



STATUTORY INSTRUMENTS.

S.I. No. 312 of 2016



EUROPEAN UNION (STATUTORY AUDITS) (DIRECTIVE 2006/43/EC,
AS AMENDED BY DIRECTIVE 2014/56/EU, AND REGULATION (EU)
NO 537/2014) REGULATIONS 2016

S.I. No. 312 of 2016

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AS AMENDED BY DIRECTIVE 2014/56/EU, AND REGULATION (EU)
NO 537/2014) REGULATIONS 2016

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EUROPEAN UNION (STATUTORY AUDITS) (DIRECTIVE 2006/43/EC,
AS AMENDED BY DIRECTIVE 2014/56/EU, AND REGULATION (EU)
NO 537/2014) REGULATIONS 2016

I, MARY MITCHELL O'CONNOR, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006¹ on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014² amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, and giving effect to certain provisions of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014³ on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, hereby make the following regulations:

PART 1

PRELIMINARY MATTERS

Citation, commencement and construction

1. (1) These Regulations may be cited as the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016.

(2) These Regulations shall come into operation on 17 June 2016.

(3) These Regulations shall be read as one with the Companies Act 2014 (No. 38 of 2014).

Revocation and savings

2. (1) Subject to paragraph (2), the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010) are revoked.

(2) Subject to Regulation 143(3), the 2010 Audits Regulations, as in force immediately before 17 June 2016—

(a) in so far as they related to the conduct of statutory audits and the duties and powers of statutory auditors and audit firms in relation

¹OJ L 157, 9.6.2006, p. 87

²OJ L 158, 27.5.2014, p. 196

³OJ L 158, 27.5.2014, p. 77

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 17th June, 2016.*

thereto for financial years commencing before that date, shall continue to apply to the conduct of statutory audits and the duties and powers of statutory auditors and audit firms in relation thereto for those financial years, and

- (b) as regards each other matter provision for which was made by those Regulations before that date, shall continue to make such provision before that date.

Application

3. Save where otherwise provided (including provided by Regulation (EU) No 537/2014), these Regulations apply—

- (a) in so far as they relate to the conduct of statutory audits and the duties and powers of statutory auditors and audit firms in relation thereto, to the conduct of statutory audits for financial years commencing on or after 17 June 2016, and
- (b) as regards each other matter provision for which is made by these Regulations, on and from 17 June 2016.

Interpretation — general

4. (1) In these Regulations—

“2010 Audits Regulations” means the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 revoked by Regulation 2(1);

“AAPA report” means the annual audit programme and activity report referred to in Regulation 34(1);

“additional report to the audit committee” means the report submitted to the audit committee of a public-interest entity by the statutory auditor or audit firm carrying out statutory audits as set out in Article 11 of Regulation (EU) No 537/2014;

“affiliate”, in relation to a statutory audit firm, means any undertaking, regardless of legal form, which is connected to the statutory audit firm by means of common ownership, control or management;

“approved”, in relation to a statutory auditor or audit firm, means approved under these Regulations;

“aptitude test” means an aptitude test referred to in Regulation 49(1);

“audit committee”, in relation to a public-interest entity, means the audit committee established for the entity under Regulation 115;

“Audit Directive” means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 on statutory audits of annual accounts and consolidated accounts;

“audit working papers”, in relation to a statutory auditor or audit firm, means material (whether in the form of data stored on paper, film, electronic media or other media or otherwise) prepared by or for, or obtained by the statutory auditor or audit firm in connection with, the performance of the audit concerned, and includes—

- (a) the record of audit procedures performed,
- (b) relevant audit evidence obtained, and
- (c) conclusions reached,

and a reference to audit working papers in relation to a Member State auditor or audit firm, or a third-country auditor or audit entity, shall be read accordingly;

“auditing standards” means the standards adopted by the Supervisory Authority under Regulation 77 in accordance with which statutory audits shall be carried out;

“Commission” means Commission of the European Union;

“counterpart authority” shall be construed in accordance with Regulation 116;

“disciplinary committee” has the same meaning as in section 900 of the Companies Act 2014;

“EEA Agreement” has the same meaning as in section 2 of the Companies Act 2014;

“EEA state” has the same meaning as in section 2 of the Companies Act 2014;

“enactment” has the same meaning as in section 2 of the Companies Act 2014;

“financial year”—

- (a) in relation to the Supervisory Authority and an audited entity, shall be construed in accordance with section 288 of the Companies Act 2014, and
- (b) in relation to a statutory auditor or audit firm, means—
 - (i) subject to subparagraph (ii), any period in respect of which a profit and loss account or income statement is prepared by the auditor or audit firm for income tax or other business purposes, or
 - (ii) in the case of a statutory audit firm that is a company, any period in respect of which accounts under the Companies Act 2014 are prepared by the firm,

whether that period is of a year’s duration or not;

“firm” includes a body corporate;

“group auditor” means the statutory auditor or audit firm carrying out the statutory audit of the group accounts concerned;

“home Member State” means the Member State in which a statutory auditor or audit firm is approved in accordance with Article 3(1) of the Audit Directive;

“host Member State” means—

- (a) a Member State in which a statutory auditor approved by his or her home Member State seeks to be also approved in accordance with Article 14 of the Audit Directive, or
- (b) a Member State in which an audit firm approved by its home Member State seeks to be registered, or is registered, in accordance with Article 3a of the Audit Directive;

“key audit partner” means—

- (a) the one or more statutory auditors designated by a statutory audit firm for a particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm,
- (b) in the case of a group audit, at least the one or more statutory auditors designated by a statutory audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the one or more statutory auditors designated as being primarily responsible at the level of material subsidiaries, or
- (c) the one or more statutory auditors who sign the audit report;

“medium-sized undertakings” means the undertakings referred to in Article 3(3) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013⁴ on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

“Member State” means a Member State of the European Union or an EEA state;

“Member State audit firm” means an audit entity approved in accordance with the Audit Directive by the counterpart authority of another Member State to carry out audits of annual or group accounts as required by European Union law;

“Member State auditor” means an auditor approved in accordance with the Audit Directive by a counterpart authority of another Member State to carry out audits of annual or group accounts as required by European Union law;

“Minister” means the Minister for Jobs, Enterprise and Innovation;

⁴OJ L182, 29.6.2013, p. 19

“network”, in relation to a statutory auditor or audit firm, means the larger structure:

- (a) which is aimed at cooperation and to which the statutory auditor or audit firm belongs;
- (b) either—
 - (i) the clear objective of which is profit or cost-sharing, or
 - (ii) which shares—
 - (I) common ownership, control or management,
 - (II) common quality control policies and procedures,
 - (III) a common business strategy, or
 - (IV) the use of a common brand-name or a significant part of professional resources;

“public-interest entities” means—

- (a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004⁵ on markets in financial instruments amending Council Directives 85/611/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EC,
- (b) credit institutions as defined in point 1 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013⁶ on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (but excluding credit institutions referred to in Article 2 of Directive 2013/36/EU), and
- (c) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC of 19 December 1991⁷ on the annual accounts and consolidated accounts of insurance undertakings;

“public register” shall be construed in accordance with Regulation 84;

“recognised accountancy body” has the same meaning as in section 900 of the Companies Act 2014;

⁵OJ L145, 30.4.2004, p.1

⁶OJ L176, 27.6.2013, p.338

⁷OJ L374, 31.12.91, p.7

“Regulation (EU) No 537/2014” means Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC;

“small undertakings” means the undertakings referred to in Article 3(2) of Directive 2013/34/EU;

“standards” means those standards, as defined in section 900 of the Companies Act 2014, of a prescribed accountancy body which is a recognised accountancy body;

“statutory audit” means an audit of individual accounts or group accounts in so far as—

- (a) required by European Union law, or
- (b) required by national law as regards small undertakings;

“statutory audit firm” means—

- (a) an audit firm which is approved in accordance with these Regulations to carry out statutory audits, or
- (b) an audit firm which is registered in accordance with Regulation 38 to carry out statutory audits;

“statutory auditor” means an individual who is approved in accordance with these Regulations to carry out statutory audits;

“statutory auditors’ report” means the report made under section 391 of the Companies Act 2014 in the form required by section 336 of that Act;

“Supervisory Authority” has the same meaning as in section 900 of the Companies Act 2014;

“third country” means a country or territory that is not a Member State or part of a Member State;

“third-country audit entity” means an entity, regardless of its legal form, which carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than an entity which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3 of the Audit Directive;

“third-country auditor” means an individual who carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than an individual who is registered as a statutory auditor in any Member State as a consequence of approval in accordance with Articles 3 and 44 of the Audit Directive;

“third-country competent authority” means an authority in a third country with responsibilities, as respects auditors and audit entities in that country, equivalent to those of the Supervisory Authority.

(2) A reference in these Regulations to a registered third-country auditor or audit entity is a reference to a third-country auditor or audit entity registered under Chapter 2 of Part 11.

(3) A word or expression that is used in these Regulations and is also used in the Audit Directive shall have in these Regulations the same meaning as it has in the Audit Directive.

(4) The definition of “court” in section 2(1) of the Companies Act 2014 shall, with any necessary modifications, apply to references in these Regulations to a court as that definition applies to references to a court in that Act.

PART 2

AMENDMENT OF COMPANIES ACT 2014

Definition

5. In this Part, “Principal Act” means the Companies Act 2014.

Amendment of section 2 of Principal Act

6. Section 2 of the Principal Act is amended, in subsection (1)—

(a) in the definition of “statutory auditor”, by the substitution of “2016 Audits Regulations, and includes a firm registered in accordance with Regulation 38 of those Regulations” for “European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010)”, and

(b) by the insertion of the following definition:

“‘2016 Audits Regulations’ means the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016 (S.I. No. [-] of 2016);”.

Amendment of section 35 of Principal Act

7. Section 35 of the Principal Act is amended by the substitution of the following subsection for subsection (7):

“(7) An electronic filing agent shall not, by virtue of his or her authorisation under this section to act as such, be regarded as an officer or servant of the company concerned for the purposes of Regulation 93(2) or (3) of the 2016 Audits Regulations.”.

Amendment of section 322 of Principal Act

8. Section 322 of the Principal Act is amended, in subsection (4), by the substitution of “2016 Audits Regulations” for “European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010)”.

Amendment of section 336 of Principal Act

9. Section 336 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (2):

“(2) The statutory auditors’ report shall be in writing and shall—

- (a) include an introduction identifying the entity financial statements, and where appropriate, the group financial statements, that are the subject of the audit and the financial reporting framework that has been applied in their preparation,
- (b) include a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted, and
- (c) identify the place of establishment of the statutory auditors who made the report.”,

(b) by the substitution of the following subsection for subsection (5):

“(5) The statutory auditors’ report shall—

- (a) state whether, in their opinion, based on the work undertaken in the course of the audit—
 - (i) the information given in the directors’ report for the financial year for which statutory financial statements are prepared is consistent with the company’s statutory financial statements in respect of the financial year concerned, and
 - (ii) the directors’ report has been prepared in accordance with applicable legal requirements,

and

- (b) state whether, based on their knowledge and understanding of the company and its environment obtained in the course of the audit, they have identified material misstatements in the directors’ report and, where they have so identified such misstatements, give an indication of the nature of each of such misstatements.”,

(c) by the insertion of the following subsection after subsection (5):

“(5A) The statutory auditors’ report shall provide a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the entity’s ability to continue as a going concern.”,

and

(d) by the insertion of the following subsection after subsection (9):

“(9A) (a) Subject to paragraph (b), where the statutory audit was carried out by more than one statutory auditor, the statutory auditors shall agree on the results of the statutory audit and submit a joint report and opinion.

(b) In the case of disagreement, each statutory auditor shall submit his, her or its opinion in a separate paragraph of the audit report and shall state his, her or its reason for such disagreement.”.

Amendment of section 337 of Principal Act

10. Section 337 of the Principal Act is amended by the substitution of the following subsection for subsection (2):

“(2) Where the auditor is—

- (a) a statutory auditor (within the meaning of the 2016 Audits Regulations), the report shall be signed by the statutory auditor (or, where more than one, each statutory auditor), or
- (b) a statutory audit firm (within the meaning of the 2016 Audits Regulations), the report shall be signed by—
 - (i) the statutory auditor (or, where more than one, each statutory auditor) designated by the statutory audit firm for the particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm,
 - (ii) in the case of a group audit, at least the statutory auditor (or, where more than one, each statutory auditor) designated by the statutory audit firm as being primarily responsible for carrying out the statutory audit at the level of the group,
 - (iii) where more than one statutory audit firm has been simultaneously engaged, by the statutory auditors designated by the statutory audit firms for the particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm, or
 - (iv) in the case of a group audit, where more than one statutory audit firm has been simultaneously engaged, by the statutory auditors designated by the statutory audit firms for the particular audit

engagement as being primarily responsible for carrying out the statutory audit at the level of the group,

in his or her own name, for and on behalf of the audit firm.”.

Amendment of section 380 of Principal Act

11. Section 380 of the Principal Act is amended, in subsection (5), by the substitution of the following paragraph for paragraph (iii):

“(iii) the person’s becoming disqualified from holding office by virtue of the 2016 Audits Regulations.”.

Amendment of section 390 of Principal Act

12. Section 390 of the Principal Act is amended by the substitution of “2016 Audits Regulations” for “European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010)”.

Amendment of section 394 of Principal Act

13. Section 394 of the Principal Act is amended, in paragraph (a), by the substitution of “2016 Audits Regulations” for “European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010)”.

Amendment of section 900 of Principal Act

14. Section 900 of the Principal Act is amended—

(a) in subsection (1)—

(i) by the deletion of the definition of “2010 Audits Regulations”,

(ii) in the definition of “recognised accountancy body”, by the substitution of “2016 Audits Regulations” for “2010 Audits Regulations”, and

(iii) by the insertion of the following definition:

“‘CEAOB’ has the meaning assigned to it by section 905(3)(c);”,

and

(b) by the insertion of the following subsection after subsection (2):

“(3) Regulation 4 (except the definitions of ‘standards’ and ‘statutory auditor’) of the 2016 Audits Regulations shall apply to the interpretation of this Chapter as that Regulation applies to the interpretation of those Regulations.”.

Amendment of section 904 of Principal Act

15. Section 904 of the Principal Act is amended, in subsection (1)—

(a) in paragraph (c), by the substitution of “IAS Regulation,” for “IAS Regulation, and”,

(b) in paragraph (d), by the substitution of “matters, and” for “matters.”, and

(c) by the insertion of the following paragraph after paragraph (d):

“(e) oversee statutory auditors and the conduct of statutory audits in accordance with the 2016 Audits Regulations and Regulation (EU) No 537/2014 and perform functions under those Regulations and that Regulation.”.

Amendment of section 905 of Principal Act

16. Section 905 of the Principal Act is amended—

(a) in subsection (2)—

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

“(a) grant recognition to bodies of accountants for the purposes of the 2016 Audits Regulations, Regulation (EU) No 537/2014 and section 1441,”,

(ii) by the substitution of the following paragraphs for paragraph (i):

“(i) monitor the effectiveness of provisions of the 2016 Audits Regulations and Regulation (EU) No 537/2014 relating to the independence of statutory auditors,

(ia) monitor developments in the market for audit services to public-interest entities as required by Regulation (EU) No 537/2014,”,

and

(iii) by the substitution of the following paragraphs for paragraph (n):

“(ma) adopt auditing standards for the purposes of the 2016 Audits Regulations and Regulation (EU) No 537/2014,

(n) oversee, in accordance with the 2016 Audits Regulations and Regulation (EU) No 537/2014, the performance of (and, where permitted by those Regulations, that Regulation or this Act, perform) the following functions with respect to statutory auditors:

(i) the approval and registration of statutory auditors (including the registration of Member State audit firms);

(ii) continuing education;

(iii) quality assurance systems;

(iv) investigative and administrative disciplinary systems,”

and

(b) by the insertion of the following subsections after subsection (2):

“(3) The Supervisory Authority shall—

(a) cooperate with competent authorities in other Member States to achieve the convergence of the educational qualifications required for the approval of an individual as a statutory auditor,

(b) when engaging in such operation, take into account developments in auditing and the audit profession and, in particular, convergence that has already been achieved by the profession, and

(c) cooperate with the Committee of European Auditing Oversight Bodies (in this Chapter referred to as ‘CEAOB’) established under Article 30 of Regulation (EU) No 537/2014 and the competent authorities referred to in Article 20 of that Regulation in so far as such convergence relates to the statutory audit of public-interest entities.

(4) The Supervisory Authority shall—

(a) cooperate within the framework of the CEAOB with a view to achieving the convergence of the requirements of the aptitude test,

(b) enhance the transparency and predictability of those requirements, and

(c) cooperate with the CEAOB and with the competent authorities referred to in Article 20 of Regulation (EU) No 537/2014 in so far as such convergence relates to statutory audits of public-interest entities.

(5) With regard to the cooperation that the State is required to engage in by virtue of Article 33 of the Audit Directive, the Supervisory Authority is assigned responsibility in that behalf.

(6) For the purpose of discharging the responsibility referred to in subsection (5), the Supervisory Authority shall put in place appropriate mechanisms, including arrangements with competent authorities in other Member States.”.

Amendment of section 906 of Principal Act

17. Section 906 of the Principal Act is amended—

- (a) in subsection (3), by the insertion of “(including its functions under Regulation (EU) No 537/2014)” after “its functions”, and
- (b) in subsection (5)—
 - (i) in paragraph (a), by the substitution of “Chapter),” for “Chapter), or”,
 - (ii) in paragraph (b), by the substitution of “section 905(2)(m),” for “section 905(2)(m).”, and
 - (iii) by the insertion of the following paragraphs after paragraph (b):
 - “(c) provisions of the 2016 Audits Regulations or Regulation (EU) No 537/2014, or
 - (d) rules adopted by the Supervisory Authority under subsection (3) concerning matters that relate to its functions under section 905(2)(n).”.

Amendment of section 907 of Principal Act

18. Section 907 of the Principal Act is amended—

- (a) in subsection (2), by the insertion of “subsections (2A) and (2B) and” after “Subject to”, and
- (b) by the insertion of the following subsections after subsection (2):
 - “(2A) On and from 17 June 2016, the Minister shall not appoint a person under subsection (2) as a director unless the Minister is satisfied that the person is knowledgeable in areas relevant to the conduct of statutory audits as specified in Schedule 1 to the 2016 Audits Regulations.
 - (2B) On and from 17 June 2016, the Minister shall not appoint a person as a director under subsection (2) if the person—
 - (a) on the proposed date of his or her appointment as a director—
 - (i) carries out statutory audits,
 - (ii) holds voting rights in an audit firm,
 - (iii) is a director or member of an audit firm, or
 - (iv) is employed by or otherwise contracted with an audit firm,

or

- (b) has, at any time during the 3 years immediately preceding the proposed date of his or her appointment as a director—
 - (i) carried out statutory audits,
 - (ii) held voting rights in an audit firm,
 - (iii) was a director or member of an audit firm, or
 - (iv) was employed by or otherwise contracted with an audit firm.”.

Amendment of section 918 of Principal Act

19. Section 918 of the Principal Act is amended—

- (a) by the deletion of subsection (1), and
- (b) by the substitution of the following subsection for subsection (3):

“(3) Money received by the Supervisory Authority under this section may be used only for the purposes of meeting expenses properly incurred by it in performing its functions as the competent authority under the 2016 Audits Regulations, Regulation (EU) No 537/2014 or this Act (including a function referred to in section 905(2)(n) that it may perform by virtue of Regulations 33(2) and 33(3)(b) of the 2016 Audit Regulations) in relation to statutory auditors of public-interest entities.”.

Amendment of section 919 of Principal Act

20. Section 919 of the Principal Act is amended—

- (a) in subsection (4)—
 - (i) in paragraph (b), by the deletion of “and”,
 - (ii) in paragraph (c), by the substitution of “934(7), and” for “934(7).”, and
 - (iii) by the insertion of the following paragraph after paragraph (c):
 - “(d) any amounts paid to the Supervisory Authority under section 935C(1)(f)(i) or (ii).”,
- and
- (b) by the insertion of the following subsection after subsection (5):

“(6) Amounts referred to in subsection (4)(d) may only be used by the Supervisory Authority to fund the performance of its functions under section 935B.”.

Amendment of section 930 of Principal Act

21. Section 930 of the Principal Act is amended, in subsections (1) and (2), by the substitution of “2016 Audits Regulations” for “2010 Audits Regulations”.

Amendment of section 932 of Principal Act

22. Section 932 of the Principal Act is amended by the substitution of the following paragraph for paragraph (a):

“(a) the 2016 Audits Regulations, or”.

Supplemental provisions in relation to section 934 (including as concerns its relationship to provisions of 2016 Audits Regulations)

23. The Principal Act is amended by the substitution of the following section for section 935:

“935. (1) For the avoidance of doubt, the following matters may, without prejudice to the generality of the provisions of section 934, be the subject of an investigation by the Supervisory Authority under that section, namely matters—

- (a) in relation to which a recognised accountancy body has decided not to withdraw a person’s approval under the 2016 Audits Regulations as a statutory auditor or audit firm, or
- (b) which either—
 - (i) have not been considered by a recognised accountancy body as grounds for the withdrawal of a person’s approval under those Regulations as a statutory auditor or audit firm, or
 - (ii) having been considered by it as such grounds, are not considered by it to disclose a prima facie case for proceeding further.

(2) Where—

- (a) those matters are the subject of such an investigation by the Supervisory Authority, and
- (b) a breach of standards is found by the Supervisory Authority,

section 934(7) shall be read as requiring or enabling (depending on whether the breach of standards found falls within Part 4 or Chapter 2 of Part 8 of the 2016 Audits Regulations) the Supervisory Authority to withdraw the approval under those Regulations of the person concerned as a statutory auditor or audit firm.

(3) Where such an approval is withdrawn by the Supervisory Authority, the following provisions of the 2016 Audits Regulations shall, with any necessary modifications, apply (and not subsections (10) and (11) of section 934) to that withdrawal, namely Regulation 52 (14) to (17) (or, as the case may be, Regulation 53(14) to (17)) and Regulation 54.

(4) Subsection (2) does not prejudice the imposition, in the circumstances concerned, by the Supervisory Authority of another sanction referred to in section 934(7) in addition to a withdrawal of approval (where withdrawal of the approval is mandatory under the 2016 Audits Regulations) or in lieu of a withdrawal of approval (where such withdrawal is not so mandatory).

(5) For the purposes of section 934, ‘member’, in addition to the meaning given to that expression by section 900(1), includes, in relation to a prescribed accountancy body that is a recognised accountancy body, an individual or firm who or which, though not a member of the recognised accountancy body, is an individual or firm in relation to whom that body may exercise powers under the 2016 Audits Regulations.”.

