



STATUTORY INSTRUMENTS.

S.I. No. 450 of 2009



EUROPEAN COMMUNITIES (DIRECTIVE 2006/46/EC) REGULATIONS
2009

(Prn. A9/1642)

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I, MARY COUGHLAN, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006¹, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Directive 2006/46/EC) Regulations 2009.

(2) The Companies Acts and these Regulations shall be read together as one.

2. (1) In these Regulations—

“Act of 1986” means the Companies (Amendment) Act 1986 (No. 25 of 1986);

“Act of 1990” means the Companies Act 1990 (No. 33 of 1990);

“annual accounts” has the meaning assigned to it by the Principal Act;

“company” has the meaning assigned to it by the Principal Act;

“consolidated balance sheet” means the balance sheet dealing with the state of the affairs of a parent undertaking and its subsidiary undertakings as a whole;

“Credit Institutions Regulations” means the European Communities (Credit Institutions: Accounts) Regulations 1992 (S.I. No. 294 of 1992);

“Directive” means Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006¹;

“Fair Value Regulations” means the European Communities (Fair Value Accounting) Regulations 2004 (S.I. No. 765 of 2004);

“IFRS group accounts” has the meaning assigned to it by the Principal Act;

“Insurance Undertakings Regulations” means the European Communities (Insurance Undertakings: Accounts) Regulations 1996 (S.I. No. 23 of 1996);

“parent undertaking” means a body corporate, a partnership or an unincorporated body of persons engaged for gain in the production, supply or distribution

¹ OJ No. L 224, 16.8.2006, p.1.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 20th November, 2009.*

of goods, the provision of a service or the making or holding of investments which has one or more subsidiary undertakings;

“Principal Act” means the Companies Act 1963 (No. 33 of 1963);

“Regulations of 1992” means the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

“Regulations of 2005” means the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005);

“subsidiary undertaking” is a subsidiary of a parent undertaking;

“undertaking” has the meaning assigned to it by the Principal Act.

(2) A word or expression that is used in these Regulations (including provisions inserted by these Regulations into the Principal Act, the Act of 1986, the Regulations of 1992, the Credit Institutions Regulations or the Insurance Undertakings Regulations) and is also used in the Directive, Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002², the Fourth Council Directive 78/660/EEC of 25 July 1978³ and the Seventh Council Directive 83/349/EEC of 13 June 1983⁴ has, unless the contrary is indicated, the same meaning in these Regulations and those provisions as it has in the Directive, that Regulation and those Directives.

3. Part IIIA (inserted by the Fair Value Regulations) of the Schedule to the Act of 1986 is amended—

(a) in paragraph 22A(1) by inserting “and paragraph 22AA” after “of this paragraph”,

(b) by inserting the following paragraph after paragraph 22A of that Part:

“22AA. (1) Financial instruments which constitute liabilities other than such instruments referred to in subparagraphs (2)(a) and (2)(b) of paragraph 22A may be accounted for by companies at fair value if—

(a) they are accounted for in accordance with international accounting standards as adopted by the Commission Regulation on or before 5 September 2006, and

(b) the associated disclosure requirements, provided for in international financial reporting standards adopted in accordance with the IAS Regulation, are made.

(2) Financial instruments referred to in subparagraph (3) of paragraph 22A may be accounted for by companies at fair value if—

² OJ No. L 243, 11.9.2002, p.1.

³ OJ L 222, 14.8.1978, p.11.

⁴ OJ L 193, 18.7.1983, p.1.

(a) they are accounted for in accordance with international accounting standards as adopted by the Commission Regulation, on or before 5 September 2006, and

(b) the associated disclosure requirements, provided for in international financial reporting standards adopted in accordance with the IAS Regulation, are made.

(3) In this paragraph—

‘Commission Regulation’ means Commission Regulation (EC) No. 1725/2003⁵ of 29 September 2003;

‘IAS Regulation’ has the meaning assigned to by the Principal Act;

‘international financial reporting standards’ has the meaning assigned to it by section 2 of the Principal Act.”.

4. Section 8 of the Act of 1986 is amended—

(a) in subsection (1)(a), by inserting “, subject to subsection (1A),” after “a private company”,

(b) in subsection (1)(b), by inserting “, subject to subsection (1B),” after “a private company”,

(c) by inserting the following subsections after subsection (1):

“(1A) Subsection (1)(a) shall not apply to a private company whose securities are admitted to trading on a regulated market.

