FIRST SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3463 of 31st March, 2005

I ASSENT,

FRANCIS RICHARDS,

LS

GOVERNOR.

29th March, 2005.

DIEU ET MON DROIT

GIBRALTAR

No. 24 of 2005

AN ORDINANCE to amend the Companies (Accounts) Ordinance, 1999, the Companies (Consolidated Accounts) Ordinance, 1999 and the Banking (Accounts Directive) Regulations 1997 in order to implement into the law of Gibraltar Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Ordinance may be cited as the Fair Value Accounting 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 Companies (Accounts) Ordinance: Insertion of section 8A.

2.(1) After section 8 of the Companies (Accounts) Ordinance, 1999, insert–

"Financial instruments.

8A.(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 subsection (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.

(3) The directors' report for the year need not give the information required by subsection (1) where a company qualifies as a small company in relation to a financial year."

Amendment of Schedule 6 of the Companies (Accounts) Ordinance: insertion of Section C.

3.(1) Schedule 6 of the Companies (Accounts) Ordinance, 1999 (Amounts to be included in respect of items shown in company accounts) is amended as follows.

(2) In the first, qualifying paragraph for, "Subject to section B" substitute, "Subject to sections B and C".

(3) After section B insert–

"SECTION C – FAIR VALUE ACCOUNTING

Inclusion of financial instruments at fair value.

22.(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) 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 23, 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 of the Companies (Consolidated Accounts) Ordinance, 1999;

"joint venture" has the meaning given by paragraph 17 of Schedule 2 of the Companies (Consolidated Accounts) Ordinance, 1999.

Determination of fair value.

23.(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.

24. 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.

Accounting for changes in value.

25.(1) This paragraph applies where a financial instrument is valued in accordance with paragraph 22 or 24.

(2) Notwithstanding section 5 of this Ordinance, and subject to sub-paragraphs (3) and (4) below, a change in the value of the financial instrument 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.

26.(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 25(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 22 to 26.

27.(1) 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.

(2) The expressions listed in sub-paragraph (3) have the same meaning as they have in Council Directive 78/660/EEC on the annual accounts of certain types of companies, as amended.

(3) 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".

Amendment of Schedule 7 of the Companies (Accounts) Ordinance.

4.(1) Schedule 7 of the Companies (Accounts) Ordinance, 1999 (Notes on Accounts – minimum requirements) is amended as follows.

(2) In paragraph 5, after "paragraph 1(1)(f) to (n)", insert "and paragraph 7".

(3) After paragraph 5, insert–

“6.(1) This paragraph applies where financial instruments have been valued in accordance with paragraph 22 or 24 of Schedule 6.

(2) There must be stated–

(a) where the fair value of the instruments has been determined in accordance with paragraph 23(4) of Schedule 6, 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; and

(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.

(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 that year; and

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

7. 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 23 of Schedule 6; and

(b) the extent and nature of the derivatives.

8.(1) Sub-paragraph (2) applies if–

(a) the company has financial fixed assets that could be included at fair value by virtue of paragraph 22 of Schedule 6;

(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 3(1) of Schedule 6.

(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.

9. Where used in this Schedule, the expressions defined in paragraph 27 of Schedule 6 have the same meaning as in that Schedule.".

Consequential amendments to the Companies (Consolidated Accounts) Ordinance, 1999.

5. In paragraph 1(1) of Schedule 2 to the Companies (Consolidated Accounts) Ordinance, 1999, for "Schedule 2" substitute "Schedules 2, 3, 6 and 7".

Amendment of Banking (Accounts Directive) Regulations: Insertion of regulation 11A.

6.(1) After regulation 11 of the Banking (Accounts Directive) Regulations 1997, insert–

“Financial instruments.

11A.(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 Schedule 1 of the Banking (Accounts Directive) Regulations.

7.(1) Schedule 1 of the Banking (Accounts Directive) Regulations, 1997 (Form and content of accounts of credit institutions) is amended as follows.

(2) In Chapter 1, Part IV, after paragraph 29 insert–

"FAIR VALUE ACCOUNTING

Inclusion of financial instruments at fair value.

30.(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) 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 31, 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.

31.(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.

32. 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.

Accounting for changes in value

33.(1) This paragraph applies where a financial instrument is valued in accordance with paragraph 30 or 32.

(2) Notwithstanding paragraph 10 of Chapter 1 of Schedule 1 (Accounting principles), and subject to sub-paragraphs (3) and (4) below, a change in the value of the financial instrument 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.

34.(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 33(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 30 to 34.

35.(1) This paragraph applies for the purposes of the interpretation of paragraphs 30 to 34 of Chapter 1, Part IV of Schedule 1.

(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".

(3) In Chapter III (Notes to the Accounts), after paragraph 31 insert–

"Information about fair value of assets and liabilities.

32.(1) This paragraph applies where financial instruments have been valued in accordance with paragraphs 30 or 32 of Chapter I, Part IV of this Schedule.

(2) There must be stated–

(a) where the fair value of the instruments has been determined in accordance with paragraph 31(4) of Chapter I, Part IV 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; and

(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.

(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 that year; and

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

33. 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 31 of Chapter I, Part IV of this Schedule; and

(b) the extent and nature of the derivatives.

34.(1) Sub-paragraph (2) applies if–

(a) the company has financial fixed assets that could be included at fair value by virtue of paragraph 30 of Chapter I, Part IV 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 13 of Chapter I, Part III 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.

35. Where used in this Chapter, the expressions defined in paragraph 35 of Chapter I, Part IV of this Schedule have the same meaning as in that Chapter.".

Passed by the Gibraltar House of Assembly on the 11th day of March, 2005.

D. J. REYES,

Clerk to the Assembly.

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