Amendment of Principal Act

24. The Principal Act is amended by the insertion of the following sections after section 935:

“Interpretation of sections 935A to 935D and 941A

935A. (1) In this section and sections 935B to 935D and 941A—

‘client’ includes an individual, a body corporate, an unincorporated body of persons and a partnership;

‘publication sanction’, in relation to a statutory auditor or relevant director, means the publication in accordance with section 935D(1) of the auditor’s or director’s particulars referred to in that section together with the other related particulars referred to in that section;

‘relevant contravention’, in relation to a statutory auditor, means a contravention by the statutory auditor of a provision of—

- (a) the 2016 Audits Regulations,
- (b) Regulation (EU) No 537/2014, or
- (c) section 336, 337 or 935C(3);

‘relevant decision’—

- (a) means a decision under section 935B(6) by the Supervisory Authority that a statutory auditor has committed a relevant contravention, and
- (b) if, in consequence of that decision—
 - (i) the Supervisory Authority decides under that section to impose a relevant sanction on the auditor, or
 - (ii) the Director of Corporate Enforcement decides under that section to impose a relevant sanction on a relevant director,
 includes the decision to impose that sanction;

‘relevant director’ means a director or former director of a public-interest entity;

‘relevant person’, in relation to an investigation of a statutory auditor, means—

- (a) the statutory auditor,
- (b) if the statutory auditor is an individual, a person who is or was an employee or agent of the statutory auditor,
- (c) if the statutory auditor is an audit firm, a person who is or was an officer, member, partner, employee or agent of the statutory auditor,
- (d) a client or former client of the statutory auditor,
- (e) if the client or former client is a body corporate, a person who is or was an officer, employee or agent of the client or former client, or
- (f) any person whom the Supervisory Authority reasonably believes has information or documents relating to the investigation other than information or documents the disclosure of which is prohibited or restricted by law;

‘relevant sanction’—

- (a) in relation to a statutory auditor, means a sanction referred to in section 935C(1)(a)(i), (b), (c), (d) or (f)(i), and
- (b) in relation to a relevant director, means a sanction referred to in section 935C(1)(a)(ii), (e) or (f)(ii);

‘statutory auditor’ includes a former statutory auditor.

(2) A reference in this section and sections 935B to 935D and 941A to the imposition of a relevant sanction on a statutory auditor or relevant director includes a reference to the taking of an administrative measure against the statutory auditor or relevant director.

Investigation of possible relevant contraventions

935B. (1) If, in the Supervisory Authority’s opinion, Regulation 33(2) or (3) of the 2016 Audits Regulations permits it to undertake an investigation into a possible relevant contravention committed by a statutory auditor, the Authority may do so—

- (a) following a complaint, or
- (b) on its own initiative.

(2) For the purposes of an investigation under this section, the Supervisory Authority may require a relevant person to do one or more of the following:

- (a) produce to the Supervisory Authority all books or documents relating to the investigation that are in the relevant person's possession or control;
- (b) attend before the Supervisory Authority;
- (c) give the Supervisory Authority any other assistance in connection with the investigation that the relevant person is reasonably able to give.

(3) For the purposes of an investigation under this section, the Supervisory Authority may—

- (a) examine on oath, either by word of mouth or on interrogatories in writing, a relevant person,
- (b) administer oaths for the purposes of the examination, and
- (c) record, in writing, the answers of a person so examined and require that person to sign them.

(4) The Supervisory Authority may certify the refusal or failure to the court if a relevant person refuses or fails to do one or more of the following:

- (a) produce to the Supervisory Authority any book or document that it is the person's duty under this section to produce;
- (b) attend before the Supervisory Authority when required to do so under this section;
- (c) answer a question put to the person by the Supervisory Authority with respect to the matter under investigation.

(5) On receiving a certificate of refusal or failure concerning a relevant person, the court may enquire into the case and after hearing any evidence that may be adduced, may do one or more of the following:

- (a) direct that the relevant person attend or re-attend before the Supervisory Authority or produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;
- (b) direct that the relevant person need not produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;
- (c) make any other ancillary or consequential order or give any other direction that the court thinks fit.

(6) (a) Subject to subsection (12) and section 935C(2), if the Supervisory Authority finds that the statutory auditor has committed a relevant contravention, the Supervisory Authority may impose such relevant sanction on the auditor as the Supervisory Authority considers appropriate in all the relevant circumstances.

(b) Subject to subsection (12) and section 935C(2), if the Supervisory Authority finds that the statutory auditor has committed a relevant contravention, and the Director of Corporate Enforcement finds that a relevant director engaged in conduct giving rise (whether in whole or in part) to that contravention, the Director of Corporate Enforcement may impose such relevant sanction on the relevant director as the Director of Corporate Enforcement considers appropriate in all the relevant circumstances.

(7) Subject to subsection (8), the statutory auditor or relevant director who is the subject of a relevant decision made under subsection (6) may appeal to the court against the decision.

(8) An appeal under subsection (7) shall be brought within 3 months after the date on which the statutory auditor or relevant director concerned was notified of that decision by—

(a) in so far as the relevant decision falls within paragraph (a) or (b)(i) of the definition of ‘relevant decision’, the Supervisory Authority, and

(b) in so far as the relevant decision falls within paragraph (b)(ii) of the definition of ‘relevant decision’, the Director of Corporate Enforcement.

(9) The production of any books or documents under this section by a person who claims a lien on them does not prejudice the lien.

(10) Any information produced or answer given by a relevant person in compliance with a requirement under this section may be used in evidence against the relevant person in any proceedings whatsoever, save proceedings for an offence (other than perjury in respect of such an answer).

(11) A finding or relevant decision of the Supervisory Authority or Director of Corporate Enforcement under this section is not a bar to any civil or criminal proceedings against the statutory auditor or relevant director who is the subject of the finding or relevant decision.

(12) A relevant decision, in so far as it relates to the imposition of a relevant sanction on a statutory auditor or relevant director, shall not take effect unless the relevant decision is confirmed by the court under section 941(2)(a) or 941A(2).

(13) Subsections (14) and (15) apply if—

- (a) the Supervisory Authority finds that the statutory auditor has committed a relevant contravention, and
- (b) that contravention relates, whether directly or indirectly, to the audit of a public-interest entity.

(14) The Supervisory Authority shall, as soon as is practicable, give the Director of Corporate Enforcement—

- (a) particulars of the statutory auditor,
- (b) particulars of the relevant contravention, and
- (c) particulars of the public-interest entity.

(15) The Supervisory Authority shall, in addition to complying with subsection (14), give the Director of Corporate Enforcement such information and documents and assistance as the Director may reasonably require for the Director to decide whether or not—

- (a) to investigate a relevant director, or
- (b) to impose, under subsection (6)(b), a relevant sanction on a relevant director,

or both.

Sanctions which Supervisory Authority or Director of Corporate Enforcement may impose

935C. (1) Subject to section 935B(6) and (12) and subsection (2), the Supervisory Authority may impose on a statutory auditor, and the Director of Corporate Enforcement may impose on a relevant director, one or more of the following sanctions in relation to a relevant contravention committed by the statutory auditor:

- (a) a direction—
 - (i) by the Supervisory Authority to the statutory auditor that the auditor cease the conduct giving rise (whether in whole or in part) to the contravention and abstain from any repetition of that conduct, or
 - (ii) a direction by the Director of Corporate Enforcement to the relevant director that the director cease the conduct giving rise (whether in whole or in part) to the contravention and abstain from any repetition of that conduct;
- (b) a direction by the Supervisory Authority to the statutory auditor (being any one or more of a statutory auditor, audit firm or key audit partner) banning him, her or it, for the period specified in the direction (being a period of not more than 3 years' duration),

from carrying out statutory audits or signing statutory auditors' reports, or both;

- (c) a declaration by the Supervisory Authority that the statutory auditors' report concerned does not meet the requirements of section 336 or 337 or, where applicable, Article 10 of Regulation (EU) No 537/2014;
- (d) if the statutory auditor is an audit firm, a direction by the Supervisory Authority to an officer, member or partner of the audit firm banning the officer, member or partner, for the period specified in the direction (being a period of not more than 3 years' duration), from performing functions in audit firms or public-interest entities;
- (e) a direction by the Director of Corporate Enforcement to the relevant director banning the director, for the period specified in the direction (being a period of not more than 3 years' duration), from performing functions in audit firms or public-interest entities;
- (f) a direction—
 - (i) subject to paragraphs (6), (8), (10) and (12), by the Supervisory Authority to the statutory auditor to pay, as an administrative pecuniary sanction, a sum, as specified in the direction but not exceeding €100,000 in the case of a statutory auditor who is an individual or, in the case of a statutory auditor which is an audit firm, not exceeding €500,000, to the Supervisory Authority, or
 - (ii) subject to paragraphs (7), (9), (11) and (13), by the Director of Corporate Enforcement to the relevant director to pay, as an administrative pecuniary sanction, a sum, as specified in the direction but not exceeding €100,000, to the Supervisory Authority.

(2) The relevant circumstances referred to in section 935B(6)(a) or (b) include, where appropriate, one or more of the following:

- (a) the gravity and duration of the relevant contravention;
- (b) the degree of responsibility of the statutory auditor or relevant director;
- (c) the financial strength of the statutory auditor or relevant director (for example, as indicated by the total turnover of the statutory auditor if the auditor is not an individual, or, in the case of a statutory auditor who is an individual or in the case of the relevant director, the annual income of the individual or relevant director);

- (d) the amount of profits gained or losses avoided by the statutory auditor or relevant director in consequence of the relevant contravention, in so far as they can be determined;
- (e) the level of cooperation of the statutory auditor or relevant director with the Supervisory Authority;
- (f) previous relevant contraventions committed by the statutory auditor or previous impositions of relevant sanctions on the relevant director.

(3) A person the subject of a direction under subsection (1) shall comply with the direction.

(4) The Supervisory Authority shall immediately communicate to the CEAOB particulars of—

- (a) any direction given by the Authority under subsection (1)(b) or (d), and
- (b) any direction given by the Director of Corporate Enforcement under subsection (1)(e).

(5) The Supervisory Authority shall, as soon as may be after the end of a year, give to the CEAOB aggregated information in relation to—

- (a) all relevant sanctions imposed by it or the Director of Corporate Enforcement during the year in accordance with the 2016 Audits Regulations and this Act, and
- (b) all publication sanctions imposed by it during the year in accordance with the 2016 Audits Regulations and this Act.

(6) If the Supervisory Authority decides to impose an administrative pecuniary sanction on a statutory auditor under subsection (1)(f)(i), the Supervisory Authority may not impose an amount—

- (a) that would be likely to cause the statutory auditor to cease business, or
- (b) that would, if the statutory auditor is an individual, be likely to cause the statutory auditor to be adjudicated bankrupt.

(7) If the Director of Corporate Enforcement decides to impose an administrative pecuniary sanction on a relevant director under subsection (1)(f)(ii), the Director of Corporate Enforcement may not impose an amount that would be likely to cause the relevant director to be adjudicated bankrupt.

(8) If the conduct engaged in by the statutory auditor has given rise (whether in whole or in part) to 2 or more relevant contraventions, the

Supervisory Authority may not impose more than one administrative pecuniary sanction under subsection (1)(f)(i) on the statutory auditor in respect of the same conduct.

(9) If the conduct engaged in by the relevant director has given rise (whether in whole or in part) to 2 or more relevant contraventions, the Director of Corporate Enforcement may not impose more than one administrative pecuniary sanction under subsection (1)(f)(ii) on the relevant director in respect of the same conduct.

(10) If the Supervisory Authority imposes an administrative pecuniary sanction under subsection (1)(f)(i) on a statutory auditor and the conduct engaged in by the statutory auditor that has given rise (whether in whole or in part) to the relevant contravention is an offence under the law of the State, the statutory auditor shall not be liable to be prosecuted or punished for the offence under that law.

(11) If the Director of Corporate Enforcement imposes an administrative pecuniary sanction under subsection (1)(f)(ii) on a relevant director and the conduct engaged in by the relevant director that has given rise (whether in whole or in part) to the relevant contravention is an offence under the law of the State, the relevant director shall not be liable to be prosecuted or punished for the offence under that law.

(12) The Supervisory Authority may not impose an administrative pecuniary sanction under subsection (1)(f)(i) on a statutory auditor if—

- (a) the statutory auditor has been charged with having committed an offence under a law of the State and has either been found guilty or not guilty of having committed the offence, and
- (b) the offence involves the conduct engaged in by the statutory auditor that has given rise (whether in whole or in part) to the relevant contravention.

(13) The Director of Corporate Enforcement may not impose an administrative pecuniary sanction under subsection (1)(f)(ii) on a relevant director if—

- (a) the relevant director has been charged with having committed an offence under a law of the State and has either been found guilty or not guilty of having committed the offence, and
- (b) the offence involves the conduct engaged in by the relevant director that has given rise (whether in whole or in part) to the relevant contravention.

Publication of relevant sanction imposed, etc

935D. (1) Subject to subsections (2) and (3), the Supervisory Authority shall, in so far as a relevant decision imposes a relevant sanction on a statutory auditor or relevant director, as soon as is practicable after—

- (a) that decision has been confirmed by the court under section 941(2)(a) or 941A(2), or
- (b) a decision of the court under section 941(2)(b) has been made to impose a different relevant sanction on the statutory auditor or relevant director,

publish on its website particulars of the relevant contravention for which the relevant sanction was imposed, particulars of the relevant sanction imposed and particulars of the statutory auditor or relevant director on whom the relevant sanction was imposed.

(2) Subject to subsection (4), if there is an appeal from the court from a confirmation referred to in subsection (1)(a), or a decision referred to in subsection (1)(b), the Supervisory Authority shall from time to time, as it considers appropriate, publish particulars on its website of the status or outcome of the appeal.

(3) The Supervisory Authority shall publish particulars referred to in subsection (1) on an anonymous basis on its website in any one or more of the following circumstances:

- (a) the Supervisory Authority, following an assessment of the proportionality of the publication of those particulars in accordance with subsection (1) in so far as personal data is concerned, is of the opinion that, in relation to the relevant sanction imposed on a statutory auditor who is an individual or on a relevant director, such publication would be disproportionate;
- (b) the Supervisory Authority is of the opinion that the publication of those particulars in accordance with subsection (1) would jeopardize the stability of financial markets or an ongoing criminal investigation;
- (c) the Supervisory Authority is of the opinion that the publication of those particulars in accordance with subsection (1) would cause disproportionate damage to the statutory auditor or relevant director concerned.

(4) Subsection (2) shall not apply in any case where subsection (3) applies.

(5) The Supervisory Authority shall ensure that particulars published on its website in accordance with subsection (1) or (2) remain on its website for at least 5 years.”.

Amendment of section 938 of Principal Act

25. Section 938 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “, 935 or 935B” for “or 935”,

(b) in subsection (3), by the insertion of “, 935B” after “935”, and

(c) in subsection (4), by the substitution of “, 935 and 935B” for “and 935”.

Amendment of section 941 of Principal Act

26. Section 941 of the Principal Act is amended, in subsection (1), by the substitution of “, 934(10) or 935B(7)” for “or section 934(10)”.

Application to court to confirm decision to impose relevant sanction

27. The Principal Act is amended by the insertion of the following section after section 941:

“941A. (1) Where a statutory auditor or relevant director does not, within the period allowed under section 935B(8), appeal to the court against a relevant decision made by the Supervisory Authority or Director of Corporate Enforcement to impose a relevant sanction on the auditor or director, the Supervisory Authority or Director of Corporate Enforcement, as appropriate, shall, as soon as is practicable after the expiration of that period and on notice to the auditor or director, make an application in a summary manner to the court for confirmation of the relevant decision.

(2) The court shall, on the hearing of an application under subsection (1), confirm the relevant decision the subject of the application unless the court considers that there is good reason not to do so.”.

Amendment of section 1097 of Principal Act

28. Section 1097 of the Principal Act is amended—

(a) by the substitution of “Regulation 115” for “Regulation 91”, and

(b) by the substitution of “2016 Audits Regulations” for “European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010”.

Amendment of section 1305 of Principal Act

29. Section 1305 of the Principal Act is amended, in subsection (3), in paragraph (b), by the substitution of “the Audit Directive (within the meaning of the 2016 Audits Regulations)” for “Directive 2006/43/EC”.

Amendment of section 1441 of Principal Act

30. Section 1441 of the Principal Act is amended, in subsection (3), by the substitution of the following paragraph for paragraph (f):

“(f) a person who is disqualified under Regulation 93 of the 2016 Audits Regulations for appointment as statutory auditor of a company that is a subsidiary or holding company of the society,”.

Amendment of section 1448 of Principal Act

31. Section 1448 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) In this section—

‘third-country audit entity’ has the same meaning as in Regulation 4 of the 2016 Audits Regulations;

‘third-country auditor’ has the same meaning as in Regulation 4 of the 2016 Audits Regulations.”,

and

(b) in subsection (2)—

(i) by the substitution of “sections 935A to 941A shall apply (with such modification to those sections as are specified in the regulations)” for “Chapter 3 of Part 8 of the 2010 Audits Regulations”, and

(ii) by the substitution of “Regulation 135(3) of the 2016 Audits Regulations” for “Regulation 113(2) of the 2010 Audits Regulations”.

PART 3

DESIGNATION OF COMPETENT AUTHORITY AND ASSIGNMENT OF FUNCTIONS

Designation of competent authority

32. (1) Subject to paragraph (2), the Supervisory Authority is designated as the competent authority for the oversight of statutory auditors and audit firms in accordance with the Audit Directive and Regulation (EU) No 537/2014.

(2) Subject to paragraph (4), the Director of Corporate Enforcement is designated as the competent authority with the power to take the administrative measures or impose the sanctions referred to in Article 30 of the Audit Directive (except the sanction referred to in Article 30a (1)(b) of the Audit Directive) in so far as such administrative measures are taken against, or such sanctions are imposed on, directors of public-interest entities.

(3) The Supervisory Authority is designated as the competent authority for the purposes of—

(a) public oversight, quality assurance, investigations and penalties of third-country auditors and audit entities registered under Regulation 135(1), and

(b) public oversight, investigations and penalties of third-country auditors and audit entities referred to in Regulation 135(7), (8) and (9).

- (4) (a) Subject to subparagraph (b), to the extent that the Director of Corporate Enforcement is a competent authority by virtue of paragraph (2), a reference in these Regulations (other than this Regulation) to the Supervisory Authority shall include a reference to the Director of Corporate Enforcement.
- (b) The Supervisory Authority shall perform the functions under these Regulations that would, but for this paragraph, otherwise fall to be performed by the Director of Corporate Enforcement by virtue of being the competent authority referred to in subparagraph (a).
- (c) The Director of Corporate Enforcement shall cooperate with the Supervisory Authority so as to enable the Supervisory Authority to perform the functions referred to in subparagraph (b).
- (5) The Supervisory Authority shall, as soon as is practicable on or after 17 June 2016, publish on its website information on the designation of competent authorities effected by this Regulation between the Supervisory Authority and the Director of Corporate Enforcement.

Assignment of functions

33. (1) Subject to paragraph (3), the recognised accountancy bodies shall perform the functions referred to in section 905(2)(n) of the Companies Act 2014 in accordance with these Regulations.

(2) Subject to Regulation 32(2), the Supervisory Authority shall perform the functions referred to in points (a), (b) and (c) of Article 24(1) of Regulation (EU) No 537/2014.

(3) The Supervisory Authority may perform a function (whether in whole or in part or in a particular instance) referred to in section 905(2)(n) of the Companies Act 2014 instead of the recognised accountancy body concerned if—

(a) the Supervisory Authority—

(i) is satisfied that the body has failed to perform that function in the circumstances concerned, and

(ii) is of the opinion that it is in the public interest that it perform that function in those circumstances,

or

(b) without prejudice to the generality of subparagraph (a), in the case of investigative and administrative disciplinary systems referred to at subparagraph (iv) of that section, the Supervisory Authority is of the opinion that it is in the public interest that it perform that function in the circumstances concerned.

(4) The costs incurred by the Supervisory Authority in performing, pursuant to paragraph (3), a function referred to in section 905(2)(n) of the Companies

Act 2014 instead of the recognised accountancy body concerned shall be defrayed by that body except where money referred to in section 918(3) of the Companies Act 2014 may be used, in accordance with that section 918(3), to defray such costs; for the purposes of this paragraph, in default of payment of the amount of such costs to the Supervisory Authority, the Authority may recover that amount as a simple contract debt in any court of competent jurisdiction.

(5) The Supervisory Authority shall, as soon as is practicable on or after 17 June 2016, publish on its website information on the assignment of functions effected by this Regulation between the Supervisory Authority and the recognised accountancy bodies.

Annual audit programme and activity report

34. (1) The Supervisory Authority shall, not later than 4 months after the end of each financial year, prepare a report (in these Regulations referred to as the “annual audit programme and activity report”) in accordance with this Regulation on, inter alia, its oversight functions referred to in Regulation 32 performed during that year.

(2) The AAPA report shall contain the following information:

- (a) an activity report on the functions performed by the recognised accountancy bodies during the financial year to which the AAPA report relates;
- (b) a work programme concerning the oversight functions referred to in Regulation 32 that the Supervisory Authority proposes to perform during the financial year immediately following the financial year to which the AAPA report relates;
- (c) an activity report regarding the functions of the Supervisory Authority under Regulation (EU) No 537/2014 during the financial year to which the AAPA report relates;
- (d) a work programme regarding the functions of the Supervisory Authority under Regulation (EU) No 537/2014 that the Supervisory Authority proposes to perform during the financial year immediately following the financial year to which the AAPA report relates;
- (e) a report for the financial year to which the AAPA report relates on the overall results of the quality assurance system, including—
 - (i) information on recommendations issued, follow-up on the recommendations, supervisory measures taken and relevant sanctions and publication sanctions (within the meaning of section 935A of the Companies Act 2014) imposed, and
 - (ii) quantitative information and other key performance information on financial resources and staffing, and the efficiency and effectiveness of the quality assurance system.

(3) The AAPA report may form part of the annual report required under section 928 of the Companies Act 2014 in respect of the same financial year to which the AAPA report relates.

(4) The Supervisory Authority shall cause the AAPA report to be published on its website not later than 1 July of the year immediately following the financial year to which the report relates.

Operation of certain provisions with regard to particular recognised accountancy bodies

35. (1) This Regulation applies where the provision referred to in paragraph (2), (3), (4) or (5) uses the expression “recognised accountancy body” without qualification and that provision does not, by its express terms, itself indicate which recognised accountancy body is being referred to.

(2) A provision of these Regulations that confers a function on a recognised accountancy body in relation to a statutory auditor or audit firm shall be read as conferring that function—

- (a) in the case of a statutory auditor who is not a member of a statutory audit firm, on the recognised accountancy body of which the statutory auditor is a member,
- (b) in the case of statutory auditor who is a member of a statutory audit firm, on the recognised accountancy body of which the statutory audit firm is a member, and
- (c) in the case of a statutory audit firm, on the recognised accountancy body of which the statutory audit firm is a member.

(3) With regard to the function conferred by Regulation 37 on a recognised accountancy body in relation to an individual or firm, paragraph (2) applies as if, for each reference in that paragraph to a statutory auditor or audit firm (as the case may be), there were substituted a reference to the individual or firm, as appropriate.