(1B) Subsection (1)(b) shall not apply to a private company whose securities are admitted to trading on a regulated market.”,

(d) by inserting the following subsection after subsection (12):

“(13) In subsections (1A) and (1B), ‘regulated market’ has the meaning assigned to it by Article 4(1), point (14) of Directive 2004/39/EC⁶.”.

5. (1) Section 32 of the Companies (Amendment) (No. 2) Act 1999 (No. 30 of 1999) is amended—

(a) in subsection (3)(a)(v)(III) by deleting “or”,

(b) in subsection (3)(a)(v)(IV) by substituting “paragraph 18 thereof, or” for “paragraph 18 thereof.”,

(c) section (3)(a)(v), by inserting the following clause after clause (IV):

⁵ OJ L 261, 13.10.2003, p.1.

⁶ OJ L 145, 30.4.2004, p.1.

“(V) a company whose securities are admitted to trading on a regulated market.”, and

(d) by inserting the following subsection after subsection (8):

“(9) In subsection (3), ‘regulated market’ has the meaning assigned to it by Article 4(1), point (14) of Directive 2004/39/EC⁶.”.

6. Part IV of the Schedule to the Act of 1986 is amended by inserting the following paragraphs after paragraph 36:

“Information on arrangements not included in balance sheet

36A. The nature and business purpose of the arrangements of the company that are not included in its balance sheet and the financial impact on the company of those arrangements shall be provided in the notes to the accounts of the company if the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the company.

Related party transactions

36. (1) Particulars shall be given in the notes to the accounts of the company of transactions which have been entered into with related parties by the company if such transactions are material and have not been concluded under normal market conditions and the particulars shall include the amount of such transactions, the nature of the related party relationship and other information about the transactions which is necessary for an understanding of the financial position of the company.

(2) Subject to subparagraph (4), the provision of particulars and other information about individual transactions may be aggregated according to their nature, except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company.

(3) Subparagraph (1) shall not apply to transactions which are entered into between 2 or more members of a group if any subsidiary undertaking which is party to the transaction is wholly owned by such a member.

(4) Subparagraph (2) shall not apply to a company whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC⁶.

(5) A word or expression used in subparagraphs (1) to (3) has the same meaning as it has in Directive 2006/46/EC¹.”.

7. (1) The notes on the consolidated accounts prepared in respect of a parent undertaking and its subsidiary undertakings shall set out information relating to—

- (a) the nature and business purpose of any arrangement that is not included in the consolidated balance sheet, and the financial impact of such arrangement if the risks or benefits arising from the arrangement are material, and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position, taken as a whole, of the parent undertaking and its subsidiary undertakings included in the consolidated balance sheet, and
- (b) subject to paragraph (2), transactions entered into by—
 - (i) the parent undertaking, or
 - (ii) a subsidiary undertaking of that parent undertaking included in the consolidation,

with related parties, if the transactions are material and have not been concluded under normal market conditions and the information shall include the amounts of such transactions, the nature of the related party relationship and other information about the transactions which is necessary for an understanding of the financial position, taken as a whole, of the parent undertaking and its subsidiary undertakings included in the consolidation.

(2) A transaction referred to in paragraph (1)(b) does not include an intra-group transaction.

(3) Information provided pursuant to paragraph (1)(b) concerning individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of the related party transactions on the financial position, taken as a whole, of the parent undertaking and its subsidiary undertakings included in the consolidation.

8. (1) Where a parent undertaking which has its securities admitted to trading on a regulated market is preparing consolidated accounts the corporate governance statement included in the report by the directors of that undertaking under section 158 of the Principal Act shall contain, in addition to the information specified in that section, a description of the main features of the internal control and risk management systems of that parent undertaking and its subsidiary undertakings in relation to the process for preparing such consolidated accounts for the parent undertaking and its subsidiary undertakings.

(2) Where the consolidated annual report and the annual report are presented as a single report the description referred to in paragraph (1) shall be included in the section of the report by the directors referred to in paragraph (1) containing the corporate governance statement.

(3) Where a parent undertaking referred to in paragraph (1) produces a corporate governance statement in the form of a separate report published in conjunction with the annual report, in accordance with section 158 of the Principal Act, the description required by paragraph (1) shall form part of that separate report.

(4) In paragraph (4), “regulated market” has the meaning assigned to it by Directive 2004/39/EC⁶.

