STATUTORY INSTRUMENTS

S.I. No. 765 of 2004

European Communities (Fair Value Accounting) Regulations 2004

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European Communities (Fair Value Accounting) Regulations 2004

I, Michéal Martin, 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), for the purpose of giving effect to Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001[1], hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Fair Value Accounting) Regulations 2004.

(2) These Regulations come into operation on 1 January 2005.

(3) These Regulations shall be read as one with the Companies Acts 1963 to 2003.

2. A word or expression that is used in these Regulations (including provisions inserted by these Regulations into the Companies (Amendment) Act 1986 (No. 25 of 1986) and the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992)) and is also used in Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 has, unless the contrary is indicated, the same meaning in these Regulations as it has in that Directive.

3. The Companies (Amendment) Act 1986 is amended -

(a) in section 12(1), by inserting "31B, 31C," after "27,",

[1] OJ No. L283, 27.10.01, p28

(b) in section 13 (as amended by the European Communities (Accounts) Regulations 1993 (S.I. No. 396 of 1993)), by substituting the following for paragraphs (c), (d) and (e) -

"(c) an indication of likely future developments in the business of the company and of its subsidiaries, if any;

(d) an indication of the activities, if any, of the company and its subsidiaries, if any, in the field of research and development;

(e) an indication of the existence of branches (within the meaning of Council Directive 89/666/EEC[2]) of the company outside the State and the country in which each such branch is located, and

(f) in relation to the use by the company and its subsidiaries, if any, of financial instruments and where material for the assessment of the assets, liabilities, financial position and profit or loss of the company and, as the case may be, the group -

(i) the financial risk management objectives and policies of the company and the group, including the policy for hedging each major type of forecasted transaction for which hedge accounting is used, and

[2] OJ No. L395, 30.12.1989, p36

(ii) the exposure of the company and the group to price risk, credit risk, liquidity risk and cash flow risk.”,

and

(c) in the Schedule -

(i) in Part II (HISTORICAL COST RULES IN RELATION TO THE DRAWING UP OF ACCOUNTS), in paragraph 4 (*Preliminary*), by substituting “Parts III and IIIA” for “Part III”,

(ii) by inserting the following after paragraph 22 -

“PART IIIA

VALUATION AT FAIR VALUE

Inclusion of financial instruments at fair value

22A. (1) Subject to subparagraphs (2) to (4) of this paragraph, financial instruments, including derivative financial instruments, may be accounted for by companies at fair value.

(2) Subparagraph (1) of this paragraph does not apply to financial instruments which constitute liabilities unless -

(a) they are held as part of a trading portfolio, or

(b) they are derivative financial instruments.

(3) Subparagraph (1) of this paragraph does not apply to -

(a) non-derivative financial instruments held to maturity,

(b) loans and receivables originated by the company and not held for trading purposes,

(c) interests in subsidiary undertakings, associated undertakings and joint ventures,

(d) equity instruments issued by the company,

(e) contracts for contingent consideration in a business combination, and

(f) 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.

(4) In this paragraph –

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

‘associated undertaking’ has the same meaning as in Regulation 34 of the Regulations of 1992;

‘joint venture’ has the same meaning as in Regulation 32 of the Regulations of 1992;

‘subsidiary undertaking’ has the same meaning as in Regulation 4 of the Regulations of 1992.

Methods for determining fair value

22B. (1) The fair value of a financial instrument is its value determined in accordance with this paragraph.

(2) Where a reliable market can readily be identified for a financial instrument its fair value is to be determined by reference to its market value.

(3) Where a reliable market value cannot readily be identified for a financial instrument but can be identified for its components or for a similar instrument, its fair value is to be determined by reference to the market value of its components or of the similar instrument.

(4) Where neither subparagraph (2) nor (3) of this paragraph apply, the fair value of the financial instrument is to be a value resulting from generally accepted valuation models and techniques.

(5) Valuation models and techniques used for the purposes of subparagraph (4) of this paragraph shall ensure a reasonable approximation of the market value.

(6) Financial instruments that cannot be measured reliably by any of the methods described in paragraphs (1) to (5) of this paragraph shall be measured in accordance with Part II or III of this Schedule.

Hedged items

22C. A company may, in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of those assets and liabilities, value those assets and liabilities at the amount required under that system.

Accounting for changes in fair value of financial instruments

22D. (1) This paragraph applies where the fair value at which a financial instrument is included in accordance with paragraph 22A or 22C of this Schedule is different from the value at which it was last included in accordance with that paragraph.

(2) Notwithstanding section 5(c) of this Act, and subject to subparagraphs (3) and (4) of this paragraph, the amount of the difference in value shall be included in the profit and loss account.

(3) Where -

(a) the financial instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the difference in value not to be shown in the profit and loss account, or

(b) the difference in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity,

the difference in value shall be credited to (or debited from as the case may be) a separate reserve to be known as the 'fair value reserve'.

(4) Where the instrument accounted for -

(a) is an available for sale financial asset, and

(b) is not a derivative financial instrument,

the difference in value may be credited to (or debited from as the case may be) the fair value reserve.

The fair value reserve

22E. (1) An amount may be transferred -

(a) from the fair value reserve to the profit and loss account if the amount represents realised profit, or

(b) to or from the fair value reserve in respect of taxation relating to any amount credited or debited to the reserve.

(2) The fair value reserve shall be adjusted when amounts therein are no longer necessary for the purposes of paragraph 22D (3) or (4) of this Schedule.

(3) The fair value reserve shall not be reduced except as provided for in this paragraph.

(4) The treatment for taxation purposes of amounts credited or debited to the fair value reserve shall be disclosed in a note to the accounts.”,

(iii) in Part IV (INFORMATION REQUIRED BY WAY OF NOTES TO ACCOUNTS), by inserting the following after paragraph 31 -

“*Information about fair valuation of assets and liabilities*

31A. (1) This paragraph applies where financial instruments have been included at fair value pursuant to paragraph 22A or 22C of this Schedule.