(4) A provision of these Regulations requiring that an act is to be done, or enabling an act to be done, by a person (other than a person referred to in paragraph (5)(b)) in relation to a recognised accountancy body shall be read as requiring or enabling it to be done by the person in relation to—

- (a) if the person is not a member of a statutory audit firm, the recognised accountancy body of which the person is a member,
- (b) if the person is a member of a statutory audit firm, the recognised accountancy body of which the statutory audit firm is a member, and
- (c) if the person is a statutory audit firm, the recognised accountancy body of which the statutory audit firm is a member.

(5) Paragraph (6) applies in the case—

- (a) of a provision of the kind referred to in paragraph (2), (3) or (4), and
- (b) where the provision falls to be applied to a Member State auditor, a Member State audit firm, a third-country auditor or any other person who or which is not a member of a recognised accountancy body (or, as the case may be, the firm of which the person is a member is not a member of a recognised accountancy body).

(6) The recognised accountancy body that shall perform the function concerned or, as the case may be, in relation to which the act concerned is required or enabled to be done shall be determined—

- (a) by reference to arrangements, in writing entered into by the recognised accountancy bodies amongst themselves for the purpose (which arrangements those bodies are empowered by this paragraph to enter into), or
- (b) in default of—
 - (i) such arrangements being entered into, or
 - (ii) the provision of such arrangements dealing with the particular case falling to be determined,

by the Supervisory Authority.

(7) On a determination being made by the Supervisory Authority for the purposes of paragraph (6)(b), a direction in writing, reflecting the terms of the determination, shall be given by it (which direction the Supervisory Authority is empowered by this paragraph to give).

(8) Arrangements shall not be entered into under paragraph (6)(a) by the recognised accountancy bodies save after consultation by them with the Supervisory Authority.

(9) Subject to paragraph (10), in consequence of the operation of this Regulation, the function of withdrawal of a particular approval of a statutory auditor or audit firm falls to be discharged by a recognised accountancy body (in this Regulation referred to as the “first-mentioned accountancy body”) that is different from the recognised accountancy body (in this Regulation referred to as the “second-mentioned accountancy body”) that granted the approval—

- (a) the first-mentioned accountancy body shall notify in writing the second-mentioned accountancy body of the proposal by it to withdraw the approval, and
- (b) the second-mentioned accountancy body shall provide such assistance by way of provision of information or clarification of any matter, to the first-mentioned accountancy body as the latter considers it may require so as to inform itself better on any issue bearing on the performance of the function of withdrawal.

(10) The procedures adopted for the purposes of paragraph (9) by the first-mentioned accountancy body and the second-mentioned accountancy body shall be such as will—

- (a) avoid any unnecessary delay in the performance of the function of withdrawal, and
- (b) respect the requirements of procedural fairness as concerns the auditor or audit firm concerned being able to answer any part of the case made against him, her or it that is informed by those procedures being employed.

(11) In a case falling within paragraphs (9) and (10), if the approval concerned is withdrawn, the first-mentioned accountancy body, in addition to making the notifications required by Regulation 55 and (where it applies) Regulation 56, shall notify the second-mentioned accountancy body of the withdrawal of approval.

Conflicts of interest to be avoided

36. (1) The persons to whom this paragraph applies shall organise themselves in such a manner so that conflicts of interest are avoided in the performance of their respective functions under these Regulations.

(2) Paragraph (1) applies to—

- (a) the Supervisory Authority,
- (b) the Director of Corporate Enforcement,
- (c) the Registrar of Companies, and
- (d) the recognised accountancy bodies.

PART 4

APPROVAL OF STATUTORY AUDITORS AND AUDIT FIRMS,
PROHIBITION ON UNAPPROVED PERSONS ACTING AS AUDITOR,
ETC.

Chapter 1

Approval of Statutory Auditors and Audit Firms

Applications for approval, general principle as to good repute, etc.

37. (1) A recognised accountancy body may, on application made to it by an individual or firm, approve, under these Regulations, the applicant as a statutory auditor or audit firm.

(2) A recognised accountancy body may, on foot of an application under paragraph (1), grant approval under these Regulations only to—

- (a) individuals, or

(b) firms,

who or which are of good repute.

(3) A recognised accountancy body may, on application made to it by a third-country auditor and in accordance with Regulation 134, approve, under these Regulations, the applicant as a statutory auditor.

(4) Paragraph (5) applies in the case of an application under paragraph (1)—

(a) by a firm that is a Member State audit firm in the circumstances where it is not seeking registration in accordance with Regulation 38, or

(b) by a Member State auditor.

(5) For the purposes of this Regulation, the fact that the applicant is a Member State audit firm or Member State auditor shall constitute conclusive evidence that the applicant is of good repute unless, arising out of the cooperation referred to in paragraph (6), a counterpart authority in the Member State where the applicant is approved as a statutory audit firm or auditor has notified the Supervisory Authority or a recognised accountancy body that the counterpart authority has reasonable grounds for believing that the good repute of the audit firm or auditor has been seriously compromised.

(6) The cooperation referred to in paragraph (5) is the cooperation that the State is required to engage in by virtue of Chapter VIII of the Audit Directive.

(7) On approving a person as a statutory auditor or audit firm, the recognised accountancy body shall assign an individual identification number to the person and a record in writing shall be maintained by the recognised accountancy body of all such numbers assigned by it under this paragraph.

Basis on which audit firms approved in other Member States may carry out audits in State

38. (1) An audit firm which is approved in another Member State shall be entitled to carry out statutory audits in the State if the key audit partner who carries out those audits on behalf of the audit firm, both at the time of registration (in accordance with paragraph (2)) and at all times during the registration of the firm, complies with the requirements of Regulations 37 to 45.

(2) (a) An audit firm that wishes to carry out statutory audits in the State where the State is not its home Member State shall, before carrying out any such audit, register with the recognised accountancy body with which the key audit partner referred to in paragraph (1) is approved.

(b) The recognised accountancy body shall ensure that an audit firm which complies with paragraph (1) is registered in accordance with the requirements of Part 6 and Schedule 2.

(3) (a) The recognised accountancy body shall register the audit firm if it is satisfied that the audit firm is registered with the counterpart authority in the audit firm's home Member State.

(b) Where the recognised accountancy body intends to rely on a certificate, issued by the counterpart authority in the home Member State, attesting to the registration of the audit firm in the home Member State, the recognised accountancy body may require that such certificate be issued on a date falling within the 3 months immediately preceding that date on which the recognised accountancy body is given that certificate.

(4) On registering the audit firm, the recognised accountancy body shall assign an individual identification number to the firm and a record in writing shall be maintained by the recognised accountancy body of all such numbers assigned by it under this paragraph.

(5) The recognised accountancy body shall inform the counterpart authority in the home Member State of the registration of the audit firm.

(6) Where the Supervisory Authority or a recognised accountancy body receives a notification from another Member State that an audit firm whose home Member State is the State has registered with the counterpart authority in the host Member State, the Supervisory Authority or recognised accountancy body (as the case may be) shall ensure that the registration is recorded in the public register.

Restriction as to persons who may carry out statutory audits

39. Statutory audits shall be carried out only by—

- (a) auditors or audit firms that are approved under these Regulations, or
- (b) audit firms registered in accordance with Regulation 38.

Restriction on acting as statutory auditor

40. A person shall not—

- (a) act as a statutory auditor,
- (b) describe himself or herself as a statutory auditor, or
- (c) so hold himself or herself out as to indicate, or be reasonably understood to indicate, that he or she is a statutory auditor,

unless he or she has been approved in accordance with these Regulations.

Restriction on acting as statutory audit firm

41. A firm shall not—

- (a) act as a statutory audit firm,
- (b) describe itself as a statutory audit firm, or

- (c) so hold itself out as to indicate, or be reasonably understood to indicate, that it is a statutory audit firm,

unless it has been approved in accordance with these Regulations or registered in accordance with Regulation 38.

Offence for contravening Regulation 39, 40 or 41

42. A person who contravenes Regulation 39, 40 or 41 shall be guilty of an offence and shall be liable—

- (a) on a summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 12 months or both.

Conditions for approval as statutory auditor

43. A person shall not be eligible for approval as a statutory auditor unless he or she is—

- (a) a member of a recognised accountancy body and holds an appropriate qualification as referred to in Regulation 45,
- (b) a Member State auditor and complies with Regulation 49, or
- (c) a third-country auditor and complies with Regulations 49 and 134.

Transitional provisions

44. (1) Subject to Regulations 52 and 143, a deemed approval of a person as a statutory auditor referred to in Regulation 25(2) of the 2010 Audits Regulations that was in force immediately before 17 June 2016 shall continue in force under these Regulations as if it were a deemed approval of that person as a statutory auditor under these Regulations.

(2) Subject to Regulations 53 and 143, a deemed approval of a firm as a statutory audit firm under Regulation 27(4) of the 2010 Audits Regulations that was in force immediately before 17 June 2016 shall continue in force under these Regulations as if it were a deemed approval of that firm as a statutory audit firm under these Regulations.

Appropriate qualification for purpose of Regulation 43(a)

45. (1) An individual holds an appropriate qualification, as required by Regulation 43(a), if he or she holds a qualification granted by a recognised accountancy body whose standards relating to training and qualifications for the approval of a person as a statutory auditor are not less than those specified in Schedule 1.

(2) In paragraph (1), “qualification” means a qualification to undertake an audit of individual accounts and group accounts in so far as required by European Union law.

Conditions for approval as statutory audit firm

46. (1) In this Regulation, references to a firm include references to a Member State audit firm if the firm is not seeking registration in accordance with Regulation 38.

(2) A firm shall not be eligible for approval as a statutory audit firm unless—

(a) the individuals who carry out statutory audits in the State on behalf of the firm are approved as statutory auditors in accordance with these Regulations,

(b) the majority of the voting rights in the firm are held by—

(i) individuals who are eligible for approval in the State or in any other Member State as statutory auditors,

(ii) audit firms approved as statutory audit firms in the State or in any other Member State, or

(iii) a combination of such individuals and audit firms,

and

(c) subject to paragraph (3), the majority of the members of the administrative or management body of the firm are—

(i) individuals who are eligible for approval in the State or in any other Member State as statutory auditors,

(ii) audit firms approved as statutory audit firms in the State or in any other Member State, or

(iii) a combination of such individuals and audit firms.

(3) Where the administrative or management body of a firm has no more than 2 members, then, for the purposes of subparagraph (c) of paragraph (2), one of those members shall satisfy at least the requirements of that subparagraph.

Powers of Director of Corporate Enforcement

47. (1) The Director of Corporate Enforcement may demand of a person—

(a) acting as a statutory auditor or audit firm of a company, or

(b) purporting to have obtained approval under these Regulations, or registration in accordance with Regulation 38, to so act,

the production of evidence of the person's approval under these Regulations or, if applicable, registration in accordance with Regulation 38 in respect of any period during which the person so acted or purported to have obtained such approval.

(2) If the person concerned refuses or fails to produce the evidence referred to in paragraph (1) within 30 days after the date of the demand referred to in that paragraph, or such longer period as the Director of Corporate Enforcement may allow, the person shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €12,500.

(3) In a prosecution for an offence under this Regulation, it shall be presumed, until the contrary is shown, that the defendant did not, within 30 days, or any longer period allowed, after the day on which the production was demanded, produce evidence in accordance with paragraph (1).

Evidence in prosecutions under Regulation 47

48. (1) Subject to paragraph (2), in proceedings for an offence under Regulation 47, the production to the court of a certificate purporting to be signed by a person on behalf of a recognised accountancy body and stating that the defendant is not approved under these Regulations or, if applicable, is not registered in accordance with Regulation 38, by that recognised accountancy body shall be sufficient evidence, until the contrary is shown by the defendant, that the defendant is not so approved or registered, as the case may be.

(2) Paragraph (1) shall not apply unless a copy of the certificate concerned is served by the prosecution on the defendant, by registered post, not later than 28 days before the day the certificate is produced in court in the proceedings concerned.

(3) If the defendant in those proceedings intends to contest the statement contained in such a certificate, he or she shall give notice in writing of that intention to the prosecution within 21 days, or such longer period as the court may allow, after the date of receipt by him or her of a copy of the certificate from the prosecution.

Chapter 2

Aptitude Test

Aptitude test to be passed

49. (1) Subject to paragraph (2), a Member State auditor or third-country auditor applying for approval as a statutory auditor in the State is required to sit and pass an aptitude test to demonstrate his or her knowledge of the enactments and practice that are relevant to statutory audits in the State.

(2) Paragraph (1) shall not apply to a Member State auditor or third-country auditor if the recognised accountancy body is satisfied that he or she has otherwise demonstrated sufficient knowledge of the enactments and practice referred to in that paragraph.

(3) The Supervisory Authority shall, at such time as it thinks it appropriate to do so, issue guidelines to each recognised accountancy body as to the specific

matters that a recognised accountancy body should have regard to in reaching a decision that it is satisfied that a person has demonstrated, in accordance with paragraph (2), the knowledge referred to in paragraph (1).

(4) A recognised accountancy body may charge and impose a fee (of an amount specified from time to time by the Minister sufficient to cover the body's administrative expenses in respect of the following) on a Member State auditor or third-country auditor in respect of the administration of an aptitude test under this Regulation in relation to him or her.

(5) A fee imposed under paragraph (4) may, in default of payment, be recovered from the Member State auditor or third-country auditor concerned as a simple contract debt in any court of competent jurisdiction.

Scope of aptitude test

50. (1) The aptitude test shall—

- (a) be conducted in either Irish or English, and
- (b) cover only the applicant's adequate knowledge of the enactments and practice that are relevant to statutory audits in the State.

(2) The various matters that shall constitute the contents of the aptitude test shall be decided by the recognised accountancy body after it has received the approval of the Supervisory Authority to the contents of the test.

(3) A recognised accountancy body shall not alter the contents of an aptitude test approved under paragraph (2) unless the alteration concerned has been approved by the Supervisory Authority.

Adequate standards to be applied in administration of aptitude test

51. (1) Subject to paragraph (2), a recognised accountancy body shall apply adequate standards in the administration of the aptitude test.

(2) No standards shall be used by a recognised accountancy body for the purposes of paragraph (1) unless those standards have (with respect to that use) first been approved by the Supervisory Authority.

Chapter 3

Withdrawal of approval

Grounds for mandatory withdrawal of approval in case of statutory auditor

52. (1) The procedures under this Regulation are in addition to those procedures, in the cases to which Regulation 35(9) to (11) apply, that are required by Regulation 35(9) to (11) to be employed.

(2) For the purposes of this Regulation, the cases that can constitute circumstances of an auditor's good repute being seriously compromised include cases of professional misconduct or want of professional skill on the part of the auditor.

(3) Without prejudice to Regulation 114 and subject to paragraphs (5) to (7), a recognised accountancy body shall withdraw an approval of an auditor under these Regulations if, but only if—

- (a) circumstances arise (involving acts or omissions on the part of the auditor) from which the recognised accountancy body can reasonably conclude that the auditor's good repute is seriously compromised, or
- (b) the auditor no longer falls within paragraph (a), (b) or (c) of Regulation 43, or
- (c) in the case of a person who is a statutory auditor referred to in Regulation 44(1)—
 - (i) the auditor no longer falls within paragraph (a) of Regulation 43,
 - (ii) the auditor is not registered as a statutory auditor in the public register, or
 - (iii) the auditor is not subject to the regulation of a recognised accountancy body.

(4) Unless there do not exist internal appeal procedures of the recognised accountancy body as referred to in paragraph (9)(a), references in paragraphs (5) to (8) to a recognised accountancy body shall be read as references to a recognised accountancy body acting through the disciplinary committee that deals with matters at first instance.

(5) Subject to paragraph (8), paragraph (6) applies where, having—

- (a) complied with the requirements of procedural fairness in that regard, and
- (b) served any notices required for that purpose or as required by its investigation and disciplinary procedures,

the recognised accountancy body is satisfied that subparagraph (a), (b) or (c) of paragraph (3) applies in the case of an auditor.

(6) Subject to paragraph (8), the recognised accountancy body shall serve a notice in writing on the auditor stating that—

- (a) it is satisfied that subparagraph (a), (b) or (c) of paragraph (3) applies in the case of the auditor,
- (b) the auditor must take specified steps to cause subparagraph (a), (b) or (c) of paragraph (3) to cease to apply to him or her within a specified period (which shall be not less than one month), and
- (c) if those steps are not taken, it shall withdraw the approval of the auditor.

(7) Where the recognised accountancy body has served a notice under paragraph (6) on a statutory auditor and the auditor has not, before the expiration of the specified period referred to in paragraph (6)(b), taken the steps referred to in paragraph (6)(b), the recognised accountancy body shall withdraw the approval of the auditor under these Regulations.

(8) The procedure specified in paragraph (6) need not be employed if the acts or omissions concerned referred to in subparagraph (a) of paragraph (3) are such as, in the opinion of the recognised accountancy body, constitute professional misconduct or want of professional skill on the part of the auditor of a degree that employing that procedure would not be in the public interest but nothing in this paragraph affects the application of the requirements of procedural fairness to the withdrawal of approval.

(9) If—

(a) there exist applicable internal appeal procedures of the recognised accountancy body, and

(b) the investigation and disciplinary procedures of the recognised accountancy body provide that a decision of its disciplinary committee, being a decision of a nature to which this Regulation applies, shall stand suspended or shall not take effect until, as the case may be—

(i) the period for making an appeal under those procedures has expired without such an appeal having been made,

(ii) such an appeal has been made and the decision to withdraw the approval confirmed, or

(iii) such an appeal that has been made is withdrawn,

then, notwithstanding anything in the preceding provisions of this Regulation, the operation of the withdrawal of approval by that disciplinary committee shall stand suspended until the happening of an event specified in subparagraph (b)(i), (ii) or (iii).

(10) Paragraph (11) applies if—

(a) there exist applicable internal appeal procedures of the recognised accountancy body, and

(b) the investigation and disciplinary procedures of the recognised accountancy body do not provide, as referred to in paragraph (9)(b), for the decision of the disciplinary committee referred to in that provision to stand suspended or not to take effect.

(11) Notwithstanding the internal appeal procedures referred to in paragraph (10)(a), the auditor to whom the decision referred to in paragraph (9)(b) relates may apply to the High Court for an order suspending the operation of the withdrawal pending the determination by the relevant appellate committee of

an appeal that he or she is making under those procedures and, where such an application is made, paragraphs (14) to (17) apply to that application with—

- (a) the substitution of references to an appeal under those internal appeal procedures for reference to an appeal under Regulation 54, and
- (b) any other necessary modifications.

(12) If the relevant appellate committee referred to in paragraph (11) is of the opinion, having regard to the particular issues that have arisen on that appeal, that, in the interests of justice, the disposal by it of an appeal referred to in that paragraph ought to include its proceeding in the manner specified in paragraphs (6) and (7), then, in disposing of that appeal, it shall proceed in the manner so specified.

(13) The recognised accountancy body shall take all reasonable steps to ensure that any appeal to the relevant appellate committee referred to in paragraph (11) is prosecuted promptly and it shall be the duty of that appellate committee to ensure that any such appeal to it is disposed of as expeditiously as may be and, for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the determination of such an appeal.

(14) Where a recognised accountancy body has made a decision to withdraw the approval of an auditor under this Regulation (that is to say, a final decision of the recognised accountancy body on the matter after the internal appeal procedures (if any) of it have been employed and exhausted), the auditor may apply to the High Court for an order suspending the operation of the withdrawal pending the determination by the High Court of an appeal under Regulation 54 that he or she is making against the withdrawal.

(15) Subject to paragraph (17), on the hearing of an application under paragraph (14), the High Court may, as it considers appropriate and having heard the recognised accountancy body concerned and, if it wishes to be so heard, the Supervisory Authority (which shall have standing to appear and be heard on the application)—

- (a) grant an order suspending the operation of the withdrawal, or
- (b) refuse to grant such an order,

and an order under subparagraph (a) may provide that the order shall not have effect unless one or more conditions specified in the order are complied with (and such conditions may include conditions requiring the auditor not to carry out statutory audits save under the supervision of another statutory auditor or not to carry out such audits save in specified circumstances).

(16) Subject to paragraph (17), the High Court may, on application to it by the auditor or recognised accountancy body concerned, vary or discharge an order under paragraph (15)(a) if it considers it just to do so.

(17) In considering an application under paragraph (14) or (16), the High Court shall have regard to—

- (a) whether, as regards the appeal the applicant is making under Regulation 54 to the High Court, the applicant has a strong case that is likely to succeed before that Court (and, for that purpose, the High Court shall require the applicant to give an indication of the facts that will be relied upon, or of the evidence that will be adduced in the case of facts that are in controversy, by him or her on the hearing of that appeal), and
- (b) the public interest and, in particular, the public interest in ensuring that there is the minimum of disruption, consistent with law, to the discharge by the recognised accountancy body concerned, as a body assigned with the function of granting and withdrawing approval.

Grounds for mandatory withdrawal in case of statutory audit firm

53. (1) The procedures under this Regulation are in addition to those procedures, in the cases to which Regulation 35(9) to (11) apply, that are required by Regulation 35(9) to (11) to be employed.

(2) For the purposes of this Regulation, the cases that can constitute circumstances of an audit firm's good repute being seriously compromised include cases of professional misconduct or want of professional skill on the part of the audit firm or any of the one or more auditors through whom it acts.

(3) Without prejudice to Regulation 114 and subject to paragraphs (5) to (7), a recognised accountancy body shall withdraw an approval of an audit firm under these Regulations if, but only if—

- (a) circumstances arise (involving acts or omissions on the part of the audit firm or auditor or auditors through whom it acts) from which the recognised accountancy body can reasonably conclude that the firm's good repute is seriously compromised,
- (b) the audit firm (not being a firm referred to in subparagraph (c)) no longer falls within subparagraphs (a), (b) and (c) of Regulation 46(2), or
- (c) in the case of a firm which is a statutory audit firm referred to in Regulation 44(2), the firm no longer falls within subparagraph (a) of Regulation 46(2).

(4) Unless there do not exist internal appeal procedures of the recognised accountancy body as referred to in paragraph (9)(a), references in paragraphs (5) to (8) to a recognised accountancy body shall be read as references to a recognised accountancy body acting through the disciplinary committee that deals with matters at first instance.

(5) Subject to paragraph (8), paragraph (6) applies where, having—

- (a) complied with the requirements of procedural fairness in that regard, and
- (b) served any notices required for that purpose or as required by its investigation and disciplinary procedures,

the recognised accountancy body is satisfied that subparagraph (a), (b) or (c) of paragraph (3) applies in the case of an audit firm.

(6) Subject to paragraph (8), the recognised accountancy body shall serve a notice in writing on the audit firm stating that—

- (a) it is satisfied that subparagraph (a), (b) or (c) of paragraph (3) applies in the case of the audit firm,
- (b) the audit firm must take specified steps to cause subparagraph (a), (b) or (c) of paragraph (3) to cease to apply to it within a specified period (which shall not be less than one month), and
- (c) if those steps are not taken, it shall withdraw the approval of the firm.

(7) Where the recognised accountancy body has served a notice under paragraph (6) on a statutory audit firm and the firm has not, before the expiration of the specified period referred to in paragraph (6)(b), taken the steps referred to in paragraph (6)(b), the recognised accountancy body shall withdraw the approval of the audit firm under these Regulations.