9. Where a parent undertaking referred to in Regulation 9 produces a corporate governance statement under section 158 of the Principal Act, the auditors of the parent undertaking, when preparing a report required by section 193 of the Act of 1990 shall—

- (a) provide an opinion as to whether the description of the main features of the internal control and risk management systems of the parent undertaking and its subsidiary undertakings, in relation to the process for preparing consolidated accounts, is consistent with their evaluation and testing of the relevant systems for the purposes of preparing such report on such group accounts, and
- (b) consider whether, in their opinion, the description referred to in paragraph (a) is consistent with their evaluation and testing of the systems referred to in paragraph (a).

10. Part 2 of the Schedule to the Regulations of 1992 is amended in paragraph 16C(a) by inserting “or 22AA” after “(inserted by the European Communities (Fair Value Accounting) Regulations 2004)”.

11. Section 149A (inserted by the Regulations of 2005) of the Principal Act is amended—

- (a) in subsection (1)(b)(x), by substituting “subsidiary undertakings,” for “subsidiary undertakings), and”,
- (b) in subsection (1)(b)(xi) by substituting “(remuneration of auditors), and” for “(remuneration of auditors).”, and
- (c) in subsection (1)(b), by inserting the following subparagraph after subparagraph (xi):
 - “(xii) where appropriate, paragraph 36A of the Schedule to the Act of 1986.”.

12. Section 150B(2) (inserted by the Regulations of 2005) of the Principal Act is amended—

- (a) in paragraph (j), by substituting “subsidiary undertakings,” for “subsidiary undertakings), and”,
- (b) in paragraph (k) by substituting “(remuneration of auditors), and” for “(remuneration of auditors).”, and
- (c) by inserting the following paragraph after paragraph (k):
 - “(l) where appropriate, Regulation 7(1)(a) of the European Communities (Directive 2006/46/EC) Regulations 2009.”.

13. Section 158 of the Principal Act is amended by inserting the following subsections after subsection (6B) (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003):

“(6C) Subject to subsection (6E), a company whose securities are admitted to trading on a regulated market shall include a corporate governance statement in respect of the financial year in the report by the directors referred to in subsection (1).

(6D) The corporate governance statement referred to in subsection (6C) shall be included as a specific section of the report of the directors referred to in subsection (1), and shall include, at least, all of the following information:

(a) a reference to—

(i) the corporate governance code—

(I) to which the company is subject and where the relevant text is publicly available, or

(II) which the company has voluntarily decided to apply and where the relevant text is publicly available, and

(ii) all relevant information concerning corporate governance practices applied in respect of the company which are additional to any statutory requirement, and where the information on such corporate governance practices is available for inspection by the public;

(b) where the company departs, in accordance with any statutory provision, from a corporate governance code referred to in clause (I) or (II) of paragraph (a)(i)—

(i) an explanation by the company as to which parts of the corporate governance code it departs from in accordance with the statutory provision and the extent to which it departs from such code and

(ii) the reasons for such departure,

and where the company has decided not to apply any provisions of a corporate governance code referred to in clause (I) or (II) of paragraph (a)(i), the company shall explain its reasons for doing so;

(c) a description of the main features of the internal control and risk management systems of the company in relation to the financial reporting process;

- (d) the information required under subparagraphs (c), (d), (f), (h) and (i) of paragraph (2) of Regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. 255 of 2006), where the company is subject to those Regulations;
- (e) a description of the operation of the shareholder meeting, the key powers of the shareholder meeting, shareholders' rights and the exercise of such rights;
- (f) the composition and operation of the board of directors and the committees of the board of directors with administrative, management and supervisory functions.

(6E) The information required under subsection (6D) may be set out in a separate report published in conjunction with the annual report in accordance with subsections (6F) or (6G), or provided by a reference in the annual report to where the separate report is publicly available on the website of the company, and where a separate report is provided, the corporate governance statement may contain a reference to the annual report where the information referred to in subsection (6D)(d) is provided.

(6F) Where a company produces a corporate governance statement in the form of a separate report, such report shall be attached to every balance sheet, referred to in subsection (1), laid before the annual general meeting of the company and shall be signed on behalf of the directors by 2 of the directors of the company.

(6G) Where a company produces a corporate governance statement in the form of a separate report—

- (a) a copy of such report shall be published on the website of the company, and a statement that a copy of the report has been so published together with the address of the website of the company, shall be included in the report of the directors of the company, or
- (b) be annexed to the annual return, under section 7 of the Act of 1986, of the company and shall be certified both by a director and the secretary of the company to be a true copy of such corporate governance statement laid or to be laid before the annual general meeting of the company.