(2) There shall be disclosed -

(a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with paragraph 22B(4) of this Schedule,

(b) for each category of financial instrument, the fair value of the financial instruments in that category and the amounts -

(i) included in the profit and loss account, and

(ii) credited to or debited from the fair value reserve,

in respect of instruments in that category,

(c) for each class of derivative financial instrument, the extent and nature of the instruments including significant terms and conditions that may affect the amount, timing and certainty of future cash flows, and

(d) a table showing movements in the fair value reserve during the financial year.

31B. Where valuation of financial instruments at fair value has not been applied, for each class of derivative financial instrument there shall be stated -

(a) the fair value of the instruments in that class, if such a value can be determined in accordance with paragraph 22B of this Schedule, and

(b) the extent and nature of the instruments.

31C. Where a company -

(a) has financial fixed assets which have not been included at fair value by virtue of paragraph 22A of this Schedule and those assets are included in the company's accounts at an amount in excess of their fair value, and

(b) has not made provision for the diminution in value of those assets in accordance with paragraph 7(1) of this Schedule,

there shall be stated -

(i) the amount at which either the individual assets or appropriate groupings of those assets is stated in the company's accounts, and the fair value of those assets or groupings, and

(ii) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.”,

and

(iv) in Part VII (INTERPRETATION OF SCHEDULE), by inserting the following after paragraph 76 -

“Financial instruments

77. References to ‘derivative financial instruments’ are deemed to include commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument except where those contracts -

(a) were entered into and continue to meet the company’s expected purchase, sale or usage requirements,

(b) were designed for that purpose at their inception, and

(c) are expected to be settled by delivery of the commodity.

78. The words and expressions set out in the Table to this paragraph have the same meaning in this Schedule as they have in Council Directive 78/660/EEC of 25 July 1978[3], as amended by Council Directive

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[3] OJ L222, 14/08/1978 p11

2001/65/EEC of the European Parliament and of the Council of 27 September 2001[4].

TABLE

available for sale financial asset
business combination
commodity-based contracts
equity instrument
exchange difference
fair value hedge accounting system
financial fixed asset
financial instrument
foreign entity
hedge accounting
hedge accounting system
hedged items
hedging instrument
held to maturity
held for trading purposes
monetary item
receivables
reliable market
trading portfolio

”.

4. The European Communities (Companies: Group Accounts) Regulations 1992 are amended -

(a) in Regulation 37(1), by substituting the following for paragraphs (d) and (e) -

“(d) an indication of the activities, if any, of the parent undertaking and its subsidiary undertakings, taken as a group, in the field of research and development;

[4] OJ No. L283, 27.10.01, p28

(e) the number and nominal value of shares in the parent undertaking held by that undertaking itself, by its subsidiary undertakings or by a person acting in the person's own name but on behalf of those undertakings, and

(f) in relation to the use of financial instruments by the parent undertaking and its subsidiary undertakings, taken as a group, and where material for the assessment of the assets, liabilities, financial position and profit or loss of the parent undertaking and its subsidiary undertakings, taken as a group -

(i) the financial risk management objectives and policies of the parent undertaking and its subsidiary undertakings, taken as a group, including its policies for hedging each major type of forecasted transaction for which hedge accounting is used, and

(ii) the exposure of the parent undertaking and its subsidiary undertakings, taken as a group to price risk, credit risk, liquidity risk and cash flow risk.",

and

(b) In Part 2 *(Information required by way of notes to the group accounts)* of the Schedule, by inserting the following after paragraph 16 -

"*Information about fair valuation of assets and liabilities*

16A. (1) This paragraph applies where financial instruments have been included at fair value pursuant to Part IIIA of the Schedule to the 1986 Act.

(2) There shall be stated -

(a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with paragraph 22B(4) (inserted by the European Communities (Fair Value Accounting) Regulations 2004) of the Schedule to the 1986 Act,

(b) for each category of financial instrument the fair value of the financial instruments in that category and the amounts -

(i) included in the profit and loss account, and

(ii) credited to or debited from the fair value reserve,

in respect of instruments in that category,

(c) for each class of derivative financial instrument, the extent and nature of the instruments including significant terms and conditions that may affect the amount, timing and certainty of future cash flows, and

(d) a table showing movements in the fair value reserve during the financial year.

16B. Where valuation of financial instruments at fair value has not been applied, for each class of derivative financial instrument there shall be stated -

(a) the fair value of the instruments in that class, if such a value can be determined in accordance with paragraph 22B(1) to (5) (inserted by the European Communities (Fair Value Accounting) Regulations 2004) of the Schedule to the1986 Act, and

(b) the extent and nature of the instruments.

16C. Where a parent undertaking and its subsidiary undertakings, taken as a group -

(a) have financial fixed assets which have not been included at fair value by virtue of paragraph 22A (inserted by the European Communities (Fair Value Accounting) Regulations 2004) of the Schedule to the 1986 Act and those assets are included in the accounts of the parent undertaking and its subsidiary undertakings, taken as a group, at an amount which is in excess of their fair value, and

(b) have not made provision for the diminution in value of those assets in accordance with paragraph 7(1) of the Schedule to the 1986 Act,

there shall be stated -

(i) the amount at which either the individual assets or appropriate groupings of those assets is stated in the parent undertaking's accounts and the fair value of those assets or groupings, and

(ii) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.".

Given under my Official Seal
this 30th day of November, 2004

L.S.

Micheál Martin
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 2001/65/EC of the European Parliament and of the Council of 27 September, 2001 to allow for the fair valuation of financial instruments in accounts.

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