(8) The procedure specified in paragraph (6) need not be employed if the acts or omissions concerned referred to in subparagraph (a) of paragraph (3) are such as, in the opinion of the recognised accountancy body, constitute professional misconduct or want of professional skill on the part of the audit firm (or the auditor or auditors through whom it acts) of a degree that employing that procedure would not be in the public interest but nothing in this paragraph affects the application of the requirements of procedural fairness to the withdrawal of approval.

(9) If—

- (a) there exist applicable internal appeal procedures of the recognised accountancy body, and
- (b) the investigation and disciplinary procedures of the recognised accountancy body provide that a decision of its disciplinary committee, being a decision of a nature to which this Regulation applies, shall stand suspended or shall not take effect until, as the case may be—
 - (i) the period for making an appeal under those procedures has expired without such an appeal having been made,
 - (ii) such an appeal has been made and the decision to withdraw the approval confirmed, or

(iii) such an appeal that has been made is withdrawn,

then, notwithstanding anything in the preceding provisions of this Regulation, the operation of the withdrawal of approval by that disciplinary committee shall stand suspended until the happening of an event specified in subparagraph (b)(i), (ii) or (iii).

(10) Paragraph (11) applies if—

- (a) there exist applicable internal appeal procedures of the recognised accountancy body, and
- (b) the investigation and disciplinary procedures of the recognised accountancy body do not provide, as referred to in paragraph (9)(b), for the decision of the disciplinary committee referred to in that provision to stand suspended or not to take effect.

(11) Notwithstanding the internal appeal procedures referred to in paragraph (10)(a), the audit firm to which the decision referred to in paragraph (9)(b) relates may apply to the High Court for an order suspending the operation of the withdrawal pending the determination by the relevant appellate committee of an appeal that it is making under those procedures and, where such an application is made, paragraphs (14) to (17) apply to that application with—

- (a) the substitution of references to an appeal under those internal appeal procedures for reference to an appeal under Regulation 54, and
- (b) any other necessary modifications.

(12) If the relevant appellate committee referred to in paragraph (11) is of the opinion, having regard to the particular issues that have arisen on that appeal, that, in the interests of justice, the disposal by it of an appeal referred to in that paragraph ought to include its proceeding in the manner specified in paragraphs (6) and (7), then, in disposing of that appeal, it shall proceed in the manner so specified.

(13) The recognised accountancy body shall take all reasonable steps to ensure that any appeal to the relevant appellate committee referred to in paragraph (11) is prosecuted promptly and it shall be the duty of that appellate committee to ensure that any such appeal to it is disposed of as expeditiously as may be and, for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the determination of such an appeal.

(14) Where a recognised accountancy body has made a decision to withdraw the approval of an audit firm under this Regulation (that is to say, a final decision of the recognised accountancy body on the matter after the internal appeal procedures (if any) of it have been employed and exhausted), the audit firm may apply to the High Court for an order suspending the operation of the withdrawal pending the determination by the High Court of an appeal under Regulation 54 that it is making against the withdrawal.

(15) Subject to paragraph (17), on the hearing of an application under paragraph (14), the High Court may, as it considers appropriate and having heard the recognised accountancy body concerned and, if it wishes to be so heard, the Supervisory Authority (which shall have standing to appear and be heard on the application)—

- (a) grant an order suspending the operation of the withdrawal; or
- (b) refuse to grant such an order,

and an order under subparagraph (a) may provide that the order shall not have effect unless one or more conditions specified in the order are complied with (and such conditions may include conditions requiring the audit firm not to carry out statutory audits save under the supervision of one or more statutory auditors or one or more statutory audit firms or not to carry out such audits save in specified circumstances).

(16) Subject to paragraph (17), the High Court may, on application to it by the audit firm or recognised accountancy body concerned, vary or discharge an order under paragraph (15)(a) if it considers it just to do so.

(17) In considering an application under paragraph (14) or (16), the High Court shall have regard to—

- (a) whether, as regards the appeal the applicant is making under Regulation 54 to the High Court, the applicant has a strong case that is likely to succeed before that Court (and, for that purpose, the High Court shall require the applicant to give an indication of the facts that will be relied upon, or of the evidence that will be adduced in the case of facts that are in controversy, by it on the hearing of that appeal), and
- (b) the public interest and, in particular, the public interest in ensuring that there is the minimum of disruption, consistent with law, to the discharge by the recognised accountancy body concerned, as a body assigned with the function of granting and withdrawing approval.

Appeals against withdrawal of approval

54. (1) Subject to paragraph (2), a person may appeal to the High Court against the withdrawal by a recognised accountancy body of approval under these Regulations of the person as a statutory auditor or audit firm.

(2) An appeal shall not lie under paragraph (1) unless and until any applicable internal appeal procedures of the recognised accountancy body have been employed and exhausted by the person referred to in that paragraph.

(3) An appeal under paragraph (1) shall be made within one month—

- (a) unless subparagraph (b) applies, after the date of the withdrawal of approval, or

- (b) after the confirmation of that withdrawal on foot of the internal appeal procedures of the recognised accountancy body having been employed.
- (4) On the hearing of an appeal under paragraph (1), the High Court—
- (a) if it is satisfied that the appellant has established that there was not a reasonable basis for the decision of the recognised accountancy body concerned to withdraw the approval, shall cancel the withdrawal of the approval, or
 - (b) if it is not so satisfied, shall confirm the withdrawal of the approval.
- (5) For the purposes of paragraph (4), there is a reasonable basis for the decision of the recognised accountancy body if, taking into account the expertise and specialist knowledge possessed by the recognised accountancy body, the decision (and the process that led to its making) was not vitiated by—
- (a) any serious and significant error or a series of such errors,
 - (b) a mistake of law, or
 - (c) the evidence, taken as a whole, not supporting the decision.
- (6) The High Court may, on the hearing of an appeal under paragraph (1), consider evidence not adduced or hear an argument not made to the recognised accountancy body concerned if the Court is satisfied that—
- (a) there are cogent circumstances justifying the failure to adduce the evidence or make the argument to the recognised accountancy body, and
 - (b) it is just and equitable for the Court to consider the evidence or hear the argument, as the case may be.
- (7) A notification of the outcome of an appeal under this Regulation (or of any appeal from a decision of the High Court thereunder) shall be made by the recognised accountancy body concerned to the same persons to whom a notification of a withdrawal of approval must be made by Regulation 55 and (where it applies) Regulation 56.

Certain persons to be notified of withdrawal of approval

55. Without prejudice to Regulation 56, where the approval under these Regulations of a statutory auditor or audit firm is withdrawn for any reason by a recognised accountancy body, that fact and the reasons for the withdrawal shall be communicated by the recognised accountancy body to—

- (a) the Supervisory Authority, and
- (b) the Registrar of Companies,

as soon as possible, but not later than one month after the date of withdrawal of approval.

Other persons to be notified of withdrawal of approval

56. (1) Where the approval under these Regulations of a statutory auditor is withdrawn for any reason by a recognised accountancy body, the recognised accountancy body shall, in addition to making the communication specified in Regulation 55, notify the relevant competent authorities of the host Member States, where the statutory auditor is also approved and entered in the public registers of those States pursuant to Articles 15 to 19 of the Audit Directive, of the fact of the withdrawal and the reasons for it.

(2) Where the approval under these Regulations of an audit firm is withdrawn for any reason by the recognised accountancy body, the recognised accountancy body shall, in addition to making the communication specified in Regulation 55, notify the relevant competent authorities of the host Member States, where the statutory auditor is also registered and entered in the public registers of those States pursuant to Articles 15 to 19 of the Audit Directive, of the fact of the withdrawal and the reasons for it.

(3) If the approval under these Regulations of a statutory auditor or audit firm is withdrawn by the Supervisory Authority, this Regulation and Regulation 55 (other than paragraph (a) of it) shall apply in relation to the withdrawal as if the references in them to the recognised accountancy body were references to the Supervisory Authority and with any other necessary modifications.

(4) The notifications under this Regulation shall be made as soon as possible, but not later than one month after the date of withdrawal of approval.

PART 5

STANDARDS AND PROVISIONS APPLICABLE TO STATUTORY
AUDITORS AND AUDIT FIRMS

Chapter 1

*Appointment of Statutory Auditors or Audit Firms**Prohibition of contractual clauses restricting choice of auditors*

57. (1) Subject to paragraph (2), a contractual clause which has the effect of restricting the choice by the general meeting of shareholders or members of the audited entity pursuant to Part 6 of the Companies Act 2014, or any audited entity to whom these Regulations apply, to certain categories or lists of statutory auditors or audit firms as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit of that entity shall be prohibited and shall be void.

(2) (a) A contractual clause referred to in paragraph (1) which—

(i) does not fall within Article 16(6) of Regulation (EU) No 537/2014, and

(ii) exists on 17 June 2016,

is void on and from that date.

(b) Paragraph (1) shall not apply to a contractual clause which falls within Article 16(6) of Regulation (EU) No 537/2014 until 17 June 2017.

(c) A contractual clause referred to in paragraph (1) which—

(i) falls within Article 16(6) of Regulation (EU) No 537/2014, and

(ii) exists on 17 June 2017,

is void on and from that date.

(3) An audited entity that is a public-interest entity shall directly and without delay report to the Supervisory Authority any contractual clause referred to in paragraph (1) that purports to affect it and the circumstances which gave rise to that clause.

(4) The Supervisory Authority, on receipt of a report under paragraph (3), may, by virtue of its powers under Part 15 of the Companies Act 2014, share the report with authorities in the State.

Selection procedures for statutory auditors or audit firms by public-interest entities

58. (1) Subject to paragraph (2), the following selection procedures apply, for financial years commencing on or after 17 June 2016, to the appointment of a statutory auditor or audit firm to a public-interest entity:

(a) the audit committee shall prepare a recommendation for the directors of the entity by carrying out the selection procedure specified in Article 16(3) of Regulation (EU) No 537/2014;

(b) the audit committee shall submit a recommendation to the directors of the entity for the appointment of statutory auditors or audit firms;

(c) the recommendation—

(i) shall be justified and contain at least 2 choices for the audit engagement and shall express a duly justified preference for one of them, and

(ii) shall state (if such be the case) that the recommendation is free from influence by a third party and that, on and from 17 June 2017, no clause of the kind referred to in Regulation 57(1) has been imposed upon it;

(d) the proposal by the directors to the general meeting of shareholders or members of the entity for the appointment of statutory auditors or audit firms—

(i) shall include the recommendation referred to in subparagraph (b) and the preference referred to in subparagraph (c)(i),

(ii) if it departs from the preference of the audit committee, shall justify the reasons for not following the recommendation of the audit committee, and

(iii) shall state if the statutory auditor or audit firm recommended by the directors participated in the selection procedure referred to in paragraph (2)(a).

(2) Paragraph (1) shall not apply if—

(a) a selection procedure in accordance with Article 16(3) of Regulation (EU) No 537/2014 has been carried out in respect of the appointment of the statutory auditor or audit firm in relation to one or more of the preceding 9 financial years, and

(b) the statutory auditor or audit firm appointed by the public-interest entity was appointed for the previous financial year.

(3) Where the public-interest entity is exempt from the requirement for an audit committee under Regulation 115, this Regulation applies to the directors of the public-interest entity.

(4) Where a public-interest entity relies on the provisions of section 382, 384 or 385 of the Companies Act 2014, the public-interest entity shall, as soon as is practicable, inform the Supervisory Authority of that fact.

(5) The appointment of an auditor is invalid if the appointment contravenes a provision of this Regulation.

(6) (a) Subject to subparagraph (b), a public-interest entity shall keep records demonstrating that the selection procedures referred to in paragraph (1) have been carried out.

(b) The public-interest entity shall keep those records for at least 6 years from the date on which the selection procedures were completed.

(7) A public-interest entity which contravenes paragraph (6)(a) or (b) shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine.

Appointment of statutory auditors or audit firms by public-interest entities — informing the Supervisory Authority

59. (1) Subject to paragraph (2)—

(a) where a statutory auditor or audit firm is first appointed by a public-interest entity on or after 17 June 2016, he, she or it shall inform the Supervisory Authority within one month after the date of such appointment that the statutory auditor or audit firm has been appointed to hold office, and

(b) where a statutory auditor or audit firm which has complied with subparagraph (a) is subsequently appointed by the same or a different public-interest entity, he, she or it shall inform the Supervisory Authority within one month after the date of such appointment that the statutory auditor or audit firm has been appointed to hold office only if, immediately before the time of such appointment, the statutory auditor or audit firm held no such office with any public-interest entity.

(2) The information shall be submitted in such form and manner as the Supervisory Authority specifies and may be used by the Supervisory Authority in the performance of its functions.

(3) A statutory auditor or audit firm who or which contravenes paragraph (1) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €12,500.

Removal of statutory auditors or audit firms by public-interest entities — supplementary provisions

60. (1) In the case of a statutory audit of a public-interest entity—

(a) shareholders representing 5% or more of the voting rights or of the share capital, or

(b) the Supervisory Authority,

may bring a claim before the court for the removal of the statutory auditor or audit firm subject to there being good and substantial grounds for bringing such a claim before the court.

(2) The grounds for bringing the claim before the court must relate to—

(a) the conduct of the auditor or audit firm with regard to the performance of his, her or its duties as auditor of the public-interest entity or otherwise, or

(b) the petitioner's opinion that it is in the best interests of the public-interest entity to do so.

(3) For the purposes of paragraph (2)—

(a) diverging opinions on accounting treatments or audit procedures cannot constitute the basis for the passing of any resolution for the purposes of that paragraph, and

(b) “best interests of the public-interest entity” does not include any illegal or improper motive with regard to avoiding disclosures or detection of any contravention by the entity of these Regulations.

Directors' report to include date of last appointment of statutory auditor or audit firm

61. (1) The directors' report shall contain details of the date of appointment of the public-interest entity's statutory auditor or audit firm.

(2) Where a public-interest entity has sought an extension from the Supervisory Authority under Regulation 105, pursuant to Article 17(6) of Regulation (EU) No 537/2014, the directors' report shall also contain details of the extension granted.

(3) In this Regulation, "directors' report" means the directors' report required by section 325 of the Companies Act 2014.

Chapter 2

Standards for Statutory Auditors

Continuing education

62. (1) A recognised accountancy body shall attach the condition specified in paragraph (2) to an approval granted by it under these Regulations to a person as statutory auditor.

(2) The condition is one requiring the person to take part in appropriate programmes of continuing education in order to maintain his or her theoretical knowledge, professional skills and values, including, in particular, in relation to auditing, at a sufficiently high level.

(3) In the case of a statutory auditor who is a person in relation to whom a recognised accountancy body may, by virtue of Regulation 35, perform functions under these Regulations but either—

(a) the approval of whom as a statutory auditor has not been granted by that recognised accountancy body, or

(b) the person is a person referred to in Regulation 44(1),

a like obligation to that referred to in paragraph (2) as regards taking part in appropriate programmes of continuing education is, by virtue of this paragraph, imposed on him or her.

Professional ethics

63. A recognised accountancy body shall subject statutory auditors and audit firms to principles of professional ethics, covering at least their public interest function, their integrity and objectivity and their professional competence and due care.

Independence, objectivity and professional scepticism

64. Statutory auditors and audit firms are subject to the independence, objectivity and professional scepticism requirements of Articles 21(2), 22, 22a, 22b, 24, 24a, 24b, 25 and 25a of the Audit Directive as implemented in the State by Regulations 91 to 101 and 103.

Standards for purposes of Regulations 62 to 64

65. (1) A recognised accountancy body shall, in respect of statutory auditors and audit firms—

- (a) have adequate standards requiring those auditors and audit firms to comply with the obligations specified in Regulations 62 to 64, and
- (b) institute adequate arrangements for the effective monitoring and enforcement of compliance with such standards.

(2) No standards shall be used by a recognised accountancy body for that purpose unless those standards have (with respect to that use) first been approved by the Supervisory Authority in accordance with section 905(2)(c) of the Companies Act 2014.

Arrangements for enforcement of standards

66. The arrangements for enforcement referred to in Regulation 65(1)(b) shall include, in accordance with Regulations 113 and 114, provision for—

- (a) sanctions which include—
 - (i) at the discretion of the recognised accountancy body, in accordance with Regulation 114, the withdrawal of approval under these Regulations as a statutory auditor or audit firm,
 - (ii) appropriate penalties,
 - (iii) appropriate disciplinary measures,
 - (iv) appropriate regulatory sanctions,
 and
- (b) making available to the public information relating to the measures taken and the penalties imposed in respect of statutory auditors and audit firms.

Chapter 3

*Confidentiality and Professional Secrecy**Rules of confidentiality to apply*

67. (1) The rules of confidentiality and secrecy of a recognised accountancy body (of which the statutory auditor or audit firm concerned is a member) shall apply with respect to information and documents to which a statutory auditor or audit firm has access when carrying out a statutory audit.

(2) The statutory auditor or audit firm, as the case may be, shall comply with those rules of confidentiality and secrecy.

(3) In the case of an audit firm registered in accordance with Regulation 38, the rules of confidentiality and secrecy of the recognised accountancy body of

which the key audit partner who carries out the statutory audit on behalf of the audit firm is a member shall apply with respect to information and documents to which the audit firm (or a statutory auditor on behalf of the firm) has access when carrying out a statutory audit.

Supplemental provisions in relation to Regulation 67

68. (1) Regulation 67 shall continue to apply with respect to an audit assignment notwithstanding—

- (a) that the statutory auditor or audit firm referred to in that Regulation has ceased to be engaged in that audit assignment, or
- (b) that the auditor or audit firm referred to in that Regulation ceases to be—
 - (i) a statutory auditor or audit firm, or
 - (ii) an auditor or audit firm.

(2) Accordingly, in such a case—

- (a) the statutory auditor or, as the case may be, audit firm, or
- (b) the former such auditor or, as the case may be, audit firm,

shall continue to comply with the rules of confidentiality and secrecy concerned.

Saving

69. (1) Nothing in Regulation 67 or 68 shall operate to prevent the recognised accountancy body from complying with its obligations under these Regulations or, where applicable, Regulation (EU) No 537/2014.

(2) Nothing in Regulation 67 or 68 shall operate to impede the enforcement of the provisions of these Regulations or, where applicable, Regulation (EU) No 537/2014.

Rules of confidentiality in relation to entities in third countries

70. (1) Where a statutory auditor or audit firm carries out a statutory audit of an undertaking which is part of a group whose parent undertaking is situated in a third country, the confidentiality and professional secrecy rules referred to in Regulation 67(1) shall not impede the transfer by the statutory auditor or the audit firm of relevant documentation concerning the audit work performed to the group auditor situated in a third country if such documentation is necessary for the performance of the audit of consolidated financial statements of the parent undertaking.

(2) A statutory auditor or an audit firm that carries out the statutory audit of an undertaking which has issued securities in a third country, or which forms part of a group issuing statutory consolidated financial statements in a third country, may only transfer the audit working papers or other documents relating to the audit of that entity that he, she or it holds to the competent authorities

in the relevant third countries under the conditions set out in Chapter 3 of Part 10.

(3) The transfer of information to the group auditor situated in a third country shall comply with—

- (a) Chapter IV of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995⁸ on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and
- (b) national personal data protection rules.

Incoming statutory auditor or audit firm to be afforded access to information

71. Where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall provide access to all relevant information concerning the audited entity and the most recent audit of that entity to the incoming statutory auditor or audit firm.

Access by recognised accountancy body to audit documents

72. (1) Where it considers it reasonably necessary to do so for the purpose of performing a particular function under these Regulations or, where applicable, under Regulation (EU) No 537/2014, a recognised accountancy body may inspect and make copies of all relevant documents in the possession or control of a statutory auditor or audit firm; for that purpose, it may, by notice in writing served on a statutory auditor or audit firm, require the auditor or firm either (as shall be specified) to—

- (a) furnish to it specified documents, or
- (b) permit it to have access, under specified circumstances, to all relevant documents in the possession or control of the auditor or firm,

within a specified period.

(2) Without prejudice to the generality of paragraph (1), the powers under that paragraph are exercisable in relation to a statutory auditor or audit firm where a complaint is made to the recognised accountancy body that the statutory auditor or audit firm has contravened a requirement of these Regulations.

(3) Where the powers under paragraph (1) are exercisable, the following additional power may be exercised by the recognised accountancy body if it considers that the exercise of it is reasonably necessary to enable it to clarify any matter arising from its inspection of the documents concerned, namely a power to require the statutory auditor or a member of the audit firm to—

- (a) attend before it, and
- (b) explain any entry in the documents concerned and otherwise give assistance to it in clarifying the matter concerned.

⁸OJ L 281, 23.11.1995, p. 31

(4) In this Regulation, “specified” means specified in the notice concerned.

(5) Without prejudice to paragraph (6), a person who fails, without reasonable excuse, to comply with a requirement under paragraph (1) or (3) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €12,500.

(6) Where a person fails to comply with a requirement under paragraph (1) or (3), the recognised accountancy body concerned may apply to the High Court for an order compelling compliance by the person with the requirement, and, on the hearing of such application, the High Court may make such an order or such other order as it thinks just.

Access by Supervisory Authority to information and documents held by recognised accountancy bodies or relevant persons

73. (1) Where it considers it reasonably necessary to do so for the purposes of performing a particular function under these Regulations or Regulation (EU) No 537/2014, the Supervisory Authority may request information and inspect and make copies of all relevant documents in the possession or control of a recognised accountancy body or a relevant person; for that purpose, it may, by notice in writing served on the recognised accountancy body or relevant person, require the recognised accountancy body or relevant person either (as shall be specified) to—

(a) furnish to it specified documents or information, or

(b) permit it to have access, under specified circumstances, to all relevant documents in the possession or control of the recognised accountancy body or relevant person,

within a specified period.

(2) In this Regulation, “relevant person” means—

(a) a member of a recognised accountancy body,

(b) a client or former client of such a member,

(c) if the client or former client is a body corporate, a person who is or was an officer, employee or agent of the client or former client, or

(d) any person whom the Supervisory Authority reasonably believes has information or documents in relation to the particular function other than information or documents the disclosure of which is prohibited or restricted by law.

(3) Without prejudice to the generality of paragraph (1), the powers under that paragraph are exercisable in relation to a recognised accountancy body or

relevant person where a complaint is made to the Supervisory Authority that the recognised accountancy body or relevant person has contravened a requirement of these Regulations.

(4) Where the powers under paragraph (1) are exercisable, the following additional power may be exercised by the Supervisory Authority if it considers that the exercise of it is reasonably necessary to enable it to clarify any matter arising from its inspection of the information or documents concerned, namely a power to require an officer of the recognised accountancy body or relevant person to—

(a) attend before it, and

(b) explain any entry in the information or documents concerned and otherwise give assistance to it in clarifying the matter concerned.

(5) In this Regulation, “specified” means specified in the notice concerned.

(6) A person who fails, without reasonable excuse, to comply with a requirement under paragraph (1) or (4) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €12,500.