(6H) Where a company produces a corporate governance statement the auditors of the company, when preparing the report required by section 193 of the Act of 1990, in respect of the company, shall—

- (a) establish that the company has produced a corporate governance statement and whether such statement contains the information required by paragraphs (a), (b), (e) and (f) of subsection (6D),

(b) provide an opinion concerning the consistency or otherwise of the information given in the corporate governance statement under subsection (6D)(c) relating to the financial year concerned is consistent with the outcome of their evaluation and testing of the relevant systems for the purposes of preparing that report and the auditors shall state in the report under section 193 of the 1990 Act whether, in their opinion, such information is so consistent, and

(c) provide an opinion as to whether the information given in the corporate governance statement under subsection (6D)(d) relating to the financial year concerned is consistent.

(6I) Paragraphs (a), (b), (e) and (f) of subsection (6D) shall not apply to companies which have only issued securities other than shares admitted to trading on a regulated market, unless such companies have issued shares which are traded in a multilateral trading facility.

(6J) In subsection (6I), ‘multilateral trading facility’ has the meaning assigned to it by Article 4(1), point (15) of Directive 2004/39/EC⁶.”.

14. The Credit Institutions Regulations are amended—

(a) in Regulation 5(1B)—

(i) in subparagraph (k), by substituting “remuneration), and” for “remuneration).”, and

(ii) by inserting the following subparagraph after subparagraph (k):

“(l) where appropriate, paragraph 66A of Part I of the Schedule.”, and

(b) in Regulation 7(5)—

(i) in subparagraph (k), by substituting “remuneration), and” for “remuneration).” and

(ii) by inserting the following subparagraph after subparagraph (k):

“(l) where appropriate, paragraph 7A(a) of Part II of the Schedule.”.

15. The Credit Institutions Regulations are amended by inserting the following Regulation after Regulation 11:

“Corporate Governance Statement

11A. (1) Where a section 2(2) parent company has its securities admitted to trading on a regulated market, is preparing group accounts in accordance with these Regulations, the corporate governance statement included in the report by the directors of that company under section 158 of the Principal

Act, shall contain, in addition to the information specified in that section, a description of the main features of the internal control and risk management systems of that section 2(2) parent company and its subsidiaries in relation to the process for preparing such group accounts.

(2) Where the consolidated annual report and the annual report are presented as a single report the description referred to in paragraph (1) shall be included in the section of the report by the directors referred to in paragraph (1) containing the corporate governance statement.

(3) Where a section 2(2) parent company referred to in paragraph (1), produces a corporate governance statement in the form of a separate report published in conjunction with the annual report in accordance with section 158 of the Principal Act, the description required by paragraph (1) shall form part of that separate report.

(4) In this Regulation, ‘regulated market’ has the meaning assigned to it by Article 4(1), point (14) of Directive 2004/39/EC⁶.”

16. Regulation 13 of the Credit Institutions Regulations is amended by inserting the following paragraph after paragraph (2):

“(3) Where a section 2(2) parent company referred to in Regulation 11A(1) produces a corporate governance statement under section 158 of the Principal Act, the auditors of that parent company, when preparing a report required by section 193 of the Companies Act 1990 (No. 33 of 1990) shall—

- (a) provide an opinion as to whether the description of the main features of the internal control and risk management systems of that section 2(2) parent company and its subsidiaries, in relation to the process for preparing consolidated accounts, is consistent with their evaluation and testing of the relevant systems for the purposes of preparing such report on such group accounts, and
- (b) consider whether, in their opinion, the description referred to in subparagraph (a) is consistent with their evaluation and testing of the systems referred to in paragraph (a).”.

17. Paragraph 46A (inserted by the Fair Value Regulations) of Part I of the Schedule to the Credit Institutions Regulations is amended by inserting the following subparagraphs after subparagraph (4):

“(4A) Valuation at fair value may be made by a company in respect of financial instruments which constitute liabilities other than the liabilities referred to in subparagraphs (3)(a) and (3)(b) if—

- (a) the valuation is in accordance with international accounting standards as adopted by the Commission Regulation on or before 5 September 2006, and

(b) the associated disclosure requirements, provided for in international financial reporting standards adopted in accordance with the IAS Regulation, are made.

