



STATUTORY INSTRUMENTS.

**S.I. No. 83 of 2010**



EUROPEAN COMMUNITIES (DIRECTIVE 2006/46/EC)  
(AMENDMENT) REGULATIONS 2010

**(Prn. A10/0301)**

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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 further effect to Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006<sup>1</sup>, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Directive 2006/46/EC) (Amendment) Regulations 2010.

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

(3) These Regulations and the Principal Regulations shall be read together as one.

2. (1) In these Regulations—

“Act of 1986” has the meaning assigned to it by the Principal Regulations;

“Act of 1990” has the meaning assigned to it by the Principal Regulations;

“Credit Institutions Regulations” has the meaning assigned to it by the Principal Regulations;

“Directive” has the meaning assigned to it by Principal Regulations;

“Insurance Undertakings Regulations” has the meaning assigned to it by the Principal Regulations;

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

“Principal Regulations” means the European Communities (Directive 2006/46/EC) Regulations 2009 (S.I. No. 450 of 2009).

(2) A word or expression that is used in these Regulations (including provisions inserted by these Regulations into the Principal Regulations, the Principal Act, the Act of 1986, the Credit Institutions Regulations and 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 2002<sup>2</sup>, the Fourth Council Directive 78/660/EEC of 25 July 1978<sup>3</sup> and the Seventh

<sup>1</sup>OJ No. L224, 16.8.2006, p.1.

<sup>2</sup>OJ. No. L243, 11.9.2002, p.1.

<sup>3</sup>OJ. No. L222, 14.8.1978, p.11.

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 2nd March, 2010.*

Council Directive 83/349/EEC of 13 June 1983<sup>4</sup>, 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. (1) Regulations 3, 6, 7, 10, 11, 12, 14, 17, 18, 19, 20, 21, 24 and 25 of the Principal Regulations shall apply in respect of financial years ending on or after 18 November 2009.

(2) Regulations 6, 8 and 10 shall apply in respect of financial years ending on or after 18 November 2009.

(3) Regulations 8, 9 (amended by Regulation 4), 15, 16, 22 and 23 of the Principal Regulations shall apply in respect of financial years beginning on or after 18 November 2009.

(4) Regulations 4, 7 and 9 shall apply in respect of financial years beginning on or after 18 November 2009.

(5) Subject to paragraphs (7), (8) and (9), Regulation 13 of the Principal Regulations shall apply in respect of financial years ending on or after 18 November 2009.

(6) Subject to paragraphs (7), (8) and (9), Regulation 5 shall apply in respect of financial years ending on or after 18 November 2009.

(7) Paragraph (c) of subsection (6D) (inserted by Regulation 13 of the Principal Regulations) of section 158 of the Principal Act and paragraph (a) (amended by Regulation 5) of subsection (6H) of that section shall apply in respect of financial years beginning on or after 18 November 2009.

(8) Where a company whose securities are admitted to trading on a regulated market, referred to in subsection (6C) (inserted by Regulation 13 of the Principal Regulations) of section 158 of the Principal Act—

- (a) is an investment company,
- (b) the securities of that company are admitted to trading on not more than one regulated market, and
- (c) the listing requirements and procedures of that regulated market do not require annual reporting, by the investment company, in relation to a corporate governance code,

Regulation 13 of the Principal Regulations and Regulation 5 shall apply in respect of financial years beginning on or after 18 November 2009.

(9) Where a company whose securities are admitted to trading on a regulated market, referred to in subsection (6C) (inserted by Regulation 13 of the Principal Regulations) of section 158 of the Principal Act—

<sup>4</sup>OJ. No. L193, 18.7.1983, p.1.

- (a) is an investment company,
- (b) the securities of that company are admitted to trading on more than one regulated market, and
- (c) none of the listing requirements and procedures of those regulated markets on which those securities are admitted to trading require annual reporting, by that investment company, in relation to a corporate governance code,

Regulation 13 of the Principal Regulations and Regulation 5 shall apply in respect of financial years beginning on or after 18 November 2009.

(10) In paragraphs (8) and (9) “investment company” means—

- (a) an investment company authorised by the Central Bank and Financial Services Authority of Ireland pursuant to Part XIII of the Act of 1990, or
- (b) an investment company authorised by the Central Bank and Financial Services Authority of Ireland pursuant to Regulation 11 (amended by Regulation 7 of the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment No. 2) Regulations 2003 (S.I. No. 497 of 2003)) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003).