(7) Nothing in this Regulation derogates from the powers exercisable by the Supervisory Authority in the circumstances, and under the conditions, specified in section 933, 934 or 935B of the Companies Act 2014.

Professional privilege

74. Nothing in this Chapter compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege.

No liability for acts done in compliance with Regulations

75. (1) No professional or legal duty to which a statutory auditor or audit firm is subject by virtue of his, her or its appointment as a statutory auditor or audit firm shall be regarded as contravened by reason of compliance with the obligations imposed by these Regulations.

(2) No liability to the entity audited or being audited, its shareholders, creditors, or other interested parties shall attach to the statutory auditor or audit firm by reason of such compliance.

(3) For the avoidance of doubt, nothing in this Regulation affects the liability of a statutory auditor or audit firm for negligence or breach of duty in the conduct of a statutory audit by him, her or it.

Restriction of section 940 of Companies Act 2014

76. Nothing in section 940 of the Companies Act 2014 shall operate to prevent the Supervisory Authority or a recognised accountancy body from complying with its obligations under these Regulations.

Chapter 4

*Auditing Standards and Audit Reporting**Auditing standards to be applied*

77. (1) The Supervisory Authority shall adopt the auditing standards to be applied and statutory auditors and audit firms shall carry out statutory audits in accordance with those standards.

(2) On and from the adoption of international auditing standards, statutory auditors and audit firms shall carry out statutory audits in accordance with those standards.

(3) The reference in paragraph (2) to the adoption of international auditing standards is a reference to the adoption by the Commission, in accordance with the procedure referred to in Article 26 of the Audit Directive, of international auditing standards.

(4) For the avoidance of doubt, levies imposed under section 916 of the Companies Act 2014 on that class of prescribed accountancy bodies comprising recognised accountancy bodies may be used for the purpose of meeting expenses properly incurred by the Supervisory Authority in performing its function referred to in section 905(2)(ma) of that Act.

(5) In this Regulation, “standards” include standards on professional ethics and internal quality control in addition to standards on auditing.

Audit of group accounts — responsibility of group auditor

78. (1) Where a statutory audit of the group financial statements of a group of undertakings is carried out—

- (a) in relation to the group financial statements, the group auditor shall bear the full responsibility for the statutory auditors’ report, and
- (b) where any of the undertakings is a public-interest entity, the group auditor shall bear the full responsibility for ensuring that the requirements of Articles 10 and 11 of Regulation (EU) No 537/2014 are met in relation to the audit carried out on that public-interest entity.

(2) The group auditor shall—

- (a) evaluate the audit work carried out by any statutory auditors for the purpose of the group audit, and

(b) document the nature, timing and extent of the work carried out by those auditors, including the group auditor's review of the relevant parts of audit documentation.

(3) For the purposes of the group audit, auditors may be one or more of the following:

- (a) statutory auditors;
- (b) statutory audit firms;
- (c) Member State auditors;
- (d) Member State audit firms;
- (e) third-country auditors;
- (f) third-country audit entities.

(4) The group auditor shall carry out a review, and maintain documentation of such review, of the work of whoever referred to in paragraph (3) performed audit work for the purposes of the group audit.

(5) The documentation referred to in paragraphs (2)(b) and (4) to be retained by the group auditor shall be such as enables the Supervisory Authority, or the recognised accountancy body where applicable, to conduct a quality assurance inspection or review, as the case may be, under Chapter 1 of Part 8.

(6) The group auditor shall request the agreement of the auditors concerned referred to in paragraph (3)(a) to (f) to transfer relevant documentation during the carrying out of the audit of group financial statements as a condition of the reliance by the group auditor on the work of such auditors.

(7) (a) Where the group auditor is unable to secure an agreement referred to in paragraph (6), he, she or it shall take appropriate measures in order to form an audit opinion and inform the relevant Supervisory Authority or the recognised accountancy body where applicable.

(b) Such measures shall, as appropriate, include carrying out additional statutory audit work, either directly or by outsourcing the additional statutory audit work, in the relevant subsidiary.

(8) (a) The group auditor who is subject to a quality assurance inspection or review or an investigation concerning the statutory audit of the group financial statements of a group of undertakings, shall, when requested, make available to the Supervisory Authority or the recognised accountancy body where applicable the relevant documentation he, she or it retains concerning the audit work performed by the auditors concerned referred to in paragraph (3)(a) to (f) for the purpose of the group audit, including any working papers relevant to the group audit.

- (b) The Supervisory Authority may request additional documentation on the audit work performed by a statutory auditor or audit firm for the purpose of the group audit from the competent authorities in other Member States where applicable pursuant to Chapter 1 of Part 10.

Further responsibility of group auditor

79. (1) Subject to paragraph (2), the Supervisory Authority may request additional documentation on the audit work performed by any third-country auditor or third country audit entity on a parent undertaking or on a subsidiary undertaking of a group of undertakings from the relevant competent authorities from third countries through the working arrangements referred to in Regulation 131(1)(c) or 132(c).

(2) Where—

- (a) a statutory audit of the group financial statements of a group of undertakings is carried out, and
- (b) a parent undertaking or subsidiary undertaking of the group of undertakings is audited by one or more third-country auditors or audit entities that have no working arrangement as referred to in Regulation 131(1)(c) or 132(c),

the group auditor is responsible for ensuring proper delivery, when requested, to the Supervisory Authority of the additional documentation of the audit work performed by those auditors or audit entities, including the working papers relevant to the group audit.

(3) To ensure such delivery, the group auditor shall retain a copy of such audit documentation, or alternatively—

- (a) agree with one or more third-country auditors or audit entities concerned arrangements for the group auditor's proper and unrestricted access, upon request, to the documentation, or
- (b) take any other appropriate action.

(4) Where audit working papers cannot, for legal or other reasons, be passed from a third country to the group auditor, the documentation retained by the group auditor shall include—

- (a) evidence that he, she or it has undertaken the appropriate procedures in order to gain access to the audit documentation, and
- (b) in the case of an impediment other than a legal one arising from legislation of the third country or countries concerned, evidence supporting the existence of such an impediment.

Additional report to audit committee

80. Where a public-interest entity is exempt from the requirement to have an audit committee, as provided for under these Regulations, the additional report

to the audit committee shall be submitted to the directors of the public-interest entity.

Auditors' reporting obligations under Article 12 of Regulation (EU) No 537/2014

81. Reports by statutory auditors or audit firms referred to in Article 12 of Regulation (EU) No 537/2014 shall be submitted to the Supervisory Authority unless they are already required to be submitted to the Central Bank of Ireland under—

- (a) Regulation 52 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014),
- (b) Regulation 78 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), or
- (c) Regulation 134(1) of, or Schedule 16 to, the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).

Chapter 5

Record keeping

Record keeping

82. (1) Statutory auditors and audit firms shall keep the documents and information referred to in Article 15 of Regulation (EU) No 537/2014 for a period of at least 6 years.

(2) Where a transaction, act or operation is the subject of an investigation, inquiry, claim, assessment, appeal or proceeding which has already commenced within that 6 year period, then the relevant documents and information must be retained until such time as the investigation, inquiry, claim, assessment, appeal or proceeding has been concluded or for a period of at least 6 years, whichever is the longer.

Chapter 6

Objectivity

Future viability

83. Without prejudice to the reporting requirements referred to in sections 336, 337 and 391 of the Companies Act 2014 and, where applicable, Articles 10 and 11 of Regulation (EU) No 537/2014, the scope of the statutory audit shall not include assurance on the future viability of the audited entity or on the efficiency or effectiveness with which the directors of the entity have conducted or will conduct the affairs of the entity.

PART 6

PUBLIC REGISTER

Public register

84. (1) Subject to paragraph (2), the Registrar of Companies shall maintain a register (in this Part referred to as the “public register”) which shall contain the information set out in Schedule 2 in relation to—

- (a) statutory auditors and audit firms (other than audit firms which fall within paragraph (b) of the definition of “statutory audit firm”),
- (b) third-country auditors and audit entities, and
- (c) audit firms approved in another Member State which have been registered in accordance with Regulation 38.

(2) The public register referred to in Regulation 63 of the 2010 Audits Regulations, as that register was in being immediately before 17 June 2016, shall, on and from that date, be deemed to be the public register referred to in paragraph (1), and the other provisions of these Regulations (including provisions relating to the removal or alteration of entries in the public register) shall apply to that register accordingly.

Notification of information to Registrar of Companies

85. (1) (a) An auditor or audit firm (other than a statutory audit firm which falls within paragraph (b) of the definition of “statutory audit firm”) shall, as soon as may be after he, she or it is approved under these Regulations as a statutory auditor or audit firm, notify the relevant information to the recognised accountancy body.

(b) A Member State audit firm shall, as soon as may be after it is registered in accordance with Regulation 38, notify the relevant information to the recognised accountancy body.

(c) A third-country auditor shall, as soon as may be after he or she is approved under these Regulations as a statutory auditor, notify the relevant information to the recognised accountancy body.

(2) On receipt of a notification under paragraph (1) and its having carried out any verification of the information as seems to it to be necessary, the recognised accountancy body or the Supervisory Authority, as appropriate, shall notify to the Registrar of Companies—

(a) the relevant information contained in the notification, and

(b) (i) subject to clause (ii), the individual identification number assigned by it to the auditor, audit firm or third-country auditor under Regulation 37(7) or a Member State audit firm under Regulation 38, and

(ii) where—

(I) under Regulations 37(7) or 38 such a number exists, and

(II) by reason of the circumstances referred to in paragraph (b) of the definition of “relevant information” in paragraph (4), the relevant information notified to the recognised accountancy body or Supervisory Authority does not include that number,

the number referred to in paragraph 1(c)(ii) or 2(g) of Schedule 2.

(3) The notifications under paragraph (1) and (2) shall each be made in such form and manner as the Registrar of Companies specifies.

(4) In this Regulation, “relevant information” means the information set out in paragraph 1 or 2, as the case may be, of Schedule 2, other than that set out—

(a) in subparagraph (b) of that paragraph 1 or 2, or

(b) if, due to the simultaneous registration of a statutory audit firm and the statutory auditors that comprise that firm, the number there referred to is not available at that time, in subparagraph (c)(ii) of that paragraph 1 or subparagraph (g) of that paragraph 2.

(5) For the avoidance of doubt, in the event that a recognised accountancy body is no longer recognised by the Supervisory Authority for the purposes of these Regulations or otherwise ceases to exist, the notifications under paragraphs (1) and (2) shall cease to have effect and the Registrar of Companies shall remove all information contained in such notifications from the public register.

Prohibition on certain acts unless registered

86. (1) A person shall not—

(a) act as, or

(b) represent himself, herself or itself, or hold himself, herself or itself out, as being,

a person falling within a category of person entered, or entitled to be entered, in the public register unless the person is entitled to be entered, and the name of the person is duly entered, in the public register.

(2) A person who contravenes paragraph (1) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €50,000.

Obligation of statutory auditor or audit firm to notify certain information

87. (1) Each statutory auditor and audit firm and Member State audit firm shall, as soon as may be but not later than one month after the event, notify the recognised accountancy body of any change in the information contained in the public register relating to him, her or it.

(2) On receipt of a notification under paragraph (1) and its having carried out any verification of the information stated to have changed as seems to it to be necessary, the recognised accountancy body shall notify the change in information to the Registrar of Companies without undue delay.

(3) The Registrar of Companies shall, as soon as may be but not later than one month after receipt of the notification referred to in paragraph (2), amend the public register to reflect the change of information so notified.

(4) A person who fails, without reasonable excuse, to comply with paragraph (1) shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine.

Information must be signed

88. (1) Information notified under Regulation 85(1) or 87(1) by a statutory auditor or audit firm (including a Member State audit firm) shall be signed by the statutory auditor or, as the case may be, a person on behalf of the statutory audit firm.

(2) The signature referred to in paragraph (1) may be an electronic signature (as defined in point 1 of Article 2 of Directive 1999/93/EC⁹ of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures) if the provision of a signature in that form complies with any requirements in that behalf of the Registrar of Companies of the kind referred to in section 13(2)(a) of the Electronic Commerce Act 2000 (No. 27 of 2000).

(3) If information is notified under Regulation 85(1) or 87(1) without being signed as required by paragraph (1), the statutory auditor or audit firm concerned shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine.

Removal of third-country auditor or audit entity registered in accordance with Regulation 135 from public register

89. (1) Subject to paragraphs (2) and (3), the Supervisory Authority may instruct the Registrar of Companies, in the case of a third-country auditor or audit entity registered pursuant to Regulation 135, to remove the third-country auditor or audit entity from the public register if—

- (a) the auditor or audit entity does not provide all the information or clarifications necessary for the renewal of his, her or its registration or does not pay the appropriate fee under Regulation 140, or

⁹OJ No. L 13, 19.1.2000, p.12

(b) the outcome of a quality assurance inspection or investigation and disciplinary process requires it.

(2) A third-country auditor or audit entity the subject of a quality assurance inspection or investigation shall not be removed from the public register until the completion of that inspection or investigation.

(3) The Supervisory Authority shall not give an instruction under paragraph (1) unless it has first given the third-country auditor or audit entity concerned a reasonable opportunity of being heard on the grounds (which the Supervisory Authority shall make known to such auditor or entity) that the Supervisory Authority is minded to give such instruction.

(4) The Supervisory Authority shall, at such times as it thinks it appropriate to do so, issue guidelines with regard to what constitutes a reasonable opportunity referred to in paragraph (3).

(5) The Supervisory Authority may publish on its website the name of the third-country auditor or audit entity that has been removed from the public register in accordance with this Regulation along with the reasons for removal.

Language of information to be entered in public register

90. The information entered in the public register shall be drawn up in either Irish or English.

PART 7

INDEPENDENCE

Requirement for independence — general

91. (1) During the period in which a statutory audit is being carried out—

- (a) the statutory auditor or audit firm, as the case may be,
- (b) in the latter case, any statutory auditor of the statutory audit firm, and
- (c) any individual in a position to directly or indirectly influence the outcome of the statutory audit,

shall be independent of, and not involved in the decision-taking of, the audited entity.

(2) During the period in which a statutory audit is being carried out, a statutory auditor or audit firm, as the case may be, shall take all reasonable steps to ensure that his, her or its independence is not affected by—

- (a) any existing or potential conflict of interest, or
- (b) any business or other direct or indirect relationship,

involving the statutory auditor or audit firm carrying out the statutory audit.

- (3) Paragraph (2) also applies, with any necessary modifications, to—
- (a) the network of the statutory auditor or audit firm,
 - (b) the managers, auditors, employees or any other individuals whose services are placed at the disposal or under the control of the statutory auditor or audit firm,
 - (c) any person directly or indirectly linked to the statutory auditor or audit firm by control, and
 - (d) managers, auditors, employees or any other individuals whose services are placed at the disposal or under the control of a person linked to the statutory auditor or audit firm by control.
- (4) The obligations referred to in paragraphs (1) and (2) shall be required at least during both the period covered by the financial statements to be audited and the period during which the statutory audit is carried out.

Professional scepticism

92. (1) When carrying out a statutory audit, the statutory auditor or the audit firm shall—

- (a) maintain professional scepticism throughout the audit,
- (b) maintain professional scepticism when reviewing management estimates relating to fair values, the impairment of assets, provisions, and future cash flow relevant to the audited entity's ability to continue as a going concern, and
- (c) recognise the possibility of a material misstatement due to facts or behaviour indicating irregularities, including fraud or error, notwithstanding the statutory auditor's or the audit firm's past experience of the honesty and integrity of the audited entity's management and of the persons charged with its governance.

(2) For the purposes of this Regulation, "professional scepticism" means an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence.

Prohibited relationships — specific provisions to secure independence

93. (1) A statutory auditor or audit firm shall not carry out a statutory audit if there is any threat of self-review, self-interest, advocacy, familiarity, or intimidation, created by any direct or indirect financial, personal, business, employment or other relationship between—

- (a) the statutory auditor or audit firm or network to which he, she or it belongs or any individual in a position to influence the outcome of the statutory audit, and

(b) the audited entity,

as a result of which an objective, reasonable and informed third party, taking into account the safeguards applied, would conclude that the statutory auditor's or audit firm's independence is compromised.

(2) Without prejudice to the generality of paragraph (1), a person shall not act as a statutory auditor of an entity if he or she is—

(a) an officer or servant of the entity,

(b) a person who has been an officer or servant of the entity within a period in respect of which accounts would fall to be audited by the person if he or she were appointed auditor of the entity,

(c) a parent, spouse, brother, sister or child of an officer of the entity,

(d) a person who is a partner of or in the employment of an officer of the entity,

(e) a person who is disqualified under this paragraph for appointment as auditor of a body corporate that is a subsidiary or holding company of the entity or a subsidiary of the entity's holding entity, or would be so disqualified if the body corporate were a company, or

(f) a person in whose name a share in the entity is registered, whether or not that person is the beneficial owner of the share.

(3) Without prejudice to the generality of paragraphs (1) and (2), a statutory audit firm, regardless of its legal structure, shall not carry out a statutory audit of an entity if—

(a) any principal of the audit firm is an officer or servant of the entity,

(b) any principal of the audit firm has been an officer or servant of the entity within a period in respect of which accounts would fall to be audited by the firm if the firm was appointed auditor of the entity, or

(c) the firm is disqualified under this paragraph for appointment as auditor of any other body corporate that is a subsidiary or holding company of the entity or a subsidiary of the entity's holding company, or would be so disqualified if the body corporate were a company.

(4) Without prejudice to the generality of paragraphs (1) to (3), a person shall not carry out a statutory audit of an entity on behalf of a statutory audit firm if he, or she or it is—

(a) a person in whose name a share in the entity is registered, whether or not that person is the beneficial owner of the share, or

(b) a parent, spouse, brother, sister or child of an officer of the entity.

Prohibited relationships — financial or beneficial interest

94. (1) A statutory auditor, an audit firm, the key audit partner of an audit firm, the employees of the statutory auditor or audit firm, and any other individual whose services are placed at the disposal or under the control of the statutory auditor or audit firm and who is directly involved in statutory audit activities, and persons closely associated with them within the meaning of Article 1(2) of Commission Directive 2004/72/EC of 29 April 2004¹⁰ implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions shall not—

- (a) hold or have a material and direct beneficial interest in, or
- (b) engage in any transaction in any financial instrument issued, guaranteed, or otherwise supported by,

any audited entity within their area of statutory audit activities, other than interests owned indirectly through diversified collective investment schemes, including managed funds such as pension funds or life assurance.

(2) A statutory auditor, an audit firm, the key audit partner of the audit firm, the employees of the statutory auditor or audit firm, and any other individual referred to in paragraph (1), shall not participate in or otherwise influence the outcome of a statutory audit of any particular audited entity if he, she or it—

- (a) owns financial instruments of the audited entity, other than interests owned indirectly through diversified collective investment schemes,
- (b) owns financial instruments of any entity related to the audited entity, the ownership of which may cause, or may be generally perceived as causing, a conflict of interest, other than interests owned indirectly through diversified collective investment schemes, or
- (c) has had an employment, or a business or other relationship with the audited entity within the period covered by the financial statements to be audited and the period during which the statutory audit is carried out that may cause, or may be generally perceived as causing, a conflict of interest.

(3) A statutory auditor, an audit firm, the key audit partner of the audit firm, the employees of the statutory auditor or audit firm, and any other individual referred to in paragraph (1), shall not solicit or accept pecuniary or non-pecuniary gifts or favours from the audited entity or any entity related to an audited entity unless an objective, reasonable and informed third party would consider the value thereof as trivial or inconsequential.

Prohibited relationships — mergers and acquisitions

95. (1) If, during the period covered by the financial statements, an audited entity is acquired by, merges with, or acquires, another entity, the statutory

¹⁰OJ L162, 30.4.2004, p. 70

auditor or audit firm shall identify and evaluate any current or recent interests or relationships, including any non-audit services provided to that entity, which, taking into account available safeguards, could compromise the statutory auditor's or audit firm's independence and ability to continue with the statutory audit after the effective date of the merger or acquisition.

(2) As soon as possible, and in any event within 3 months of the merger or acquisition referred to in paragraph (1), the statutory auditor or audit firm shall take all such steps as may be necessary to terminate any current interests or relationships that would compromise his, her or its independence and shall, where possible, adopt safeguards to minimise any threat to his, her or its independence arising from prior and current interests and relationships.

Threats to independence and other information to be recorded

96. A statutory auditor or audit firm shall document in the audit working papers all significant threats to his, her or its independence as well as the safeguards applied to mitigate those threats.

Preparation for statutory audit and assessment of threats to independence

97. A statutory auditor or audit firm shall, before accepting or continuing an engagement for a statutory audit, assess and document the following:

- (a) whether he, she or it complies with the requirements set out in Regulations 91 and 93 to 96;
- (b) whether there are threats to his, her or its independence and the safeguards applied to mitigate those threats;
- (c) whether he, she or it has the competent employees, time and resources needed in order to carry out the statutory audit in an appropriate manner;
- (d) whether, in the case of an audit firm, the key audit partner is approved as statutory auditor in the Member State requiring the statutory audit.

Internal organisation of statutory auditors and audit firms

98. (1) A statutory auditor or audit firm shall comply with the following organisational requirements:

- (a) the audit firm shall establish appropriate policies and procedures to ensure that no person, including any partner, director, member or shareholder of the audit firm or of a firm in its network, intervenes in the carrying out of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm;
- (b) the statutory auditor or audit firm shall have sound administrative and accounting procedures, internal quality control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems;

- (c) the statutory auditor or audit firm shall establish appropriate policies and procedures to ensure that his, her or its employees and any other individuals whose services are placed at his, her or its disposal or under his, her or its control, and who are directly involved in the statutory audit activities, have appropriate knowledge and experience for the duties assigned;
- (d)
 - (i) the statutory auditor or audit firm shall establish appropriate policies and procedures to ensure that outsourcing of important audit functions is not undertaken in such a way as to impair the quality of the statutory auditor's or audit firm's internal quality control and the ability of the competent authorities to supervise the statutory auditor's or audit firm's compliance with the obligations laid down in these Regulations and, where applicable, in Regulation (EU) No 537/2014;
 - (ii) the statutory auditor or audit firm shall ensure that any such outsourcing of audit functions does not affect his, her or its responsibility towards the audited entity;
- (e) the statutory auditor or audit firm shall establish appropriate and effective organisational and administrative arrangements to prevent, identify, eliminate or manage and disclose any threats to his, her or its independence as referred to in Regulations 91, 93 to 97 and 103 and Regulation (EU) No 537/2014;
- (f) the statutory auditor or audit firm shall establish appropriate policies and procedures for carrying out statutory audits, coaching, supervising and reviewing employees' activities and organising the structure of the audit file as referred to in Regulation 100;
- (g) the statutory auditor or audit firm shall establish an internal quality control system to ensure the quality of the statutory audit so that—
 - (i) such system covers, at least, the policies and procedures referred to in subparagraph (f), and
 - (ii) responsibility for such system lies with a person who is qualified as a statutory auditor;
- (h) the statutory auditor or audit firm shall use appropriate systems, resources and procedures to ensure continuity and regularity in the carrying out of his, her or its statutory audit activities;
- (i) the statutory auditor or audit firm shall also establish appropriate and effective organisational and administrative arrangements for dealing with and recording incidents which have, or may have, serious consequences for the integrity of his, her or its statutory audit activities;
- (j) the statutory auditor or audit firm shall have in place adequate remuneration policies, including profit-sharing policies, providing

sufficient performance incentives to secure audit quality but the amount of revenue that the statutory auditor or audit firm derives from providing non-audit services to the audited entity shall not form part of the performance evaluation and remuneration of any person involved in, or able to influence the carrying out of, the audit;

(k) the statutory auditor or audit firm shall monitor and evaluate the adequacy and effectiveness of his, her or its systems, internal quality control mechanisms and arrangements established in accordance with these Regulations and, where applicable, Regulation (EU) No 537/2014 and take appropriate measures to address any deficiencies;

(l) the statutory auditor or audit firm shall—

(i) carry out an annual evaluation of the internal quality control system referred to in subparagraph (g), and

(ii) keep records of the findings of that evaluation and any proposed measure to modify the internal quality control system.

