STATUTORY RULES OF NORTHERN IRELAND

2005 No. 61

COMPANIES

The Companies (1986 Order) (Operating and Financial Review and Directors' Report etc.) Regulations (Northern Ireland) 2005

Made - - - - 2nd March 2005
To be laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000

Coming into operation 31st March 2005

The Department of Enterprise, Trade and Investment(**1**), in exercise of the powers conferred on it by Article 265 of the Companies (Northern Ireland) Order 1986(**2**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (1986 Order) (Operating and Financial Review and Directors' Report etc.) Regulations (Northern Ireland) 2005.

(2) These Regulations come into operation on 31st March 2005.

(3) Parts II, III, IV and VI have effect as respects companies' financial years which begin on or after 1st April 2005.

(4) Part V has effect as follows –

(a) regulation 13 has effect from 1st April 2005, and

(b) regulations 14 to 16 have effect as respects annual accounts, directors' reports and operating and financial reviews prepared for companies' financial years which begin on or after 1st April 2006.

(5) In these Regulations, "the 1986 Order" means the Companies (Northern Ireland) Order 1986.

(**1**) Formerly the Department of Economic Development: *see* S.I.1999/283 (N.I. 1), Article 3(5)
(**2**) S.I. 1986/1032 (N.I. 6); Article 265 was inserted into the 1986 Order by Article 22 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)) in place of an existing Article of that number

PART II

DIRECTORS' REPORT

Duty to prepare directors' report

2. For Article 242 of the 1986 Order (duty to prepare directors' report)(**3**) substitute –

"DIRECTORS' REPORT

Duty to prepare directors' report

242.—(1) The directors of a company shall for each financial year prepare a report (a "directors' report") complying with the general requirements of Article 242ZZA, and containing the business review specified in Article 242ZZB.

(2) For a financial year in which –

(a) the company is a parent company, and

(b) the directors of the company prepare group accounts,

the directors' report must be a consolidated report (a "group directors' report") relating, to the extent specified in the following provisions of this Part, to the company and its subsidiary undertakings included in the consolidation.

(3) A group directors' report may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation, taken as a whole.

(4) In the case of a quoted company, a directors' report need not contain any information included in the operating and financial review for that financial year (see Article 242AA).

(5) If a directors' report does not comply with the provisions of this Part relating to the preparation and contents of the report, every director of the company who –

(a) knew that it did not comply or was reckless as to whether it complied, and

(b) failed to take all reasonable steps to secure compliance with the provision in question,

is guilty of an offence and liable to a fine.

Directors' report: general requirements

242ZZA.—(1) The directors' report for a financial year must state –

(a) the names of the persons who, at any time during the financial year, were directors of the company,

(b) the principal activities of the company in the course of the year, and

(c) the amount (if any) that the directors recommend should be paid by way of dividend.

(2) In relation to a group directors' report paragraph (1)(b) has effect as if the reference to the company was a reference to the company and its subsidiary undertakings included in the consolidation.

(3) The report must also comply with Schedule 7 as regards the disclosure of the matters mentioned there.

(**3**) Article 242 was inserted into the 1986 Order by Article 10 of the Companies (Northern Ireland) Order 1990 in place of an existing Article of that number, and amended by S.R. 1997 No. 314 and S.R. 1997 No. 501

(4) In Schedule 7 –

Part I relates to matters of a general nature, including changes in asset values, directors' shareholdings and other interests and contributions for political and charitable purposes;

Part II relates to the acquisition by a company of its own shares or a charge on them;

Part III relates to the employment, training and advancement of disabled persons;

Part V relates to the involvement of employees in the affairs, policy and performance of the company;

Part VI relates to the company's policy and practice on the payment of creditors.

Directors' report: business review

242ZZB.—(1) The directors' report for a financial year must contain –

(a) a fair review of the business of the company, and

(b) a description of the principal risks and uncertainties facing the company.

(2) The review required is a balanced and comprehensive analysis of –

(a) the development and performance of the business of the company during the financial year, and

(b) the position of the company at the end of that year,

consistent with the size and complexity of the business.

(3) The review must, to the extent necessary for an understanding of the development, performance or position of the business of the company, include –

(a) analysis using financial key performance indicators, and

(b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

(4) The review must, where appropriate, include references to, and additional explanations of, amounts included in the annual accounts of the company.

(5) In this Article, "key performance indicators" means factors by reference to which the development, performance or position of the business of the company can be measured effectively.

(6) In relation to a group directors' report this Article has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.".

Auditors' report on directors' report

3. In Article 243 of the 1986 Order (auditors' report)(**4**), for paragraph (3) substitute –

"(3) The auditors must state in their report whether in their opinion the information given in the directors' report for the financial year for which the annual accounts are prepared is consistent with those accounts.".

