



Circular No. 25

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EU 4th and 7th Directive on Company Accounts

The Government of Gibraltar has now published the Ordinances which will transpose into Gibraltar law European directives on company accounts and consolidate accounts

- **Ord 28 of 1999** Gaz No 3133 of 28/10/99 Companies (Consolidated Accounts) Ordinance 1999 wef 1.4.2000
- **Ord 29 of 1999** Gaz No 3133 of 28/10/99 Companies (Accounts) Ordinance 1999 wef 1.4.2000
- **LN 138 of 1999** Gaz No 3133 of 28/10/99 brought into effect Partnerships and Unlimited Companies (Accounts) Regulation 1999 wef 1.4.2000

The principle features of these Ordinances are as follows:-

Companies (Accounts) Ordinance 1999

Commencement - The Ordinance will come into effect on 1st April 2000 and will apply to accounts in respect of each financial year commencing on or after 1st April 2000

Scope - The Ordinance applies to all limited companies except those which are non-profit making or licenced banks and insurance companies

True and fair - Annual accounts must be drawn up in accordance with the Ordinance and must give a true and fair view of the Companies assets, liabilities, financial position and profit or loss

The Ordinance prescribes the accounting principles to be observed in preparing the annual accounts, the layout of the balance sheet and profit and loss account and the content of the notes to the accounts

Director's reports - matters to be disclosed in the directors; report are laid down and includes, inter-alia, a review of the development of the company's business, important events which have occurred during the financial year and are likely to future developments.

Filing of accounts - companies are classified as small, medium-sized or large. Documents to be filed at the Companies Registry vary according to their classification;-

- **Large companies** - to file full accounts including the balance sheet, profit and loss account, notes, directors' report and auditors' report
- **Medium-sized companies** - filing as for large companies except that the profit and loss account may be in abridged format
- **Small companies** - required to file abridged balance sheet only

Filing due dates - the relevant documents must be filed within 13 months of the financial year end in the case of a private company and 10 month of the financial year in the case of a public company. If the financial year-end is the company's first then the period allowed is the greater of 18 months from the date of incorporation or 13 months from the end of that financial year.

If a company chooses the 31st of March 2001 as the beginning of its financial year, its financial year ends on the 30th March 2002 and it then has 13 months to file the accounts. It has till the end of April 2003 to file accounts

Penalties - If the filing requirements are not complied with before the end of the relevant period the company and every officer of the company who is in default is guilty of an offence and liable to pay a fixed penalty as described in sub section (3) to the Minister or on summary conviction to a fine up to level 3 on the standard scale.

The Registrar may, within 6 months of the end of the relevant period ascertained in accordance with section 14, inform the Minister that a company or an officer of the company has failed to comply with a requirement of section 9 or 10.

The minister may, on receipt of the information described in sub section (2), issue a notice, in such form as he may decide, requiring the company or an officer of the company to pay a penalty of £100.

A company or an officer of the company served with a notice as described in sub section (3) may pay the amount of the penalty within one month of its receipt; in such a case no further proceedings shall be taken against that company or officers in respect of the failure to comply for which the notice was issued, provided that the failure to comply is remedied within 12 month of the date of payment of the penalty.

If the company or an officer of the company served with a notice as described in sub-section (3) fails to pay the amount of the penalty specified within one month of receipt, that company or officer may be proceeded against for the offence of failure to comply with a requirement of section 9 or 10.

Definitions - companies are classified by size according to the following parameters

	Small	Medium-sized	Large
Net Turnover (pro-rated if more than or less than a year)	up to £4.8 million	up to £19.2 mill	over £19.2 mill
Balance sheet total (total assets)	up to £2.4 million	up to £9.6 mill	over £ 9.6 mill

persons employed

Basically a company must fall within two out of three parameters in the financial year in question and the preceding year in order to be classified as small or medium-sized . However, if a company exceeds or ceases to exceed the limits of more than one of the parameters it will continue to qualify for the relevant year unless it occurs in two consecutive years. For a newly incorporated company the conditions need only be met in its first financial year.

Audit requirement - All limited companies must appoint auditors and have their accounts audited except small companies which do not have income liable to assessment for tax under the Income Tax Ordinance or trade or transact business in Gibraltar in such a way as is likely to generate such income in the future. **Therefore all local limited trading companies will continue to require an audit, but small exempt companies will not.**

Other exemptions - in certain circumstances a company may be exempted from preparing audited accounts, provided all the members agree. However, the parent undertaking must be subject to the laws of an EEA member state, it must guarantee the commitments of the company and it must include the latter in its consolidated accounts. The consolidated accounts must be filed.

Currency - The accounts of the company may be prepared in the currency of its share capital and/or in Euro

Companies (Consolidated Accounts) Ordinance 1999

Commencement - The Ordinance will come into effect on 1st April 2000 and will apply to accounts in respect of each financial year commencing on or after 1st April 2000

Scope - The Ordinance requires that limited companies with subsidiary undertakings prepare consolidated accounts. These accounts must include a consolidated profit and loss account, a consolidated balance sheet and notes. They must give a true and fair view.

The Ordinance provides definition of parent and subsidiary undertakings and groups and prescribes the methods to be applied in accounting for the group, the format of the group accounts and the necessary disclosures. It also prescribes disclosures in respect of subsidiary and other undertakings for those companies which are not required to prepare group accounts.

Definitions - Groups are classified according to the following parameters.

	Small group	Medium-sized group
Turnover	up to £ 4.8 mill net * or £ 5.76 mill gross	up to £19.2 mill net* or £ 23.04 mill gross
Aggregate balance sheet total	up to £ 2.4 mill net* or £ 2.88 mill gross	up to £ 9.6 mill net* or £ 11.52 mill gross
Total number of	up to 50	up to 250

* net of consolidation set offs and adjustments

In order to qualify as small or medium-sized the group must fall within two of the three parameters listed above in the financial year in question and the preceding year. The rule for applying the criteria are similar to those for establishing the size classification of an individual company (see above). All other groups are treated as large..

Exemptions - Small and medium-sized groups need not prepare group accounts unless they include a listed company, a bank or an insurance company. If advantage is to be taken of this exemption by a medium-sized company then the auditors must confirm that they are so entitled.

Other exemptions - A company is not required to prepare group accounts if it is itself a subsidiary of a parent undertaking established under the law of an EEA member state provided certain conditions are met

Partnership and Unlimited Companies (Accounts) Regulations 1999

These regulations complete the transposition in Gibraltar of the 4th and 7th Company Law Directives. They provide that partnerships and unlimited companies must file accounts at the Companies Registry (in accordance with the Companies (Accounts) Ordinance 1999 if all their members have limited liability).