(2) A statutory auditor or audit firm shall communicate, in writing, his, her or its policies and procedures referred to in paragraph (1) to the employees of the statutory auditor or audit firm.

(3) A statutory auditor or the audit firm shall take into consideration the scale and complexity of his, her or its activities when complying with the requirements set out in paragraph (1).

(4) A statutory auditor or audit firm shall be able to demonstrate to the recognised accountancy body or Supervisory Authority that the policies and procedures designed to achieve compliance with this Regulation are appropriate given the scale and complexity of activities of the statutory auditor or audit firm.

Organisation of work of statutory auditors and audit firms

99. (1) An audit firm, when carrying out a statutory audit of an entity, shall designate at least one key audit partner who shall be actively involved in the carrying out of the statutory audit.

(2) An audit firm shall—

(a) provide the key audit partner with sufficient resources and with personnel that have the necessary competence and capabilities to discharge his or her duties appropriately, and

(b) ensure that the main criteria in selecting the key audit partner are securing audit quality, independence and competence.

(3) A statutory auditor, when carrying out a statutory audit of an entity, shall devote sufficient time to the engagement and shall assign sufficient resources to enable him or her to carry out his or her duties appropriately.

(4) A statutory auditor or audit firm shall keep records of any contraventions by him, her or it of the provisions of these Regulations and, where applicable, Regulation (EU) No 537/2014.

(5) A statutory auditor or audit firm shall keep records of any consequences of any contravention referred to in paragraph (4), including the measures taken to address such contravention and to modify his, her or its internal quality control system.

(6) A statutory auditor or audit firm shall prepare an annual report containing an overview of any measures taken pursuant to paragraph (5) and, in the case of an audit firm, shall communicate that report internally to the partners or directors, as may be appropriate, of the audit firm.

(7) A statutory auditor or audit firm shall document each request made and advices received where he, she or it asks external experts for advice.

Organisation of work of statutory auditors and audit firms — audit files

100. (1) A statutory auditor or audit firm shall maintain a client account record that includes the following data for each audit client:

- (a) the name, address and place of business;
- (b) in the case of an audit firm, the names of the key audit partner;
- (c) the fees charged for the statutory audit and the fees charged for other services in any financial year.

(2) A statutory auditor or audit firm shall create an audit file for each statutory audit which shall be closed not later than 60 days after the date of signature of the statutory auditors' report concerned and, where applicable, the reports referred to in Articles 10 and 11 of Regulation (EU) No 537/2014.

(3) A statutory auditor or audit firm shall document and retain at least the data recorded pursuant to Regulation 96, and, where applicable, Articles 6 to 8 of Regulation (EU) No 537/2014 for a period of at least 6 years.

(4) A statutory auditor or audit firm shall retain any other data and documents that are of importance in support of the statutory auditors' report and, where applicable, the reports referred to in Articles 10 and 11 of Regulation (EU) No 537/2014 and for monitoring compliance with these Regulations and other applicable legal requirements.

(5) A statutory auditor or audit firm shall keep records of any complaints made in writing about the performance of the statutory audits carried out by him, her or it.

Restrictions with regard to fees

101. A recognised accountancy body shall ensure that its standards include provisions that fees for statutory audits—

- (a) are not to be influenced by, or determined by, the provision of additional services to the audited entity, and
- (b) are not to be based on any form of contingency.

Rotation of key audit partner in cases of public-interest entities

102. The key audit partner responsible for carrying out a statutory audit of a public-interest entity shall cease his or her participation in the statutory audit of the entity not later than 5 years from the date of his or her first appointment to carry out such audit.

Moratorium on taking up certain positions in audited entities

103. (1) There shall not be taken up by—

- (a) a statutory auditor who carries out a statutory audit of an entity, or
- (b) the key audit partner who carries out, on behalf of an audit firm, a statutory audit of an entity,

any of the positions in that entity, specified in paragraph (2), before a period of at least one year has elapsed since the day following the end of his or her direct involvement as a statutory auditor or key audit partner from the audit engagement.

(2) The specified positions are—

- (a) a key management position in the audited entity,
- (b) a position on the audit committee, or where such committee does not exist, such body as performs the equivalent functions to the audit committee, of the audited entity, or
- (c) a non-executive member position of the audited entity or a member's position of that entity.

(3) There shall not be taken up by—

- (a) a statutory auditor who carries out a statutory audit of a public-interest entity, or
- (b) the key audit partner who carries out, on behalf of an audit firm, a statutory audit of a public-interest entity,

any of the positions in that entity, specified in paragraph (4), before a period of at least 2 years has elapsed since the day following the end of his or her direct involvement as a statutory auditor or key audit partner from the audit engagement.

(4) The specified positions are—

- (a) a key management position in the audited entity,

- (b) a position on the audit committee, or where such committee does not exist, such body as performs the equivalent functions to the audit committee, of the audited entity, or
- (c) a non-executive member position of the audited entity or a member's position of that entity.

(5) Where an employee or partner, other than the key audit partner, of a statutory auditor or audit firm, or any other individual whose services are placed at the disposal or under the control of the statutory auditor or audit firm, and when such employees, partners or other individuals are personally approved as statutory auditors, there shall not be taken up by those employees, partners or other individuals any of the positions referred to in paragraphs (2) and (4), before a period of at least one year has elapsed since the day following (should such occur) his or her involvement in the statutory audit engagement of that audited entity.

Rotation of statutory auditor and audit firms in case of public-interest entities — extension

104. (1) A public-interest entity may, pursuant to Article 17(6) of Regulation (EU) No 537/2014, under exceptional circumstances request the Supervisory Authority for an extension to reappoint a statutory auditor or audit firm for a period of up to 2 years on an exceptional basis.

(2) The grounds for the exceptional basis may be events in the nature of mergers, acquisitions and special investigations but, in any case, it will be a matter for the Supervisory Authority to determine such grounds.

(3) A request shall be made in such form and manner as the Supervisory Authority specifies.

(4) On receipt of a request in the form specified in paragraph (3), the Supervisory Authority shall—

- (a) grant the extension as requested,
- (b) grant a shorter extension than that requested, or
- (c) refuse to grant the extension.

(5) Where the Supervisory Authority, on receipt of a request for an extension, considers that it requires additional information before making a decision under paragraph (4), it shall give notice of that to the public-interest entity that made the request.

(6) The notice referred to in paragraph (5) shall set out the additional information required by the Supervisory Authority.

(7) On receipt of a response to the notice from the public-interest entity containing the additional information referred to in paragraph (5), the Supervisory Authority shall—

- (a) grant the extension as requested,
- (b) grant a shorter extension than that requested, or
- (c) refuse to grant the extension.

(8) Where the Supervisory Authority grants an extension under paragraph (4) or (5), it shall—

- (a) do so on an exceptional and case by case basis only, and
- (b) publish its decision on its website.

(9) Where the Supervisory Authority refuses to grant an extension under paragraph (4)(c) or (7)(c), it shall provide reasons for its decision to the public-interest entity.

Rotation — reports by statutory auditor and audit firm in case of public-interest entities

105. (1) If there is uncertainty as to the date on which a statutory auditor or audit firm began carrying out consecutive statutory audits for a public-interest entity (for example, due to firm mergers, acquisitions, or changes in ownership structure), the statutory auditor or audit firm shall immediately report such uncertainty to the Supervisory Authority.

(2) The report to the Supervisory Authority referred to at Article 17(8) of Regulation (EU) No 537/2014 shall be made in such form and manner as the Supervisory Authority specifies.

(3) On receipt of a report in the form specified in paragraph (2), the Supervisory Authority shall have the power to—

- (a) determine the relevant date for the purposes of paragraph (1), or
- (b) request additional information from the statutory auditor or audit firm before making a decision referred to in subparagraph (a).

(4) Where the Supervisory Authority, on receipt of a report, considers that it requires additional information from the statutory auditor or audit firm or public-interest entity before making a decision under paragraph (3)(a), it shall—

- (a) give notice of that to the statutory auditor or audit firm or public-interest entity within 2 weeks after the receipt of the report, and
- (b) set out, in the notice, the additional information required by the Supervisory Authority.

(5) On receipt of a response to the notice from the statutory auditor or audit firm or public-interest entity containing the additional information referred to in paragraph (4), the Supervisory Authority shall—

- (a) determine the relevant date for the purposes of paragraph (1), and

- (b) provide reasons for its decision to the statutory auditor or audit firm and public-interest entity.

Provision of certain prohibited non-audit services by auditors of public-interest entities

106. (1) Subject to paragraph (2), a statutory auditor or audit firm carrying out the statutory audit of a public-interest entity, or any member of the network to which the statutory auditor or the audit firm belongs, may provide the following non-audit services to the audited entity, to its parent undertaking or to its controlled undertakings within the European Union:

- (a) tax services relating to—
 - (i) preparation of tax forms,
 - (ii) identification of public subsidies and tax incentives unless support from the statutory auditor or audit firm in respect of such services is required by law,
 - (iii) support regarding tax inspections by tax authorities unless support from the statutory auditor or audit firm in respect of such inspections is required by law,
 - (iv) calculation of direct and indirect tax and deferred tax, or
 - (v) provision of tax advice;
- (b) valuation services, including valuations performed in connection with actuarial services or litigation support services.

(2) The non-audit services referred to in paragraph (1) may only be provided as specified in that paragraph if—

- (a) they have no direct or have immaterial effect, separately or in the aggregate, on the audited financial statements,
- (b) the estimation of the effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee, and
- (c) the principles of independence set out in these Regulations are complied with by the statutory auditor or audit firm.

(3) The audit committee shall, at such times as it thinks it appropriate to do so, issue guidelines with regard to the non-audit services referred to in paragraph (1).

PART 8

QUALITY ASSURANCE OF STATUTORY AUDITORS AND AUDIT FIRMS

Chapter 1

Quality Assurance

Quality assurance by Supervisory Authority of statutory audit of public-interest entities and third-country auditors, etc.

107. (1) The Supervisory Authority shall put in place a quality assurance system as set out in Article 26 of Regulation (EU) No 537/2014.

(2) The Supervisory Authority shall ensure that it has in place a quality assurance system of registered third-country auditors and audit entities to whom these Regulations or Regulation (EU) No 537/2014 applies.

(3) Regulations 108 to 110 shall not apply to the statutory audit of annual and consolidated financial statements of public-interest entities unless specified in Regulation (EU) No 537/2014.

(4) The Supervisory Authority may publish on its website the findings and conclusions of individual inspections undertaken as part of the quality assurance system referred to in paragraph (1).

System of quality assurance to be put in place

108. (1) The Supervisory Authority, in accordance with these Regulations, shall oversee the quality assurance system implemented by the recognised accountancy bodies.

(2) A recognised accountancy body shall ensure that it has in place a system of quality assurance of—

- (a) the body's members' activities as statutory auditors and audit firms of entities not referred to in Regulation 107 (1) and (2), and
- (b) the activities, as statutory auditors and audit firms, of persons who, though not members of the recognised accountancy body, are persons in relation to whom the body may perform functions under these Regulations.

Organisation of quality assurance system

109. (1) A recognised accountancy body shall organise its system of quality assurance for audits in such a manner that—

- (a) the system is independent of the reviewed statutory auditors and audit firms,
- (b) the funding for the system is secure and free from any possible undue influence by statutory auditors or audit firms,

- (c) the system has adequate resources,
 - (d) the persons who carry out quality assurance reviews have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance reviews,
 - (e) the selection of reviewers for specific quality assurance review assignments is effected in accordance with an objective procedure designed to ensure that there are no conflicts of interest between reviewers and the statutory auditor or audit firm under review,
 - (f) the scope of quality assurance reviews of audits, supported by adequate testing of selected audit files, includes, except where otherwise agreed with the Supervisory Authority, an assessment of—
 - (i) compliance with applicable auditing standards and independence requirements,
 - (ii) the quantity and quality of resources spent,
 - (iii) the audit fees charged, and
 - (iv) the internal quality control system of the audit firm,
 - (g) each quality assurance review is the subject of a report in writing which includes the main conclusions of the review,
 - (h) a quality assurance review of each statutory auditor or audit firm takes place on the basis of an analysis of risk, at least, subject to paragraph (5) and Regulation 110, every 6 years,
 - (i) statutory auditors and audit firms take all reasonable steps to ensure that recommendations arising from quality assurance reviews of them are implemented within a reasonable period,
 - (j) there is published annually by it the overall results of quality assurance reviews carried out by it in the year concerned, and
 - (k) quality assurance reviews are appropriate and proportionate in view of the scale and complexity of the activity of the reviewed statutory auditor or audit firm.
- (2) For the purpose of paragraph (1)(e), at least the following criteria shall apply to the selection of reviewers:
- (a) reviewers have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance reviews;
 - (b) a person does not act as a reviewer in a quality assurance review of a statutory auditor or audit firm until at least 3 years have elapsed since

that person ceased to be a partner or an employee of, or otherwise associated with, that statutory auditor or audit firm;

- (c) reviewers must declare (if such be the case) that there are no conflicts of interest between them and the statutory auditor and the audit firm to be reviewed.

(3) For the purpose of paragraph (1)(k), a recognised accountancy body, when undertaking quality assurance reviews of the statutory audits of annual or consolidated financial statements of medium-sized or small undertakings, shall take account of the fact that auditing standards adopted in accordance with Article 26 of the Audit Directive are designed to be applied in a manner that is proportionate to the scale and complexity of the business of the audited entity.

(4) If a statutory auditor or audit firm fails to take all reasonable steps to ensure that recommendations arising from a quality assurance review of him, her or it are implemented within a reasonable period, the recognised accountancy body concerned shall take appropriate action, including, where applicable, subjecting the statutory auditor or audit firm, as the case may be, to the system of disciplinary actions or penalties referred to in these Regulations.

(5) The period of at least 6 years referred to in paragraph (1)(h) shall be a continuation of the system that was in place under the 2010 Audit Regulations when the first quality assurance reviews were required to be completed within 6 years of the date of the making of those Regulations.

Quality assurance review deemed to include individual auditors in certain cases

110. For the purpose of Regulation 109(1)(h), a quality assurance review conducted in relation to a statutory audit firm shall be regarded as a quality assurance review of all statutory auditors carrying out audits on behalf of the firm provided that the firm has a common quality assurance policy with which each such statutory auditor is required to comply.

Right of recognised accountancy body as regards professional discipline

111. A recognised accountancy body shall have the right to take disciplinary actions or impose sanctions in respect of statutory auditors and audit firms who carry out audits and shall have procedures in place to facilitate the taking or imposition of such action or sanctions.

Chapter 2

Investigations and Sanctions

System of investigation and penalties

112. Each recognised accountancy body shall, in respect of those auditors and audit firms in relation to whom, by virtue of Regulation 35, it may perform functions, institute arrangements to ensure that there are effective systems of investigations and penalties to detect, correct and prevent inadequate execution of a statutory audit by them.

Duty of each recognised accountancy body with regard to sanctions

113. (1) Each recognised accountancy body shall ensure that the contractual and other arrangements that exist between it and its members are such as enable the imposition by it of effective, proportionate and dissuasive penalties in respect of statutory auditors and audit firms in cases where statutory audits are not carried out by them in accordance with these Regulations.

(2) The contractual and other arrangements referred to in paragraph (1) shall comply with the requirements of procedural fairness.

(3) By virtue of this Regulation, the contractual and other arrangements referred to in paragraph (1) that subsist for the time being between a recognised accountancy body and its members shall operate and have effect so as to enable the imposition by the recognised accountancy body—

- (a) of penalties of a like character to those, and
- (b) in the cases,

referred to in that paragraph in respect of persons who, though not members of the recognised accountancy body, are persons in relation to whom it may, by virtue of Regulation 35, perform functions under these Regulations.

Scope of penalties and publicity in relation to their imposition

114. (1) The penalties referred to in Regulation 113, provision for which must be made by the means referred to in that Regulation, shall, where appropriate, include withdrawal of approval under these Regulations or, if applicable, registration under Regulation 38.

(2) Paragraph (1) is without prejudice to Regulations 52 and 53.

(3) Unless there do not exist internal appeal procedures of a recognised accountancy body as referred to in Regulation 52(9)(a) or 53(9)(a), the reference in paragraph (4) to a recognised accountancy body shall be read as a reference to a recognised accountancy body acting through the disciplinary committee that deals with matters at first instance.

(4) Without prejudice to Regulation 35(9) to (11), a recognised accountancy body may, save where, in its opinion, proceeding in this manner would not be in the public interest, adopt procedures analogous to those in Regulation 52(5) to (7) or 53(5) to (7) as regards affording the statutory auditor or audit firm an opportunity to rectify the matters that have occasioned the investigation concerned and the proposed exercise of the power of withdrawal of approval referred to in paragraph (1).

(5) If—

- (a) there exist internal appeal procedures, as referred to in Regulation 52(9)(a) or 53(9)(a), of a recognised accountancy body, and

(b) the investigation and disciplinary procedures of the recognised accountancy body provide that a decision of its disciplinary committee referred to in paragraph (3), being a decision of a nature to which this Regulation applies, shall stand suspended or shall not take effect until, as the case may be—

(i) the period for making an appeal under those procedures has expired without such an appeal having been made,

(ii) such an appeal has been made and the decision to withdraw the approval confirmed, or

(iii) such an appeal that has been made is withdrawn,

then, notwithstanding anything in the preceding provisions of this Regulation, the operation of the withdrawal of approval by that disciplinary committee shall stand suspended until the happening of an event specified in subparagraph (b)(i), (ii) or (iii).

(6) If—

(a) there exist internal appeal procedures, as referred to in Regulation 52(9)(a) or 53(9)(a), of a recognised accountancy body, and

(b) the investigation and disciplinary procedures of the recognised accountancy body do not provide, as referred to in paragraph (5)(b), for the decision of the disciplinary committee referred to in that provision to stand suspended or not to take effect,

then, notwithstanding anything in those procedures, the auditor or audit firm to whom that decision relates may apply to the High Court for an order suspending the operation of the withdrawal pending the determination by the relevant appellate committee of an appeal that he, she or it is making under those internal appeal procedures.

(7) Where an application under paragraph (6) is made to the High Court, paragraphs (10) to (13) apply to the application with—

(a) the substitution of references to an appeal under those internal appeal procedures for references to an appeal under Regulation 54,

and

(b) any other necessary modifications.

(8) If the relevant appellate committee referred to in paragraph (6) is of the opinion, having regard to the particular issues that have arisen on that appeal, that, in the interests of justice, the disposal by it of an appeal referred to in that paragraph ought to include procedures analogous to those, as referred to in paragraph (4), provided by Regulation 52(5) to (7) or 53(5) to (7) being adopted

by it, then, in disposing of that appeal, it shall adopt procedures analogous to those in Regulation 52(5) to (7) or 53(5) to (7).

(9) A recognised accountancy body shall take all reasonable steps to ensure that any appeal to the relevant appellate committee referred to in paragraph (6) is prosecuted promptly and it shall be the duty of that appellate committee to ensure that any such appeal to it is disposed of as expeditiously as may be and, for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the determination of such an appeal.

(10) Where a recognised accountancy body has made a decision to withdraw the approval of an auditor or audit firm under this Regulation (that is to say, a final decision of the recognised accountancy body on the matter after the internal appeal procedures (if any) of it have been employed and exhausted), the auditor or audit firm may apply to the High Court for an order suspending the operation of the withdrawal pending the determination by the High Court of an appeal under Regulation 54 that he, she or it is making against the withdrawal.

(11) Subject to paragraph (13), on the hearing of an application under paragraph (10), the High Court may, as it considers appropriate and having heard the recognised accountancy body concerned and, if it wishes to be so heard, the Supervisory Authority (which shall have standing to appear and be heard on the application)—

- (a) grant an order suspending the operation of the withdrawal, or
- (b) refuse to grant such an order,

and an order under subparagraph (a) may provide that the order shall not have effect unless one or more conditions specified in the order are complied with (and such conditions may include conditions requiring the auditor or audit firm not to carry out statutory audits save under the supervision of one or more other statutory auditors or audit firms or not to carry out such audits save in specified circumstances).

(12) Subject to paragraph (13), the High Court may, on application to it by the auditor or audit firm or recognised accountancy body concerned, vary or discharge an order under paragraph (11)(a) if it considers it just to do so.

(13) In considering an application under paragraph (10) or (12), the High Court shall have regard to—

- (a) whether, as regards the appeal the applicant is making under Regulation 54 to the High Court, the applicant has a strong case that is likely to succeed before that Court (and, for that purpose, the High Court shall require the applicant to give an indication of the facts that will be relied upon, or of the evidence that will be adduced in the case of facts that are in controversy, by him, her or it on the hearing of that appeal), and

- (b) the public interest and, in particular, the public interest in ensuring that there is the minimum of disruption, consistent with law, to the discharge by the recognised accountancy body concerned, as a body assigned with the function of granting and withdrawing approval.

(14) The fact of one or more—

- (a) measures having been taken against, or
- (b) one or more penalties having been imposed on,

a statutory auditor or audit firm by a recognised accountancy body shall be disclosed by the recognised accountancy body to the public and that disclosure shall, if the recognised accountancy body considers it appropriate, include such further particulars with respect to the matter as it thinks fit.

(15) Subject to paragraph (16), the manner of such disclosure, and the time at which it is made, shall be such as the recognised accountancy body determines to be appropriate.

(16) The recognised accountancy body shall establish, in writing, criteria the purpose of which is to govern the determination by it of the matters referred to in paragraph (15); and those criteria shall require the prior approval of the Supervisory Authority.

PART 9

AUDIT COMMITTEES

Audit committees for public-interest entities

115. (1) The directors of each public-interest entity shall establish an audit committee for the entity.

(2) The majority of the members of the audit committee shall be non-executive directors of the public-interest entity, that is to say, directors—

- (a) the terms of appointment of whom indicate or state that they are being appointed in a non-executive capacity, and
- (b) who otherwise possess the requisite degree of independence (particularly with regard to each of them satisfying the condition in paragraph (3)) so as to be able to contribute effectively to the committee's functions.

