Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009 amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts

The Department of Enterprise, Trade and Innovation is required to transpose Directive 2009/49/EC by 31 December 2010 at the latest, and proposes to give effect to the Directive by means of Ministerial Regulations, made under the European Communities Act 1972.

Directive 2009/49/EC of 18 June 2009 was adopted in the context of the EU drive to reduce administrative burdens, particularly in the accounting and auditing area, and is aimed at small and medium-sized companies.

The changes addressed by the Directive are:

Article 1 – Amendment to Article 45(2) of Directive 78/660/EEC (4th Directive) ***providing that the requirement that formation expenses be explained in the notes to the accounts may be waived in the case of medium-sized companies***.

Formation expenses
Where formation expenses are capable of being treated as an asset in the balance sheet, Article 34(2) of Directive 78/660/EEC requires that those expenses be explained in the notes to the accounts. Article 1 of 2009/49/EC, by means of an amendment to Article 45(2) of Directive 78/660/EEC, provides that Member States may permit medium-sized companies to omit this disclosure.

Irish Law
Section 4(12)(a) of the Companies (Amendment) Act 1986 prohibits the inclusion of 'preliminary expenses' in the balance sheet, therefore, Article 1 does not apply in Ireland's case.

The European Communities (Credit Institutions: Accounts) Regulations 1992 (S.I. No. 294 of 1992) (the Schedule, Part I, Chapter I, Section A, paragraph 3(2)(i)) and the European Communities (Insurance Undertakings: Accounts) Regulations 1996 (S.I. No. 23 of 1996) (Regulation 6(10)(a)) contain similar prohibitions.

IAS 38 (paragraph 69(a)) and the IFRS for SMEs (paragraph 18.15(b)) also preclude the inclusion of 'start-up' costs in the balance sheet.

Article 2 – *Amendment to Article 13 of Directive 83/349/EEC (7th Directive) to provide that parent undertakings which only have non-material subsidiaries are to be exempted from the requirement at Article (1) of Directive 83/349/EEC requiring the drawing up of consolidated accounts and a consolidated annual report.*

Consolidated accounts *obligations*
Parent undertakings are ***at present*** required to prepare consolidated accounts even if the only subsidiary or all of the subsidiaries as a whole are not material for the purposes of Article 16(3) of Directive 83/349/EEC (7th Directive).

Article 2 of Directive 2009/49/EC, amends Article 13 of Directive 83/349/EEC, by providing that a parent undertaking is exempted from the obligation to draw up consolidated accounts and a consolidated annual report, both individually and as a whole, if it has only subsidiary undertakings which are not material. ***This does not, however, prevent a parent undertaking, if it so wishes, from drawing up consolidated accounts and a consolidated annual report, on its own initiative.***

Article 2 is mandatory and Ireland is obliged to implement it.

It should be noted that the provisions of the Directive will be applied by the implementing Regulations for financial years beginning on or after 1 January 2011.

Ireland is required to implement the Directive by the end of this year. This Directive is being brought to your attention for **information purposes**. However, if you have any comments please address them as early as possible and no later than **11th June 2010** to:

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24th May, 2010