



Implementation Guidance

Accounting 02/17

Recent Changes to the Companies Act (Cap. 386) – some frequently asked questions

The Companies Act (Cap. 386) has been amended to reflect important changes brought about by EU Single Accounting Directive 2013/34/EU (the Directive). Changes brought about by this directive included amongst other updates to: the definitions, the content of the accounts, thresholds for the classification of small and medium-sized entities, the content of the directors' report and a major overhaul of the third and fourth schedules. The scope of this implementation guidance is to assist members in complying with the specific amendments to sections of the Companies Act (Cap. 386), clarifying some frequently asked queries the technical department of the Institute received from its members.

We trust you will find the information useful however it is not intended to be a comprehensive review of all the changes to the Companies Act (Cap. 386). Readers are therefore advised to refer to the amending acts and the full legal provisions included in the Act.

Contents

1. Abridged financial statements	1
Filing of abridged financial statements	1
2. Private exempt companies	1
2.1. Publishing the profit and loss account	1
2.2. The auditor's report.....	1
3. Consolidated Accounts	2
3.1. The Small Group exemption	2
3.2. The parent company of a medium-sized group.....	2
4. Other	2
4.1. Intangible assets	2



1. Abridged financial statements

Filing of abridged financial statements.

Is a small company still allowed to file abridged financial statements with the Registrar of Companies?

In the case of financial periods commencing before 1 January 2016, qualifying companies can still file abridged financial statements with the Registrar of Companies. However companies are not eligible to file abridged financial statements with the Registrar of Companies, for financial periods beginning on or after 1 January 2016.

2. Private exempt companies

2.1. Publishing the profit and loss account

Can private exempt companies elect not to publish the profit and loss account?

In terms of article 183(2) of the Companies Act (Cap. 386), a company which qualifies as a small company in terms of article 185(1) and is a private company having the status of an exempt company, need not deliver to the Registrar the profit and loss account. If the directors elect to remove the profit and loss account it is being suggested that the detail of the profit and loss is removed and instead the following declaration is inserted "The directors have elected not to file the profit and loss account in terms of article 183(2) of the Companies Act (Cap. 386)." Furthermore the directors of such companies are required to file the declaration referred to in Article 183 of the Companies Act (Chap. 386), when submitting their companies' annual accounts to the Registrar. The relevant template may be downloaded from the Registry of Companies website.

2.2. The auditor's report

If the directors elect not to publish the profit and loss account can a standard auditor's report be filed, i.e. following international auditing standards?

Yes a standard auditor's report can be filed. ISA 700 (Revised) requires an auditor to form an opinion on whether the financial statements are prepared in accordance with the applicable financial reporting framework. Financial Statements as defined under ISA means "a complete set of general purpose financial statements, including the related notes". Therefore an opinion is formed taking into consideration the complete set, which includes the profit and loss account. If the company qualifies for exemption, the directors can elect not to deliver to the Registrar of Companies the profit and loss account. In all other respects, the financial statements have been unchanged.



3. Consolidated Accounts

3.1. The Small Group exemption

Are all Small Groups as determined by section 185(5) of the Companies Act (Cap. 386) exempt from preparing consolidated financial statements?

Section 173 of the Companies Act (Cap. 386) specifies that a parent company of a Small Group as determined according to section 185(5), is exempt from the requirement to prepare consolidated financial statements provided that:

- None of the undertakings to be consolidated is a company the securities of which have been admitted to trading on a regulated market, or on an equivalent market in a non-Member State or non-EEA State.
- None of the group companies is a Public Interest Entity.

3.2. The parent company of a medium-sized group

If a parent company met the small criteria for two consecutive years, however the group of which it is a parent qualifies as medium, can the parent company prepare its separate financial statements, applying the disclosure requirements of a small company?

Article 185(5) of the Companies Act (Cap. 386) specifically states that a parent company shall not be treated as qualifying as a small company in relation to an accounting period unless the group of which it is parent qualifies as a small group.

However article 185(5) does not apply to a parent which is exempted from the requirement to prepare consolidated financial accounts in accordance with article 174. Therefore if for example the parent is itself a wholly-owned subsidiary company of an immediate parent company formed and registered under the law of a Member State or an EEA State; subject to the requirements as per article 174 (2)-(5), then the parent company is considered to be small, irrespective of the size of the group of which it is the parent.

4. Other

4.1. Intangible assets

The Third Schedule of the Companies Act (Cap. 386), paragraph 2(1) states that intangible assets are to be written off over their useful life. Where the useful life of goodwill and development costs cannot be reliably estimated, these assets will be written off within a maximum period of 10 years. However IAS 38 *Intangible Assets* states that when an intangible asset has an indefinite useful life it shall not be amortised. IAS 38 specifies that an entity is required to test an intangible asset with an indefinite useful life for impairment by comparing its recoverable amount with its carrying amount annually, and whenever there is an indication that the intangible asset may be impaired. Therefore, does paragraph 2(1) of the Companies Act (Cap. 386) supersede the IFRS requirements for intangible assets including goodwill?



The query relates to the preparation of financial statements for a Maltese entity under the requirement of IFRS as adopted by the EU. Therefore reference will be made to IAS Regulation (EC No 1606/2002) which sets out the legal context and provides the legal basis for the application of IFRS in the EU. This Regulation requires the application of IFRSs as adopted by the EU ("adopted IFRSs") for the consolidated financial statements of European companies whose securities trade in a regulated securities markets as defined in article 4 of that Regulation. In addition, article 5 allows Member States to permit or require (i) the companies referred to in article 4 to prepare their annual accounts, and (ii) companies other than those referred to in article 4 to prepare their annual and/or consolidated accounts, in conformity with IFRS adopted under the IAS Regulation. Malta is one of the countries that have extended the application of adopted IFRS to all limited liability companies registered in Malta except for entities that are permitted to, and apply, the GAPSE or GAPSME regulations.

As stated in the "Comments concerning certain Articles of the Regulation (EC) No 1606/2002", published by the Commission on November 2003. No transposed provision of the Accounting Directives may restrict or hinder a company's compliance with (or choice under) adopted IASs, further to the IAS Regulation. In other words, a company applies endorsed IASs irrespective of any contrary, conflicting or restricting requirements in national law.

Therefore any contradictions between the Directive and the Regulation are resolved using the concepts of *Lex Specialis* and *Lex Posteriori*. According to the concept of *Lex Specialis*, the IFRS regulation is deemed to be more specific than the Accounting Directive, and in this case, the IAS/IFRS requirements would prevail on the Companies Act requirements. .

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