(**4**) Article 243 was inserted into the 1986 Order by Article 11 of the Companies (Northern Ireland) Order 1990 in place of an existing Article of that number, and amended by S.R. 2004 No. 496 and S.R. 2005 No. 56

Special provision for small companies

4. For sub-paragraph (a) of Article 254(4) of the 1986 Order (exemptions for small companies from disclosures in directors' report)(**5**) substitute –

"(a) Articles 242ZZA(1)(c) (directors' report: amount to be paid as dividend) and 242ZZB (directors' report: business review);".

Special provision for medium-sized companies

5. After paragraph (2) of Article 254A of the 1986 Order (special provisions for medium-sized companies)(**6**) insert –

"(2A) The directors' report for the year need not comply with the requirements of Article 242ZZB(3) (business review to include analysis using key performance indicators) so far as they relate to non-financial information.".

Cases in which special provisions for small and medium-sized companies do not apply

6.—(1) In Article 255A of the 1986 Order (cases in which special provisions in Articles 254 and 254A do not apply)(**7**), for paragraph (1) substitute –

"(1) If a company is, or was at any time within the financial year to which the accounts relate, an ineligible company, Articles 254 and 254A do not apply.

(1A) If a company does not fall within paragraph (1) but is, or was at any time within the financial year to which the accounts relate, a member of an ineligible group –

(a) Article 254(4) and (5)(b) and Article 254(2A) apply;

(b) the other provisions of Articles 254 and 254A do not apply.

(1B) A company is ineligible if –

(a) it is a public company,

(b) it has permission under Part IV of the Financial Services and Markets Act 2000 to carry on one or more regulated activities, or

(c) it carries on an insurance market activity.".

Amendments to Schedule 7

7.—(1) Schedule 7 to the 1986 Order (matters to be dealt with in directors' report) is amended as follows.

(2) In paragraph 1 (asset values)(**8**) –

(a) in sub-paragraph (2) omit "or of any of its subsidiary undertakings", and

(b) after that sub-paragraph insert –

"(3) In relation to a group directors' report sub-paragraph (2) has effect as if the reference to the fixed assets of the company was a reference to the fixed assets of the company and its subsidiary undertakings included in the consolidation.".

(3) In paragraph 5A (use of financial instruments)(**9**) –

(a) in sub-paragraph (1) omit –

(**5**) Article 254 was inserted into the 1986 Order by Article 15 of the Companies (Northern Ireland) Order 1990, substituted by S.R. 1997 No. 436 and amended by S.R. 1997 No. 545, S.R. 2001 No. 153 and S.R. 2004 No. 496
(**6**) Article 254A was inserted into the 1986 Order by S.R. 1997 No. 436, and amended by S.R. 2004 No. 496
(**7**) Article 255A was inserted into the 1986 Order by S.R. 1997 No. 436, and amended by S.I. 2001/3649
(**8**) Paragraph 1 of Schedule 7 was amended by S.R. 1997 No. 314
(**9**) Paragraph 5A was inserted by S.R. 2004 No. 496

(i) "and by its subsidiary undertakings", and

(ii) "and its subsidiary undertakings included in the consolidation" in each place where it occurs, and

(b) after that sub-paragraph insert –

"(1A) In relation to a group directors' report sub-paragraph (1) has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.".

(4) In paragraph 6 (miscellaneous matters)(**10**) –

(a) make the existing provision sub-paragraph (1),

(b) in that sub-paragraph, omit –

(i) in head (a), "or any of its subsidiary undertakings",

(ii) in head (b), "and of its subsidiary undertakings", and

(iii) in head (c), "and its subsidiary undertakings", and

(c) after that sub-paragraph insert –

"(2) In relation to a group directors' report heads (a), (b) and (c) of sub-paragraph (1) have effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.".

PART III

OPERATING AND FINANCIAL REVIEWS

Duty to prepare operating and financial review

8. After Article 242A of the 1986 Order (approval and signing of directors' report)(**11**), insert –

"QUOTED COMPANIES: OPERATING AND FINANCIAL REVIEW

Duty to prepare operating and financial review

242AA.—(1) The directors of a quoted company shall for each financial year prepare an operating and financial review.

(2) The review must comply with Schedule 7ZA, save that nothing in that Schedule requires the disclosure of information about impending developments or about matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.

(3) For a financial year in which –

(a) the company is a parent company, and

(b) the directors of the company prepare group accounts,

the operating and financial review must be a consolidated review (a "group operating and financial review") relating, to the extent specified in Schedule 7ZA, to the company and its subsidiary undertakings included in the consolidation.

(**10**) Paragraph 6 was amended by Article 10(2) of, and paragraph 2(2) of Schedule 5 to, the Companies (Northern Ireland) Order 1990 and by S.R. 1993 No. 199

(**11**) Article 242A was inserted into the 1986 Order by Article 10 of the Companies (Northern Ireland) Order 1990