



STATUTORY INSTRUMENTS.

S.I. No. 336 of 2017



TRANSPARENCY (DIRECTIVE 2004/109/EC) (AMENDMENT)
REGULATIONS 2017

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 1380 of the Companies Act 2014, and for the purpose of giving further effect to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004¹ (as amended by Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008², Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010³, Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010⁴ and Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013⁵) and for the other purposes mentioned in that section, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Transparency (Directive 2004/109/EC) (Amendment) Regulations 2017.

(2) These Regulations come into operation on 1 August 2017.

Interpretation

2. In these Regulations “Principal Regulations” means the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007).

Amendment of Regulation 2

3. Regulation 2 of the Principal Regulations is amended in paragraph (1) by the substitution of the following definition for the definition of “Directive”:

“ ‘Directive’ means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004¹ (as amended by Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008², Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010³, Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010⁴ and Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013⁵);”.

Amendment of Regulation 3

4. Regulation 3 of the Principal Regulations is amended in paragraph (1) by the substitution of “Part 2, 2A, 3, 5, 6 or 7” for “Part 2, 3, 5, 6 or 7”.

¹OJ No. L 390, 31.12.2004, p. 38.

²OJ No. L 76, 19.3.2008, p. 50.

³OJ No. L 327, 11.12.2010, p. 1.

⁴OJ No. L 331, 15.12.2010, p. 120.

⁵OJ No. L 294, 6.11.2013, p. 13.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 28th July, 2017.*

Payments to governments

5. The Principal Regulations are amended by the insertion of the following Part after Part 2:

*“Part 2A**Payments to governments**Definitions*

9A. In this Part—

‘accountable persons’ in relation to a relevant issuer, means its directors or, where the relevant issuer does not have a board of directors, the members of the board of management or other administrative or management body charged with the direction of the issuer;

‘extractive industry issuer’ means an issuer which performs any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the activities listed in Section B, Divisions 05 to 08 of Annex I to the NACE Regulation as set out in Table 2 of Schedule 18 to the Companies Act 2014;

‘government’ has the same meaning as it has in the Accounting Directive;

‘logging issuer’ means an issuer which undertakes in primary forests the activity referred to in Section A, Division 02, Group 02.2 of Annex I to the NACE Regulation as set out in Table 1 of Schedule 18 to the Companies Act 2014;

‘NACE Regulation’ means Regulation (EC) No. 1893/2006 of the European Parliament and of the Council of 20 December 2006⁶;

‘parent undertaking’ means an undertaking which controls one or more subsidiary undertakings;

‘payment’ means an amount paid, whether in money or in kind, for relevant activities, where the payment includes any of the following:

- (a) production entitlements;
- (b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
- (c) royalties;
- (d) dividends, other than dividends paid by an undertaking to a government as an ordinary shareholder of that undertaking where—
 - (i) the dividend is paid to the government on the same terms as to other ordinary shareholders, and

(ii) the dividend is not paid in lieu of production entitlements or royalties;

(e) signature, discovery and production bonuses;

(f) licence fees, rental fees, entry fees and other considerations for licences and concessions;

(g) payments for infrastructure improvements;

‘payment report’ means an entity payment report prepared in accordance with Regulation 9C or a consolidated payment report prepared in accordance with Regulation 9D, as the case may be;

‘primary forest’ has the same meaning as it has in Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009⁷;

‘project’ means operational activities that—

(a) are governed by—

(i) a single contract, licence, lease, concession or similar legal agreement, or

(ii) multiple contracts, licences, leases, concessions or similar legal agreements that are substantially interconnected, and

(b) form the basis for payment liabilities with a government;

‘relevant activities’ means—

(a) the activity specified in Table 1 of Schedule 18 of the Companies Act 2014 in primary forests, or

(b) any activity involving the exploration, prospection, discovery, development and extraction of minerals, oil, natural gas deposits or other materials, within the economic activities specified in Table 2 of Schedule 18 of the Companies Act 2014;

‘relevant issuer’ means an extractive industry issuer or a logging issuer whose home Member State is the State;

‘subsidiary undertaking’ means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking.

Application

9B. This Part shall apply to any financial year of a relevant issuer which commenced on or after 1 August 2017.

Report on payments to governments

9C. Without prejudice to Part 26 of the Companies Act 2014, a relevant issuer shall prepare a report on payments made to governments for each financial year of the relevant issuer (in this Part referred to as the ‘entity payment report’).

Consolidated report on payments to governments

9D. Without prejudice to Part 26 of the Companies Act 2014, a relevant issuer which is a parent undertaking shall prepare a consolidated report on payments made to governments for each financial year of the relevant issuer (in this Part referred to as the ‘consolidated payment report’).

