



# Regulations on Accounts and Consolidated Accounts

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO




## Regulations on Accounts and Consolidated Accounts

### Introduction

On the 18 November 2009, the European Communities (Directive 2006/46/EC) Regulations (S.I. 450 of 2009) (“the Regulations”), which implements Directive 2006/46/EC on company reporting in Ireland was signed into law.

Directive 2006/46/EC amends four other Directives; namely Directive 78/660/EEC (the “4<sup>th</sup> Company Law Directive”), Directive 83/349/EEC (the “7<sup>th</sup> Company Law Directive”), Directive 86/635/EEC (the “Credit Institutions Directive”) and Directive 91/674/EEC (the “Insurance Undertakings Directive”).

The key changes arising from the Regulations can be summarised as follows:

-  It is now a requirement for an Irish incorporated company whose securities are admitted to trading on a regulated market or on a multi-lateral trading facility to include a corporate governance statement in respect of each financial year end in the annual (directors’) report;
-  All Irish incorporated companies (listed and unlisted) will be subject to disclosures of “off balance sheet arrangements” and “related party transactions” in certain circumstances;
-  Amendments have been made to existing fair value rules contained in Irish legislation.

Both the E.C. (Credit Institutions: Accounts) Regulations 1992 (S.I. 294 of 1992) and the E.C. (Insurance Undertakings: Accounts) Regulations 1996 (S.I. 23 of 1996) have been amended accordingly to reflect the above requirements.

We will now examine each of these changes in more detail.

### Corporate Governance Statement

Regulation 13 of the Regulations amends Section 158 of the Companies Act, 1963 (as amended) to include a new requirement whereby a company whose securities are admitted to trading on a regulated market or on a multi-lateral trading facility will now be required to include a corporate governance statement in the annual (directors’) report in respect of the financial year end.

The corporate governance statement is required to include at least the following information:

- ▣ A description of the main features of the company's internal control and risk management systems in relation to its financial reporting process;
- ▣ A description of the operation of the shareholder meeting, the key powers of the shareholder meeting, shareholders' rights and the exercise of such rights;
- ▣ The composition and operation of the board of directors and the committees of the board of directors with administrative, management and supervisory functions;
- ▣ The corporate governance code, which the company is subject to or which the company has voluntarily decided to apply and where the text of the relevant code is publicly available;
- ▣ All relevant information concerning corporate governance practices applied by the company which are additional to any statutory requirements, and where this information is available for inspection by the public;
- ▣ The company must provide an explanation where it decides not to apply certain provisions of the corporate governance code it is subject to or the code which it has voluntarily decided to apply;
- ▣ The company must also provide an explanation if certain provisions of the corporate governance code it has adopted depart from the statutory provisions and the extent of such departures and the reason for same; and
- ▣ Certain information required under Regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, where the company is subject to those Regulations.

In relation to group companies, it should be noted that when a parent undertaking, which has its securities admitted to trading on a regulated market or on a multi-lateral trading facility, is preparing consolidated accounts the corporate governance statement must in addition to the requirements outlined above also include:

- ▣ A 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 such consolidated accounts for the parent undertaking and its subsidiary undertakings.

It should be noted that where a company issues securities which are not admitted on a regulated market or which are not traded on a multilateral trading facility, then that company is only required to include the following items in its corporate governance statement:

- ▣ A description of the main features of the company's internal control and risk management systems in relation to its financial reporting process;
- ▣ Certain information required under Regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, where the company is subject to those Regulations.

The corporate governance statement may be set out in a separate report published in conjunction with the annual report provided the corporate governance statement is:

- ▣ Attached to every balance sheet;
- ▣ Laid before the annual general meeting of the company;
- ▣ Signed by two directors of the company on behalf of the company;
- ▣ Published on the website of the company so long as the directors' report sets out the website address where the corporate governance statement is available or the corporate governance statement can be annexed to the annual return filed with the Companies Registration Office, provided it has been certified by a director and secretary of the company as being a true copy of the corporate governance statement laid before the annual general meeting.

The corporate governance statement is required to be audited by the Auditors of the company. The Auditors of the company are obliged to:

- ▣ Check that the company has prepared the corporate governance statement in accordance with the requirements of S.I. 450 of 2009;
- ▣ Provide an opinion concerning the consistency or otherwise of the information given in the corporate governance statement in relation to the company's internal control and risk management systems for the financial reporting process vis a vis the Auditor's evaluation and testing of the relevant systems; and
- ▣ Provide an opinion as to whether the information given in the corporate governance statement under Regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (where relevant) in relation to the financial year is consistent.

For groups, the Auditors of the parent undertaking, who is required to prepare a corporate governance statement under Section 158 of the Companies Act, 1963 (as amended) shall 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 for preparing consolidated accounts is consistent with their evaluation and testing of the relevant systems for the purposes of preparing such a report on such group accounts.

## Disclosure of Off Balance Sheet Arrangements

Part IV of the Schedule to the Companies (Amendment Act) 1986 (as amended) has been amended by the Regulations to include a new reporting requirement in relation to off balance sheet arrangements. In effect, the company is required to provide information in the notes to the accounts of the company in relation to the nature and business purpose of off balance sheet arrangements, where the risks or benefits arising from such arrangements are material and the disclosure of such risks or benefits is necessary for assessing the financial position of the company.

