



Performance

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E X P E C T E X C E L L E N C E

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Asset Management and Investment Funds Briefing

Irish Implementation of European Communities (Directive 2006/46/EC) Regulations 2009 - Corporate Governance Statements

As part of the European Commission's Company Law Action Plan published in May 2003, and with the aim of enhancing confidence in financial reporting by EU companies, the European Parliament and the Council of Europe adopted Directive 2006/46/EC on Company Reporting on 14 June 2006 (the "Directive"). The Directive provided for four key revisions to the EU's Accounting Directives as follows:

- » board members should be collectively responsible for financial statements and key non-financial information;
- » transactions with related parties should be more transparent;
- » full information about off-balance sheet arrangements should be disclosed; and
- » an annual corporate governance statement should be made by issuers whose securities have been admitted to trading on a regulated market.

The Directive was implemented in Ireland on 18 November 2009 by the European Communities (Directive 2006/46/EC) Regulations 2009 (the "Regulations"). The requirements of the Directive and the Regulations apply to EU domiciled companies generally. This briefing focuses on the requirements of the Regulations in relation to the provision of corporate governance statements by funds established as investment companies.

Commencement

Following the introduction of clarifying legislation in March 2010, the Regulations apply in respect of financial periods beginning on or after 18 November 2009.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

General Requirement and Location of Information

The Regulations require that a company, the securities of which have been admitted to trading on a regulated market, issue on an annual basis a corporate governance statement as well as a description of the internal control and risk management systems in place in respect of the company.

The requirements of the Regulations in relation to corporate governance statements therefore apply only in respect of:

- » companies whose shares have been admitted to trading on a regulated market such as The Irish Stock Exchange, irrespective of whether such shares are actively traded on such regulated market; and
- » the annual audited financial statements of such companies and not the interim financial statements.

The Regulations provide that this information may be contained:

- » in the directors' report; or
- » in a separate report which is published in conjunction with the annual audited financial statements of the company, provided that the separate document is: (i) attached to the relevant balance sheet; (ii) laid before the annual general meeting of the company; (iii) signed by two directors of the company; and (iv) published on the website of the company.

Required Information

The corporate governance statement must include the following information:

- » a reference to the corporate governance code to which the company is subject or with which the company has voluntarily decided to comply, including details of where the text of the relevant code is publicly available;
- » all relevant information concerning corporate governance practices applied in respect of the company which are additional to any statutory requirements and details of where this information has been made available by the company for inspection by the public;
- » details of, and reasons for, any departures from the requirements of the applicable code;
- » a description of the main features of the internal control and risk management systems of the company in relation to the 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; and

- » details of the composition and operation of the board of directors and the committees of the board of directors with administrative, management and supervisory functions.

The auditors of a company to which the Regulations apply are required to establish that the company has provided a corporate governance statement which complies with these requirements. They are also required to opine on the consistency of the information given in the corporate governance statement with the financial statements of the company generally and with the outcome of their evaluation and testing of the relevant systems for the purposes of preparing their audit report.

Practical Implementation of the Requirement

Irish funds established as investment companies, the shares of which are listed on The Irish Stock Exchange, are in practice subject to the corporate governance principles set out in the listing rules of The Irish Stock Exchange and in the notices issued by the Financial Regulator. There is, however, as yet, no combined corporate governance code suitable for such companies to which reference may be made in a corporate governance statement.

In the absence of such a code, these funds need to incorporate an appropriate negative statement in their corporate governance statements to the effect that the investment company is not subject to, and does not comply with, any corporate governance code. As an interim measure, a suggested industry standard template corporate governance statement which addresses each of the above-mentioned requirements and which details the corporate governance principles to which the funds are subject has been prepared by the Irish Funds Industry Association.

In order to address the requirements of the Regulations in relation to corporate governance statements, and in particular the requirement that the applicable corporate governance practices be made publicly available by the company, The Irish Stock Exchange is in the process of preparing a corporate governance framework for listed investment funds established as investment companies. This document seeks to codify the various corporate governance principles with which the Irish funds are required to comply, including those set out in the listing rules of The Irish Stock Exchange and in the notices issued by the Financial Regulator.

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