Content of entity payment report

9E. (1) A relevant issuer shall in respect of its entity payment report, for each financial year, include the following in relation to its relevant activities:

- (a) the government to which each payment has been made, including the country of that government;
- (b) the total amount of payments made to each government;
- (c) the total amount per type of payment made to each government;
- (d) where those payments have been attributed to a specific project, the total amount per type of payment made for each such project and the total amount of payments for each such project.

(2) Where a relevant issuer makes a payment that is not attributable to a specific project, it shall not be necessary in the entity payment report to allocate it to a specific project.

(3) A relevant issuer shall not be required to include a payment in the entity payment report if—

- (a) it is a single payment of an amount less than €100,000, or
- (b) it forms part of a series of related payments within a financial year where the total amount of that series of payments is less than €100,000.

(4) Payments, activities and projects shall not be artificially split or aggregated to avoid the application of this Part.

(5) The disclosure of payments shall reflect the substance, rather than the form, of each payment, relevant activity or project concerned.

(6) Where payments in kind are made to a government, the entity payment report shall state the value of such payments in kind and, where applicable, the volume of those payments in kind, and the accountable persons shall provide supporting notes to explain how the value of such payments in kind has been determined.

Content of consolidated payment report

9F. (1) A relevant issuer which is a parent undertaking shall in respect of its consolidated payment report, for each financial year, include the following information in relation to its relevant activities:

- (a) the government to which each payment has been made, including the country of that government;
- (b) the total amount of payments made to each government;
- (c) the total amount per type of payment made to each government;
- (d) where those payments have been attributed to a specific project, the total amount per type of payment made for each such project and the total amount of payments for each such project.

(2) Where an undertaking makes a payment that is not attributable to a specific project, it shall not be necessary in the consolidated payment report to allocate it to a specific project.

(3) A relevant issuer which is a parent undertaking shall not be required to include a payment in the consolidated payment report if—

- (a) it is a single payment of an amount less than €100,000, or
- (b) it forms part of a series of related payments within a financial year where the total amount of that series of payments is less than €100,000.

(4) Payments, activities and projects shall not be artificially split or aggregated to avoid the application of this Part.

(5) The disclosure of payments shall reflect the substance, rather than the form, of each payment, relevant activity or project concerned.

(6) Where payments in kind are made to a government, the consolidated payment report shall state the value of such payments in kind and, where applicable, the volume of those payments in kind, and the accountable persons shall provide supporting notes to explain how the value of such payments in kind has been determined.

(7) In this Regulation, ‘relevant activities’, in relation to a parent undertaking, means the relevant activities of—

- (a) the parent undertaking, and
- (b) any subsidiary undertaking, of any level, that is included in the consolidated accounts of the parent undertaking.

Accountable persons

9G. (1) A payment report shall be approved by the accountable persons of the relevant issuer to which it relates and signed on their behalf by not

less than two of those accountable persons, where there are 2 or more accountable persons.

(2) Where a relevant issuer has a sole accountable person, paragraph (1) shall operate to require that accountable person to approve and sign the payment report.

(3) Each copy of a payment report shall state the names of the accountable persons who signed the report in accordance with paragraph (1).

(4) The accountable persons of a relevant issuer shall be responsible for ensuring that a payment report in respect of that issuer is prepared in accordance with this Part.

Publication of payment reports

9H. A relevant issuer shall make public its payment report at the latest 6 months after the end of each financial year and ensure that it remains publicly available for at least 10 years.”.

Amendment of Regulation 11

6. Regulation 11 of the Principal Regulations is amended in paragraph (1) by the substitution of “requirements under Regulations 4 to 9H” for “requirements under Regulations 4 to 8”.

Amendment of Regulation 12

7. Regulation 12 of the Principal Regulations is amended in paragraph (1) by the substitution of “in compliance with any of Regulations 4 to 9H and 26” for “in compliance with any of Regulations 4 to 8 and 26”.

Amendment of Regulation 14

8. Regulation 14 of the Principal Regulations is amended—

(a) by the substitution of the following paragraph for paragraph (4):

“(4) The percentages referred to in paragraph (1) are: 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%, each being a percentage of the total voting rights in the issuer.”, and

(b) in paragraph (5), by the deletion of subparagraph (f).

Amendment of Regulation 40

9. Regulation 40 of the Principal Regulations is amended in paragraph (3) by the substitution of “Part 2, 2A, 3, 5, 6 or 7” for “Part 2, 3, 5, 6 or 7”.



GIVEN under my Official Seal,
25 July 2017.

PASCHAL DONOHOE,
Minister for Finance.

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