In relation to groups, the notes to the consolidated accounts prepared in respect of the parent undertaking and its subsidiary undertakings shall include information on the nature and business purpose of any off balance sheet arrangements not included in the consolidated balance sheet, and the financial impact of those arrangements where the risks or benefits arising from such arrangements are material and 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.

## Disclosure of Related Party Transactions

Part IV of the Schedule to the Companies (Amendment Act) 1986 (as amended) has also been amended by the Regulations to include additional disclosure requirements in relation to related party transactions.

Where the company has related party transactions which are material and which have not been concluded under normal market conditions, details of such transactions are required to be disclosed in the notes to the annual accounts. The details to be disclosed include (a) the amount of such transactions; (b) the nature of the related party relationship; and (c) any other information which is necessary for an understanding of the financial position of the company.

The above information about individual transactions can 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. However, if a company has securities admitted to trading on a regulated market then the information on individual transactions cannot be aggregated.

The related party transaction disclosure requirements will not apply to those transactions between two or more members of the same group where any subsidiary undertaking which is party to the transaction is wholly owned by a member of the group.

In relation to groups it should be noted that the notes to the consolidated accounts prepared in respect of the parent undertaking and its subsidiary undertakings shall set out the following information:

- ▣ Transactions (excluding intra-group transactions) with related parties entered into by the parent undertaking or a subsidiary undertaking of that parent undertaking included in the consolidation, where the transactions are material and have not been concluded under normal market conditions. The details to be disclosed include: (a) the amount of such transactions; (b) the nature of the related party relationship; (c) any 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.

The above information about individual transactions with related parties can 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, taken as a whole, of the parent undertaking and its subsidiary undertakings included in the consolidation.

## Use of Fair Value Accounting

Regulation 3 of the Regulations amends Part IIIA of the Schedule to the Companies (Amendment) Act, 1986 (as amended) to extend the right of companies to use fair value accounting for additional financial instruments such as –

- ▣ Non-derivative financial instruments held to maturity;
- ▣ Loans and receivables originated by the company and not held for trading purposes;
- ▣ Interests in subsidiary undertakings, associated undertakings and joint ventures;
- ▣ Equity instruments issued by the company;
- ▣ Contracts for contingent consideration in a business combination;
- ▣ Other financial instruments with such special characteristics that the instruments, according to what is generally accepted, should be accounted for differently from other financial instruments.

Where such financial instruments are accounted for in accordance with international accounting standards as adopted by the E.C. Commission Regulation No. 1725/2003, on or before 5 September 2006 and the associated disclosure requirements, provided for in international financial reporting standards adopted in accordance with the IAS Regulation E.C. No. 1606/2002, are made.

## Implementation Date

No effective date is contained in the Regulations, however we understand that it has immediate effect. Given that the Regulations are silent on whether or not the Regulations apply to financial years ending after the date the Regulations were brought into effect, there is concern that the Regulations may apply to financial years which have not yet ended and to financial years which have ended, but where the financial reports in respect of such financial year have not yet been approved by the directors.

## Penalties/Sanctions

It should be noted that a person who contravenes these Regulations is guilty of an offence and is liable on summary conviction to a fine of €5,000 or three months imprisonment or both and on indictment to a fine of €50,000 or imprisonment for a term not exceeding three years or both.

**Date:** January 2010  
**Author:** Breeda Cunningham

 CONTACT US

## Our Offices

**Dublin**

33 Sir John Rogerson's Quay,  
Dublin 2,  
Ireland.  
Tel: +353 1 667 0022  
Fax.: +353 1 667 0042

**Cork**

8 Webworks Cork,  
Eglinton Street,  
Cork, Ireland.  
Tel: +353 21 425 0630  
Fax: +353 21 425 0632

**Boston**

26th Floor,  
225 Franklin Street,  
Boston, MA 02110,  
United States of America.  
Tel: +1 617 217 2866  
Fax: +1 617 217 2566

**New York**

245 Park Avenue  
39<sup>th</sup> Floor  
New York, NY 10167  
United States  
Tel: +1 212 792 4166  
Fax: +1 212 792 4167

**Tokyo**

12th Floor,  
Yurakucho Itocia Building  
2-7-1 Yurakucho, Chiyoda-ku  
Tokyo 100-0006, Japan  
Tel: +813 6860 4885  
Fax: +813 6860 4501

e-mail: [enquiries@dilloneustace.ie](mailto:enquiries@dilloneustace.ie)  
website: [www.dilloneustace.ie](http://www.dilloneustace.ie)

## Contact Points

*For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.*

**Partner – Paula Kelleher**  
**e-mail: [paula.kelleher@dilloneustace.ie](mailto:paula.kelleher@dilloneustace.ie)**  
**Tel : +353 1 673 1759**  
**Fax: +353 1 667 0042**

**Director – Breeda Cunningham**  
**e-mail: [breeda.cunningham@dilloneustace.ie](mailto:breeda.cunningham@dilloneustace.ie)**  
**Tel : +353 1 673 1846**  
**Fax: +353 1667 0042**

## DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

## Copyright Notice:

© 2010 Dillon Eustace. All rights reserved.



DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

33 Sir John Rogerson's Quay, Dublin 2, Ireland.  
[www.dilloneustace.ie](http://www.dilloneustace.ie)

In alliance with Arendt & Medernach