(4B) Valuation at fair value may be made by a company in respect of financial instruments referred to in subparagraph (4) if—

(a) the valuation is in accordance with international accounting standards as adopted by the Commission Regulation on or before 5 September 2006, and

(b) the associated disclosure requirements, provided for in international financial reporting standards adopted in accordance with the IAS Regulation, are made.

(4C) In subparagraphs (4A) and (4B)—

‘Commission Regulation’ means the Commission Regulation (EC) No. 1725/2003⁵ of 29 September 2003;

‘international financial reporting standards’ has the meaning assigned to it by the Principal Act;

‘IAS Regulation’ has the meaning assigned to it by the Principal Act.”.

18. Part I of the Schedule to the Credit Institutions Regulations is amended by inserting the following paragraphs after paragraph 66:

“Information concerning off-balance sheet arrangements not included in balance sheet

66A. (1) The nature and business purpose of the arrangements of the company that are not included in its balance sheet and the financial impact on the company of those arrangements shall be provided in the notes to the accounts of the company if the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the company.

Related party transactions

66B. (1) Particulars shall be given in the notes to the accounts of the section 2(2) company of transactions which have been entered into with related parties by the company if such transactions are material and have not been concluded under normal market conditions and the particulars shall include the amount of such transactions, the nature of the related party relationship and other information about the transactions which is necessary for an understanding of the financial position of that company.

(2) Subject to subparagraph (4), the provision of particulars and other information about individual transactions may be aggregated according to their nature, except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the section 2(2) company.

(3) Subparagraph (1) shall not apply to transactions which are entered into between 2 or more members of a group if any subsidiary undertaking which is a party to the transaction is wholly owned by such a member.

(4) Subparagraph (2) shall not apply to a company whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC⁶.

(5) A word or expression used in this paragraph has the same meaning as it has in Directive 2006/46/EC¹.”.

19. Part II of the Schedule to the Credit Institutions Regulations is amended by inserting the following paragraphs after paragraph 7:

“7A. The notes on the accounts shall set out information relating to—

(a) the nature and business purpose of any arrangement that is not included in the consolidated balance sheet, and the financial impact of such arrangement if the risks or benefits arising from the arrangement are material, and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position, taken as a whole, of the section 2(2) parent undertaking and its subsidiaries included in the consolidated balance sheet, and

(b) subject to paragraph 7B, transactions entered into by—

(i) the section 2(2) parent company, or

(ii) by a subsidiary of the section 2(2) parent company included in the group accounts,

with related parties, if the transactions are material and have not been concluded under normal market conditions and the information shall include the amounts of such transactions, the nature of the related party relationship and other information about the transactions which is necessary for an understanding of the financial position, taken as a whole, of the section 2(2) parent company and its subsidiaries included in the group accounts.

7B. A transaction referred to in paragraph 7A(b) does not include an intra-group transaction.

7C. Information provided pursuant to paragraph 7A(b) concerning individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of the related party transactions on the financial position, taken as a whole, of the section 2(2) parent company and its subsidiaries included in the group accounts.

7D. In paragraph 7A, ‘consolidated balance sheet’ means the balance sheet for the section 2(2) parent company and its subsidiaries.

7E. A word or expression used in paragraphs 7A to 7C has the same meaning as it has in Directive 2006/46/EC¹.”.

20. Regulation 5(1B) of the Insurance Undertakings Regulations is amended—

(a) in subparagraph (i), by substituting “own shares),” for “own shares), and”,

(b) in subparagraph (j), by substituting “auditor’s remuneration), and” for “auditors’ remuneration).”, and

(c) by inserting the following subparagraph after subparagraph (j):

“(k) where appropriate, paragraph 19A of Part III of the Schedule.”.

21. Regulation 10(5) of the Insurance Undertakings Regulations is amended by inserting the following subparagraph after subparagraph (j):

“(k) where appropriate, paragraph 37(a) of Part IV of the Schedule,”.

22. The Insurance Undertakings Regulations are amended by inserting the following Regulation after Regulation 14:

“Corporate Governance Statement

14A. (1) Where a parent undertaking which has its securities admitted to trading on a regulated market is preparing group accounts the corporate governance statement included in the report by the directors of that undertaking under section 158 of the Principal Act, shall contain, in addition to the information specified in that section, a description of the main features of the internal control and risk management systems of that parent undertaking and its subsidiaries, taken as a whole, in relation to the process for preparing such group accounts for the parent undertaking and its subsidiaries taken as a whole.

(2) Where the consolidated annual report and the annual report are presented as a single report the description referred to in paragraph (1) shall be included in the section of the report by the directors referred to in paragraph (1) containing the corporate governance statement.

