Commission Regulation (EC) No 636/2009 of 22 July 2009 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 15 (Text with EEA relevance)

COMMISSION REGULATION (EC) No 636/2009

of 22 July 2009

amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 15

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards[(1)], and in particular Article 3(1) thereof,

Whereas:

(1) By Commission Regulation (EC) No 1126/2008[(2)] certain international standards and interpretations that were in existence at 15 October 2008 were adopted.

(2) On 3 July 2008, the International Financial Reporting Interpretations Committee (IFRIC) published IFRIC Interpretation 15 *Agreements for the Construction of Real Estate*, hereinafter 'IFRIC 15'. IFRIC 15 is an interpretation that provides clarification and guidance on when revenue from the construction of real estate should be recognised in the accounts, in particular, whether a construction agreement is within the scope of IAS 11 Construction Contracts or IAS 18 Revenue.

(3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that IFRIC 15 meets the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002. In accordance with Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions[(3)], the Standards Advice Review Group considered EFRAG's opinion on endorsement and advised the Commission that it is well-balanced and objective.

(4) Regulation (EC) No 1126/2008 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 636/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 1126/2008, International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 15 *Agreements for the Construction of Real Estate* is inserted as set out in the Annex to this Regulation.

Article 2

Each company shall apply IFRIC 15, as set out in the Annex to this Regulation, at the latest, as from the commencement date of its first financial year starting after 31 December 2009.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 July 2009.

For the Commission

Charlie McCREEVY

Member of the Commission

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EC) No 636/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

IFRIC 15	IFRIC Interpretation 15 *Agreements for the Construction of Real Estate*

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IFRIC INTERPRETATION 15 *Agreements for the Construction of Real Estate*

REFERENCES

— IAS 1 *Presentation of Financial Statements* (as revised in 2007)
— IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*
— IAS 11 *Construction Contracts*
— IAS 18 *Revenue*
— IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*
— IFRIC 12 *Service Concession Arrangements*
— IFRIC 13 *Customer Loyalty Programmes*

BACKGROUND

1 In the real estate industry, entities that undertake the construction of real estate, directly or through subcontractors, may enter into agreements with one or more buyers before construction is complete. Such agreements take diverse forms.

2 For example, entities that undertake the construction of residential real estate may start to market individual units (apartments or houses) ‘off plan’, i.e. while construction is still in progress, or even before it has begun. Each buyer enters into an agreement with the entity to acquire a specified unit when it is ready for occupation. Typically, the buyer pays a deposit to the entity that is refundable only if the entity fails to deliver the completed unit in accordance with the contracted terms. The balance of the purchase price is generally paid to the entity only on contractual completion, when the buyer obtains possession of the unit.

3 Entities that undertake the construction of commercial or industrial real estate may enter into an agreement with a single buyer. The buyer may be required to make progress payments between the time of the initial agreement and contractual completion. Construction may take place on land the buyer owns or leases before construction begins.

SCOPE

4 This Interpretation applies to the accounting for revenue and associated expenses by entities that undertake the construction of real estate directly or through subcontractors.

5 Agreements in the scope of this Interpretation are agreements for the construction of real estate. In addition to the construction of real estate, such agreements may include the delivery of other goods or services.

ISSUES

6 The Interpretation addresses two issues:

(a) Is the agreement within the scope of IAS 11 or IAS 18?

(b) When should revenue from the construction of real estate be recognised?

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CONSENSUS

7 The following discussion assumes that the entity has previously analysed the agreement for the construction of real estate and any related agreements and concluded that it will retain neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the constructed real estate to an extent that would preclude recognition of some or all of the consideration as revenue. If recognition of some of the consideration as revenue is precluded, the following discussion applies only to the part of the agreement for which revenue will be recognised.

8 Within a single agreement, an entity may contract to deliver goods or services in addition to the construction of real estate (e.g. a sale of land or provision of property management services). In accordance with paragraph 13 of IAS 18, such an agreement may need to be split into separately identifiable components including one for the construction of real estate. The fair value of the total consideration received or receivable for the agreement shall be allocated to each component. If separate components are identified, the entity applies paragraphs 10-12 of this Interpretation to the component for the construction of real estate in order to determine whether that component is within the scope of IAS 11 or IAS 18. The segmenting criteria of IAS 11 then apply to any component of the agreement that is determined to be a construction contract.

9 The following discussion refers to an agreement for the construction of real estate but it also applies to a component for the construction of real estate identified within an agreement that includes other components.

Determining whether the agreement is within the scope of IAS 11 or IAS 18

10 Determining whether an agreement for the construction of real estate is within the scope of IAS 11 or IAS 18 depends on the terms of the agreement and all the surrounding facts and circumstances. Such a determination requires judgement with respect to each agreement.

11 IAS 11 applies when the agreement meets the definition of a construction contract set out in paragraph 3 of IAS 11: ‘a contract specifically negotiated for the construction of an asset or a combination of assets …’ An agreement for the construction of real estate meets the definition of a construction contract when the buyer is able to specify the major structural elements of the design of the real estate before construction begins and/or specify major structural changes once construction is in progress (whether or not it exercises that ability). When IAS 11 applies, the construction contract also includes any contracts or components for the rendering of services that are directly related to the construction of the real estate in accordance with paragraph 5(a) of IAS 11 and paragraph 4 of IAS 18.

12 In contrast, an agreement for the construction of real estate in which buyers have only limited ability to influence the design of the real estate, e.g. to select a design from a range of options specified by the entity, or to specify only minor variations to the basic design, is an agreement for the sale of goods within the scope of IAS 18.

Accounting for revenue from the construction of real estate

The agreement is a construction contract

13 When the agreement is within the scope of IAS 11 and its outcome can be estimated reliably, the entity shall recognise revenue by reference to the stage of completion of the contract activity in accordance with IAS 11.

14 The agreement may not meet the definition of a construction contract and therefore be within the scope of IAS 18. In this case, the entity shall determine whether the agreement is for the rendering of services or for the sale of goods.

The agreement is an agreement for the rendering of services