2)(a), substitute—

- “(a) 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;”.

Offences.

18. In section 15, after “this Ordinance” insert “(or, where applicable, of Article 4 of the IAS Regulation)”.

Amendment of Schedule 2.

19. In Schedule 2—

- (a) after the main heading “SCHEDULE 2”, in the subheading, for “7(4)” substitute “7A(3) and (4)”;
- (b) omit paragraph 16.

Amendment of Schedule 3.

20. In Schedule 3—

- (a) after the main heading “SCHEDULE 3”, in the subheading for “7(4)” insert “7A(3) and (4)”;
- (b) in Part III, paragraph 1, sub-paragraphs (a) and (b) are omitted.

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Passed by the Gibraltar House of Assembly on the 9th day of November,
2005.

D. J. REYES,
Clerk to the Assembly.

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