4. The Principal Regulations are amended by substituting the following Regulation for Regulation 9:

“9. Where a parent undertaking referred to in Regulation 8 produces a corporate governance statement in respect of a financial year—

- (a) in the report by the directors in accordance with Regulation 8(1), or
- (b) in a separate report in accordance with Regulation 8(3),

the auditors of the parent undertaking, when preparing their report under section 193 of the Act of 1990 for that financial year, shall state in their report whether, in their opinion, the description, in the corporate governance statement, of the main features of the internal control and risk management systems referred to in Regulation 8(1) is consistent with the consolidated accounts for that financial year.”.

5. Section 158 of the Principal Act is amended by substituting the following subsection for subsection (6H) (inserted by Regulation 13 of the Principal Regulations):

“(6H) Where a company, in accordance with subsection (6E), produces a corporate governance statement in a separate report in respect of a financial year—

- (a) the auditors of the company, in their report under section 193 of the Act of 1990, shall state whether, in their opinion, the information in the corporate governance statement, required by paragraph (c) of subsection (6D) is consistent with the annual accounts for that financial year,
- (b) the auditors of the company, in their report under section 193 of the Act of 1990, shall state whether, in their opinion, the information in the corporate governance statement, required by paragraph (d) of subsection (6D) is consistent with the annual accounts for that financial year, and
- (c) the auditors of the company, when preparing their report under section 193 of the Act of 1990 in respect of the annual accounts for that year, shall ascertain that a separate corporate governance statement has, in accordance with subsection (6E), been produced and contains the information required by paragraphs (a), (b), (e) and (f) of subsection (6D).”.

6. Part IV of the Schedule to the Act of 1986 is amended in the paragraph numbered 36 (inserted by Regulation 6 of the Principal Regulations) immediately following paragraph 36A (inserted by Regulation 6 of the Principal Regulations)—

- (a) by substituting “36B” for “36”,
- (b) in subparagraph (2), by substituting “The provision of particulars” for “Subject to subparagraph (4), the provision of particulars”, and
- (c) by deleting subparagraph (4).

7. Regulation 13 of the Credit Institutions Regulations is amended by substituting the following paragraph for paragraph (3) (inserted by Regulation 16 of the Principal Regulations):

“(3) Where a section 2(2) parent company referred to in Regulation 11A produces a corporate governance statement in respect of a financial year in a separate report in accordance with Regulation 11A(3), the auditors of that parent company, when preparing their report under section 193 of the Companies Act 1990 (No. 33 of 1990) for that financial year, shall state in their report whether, in their opinion, the description, in the corporate governance statement, of the main features of the internal control and risk management systems referred to in Regulation 11A(1) is consistent with the group accounts for that financial year.”.

8. Paragraph 66B (inserted by Regulation 18 of the Principal Regulations) of Part 1 of the Schedule to the Credit Institutions Regulations is amended—

- (a) in subparagraph (2), by substituting “The provision of particulars” for “Subject to subparagraph (4), the provision of particulars”, and
- (b) by deleting subparagraph (4).

9. Regulation 16 of the Insurance Undertakings Regulations is amended by substituting the following paragraph for paragraph (2) (inserted by Regulation 23 of the Principal Regulations):

“(2) Where a parent undertaking referred to in Regulation 14A produces a corporate governance statement in respect of a financial year in a separate report in accordance with Regulation 14A(3), the auditors of that parent undertaking, when preparing their report under section 193 of the Act of 1990 for that financial year, shall state in their report whether, in their opinion, the description, in the corporate governance statement, of the main features of the internal control and risk management systems referred to in Regulation 14A(1) is consistent with the group accounts for that financial year.”.

10. Paragraph 19B (inserted by Regulation 24 of the Principal Regulations) of Part III of the Schedule to the Insurance Undertakings Regulations is amended—

- (a) in subparagraph (2), by substituting “The provision of particulars” for “Subject to subparagraph (4), the provision of particulars”, and
- (b) by deleting subparagraph (4).



GIVEN under my Official Seal,  
25 February 2010.

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, along with the European Communities (Directive 2006/46/EC) Regulations 2009, S.I. No. 450 of 2009, give effect to Directive 2006/46/EC of the European Parliament and of the Council, of 14 June 2006.

Directive 2006/46/EC amends 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.

The present Regulations clarify certain aspects of S.I. No. 450 of 2009.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
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€2.54



Wt. (B27495). 315. 3/10. Cahill. Gr. 30-15.