(3) Where a parent undertaking referred to in paragraph (1) produces a corporate governance statement in the form of a separate report published in conjunction with the annual report in accordance with section 158 of the Principal Act, the description required by paragraph (1) shall form part of that separate report.

(4) In paragraph (1), ‘regulated market’ has the meaning assigned to it by Directive 2004/39/EC⁶.”.

23. Regulation 16 of the Insurance Undertakings Regulations is amended by renumbering the existing provision as paragraph (1) and inserting the following paragraph after paragraph (1):

“(2) Where a parent undertaking referred to in Regulation 14A produces a corporate governance statement under section 158 of the Principal Act, the auditors of that parent undertaking, when preparing a report required by section 193 of the Act of 1990 shall—

- (a) provide an opinion as to whether the description of the main features of the internal control and risk management systems of the parent undertaking and its subsidiaries, as a group, in relation to the process for preparing consolidated accounts, is consistent with their evaluation and testing of the relevant systems for the purposes of preparing the report or such group accounts, and
- (b) consider whether, in their opinion, the description referred to in paragraph (a) is consistent with their evaluation and testing of the systems referred to in paragraph (a).”.

24. Part III of the Schedule to the Insurance Undertakings Regulations is amended by inserting the following paragraphs after paragraph 19:

“Information on arrangements not included in balance sheet

19A. (1) The following information shall be provided in the notes to the accounts for an undertaking:

- (a) the nature and business purpose of the arrangements of the undertaking that are not included in its balance sheet;
- (b) the financial impact on the undertaking of the arrangements referred to in clause (a) if the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the undertaking.

Related party transactions

19B. (1) Particulars shall be given in the notes to the accounts of an undertaking of transactions which have been entered into with related parties by the undertaking, and if such transactions are material and have not been concluded under normal market conditions and the particulars of transactions shall include the amount of such transactions, the nature of the related party relationship, and other information concerning the transactions which is necessary for an understanding of the financial position of the undertaking.

(2) Subject to subparagraph (4), the provision of particulars and other information concerning individual transactions may be aggregated according to their nature, except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the undertaking.

(3) Subparagraph (1) shall not apply to transactions which are entered into between 2 or more members of a group if any subsidiary undertaking which is a party to the transaction is wholly owned by such a member.

(4) Subparagraph (2) shall not apply to a company whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC⁶.

(5) A word or expression used in subparagraphs (1) to (4) has the same meaning as it has in Directive 2006/46/EC¹.”.

25. Chapter 3 of Part IV of the Schedule to the Insurance Undertakings Regulations is amended by inserting the following paragraphs after paragraph 36:

“37. The notes on the group accounts shall set out information relating to—

(a) the nature and business purpose of any arrangement which is not included in the consolidated balance sheet, and the financial impact of such arrangement if the risks or benefits arising from the arrangement are material, and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position, taken as a whole, of the parent undertaking and its subsidiaries included in the consolidated balance sheet, and

(b) subject to paragraph 38, transactions entered into by—

(i) the parent undertaking, or

(ii) a subsidiary of that parent undertaking included in the group accounts,

with related parties if the transactions are material and have not been concluded under normal market conditions and the information shall include the amounts of such transactions, the nature of the related party relationship and other information concerning the transactions which is necessary for an understanding of the financial position, taken as a whole, of the parent undertaking and its subsidiaries included in the group accounts.

38. A transaction referred to in paragraph 37(b) does not include an intra-group transaction.

39. Information provided pursuant to paragraph 37(b) concerning individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of the related party transactions on the financial position, taken as a whole, of the parent undertaking and its subsidiaries included in the group accounts.

40. In paragraph 37 ‘consolidated balance sheet’ means the balance sheet prepared in respect of the group accounts.

41. A word or expression that is used in paragraphs 37 to 39 has the same meaning as it has in Directive 2006/46/EC¹.”.

26. (1) A person who contravenes Regulation 7, 8 or 9 is guilty of an offence and liable—

(a) on summary conviction to a fine of €5,000 or 3 months imprisonment or both, or

(b) on conviction on indictment, to a fine of €50,000 or imprisonment for a term not exceeding 3 years or both.

(2) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) If the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if the member is a director or manager of the body corporate.



GIVEN under my Official Seal,
18 November 2009.

MARY COUGHLAN,
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations give effect to Directive 2006/46/EC of the European Parliament and of the Council, of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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