(3) The condition referred to in paragraph (2)(b) is that the director does not have, and at no time during the period of 3 years preceding his or her appointment to the committee did have—

- (a) a material business relationship with the public-interest entity, either directly, or as a partner, shareholder, director (other than as a non-executive director) or senior employee of a body that has such a relationship with the entity, or

(b) a position of employment in the public-interest entity.

(4) At least one of the directors referred to in paragraph (2) shall be a person who has competence in accounting or auditing.

(5) For the purposes of paragraphs (2) and (3)(a), a non-executive director is a director who is not engaged in the daily management of the public-interest entity or body concerned, as the case may be.

(6) The members of the audit committee as a whole shall have competence relevant to the sector in which the audited entity is operating.

(7) The chairman of the audit committee shall be appointed by its members and shall be independent of the audited entity.

(8) Any proposal of the directors of a public-interest entity with respect to the appointment of a statutory auditor or audit firm to the entity shall be based on a recommendation made to the directors by the audit committee.

(9) The statutory auditor or audit firm shall report to the audit committee of the public-interest entity on key matters arising from the statutory audit of the entity, and, in particular, on material weaknesses in internal control in relation to the financial reporting process.

(10) Without prejudice to paragraph (1), this Regulation shall not apply to a public-interest entity if it is—

(a) a public-interest entity which is a subsidiary undertaking within the meaning of point 10 of Article 2 of Directive 2013/34/EU if that entity fulfils the requirements set out in paragraphs (1) and (2) and Articles 11(1) and (2) and 16(5) of Regulation (EU) No 537/2014 at group level,

(b) any public-interest entity which is an UCITS as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009¹¹ on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or an alternative investment fund (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011¹² on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010,

(c) subject to paragraph (11), any public-interest entity the sole business of which is to act as an issuer of asset backed securities as defined in point 5 of Article 2 of Commission Regulation (EC) No 809/2004 of 29 April 2004¹³ implementing Directive 2003/71/EC of the European

¹¹OJ L302, 17.11.2009, p. 32

¹²OJ L174, 1.7.2011, p. 1

¹³OJ L149, 30.4.2004, p. 1

Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, or

- (d) any credit institution within the meaning of point 1 of Article 3(1) of Directive 2013/36/EU whose shares are not admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC and which has, in a continuous or repeated manner, issued only debt securities admitted to trading in a regulated market, provided that the total nominal amount of all such debt securities remains below €100,000,000 and that it has not published a prospectus under Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003¹⁴ on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

(11) An entity that avails itself of the exemption under paragraph (10)(c) shall, by means of a statement to that effect included—

- (a) in any annual report published by it, or
- (b) in an annual return or other periodic statement delivered by it to the Registrar of Companies or Central Bank of Ireland,

set forth the reasons for why it considers the establishment of an audit committee by it is not appropriate and, accordingly, why it has availed itself of that exemption.

(12) Without prejudice to the responsibility of the directors of the public-interest entity, the responsibilities of the audit committee shall include—

- (a) to inform directors of the entity of the outcome of the statutory audit and explain how the statutory audit contributed to the integrity of financial reporting and what the role of the audit committee was in that process,
- (b) to monitor the financial reporting process and submit recommendations or proposals to the directors of the entity to ensure its integrity,
- (c) to monitor the effectiveness of the entity's internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial reporting of the entity, without breaching its independence,
- (d) to monitor the statutory audit of the annual and consolidated financial statements, in particular, its performance, taking into account any findings and conclusions by the Supervisory Authority pursuant to Article 26(6) of Regulation (EU) No 537/2014,

¹⁴OJ L345, 31.12.2003, p.64

- (e) to review and monitor the independence of the statutory auditors or the audit firms in accordance with Regulations 93 to 98 and Article 6 of Regulation (EU) No 537/2014, and, in particular, the appropriateness of the provision of non-audit services to the audited entity in accordance with Article 5 of that Regulation, and
- (f) to be responsible for the procedure for the selection of a statutory auditor or audit firm and recommend the statutory auditor or audit firm to be appointed in accordance with Article 16 of Regulation (EU) No 537/2014 except when Article 16(8) of that Regulation is applied.

(13) Paragraph (8) applies to a proposal of the directors (with respect to the appointment of a statutory auditor or audit firm to a public-interest entity) made at any time after the establishment of the audit committee in respect of the entity.

(14) The other provisions of these Regulations with regard to the performance of a function by the audit committee apply with respect to accounts of the public-interest entity for financial years beginning on or after the establishment of the audit committee in respect of the entity.

(15) A public-interest entity which, without reasonable excuse, contravenes paragraph (11) shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €12,500.

PART 10

REGULATORY ARRANGEMENTS BETWEEN MEMBER STATES

Chapter 1

Cooperation with other Member States

Specific requirements with regard to cooperation

116. (1) In this Regulation, “counterpart authorities in other Member States” means competent authorities or bodies in other Member States with functions corresponding to those of the Supervisory Authority, the recognised accountancy bodies and the Registrar of Companies with regard to approval, registration, quality assurance, inspection and discipline under these Regulations or Regulation (EU) No 537/2014.

(2) The Supervisory Authority, the recognised accountancy bodies and the Registrar of Companies with functions relating to approval, registration, quality assurance, inspection and discipline under these Regulations or Regulation (EU) No 537/2014, shall cooperate with the counterpart authorities in other Member States and the relevant European Supervisory Authorities whenever necessary for the purpose of those authorities or bodies (or, as the case may be,

the counterpart authorities) carrying out their respective functions under these Regulations or Regulation (EU) No 537/2014 or, as the case may be, the laws of the other Member State concerned that implement the Audit Directive.

(3) The Supervisory Authority, the recognised accountancy bodies and the Registrar of Companies with the foregoing functions under these Regulations or Regulation (EU) No 537/2014 shall render assistance to the counterpart authorities in other Member States and to the relevant European Supervisory Authorities and, in particular, shall exchange information and cooperate with them in investigations relating to the carrying out of statutory audits.

Confidentiality of information

117. (1) No person shall disclose, except in accordance with law, information that—

(a) is obtained in performing functions under any provision of these Regulations or of Regulation (EU) No 537/2014, and

(b) has not otherwise come to the notice of members of the public.

(2) A person who contravenes paragraph (1) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €12,500 or imprisonment for a term not exceeding 12 months or both.

Supplemental provisions in relation to Regulation 117

118. Without limiting Regulation 117, the persons to whom that Regulation applies include the following:

(a) a member or director or former member or director of any board or committee, howsoever called, of the Supervisory Authority, the recognised accountancy bodies or the Registrar of Companies;

(b) an employee or former employee of the Supervisory Authority, the recognised accountancy bodies or the Registrar of Companies;

(c) a professional or other advisor to the Supervisory Authority, the recognised accountancy bodies or the Registrar of Companies, including a former advisor.

Obligation to supply information required for certain purposes and saving concerning confidential information

119. (1) The Supervisory Authority or a recognised accountancy body shall, on request and without undue delay, supply any information required for the purpose referred to in Regulation 116.

(2) Regulation 117 shall not prevent the Supervisory Authority or a recognised accountancy body from complying with any such request or exchanging confidential information.

Obligation of Supervisory Authority or recognised accountancy body to gather information

120. (1) Where necessary, the Supervisory Authority or a recognised accountancy body, on receiving a request referred to in Regulation 119(1), shall, without undue delay, take the necessary measures to gather the required information.

(2) If the Supervisory Authority or a recognised accountancy body of whom a request under paragraph (1) is made is not able to supply, without undue delay, the required information, it shall notify the counterpart authority in the other Member State that made the request of—

- (a) the fact of the delay, and
- (b) the reasons therefor.

Application of Regulation 117 to certain information

121. Regulation 117 shall apply to information received by the Supervisory Authority, a recognised accountancy body or the Registrar of Companies pursuant to the cooperation or exchange of information that is required of counterpart authorities of Member States by this Chapter.

Requesting authority to be notified if its request not complied with

122. (1) If—

- (a) the Supervisory Authority or a recognised accountancy body of whom a request referred to in Regulation 119(1) is made does not comply with the request, and
- (b) the case is neither—
 - (i) just one of a delay in complying with the request to which Regulation 120(2) relates, nor
 - (ii) one of a refusal to comply with the request on any of the grounds referred to in Regulation 123,

the Supervisory Authority or recognised accountancy body, as appropriate, shall notify the counterpart authority in the other Member State that made the request of the reasons for that failure to comply.

(2) If it is a recognised accountancy body as referred to in paragraph (1)(a), it shall also notify the Supervisory Authority of the reasons for the failure referred to in that paragraph.

Grounds for refusing request for information

123. (1) The Supervisory Authority or a recognised accountancy body may refuse to comply with a request referred to in Regulation 119(1) if, in its opinion—

- (a) there are reasonable grounds for believing that supplying the information concerned might adversely affect—
 - (i) public order,
 - (ii) the security of the State,
 - (iii) the defence of the State, or
 - (iv) the international relations of the State,
- (b) proceedings in any court in the State have already been initiated in respect of the same actions and against the same statutory auditor or audit firm, the subject of the request, or
- (c) a final determination has already been made by the Supervisory Authority or recognised accountancy body in respect of the same actions and the same statutory auditor or audit firm, the subject of the request.

(2) A recognised accountancy body shall not exercise the power under paragraph (1) to refuse to comply with a request save after consultation with the Supervisory Authority.

(3) The Supervisory Authority or a recognised accountancy body that refuses, under paragraph (1), to comply with a request shall notify the counterpart authority in the other Member State that made the request of the reasons for the refusal.

(4) A recognised accountancy body, referred to in paragraph (3), shall also notify the Supervisory Authority of the reasons for the refusal referred to in that paragraph.

Use to which information may be put

124. (1) In this Regulation, “relevant information” means information that the Supervisory Authority or a recognised accountancy body receives pursuant to the cooperation or exchange of information that is required of counterpart authorities of Member States in this Chapter.

(2) The Supervisory Authority or a recognised accountancy body may use relevant information only for the performance by it of its functions under these Regulations or Regulation (EU) No 537/2014 and then only in the context of steps it takes in—

- (a) investigating and detecting failures to comply with these Regulations or Regulation (EU) No 537/2014, and

- (b) initiating and employing disciplinary procedures, or maintaining proceedings in any court, in respect of any such failures.

(3) Paragraph (2) is without prejudice to any obligations, by virtue of any proceedings being maintained in any court, to which the Supervisory Authority or a recognised accountancy body or European Supervisory Authority is subject as regards the use to which it may put information referred to in that paragraph and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

- (4) (a) The Supervisory Authority or a recognised accountancy body may transmit to the counterpart authorities in other Member States responsible for supervising public-interest entities, to central banks, to the European System of Central Banks and to the European Central Bank, in their capacity as monetary authorities, and to the European Systemic Risk Board, confidential information intended for the performance of their respective functions.

- (b) Such authorities or bodies shall not be prevented from communicating, to the Supervisory Authority or a recognised accountancy body, information that the Supervisory Authority or recognised accountancy body may need in order to perform its functions under Regulation (EU) No 537/2014.

Counterpart authority to be notified of non-compliance with Audit Directive and Regulation (EU) No 537/2014

125. Where the Supervisory Authority or a recognised accountancy body forms, on reasonable grounds, the opinion that activities contrary to the provisions of the Audit Directive or of Regulation (EU) No 537/2014 are being, or have been, carried out on the territory of another Member State, it shall, as soon as possible—

- (a) notify the counterpart authority in the other Member State of that opinion, and
- (b) include in that notification specific details of the matter and the grounds for its opinion.

Counterpart authority may be requested to carry out investigation

126. (1) In relation to activities that it suspects have been, or are being, carried on contrary to the provisions of the Audit Directive or Regulation (EU) No 537/2014, the Supervisory Authority or a recognised accountancy body may request a counterpart authority in another Member State to carry out an investigation in the territory of that Member State.

(2) A request under paragraph (1) of a counterpart authority may be accompanied by a further request that one or more of the officers, or members of staff, of the Supervisory Authority or a recognised accountancy body be allowed to accompany officers, or members of staff, of the counterpart authority in the course of the investigation.

(3) A recognised accountancy body shall notify the Supervisory Authority of the making of a request by it under paragraph (1) and, if such be the case, the making of the further request by it under paragraph (2).

Duty of Supervisory Authority or recognised accountancy body to take certain action

127. (1) Where the Supervisory Authority or a recognised accountancy body receives a notification from—

- (a) the entity specifically responsible, pursuant to the laws of another Member State that implement Article 36 of the Audit Directive, for ensuring the cooperation referred to in that Article, or
- (b) the counterpart authority in another Member State,

that activities contrary to the provisions of the Audit Directive or Regulation (EU) No 537/2014 are being, or have been, carried on in the State, it shall take appropriate action under these Regulations, Regulation (EU) No 537/2014 or the Companies Act 2014, as appropriate.

(2) The Supervisory Authority or a recognised accountancy body shall inform the notifying entity or authority of the outcome of that action, and to the extent possible, of significant developments in the period pending that outcome.

(3) A recognised accountancy body shall—

- (a) notify the Supervisory Authority of the taking by it of the action referred to in paragraph (1), and
- (b) in addition to so informing, under paragraph (2), the notifying entity or authority of those matters, inform the Supervisory Authority of the outcome of that action, and to the extent possible, of significant developments in the period pending that outcome.

Due consideration to be given to counterparty's request for investigation

128. (1) The Supervisory Authority or a recognised accountancy body shall give due consideration to a request made of it, pursuant to the laws of another Member State that implement Article 36 of the Audit Directive, to carry out an investigation in the State.

(2) If a request under paragraph (1) is acceded to by the Supervisory Authority or a recognised accountancy body, the investigation shall be subject to the overall control of the Supervisory Authority or recognised accountancy body that receives the request.

(3) For the purpose of this Regulation—

- (a) the reference in paragraph (1) to a request that is made pursuant to the laws of another Member State that implement Article 36 of the Audit Directive is a reference to such a request, whether or not it is accompanied by a further request (made pursuant to those laws) that

one or more of the officers, or members of staff, of the requesting authority be allowed to accompany officers, or members of staff, of the Supervisory Authority or a recognised accountancy body in the course of the investigation, and

- (b) the investigation is subject to the control as referred to in paragraph (2) even if that further request is acceded to by the Supervisory Authority or a recognised accountancy body.
- (4) A recognised accountancy body shall notify the Supervisory Authority—
- (a) of the making of a request of it referred to in paragraph (1), and
 - (b) if the request is acceded to by it, of the fact of the request being so acceded to.

Grounds for refusing request for investigation

129. (1) The Supervisory Authority or a recognised accountancy body may refuse to accede to a request referred to in Regulation 128(1) made of it or a further request of the kind referred to in Regulation 128(3)(a) made of it if, in its opinion—

- (a) there are reasonable grounds for believing that acceding to the request might adversely affect—
 - (i) public order,
 - (ii) the security of the State,
 - (iii) the defence of the State, or
 - (iv) the international relations of the State,
- (b) proceedings in any court in the State have already been initiated in respect of the same actions and against the same statutory auditor or audit firm, the subject of the request, or
- (c) a final determination has already been made by the Supervisory Authority or a recognised accountancy body in respect of the same actions and the same statutory auditor or audit firm, the subject of the request.

(2) A recognised accountancy body referred to in paragraph (1) shall not exercise the power thereunder to refuse to accede to a request save after consultation with the Supervisory Authority.

(3) The Supervisory Authority or a recognised accountancy body that refuses, under paragraph (1), to accede to a request shall notify the counterpart authority in the other Member State that made the request of the reasons for the refusal.

(4) A recognised accountancy body referred to in paragraph (3) shall also notify the Supervisory Authority of the reasons for the refusal referred to in that paragraph.

Chapter 2

Mutual Recognition of Regulatory Arrangements between Member States

Mutual recognition of regulatory arrangements between Member States

130. To the extent that the preceding provisions of these Regulations, or, where applicable, Regulation (EU) No 537/2014 do not operate to achieve the following effects in the law of the State, these Regulations or Regulation (EU) No 537/2014 and those preceding provisions (notwithstanding anything in them to the contrary) shall be construed as operating, in a manner so that—

- (a) (i) the principle of home-country regulation and oversight by the Member State in which the statutory auditor or audit firm is approved and the audited entity has its registered office is respected, and
 - (ii) without prejudice to subparagraph (i), audit firms approved in one Member State that perform audit services in another Member State in accordance with Regulation 38 shall be subject to quality assurance review in the home Member State and oversight in the host Member State of any audit carried out there,
 - (b) the imposition of additional requirements on a statutory auditor or audit firm in relation to the statutory audit concerning registration, quality assurance review, auditing standards, professional ethics and independence is prohibited in the case of—
 - (i) a statutory audit of consolidated financial statements, required by a Member State, of a subsidiary established in another Member State, and
 - (ii) a company the securities of which are traded on a regulated market in another Member State to that in which it has its registered office, by that Member State, regarding the statutory audit of the annual or consolidated financial statement of that company,
- and
- (c) a statutory auditor or audit firm, approved under Regulation 37 or 134, which is registered in any Member State and provides audit reports concerning annual or consolidated financial statements in accordance with Regulation 135, the systems of oversight, quality assurance, investigation and sanctions of the Member State where registration took place will apply.

Chapter 3

*Transfer of Working Papers to Third-country Competent Authorities**Transfer of audit documentation to third-country competent authority*

131. (1) Subject to Regulation 132, audit working papers or other documents held by a statutory auditor or audit firm and inspection or investigation reports relating to the audits concerned may be transferred to a third-country competent authority only if the Supervisory Authority, on a request being made of it in that behalf by the first-mentioned authority, determines that the following conditions are complied with (and authorises such transfer accordingly), namely—

- (a) those audit working papers or other documents relate to the audit of a company which—
 - (i) has issued securities in the third country concerned, or
 - (ii) forms part of a group of companies that issue statutory group financial statements in the third country concerned,
- (b) the third-country competent authority meets requirements which have been declared adequate in accordance with Article 47(3) of the Audit Directive,
- (c) there are working arrangements on the basis of reciprocity agreed between the Supervisory Authority and the third-country competent authority, and
- (d) the transfer of personal data to the third country concerned is in accordance with Chapter IV of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995¹⁵ on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(2) The working arrangements referred to in paragraph (1)(c) shall ensure that—

- (a) justification as to the purpose of the request for audit working papers and other documents is provided by the third-country competent authority concerned,
- (b) the audit working papers and other documents are only transferred if—
 - (i) an obligation similar to that provided by Regulation 117 is provided under the laws of the third country concerned in relation to persons whilst in, and in any period subsequent to their ceasing to be in, the employment of the third-country competent authority,

¹⁵OJ L281, 23.11.1995, p. 31

(ii) the relevant persons in the employment of the third-country competent authority that will deal with the matter provide an undertaking in writing to the Supervisory Authority that they—

(I) will comply with their obligation referred to in clause (i), and

(II) deliver up possession of the audit working papers and other documents to the third-country competent authority, and do everything within their power to secure the return of them by that authority to the Supervisory Authority, once the performance of the functions referred to in subparagraph (c) in relation to them is completed,

and

(iii) the protection of the commercial interests of the audited entity, including its industrial and intellectual property, is not undermined,

(c) the third-country competent authority uses audit working papers and other documents only for the performance of its functions of public oversight, quality assurance and investigations that meet requirements equivalent to those of Articles 29, 30 and 32 of the Audit Directive,

and

(d) the request from a third-country competent authority for audit working papers or other documents held by a statutory auditor or audit firm can be refused by the Supervisory Authority—

(i) where the provision of those working papers or documents would adversely affect the sovereignty of the European Union or any of the following:

(I) public order (whether in the State or elsewhere in the European Union);

(II) the security of the State or the European Union;

(III) the defence of the State or the European Union;

(IV) the international relations of the State or the European Union,

(ii) where proceedings in any court in the State have already been initiated in respect of the same actions and against the same statutory auditor or audit firm, or

(iii) where final judgment in any court in the State has already been passed in respect of the same actions and on the same statutory auditor or audit firm, the subject of the request.

(3) The Supervisory Authority has, for the purposes of the performance of its functions under the preceding paragraphs (including the taking of any steps that necessitate the perusal by it of the papers and other documents concerned so as to determine whether the transfer should be refused on any of the grounds referred to in paragraph (2)(d)), the following power.

(4) That power is to require the statutory auditor or audit firm concerned to produce to it the audit working papers and other documents; the statutory auditor or audit firm shall comply with such a requirement made of him, her or it by the Supervisory Authority.

(5) As soon as may be after—

- (a) if such a determination is made, the making by the Supervisory Authority of a determination that the transfer of the papers and other documents be refused on any of the grounds referred to in paragraph (2)(d), or
- (b) the papers and other documents are returned by the third-country competent authority to it,

the Supervisory Authority shall secure the return to the statutory auditor or audit firm concerned of the audit working papers and other documents.

Derogation from Regulation 132 in exceptional cases

132. By way of derogation from Regulation 131, the Supervisory Authority may, in exceptional cases, allow a statutory auditor or audit firm to transfer audit working papers and other documents directly to a third-country competent authority, provided that—

- (a) an investigation has been initiated by that competent authority in the third country concerned,
- (b) the transfer does not conflict with the obligations with which statutory auditors and audit firms are required to comply in relation to the transfer of audit working papers and other documents to the Supervisory Authority,
- (c) there are working arrangements with the third-country competent authority of a reciprocal nature that allow the Supervisory Authority direct access to audit working papers and other documents of audit entities in the third country concerned,
- (d) the third-country competent authority informs in advance the Supervisory Authority of each direct request for information, indicating the reasons therefor, and
- (e) conditions similar to those specified in Regulation 131(2)(a) to (d) are satisfied.

Particulars of working arrangements to be notified

133. (1) Where the Supervisory Authority enters into working arrangements with a third-country competent authority in accordance with Regulation 131(1)(c), particulars of those working arrangements shall be published by the Supervisory Authority on its website without delay and those particulars shall include—

- (a) the name of the third-country competent authority, and
- (b) the jurisdiction in which it is established.

(2) Particulars of those working arrangements shall also be notified by the Supervisory Authority to the Commission.

PART 11

THIRD-COUNTRY AUDITORS

Chapter 1

*International Aspects**Approval of third-country auditor*

134. (1) Without prejudice to Chapter 2 of Part 4 and subject to paragraph (2), a recognised accountancy body may approve a third-country auditor as a statutory auditor if that person has furnished proof that he or she complies with requirements equivalent to those specified in Regulations 37 and 45.

(2) A third-country auditor shall not be approved under paragraph (1) unless reciprocal arrangements with the third country concerned are in place, that is to say arrangements that enable—

- (a) by virtue of the law of that third country, and
- (b) on fulfilment by the statutory auditor concerned of requirements no more onerous than those specified by this Regulation and Chapter 2 of Part 4 for the third-country auditor's approval under paragraph (1),

a statutory auditor to carry out audits in that third country.

Chapter 2

*Registration and Oversight of Third-country Auditors and Audit Entities**Registration of third-country auditors and audit entities*

135. (1) Subject to paragraphs (6), (7), (8) and (9) and Regulation 141, the Supervisory Authority shall, in accordance with the relevant provisions of Part 6 and Schedule 2, cause to be registered in each year in the public register every third-country auditor and audit entity that indicates, in writing to it, his, her or its intention to provide an audit report concerning the annual or group financial statements of an undertaking falling within paragraph (3).

(2) Registration in the public register pursuant to paragraph (1) shall have effect for a period of 12 months from the date on which the registration is effected.

(3) The undertaking referred to in paragraph (1) is one—

(a) incorporated outside the European Union, not being a collective investment undertaking, and

(b) whose transferable securities are admitted to trading on a regulated market (within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC) in the State.

(4) There shall accompany the indication in writing by a third-country auditor or audit entity referred to in paragraph (1) a notification, in such form and manner as the Supervisory Authority specifies, of the following information (in relation to the auditor or audit entity) to it.

(5) That information is the information referred to in paragraph 3 of Schedule 2 but does not include the information referred to in paragraph 1(b) or 2(b) (as applied by that paragraph 3) of that Schedule.

(6) Paragraph (1) shall not apply if the undertaking referred to in that paragraph is an issuer exclusively of outstanding debt securities for which one of the following applies:

(a) prior to 31 December 2010, the undertaking was admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(c) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004¹⁶ on the harmonisation of transparency requirements in relation to information about issues whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, and the denomination per unit of which is at the date of issue at least €50,000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least €50,000;

(b) from 31 December 2010, the undertaking was admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(c) of Directive 2004/109/EC, and the denomination per unit of which is at the date of issue at least €100,000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least €100,000.

(7) Paragraph (1) shall not apply in respect of an audit report for a financial year referred to in Regulation 4(a) of the European Communities (Transitional Period Measures in Respect of Third Country Auditors) Regulations 2009 (S.I. No. 229 of 2009) if the audit report is provided by a third-country auditor or audit entity that complies with Regulation 4 of those Regulations.

¹⁶OJ No. L 390, 31.12.2004, p.38

(8) Paragraph (1) shall not apply in respect of an audit report referred to in that paragraph for a financial year starting during the period from 2 July 2010 to 31 July 2012 if—

- (a) that audit report is provided by a third-country auditor or audit entity,
- (b) that audit report concerns a company referred to in paragraph (2) that is incorporated in a third-country specified in Annex I to Commission Decision 2011/30/EU of 19 January 2011¹⁷ on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union as amended by Commission Implementing Decision 2013/288/EU of 13 June 2013¹⁸ amending Decision 2011/30/EU on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third-country auditors and audit entities in the European Union, and
- (c) the third-country auditor or audit entity concerned complies with Regulations 4(2) and 7 of the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period Measures and Fees) Regulations 2012 (S.I. No. 312 of 2012).

(9) Paragraph (1) shall not apply in respect of an audit report referred to in that paragraph for a financial year starting during the period from 2 July 2010 to 31 July 2015 if—

- (a) that audit report is provided by a third-country auditor or audit entity,
- (b) that audit report concerns the annual or consolidated accounts of companies referred to in paragraph (2) that are incorporated in a third country or territory specified in Annex II to Commission Decision 2011/30/EU of 19 January 2011 as amended by Commission Implementing Decision 2013/288/EU of 13 June 2013, and
- (c) the third-country auditor or audit entity concerned complies with Regulations 4A(2) and 7 of the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period and Fees) Regulations 2012.

(10) Regulation 87 shall apply to third-country auditors and audit entities so registered with the substitution of references to the recognised accountancy body for references to the Supervisory Authority and any other necessary modifications.

(11) Regulation 88 shall apply, with any necessary modifications, to a notification of information by a third-country auditor or audit entity under—

¹⁷OJ No. L 15, 20.1.2011, p.12

¹⁸OJ No. L 163, 15.6.2013, p.26

- (a) paragraph (4) to the Supervisory Authority; and
- (b) Regulation 87, as applied by paragraph (10), to that Authority.

(12) In paragraph (3), “collective investment undertaking” does not include such an undertaking of the closed-ended type.

Exemption from quality assurance

136. (1) A third-country auditor or audit entity registered under Part 6 in pursuance of Regulation 135 may apply to the Supervisory Authority for an exemption from Chapter 1 of Part 8 if a quality assurance review has, under another Member State’s or third country’s system of quality assurance, been carried out in relation to the auditor or audit entity during the 3 years preceding the making of the application.

- (2) On the making of that application, if—
 - (a) the Supervisory Authority is satisfied that the quality assurance review referred to in paragraph (1) has been carried out as referred to in that paragraph, and
 - (b) the system of quality assurance referred to in that paragraph has been assessed as equivalent in accordance with Regulation 141,

the Supervisory Authority shall grant the exemption and the third-country auditor or audit entity shall be exempted from Chapter 1 of Part 8 accordingly.

Audit by non-registered auditor or audit entity — consequence

137. Without prejudice to Regulation 141 and unless Regulation 135(6), (7), (8) or (9) applies to it, an audit report provided by a third-country auditor or audit entity concerning the annual or group financial statements of a company falling within Regulation 135(3) shall have no legal effect in the State if the third-country auditor or audit entity that provides it is not registered under Part 6.

Conditions for registration of third-country auditor or audit entity

138. (1) The Supervisory Authority may cause to be registered a third-country auditor or audit entity pursuant to Regulation 135 only if—

- (a) where the applicant for registration is an audit entity (referred to in this Regulation as the “potential registrant”), the applicant satisfies so much of the conditions specified in paragraph (2) as are applicable to an entity, and
 - (b) where the applicant for registration is an auditor (also referred to in this Regulation as the “potential registrant”), the applicant satisfies so much of the conditions specified in paragraph (2) as are applicable to an individual.
- (2) The conditions are—

- (a) the majority of the members of the administrative or management body of the potential registrant meet requirements equivalent to those of Regulations 37 and 45,
- (b) the third-country auditor carrying out the audit on behalf of the potential registrant meets requirements equivalent to those of Regulations 37 and 45,
- (c) the audits of the annual or group financial statements referred to in Regulation 135(1) are carried out in accordance with international auditing standards as referred to in Regulation 77, as well as the requirements referred to in Regulation 64, or with equivalent standards and requirements, and
- (d) the potential registrant publishes annually on a website, being a website maintained by or on behalf of the potential registrant, a report which includes the information referred to in Article 13 of Regulation (EU) No 537/2014 in relation to the year concerned or the potential registrant complies with equivalent disclosure requirements.

Supervisory Authority may assess matter of equivalence for purposes of Regulation 138(2)(c)

139. (1) For so long as the Commission has not taken, in accordance with the procedure referred to in Article 48(2) of the Audit Directive, the decision under Article 45(6) of that Directive in relation to the matter of equivalence of standards and requirements referred to in Regulation 138(2)(c), the Supervisory Authority may, for the purposes of that provision, make an assessment of that equivalence.

(2) When assessing this equivalence, the Supervisory Authority shall use the general equivalence criteria established by the Commission in assessing whether the audits of the financial statements referred to in Regulation 135(1) are carried out in accordance with the standards and requirements referred to in Regulation 138(2)(c).

(3) The general equivalence criteria referred to in paragraph (2) shall apply to all third countries.

Certain fees chargeable by Supervisory Authority

140. (1) (a) For the purposes specified in subparagraph (b), the Supervisory Authority may charge and impose an annual fee (of an amount specified from time to time by the Minister sufficient to cover the Authority's administrative expenses) on a third-country auditor or audit entity referred to in Regulation 135(1), and subject to paragraph (c), in respect of registration, effected or provided in relation to the auditor or audit entity under and in accordance with these Regulations.

(b) Money received by the Supervisory Authority under this paragraph may be used only for the purposes of covering the Authority's reasonable administrative expenses in performing its functions and exercising its powers under Regulation 135 and under any other Regulation

of these Regulations that contain consequential or incidental provisions on, or in relation to, Regulation 135.

(c) The Supervisory Authority—

(i) shall submit the rationale for the level of fee to the Minister for approval before imposing a fee—

(I) initially when the fee is proposed, and

(II) at any time thereafter that the fee is proposed to be amended,
and

(ii) may charge fees on an annual basis to cover the reasonable administrative costs associated with the following tasks:

(I) the annual registration of such auditor or audit entity that is a statutory auditor or audit firm registered in a public register of a Member State pursuant to Articles 15 to 19 of the Audit Directive;

(II) the annual registration assessment and the annual registration of such auditor or audit entity that is not registered in a public register of a Member State pursuant to Articles 15 to 19 of the Audit Directive as a statutory auditor or audit firm.

(2) (a) For the purposes specified in subparagraph (b), the Supervisory Authority may charge and impose fees, where necessary on an interim basis, having obtained the Minister's consent and subject to subparagraph (c), on a third-country auditor or audit entity referred to in Regulation 135(1) in respect of the oversight, quality assurance and the related matters of investigation, discipline and penalties, effected or provided in relation to the auditor or audit entity under and in accordance with these Regulations.

(b) Money received by the Supervisory Authority under this paragraph may be used only for the purposes of covering the Authority's reasonable administrative expenses in performing its functions and exercising its powers under Regulation 32 and Part 8 and under any other Regulation of these Regulations that contain consequential or incidental provisions on, or in relation to, Regulation 32 or Part 8.

(c) The Supervisory Authority—

(i) shall establish criteria, as set out in paragraph (3), for charging and imposing fees on a third-country auditor or audit entity referred to in Regulation 135(1),

(ii) shall submit the criteria to the Minister for approval before imposing fees—

(I) initially when the criteria are established, and

(II) at any time thereafter that the criteria are amended,

(iii) may charge fees on an interim basis to cover the reasonable administrative costs associated with the functions of oversight, quality assurance and the related matters of investigation, discipline and penalties—

(I) before the function is performed,

(II) more than once, if necessary, during the performance of the function, and

(III) when the performance of the function is completed.

(3) Established criteria for charging and imposing fees on an interim basis on a third-country auditor or audit entity referred to in Regulation 135(1) shall be based on costs incurred to cover the Supervisory Authority's reasonable administrative expenses in relation to—

(a) location (for example flights, accommodation and subsistence),

(b) the testing of the internal quality control system undertaken (for example, the time taken to review audit firms),

(c) the number and nature of the Irish relevant audit clients,

(d) how many third-country auditors are within the firm,

(e) staffing resources, being how many staff are required, at what level and for what period,

(f) expertise required (for example, the use of local consultants to undertake on-site inspections),

(g) the nature and significance of the findings (for example, the time allocated to inspection, drafting the report and follow-up to the recommendations),

(h) associated miscellaneous costs (for example, the translation of audit papers), and

(i) legal and other costs (for example, other third party advices).

(4) Notwithstanding that the particular audit of a public-interest entity has been carried out by a statutory auditor, no fee under this Regulation shall be imposed on the statutory auditor if he or she was designated by a statutory audit firm to carry out the audit, and the fees under this Regulation shall, in those circumstances, be imposed on the statutory audit firm instead.

(5) A fee imposed under paragraph (1) or (2) may, in default of payment, be recovered from the third-country auditor or audit entity concerned as a simple contract debt in any court of competent jurisdiction.

(6) In the case of hardship on behalf of a third-country auditor or audit firm, or where the performance of a function involves particularly complicated work, the Supervisory Authority may agree to charge a lesser fee, compatible with the circumstances of the function.

Exemptions in case of equivalence

141. (1) A third-country auditor or audit entity may apply to the Supervisory Authority for an exemption from all or any of the provisions of Regulations 135 and 136 on the basis that the third-country auditor or audit entity is subject to systems of public oversight, quality assurance and investigations and penalties in the third country concerned that meet requirements equivalent to those of Regulation 32 and Part 8.

(2) On the making of that application, if—

- (a) the Commission has, in accordance with Article 46(2) of the Audit Directive, assessed the systems referred to in paragraph (1) as meeting requirements equivalent to those in the corresponding provisions of the Audit Directive, and
- (b) the Supervisory Authority is satisfied that the law of the third country concerned affords reciprocal rights to a statutory auditor or audit firm with regard to being granted corresponding exemptions under that law,

the Supervisory Authority may rely on the equivalence decided by the Commission, partially or entirely, and thus to disapply or modify the requirements in Regulations 135 and 136 partially or entirely and the third-country auditor or audit entity shall be partially or entirely exempted accordingly.

(3) The Supervisory Authority shall notify the Commission of the main elements of its cooperative arrangements with systems of public oversight, quality assurance and investigations and penalties of the third country concerned, arising out of arrangements it has entered into with that third country for the purposes of the reciprocity referred to in paragraph (2)(b).

PART 12

MISCELLANEOUS

Summary proceedings

142. Summary proceeding in relation to an offence under these Regulations may be brought and prosecuted by—

- (a) the Director of Public Prosecutions, or
- (b) the Director of Corporate Enforcement.

Savings for disciplinary proceedings in being

143. (1) None of the provisions of these Regulations (and, in particular, those amending the Companies Act 2014) affect disciplinary proceedings in being before 17 June 2016 by a recognised accountancy body against any of its members and, accordingly, those proceedings may be continued on and after that date by that body against the member or members concerned.

(2) If, as a result of proceedings referred to in paragraph (1) in relation to a person referred to in that paragraph, the person's membership of the recognised accountancy body is terminated by the body or the body's approval (howsoever expressed) of the person to act as an auditor is withdrawn, then any deemed approval of the person as a statutory auditor or audit firm by virtue of Regulation 44 ceases to have effect.

(3) Where the result of proceedings referred to in paragraph (1) is not either of those referred to in paragraph (2), the powers of the Supervisory Authority under sections 934 and 935 of the Companies Act 2014 (as those sections stand amended by these Regulations) are available to the Authority, and may be exercised by the Authority, in relation to the matters the subject of those proceedings.

Amendment of Irish Collective Asset-management Vehicles Act 2015

144. (1) In this Regulation, "Principal Act" means the Irish Collective Asset-management Vehicles Act 2015 (No. 2 of 2015).

(2) Section 2 of the Principal Act is amended by the substitution of the following definition for the definition of "Audits Regulations"—

““Audits Regulations” means the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 (S.I. No. [-] of 2016);”.

(3) Section 123 of the Principal Act is amended by the substitution of the following subsection for subsection (1):

“(1) No person other than—

- (a) a statutory auditor or audit firm approved in accordance with the Audit Regulations, or
- (b) an audit firm registered in accordance with Regulation 38 of the Audits Regulations,

shall be eligible for appointment as an auditor of an ICAV.”.

(4) Section 131 of the Principal Act is amended by the substitution of “Regulation 101” for “Regulation 75”.

SCHEDULE 1***Regulation 45*****Standards relating to training and qualifications for approval of individual as statutory auditor**

1. An individual shall have attained university entrance or equivalent level and then—

- (a) completed a course of theoretical instruction,
- (b) undergone practical training, and
- (c) passed an examination of professional competence which is of at least the standard required in the State for university final or equivalent examination level.

2. (1) The examination of professional competence referred to in paragraph 1 shall be such as guarantees the necessary level of theoretical knowledge of subjects relevant to statutory audit and the ability to apply such knowledge in practice. Part at least of that examination shall be in writing.

(2) The test of theoretical knowledge included in the examination shall cover the following subjects in particular:

- (a) general accounting theory and principles;
- (b) legal requirements and standards relating to the preparation of annual and consolidated accounts;
- (c) international accounting standards;
- (d) financial analysis;
- (e) cost and management accounting;
- (f) risk management and internal control;
- (g) auditing and professional skills;
- (h) legal requirements and professional standards relating to statutory audit and statutory auditors;
- (i) international auditing standards as referred to in Regulation 77;
- (j) professional ethics and independence.

3. The examination shall also cover at least the following subjects in so far as they are relevant to auditing:

- (a) company law and corporate governance;

- (b) the law of insolvency and similar procedures;
- (c) tax law;
- (d) civil and commercial law;
- (e) social security law and employment law;
- (f) information technology and computer systems;
- (g) business, general and financial economics;
- (h) mathematics and statistics;
- (i) basic principles of the financial management of undertakings.

4. (1) In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee shall complete a minimum of 3 years' practical training in, inter alia, the auditing of annual financial statements, consolidated financial statements or similar financial statements. A substantial part of such practical training must be in statutory audit work and at least two thirds of such practical training shall be completed with a statutory auditor or an audit firm approved in any Member State.

(2) All such training shall be carried out with persons who a recognised accountancy body is satisfied possess, to an adequate standard, the ability to provide practical training.

SCHEDULE 2***Regulation 84*****Information required, by Part 6, to be Supplied and Entered in Public Register****Statutory auditors**

1. In relation to a statutory auditor, the public register shall contain at least the following information:

- (a) the name and address of the auditor;
 - (b) the number under which the auditor is entered in that register;
 - (c) if applicable—
 - (i) the name and address and the website address (if any) of the statutory audit firm by which the auditor is employed, or with whom he or she is associated as a partner or otherwise, and
 - (ii) the number under which that statutory audit firm is entered in that register;
 - (d) the name and address of the recognised accountancy body responsible for the regulation of the auditor;
 - (e) if he or she is so registered with one or more recognised accountancy bodies—
 - (i) particulars of his or her registration—
 - (I) as a statutory auditor, with each counterpart authority and the name of the authority, and
 - (II) as auditor, with one or more third-country competent authorities and the name or names of it or them,
- and
- (ii) the number under which he or she is registered with each such authority;
- (f) without prejudice to subparagraph (e), with regard to the auditor's status (if such be the case) as a Member State statutory auditor, the name and address of each counterpart authority responsible, in relation to him or her, for—
 - (i) approval as referred to in Article 3 of the Audit Directive,
 - (ii) quality assurance as referred to in Article 29 of the Audit Directive and Article 26 of Regulation (EU) No 537/2014,

- (iii) investigations and sanctions as referred to in Chapter VII of the Audit Directive and Articles 23 and 24 of Regulation (EU) No 537/2014,
- (iv) public oversight as referred to in Article 32 of the Audit Directive, and
- (v) performing the functions provided for in Regulation (EU) No 537/2014 and for ensuring the provisions of that Regulation are applied as referred to in Article 20 of that Regulation.

Statutory audit firms and audit firms approved in another Member State

2. In relation to a statutory audit firm, the public register shall contain at least the following information:

- (a) the name and address of the audit firm;
- (b) the number under which the audit firm is entered in that register;
- (c) the legal form of the audit firm;
- (d) the primary contact person in the audit firm and contact details;
- (e) the address of each office in the State of the audit firm and the website address (if any) of the audit firm;
- (f) the name of every individual employed by or associated as partner or otherwise with the audit firm who is approved as statutory auditor under Part 4;
- (g) the number under which that individual is entered in the register;
- (h) the name and address of the recognised accountancy body responsible for the regulation of the audit firm in the State;
- (i) the names and addresses of the owners of, or as appropriate, shareholders in, the audit firm;
- (j) the names and addresses of the directors, or other members of, as appropriate—
 - (i) the board of directors,
 - (ii) board of management, or
 - (iii) other administrative or management body,

of the audit firm (but where the audit firm comprises a partnership with no management structure, the provision of the address of each individual named, under subparagraph (f), as partner suffices);

- (k) if applicable, the fact of the audit firm's membership of a network and either—
 - (i) a list of the names and addresses of member firms and affiliates of the network, or
 - (ii) an indication of where such information is publicly available;
- (l) if the audit firm is so registered with one or more counterpart authorities or third-country competent authorities—
 - (i) particulars of the firm's registration—
 - (I) as a statutory audit firm, with each counterpart authority of another Member State and the name of the authority,
 - (II) as an audit firm, with one or more third-country competent authorities and the name or names of it or them, and
 - (III) as an audit firm approved in another Member State, who has registered with the relevant recognised accountancy body in accordance with Article 3a of the Audit Directive,

and

 - (ii) the number under which the firm is registered with each such authority;
- (m) without prejudice to subparagraph (l), with regard to the audit firm's status (if such be the case) as a Member State statutory audit firm, the name and address of each counterpart authority responsible, in relation to it, for—
 - (i) approval as referred to in Article 3 of the Audit Directive,
 - (ii) where the audit firm is registered in the public register of another Member State pursuant to Article 3a of the Audit Directive and Ireland is its home Member State—
 - (I) the fact that the firm is so registered, and
 - (II) the name of the host Member State and the counterpart authority in the host Member State,
 - (iii) quality assurance as referred to in Article 29 of the Audit Directive and Article 26 of Regulation (EU) No 537/2014,
 - (iv) investigations and sanctions as referred to in Chapter VII of the Audit Directive and Articles 23 and 24 of Regulation (EU) No 537/2014,

- (v) public oversight as referred to in Article 32 of the Audit Directive, and
 - (vi) performing the functions provided for in Regulation (EU) No 537/2014 and for ensuring the provisions of that Regulation are applied as referred to in Article 20 of that Regulation;
- (n) where the audit firm is registered in the public register pursuant to Article 3a(3) of the Audit Directive with Ireland as its host Member State—
- (i) the fact that the firm is so registered, and
 - (ii) the name of the home Member State and the counterpart authority in the home Member State.

Third-country auditors and audit entities

3. (1) In relation to the case provided by Regulation 135 of the registration of a third-country auditor or audit entity, the public register shall contain at least the information specified in the provisions of paragraph 1 or, as the case may be, 2 (as, in either case, those provisions are applied by subparagraph (2)).

(2) The provisions of paragraph 1 or 2, as the case may be, apply for the purposes of this paragraph save so much of them as are inapplicable in the case of a third-country auditor or audit entity, as appropriate.

(3) Third-country auditors or audit entities so registered shall be clearly indicated in the register as such and not as statutory auditors or audit firms.

Individual identification number and storage of information in electronic form

4. (1) There shall be assigned an individual identification number to each individual, firm and entity that is being entered in the public register, being—

- (a) in a case where the information entered in respect of the individual or firm is that provided under Regulation 85, the number notified under paragraph (2)(b)(i) of that Regulation to the Registrar of Companies,
- (b) in any other case, such individual identification number as, subject to subparagraph (2), is determined and allocated by the Registrar of Companies,

and references in paragraphs 1 and 2 to the number under which any of the foregoing persons is entered in the register shall be read as references to that identification number.

(2) Instead of its allocating a number for the purposes of subparagraph (1)(b) that has been determined by it, the Registrar of Companies may—

- (a) in specifying under any provision of these Regulations the form in which information is to be notified to it for registration (and the provision concerned of these Regulations does not itself provide for the notification of such a number), include in that specification a requirement that the form, as completed, includes an identification number allocated to the subject of the notification by the notifier of the information, and
- (b) if the number so provided in that form is satisfactory for the purpose of distinguishing the subject from other registrants, allocate, for the purposes of subparagraph (1)(b), that number so provided.

(3) The information contained in that register shall be stored in electronic form and be capable of being accessed by members of the public by electronic means.

Definition of “address”

5. In this Schedule, “address”, in relation to an individual, firm or entity, means the individual’s, firm’s or entity’s usual business address.



GIVEN under my Official Seal,
15 June 2016.

MARY MITCHELL O’CONNOR,
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give effect to (i) Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and (ii) certain provisions of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

Consequential amendments to the Companies Act 2014 are included in these Regulations.

These Regulations replace the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010).

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