



STATUTORY INSTRUMENTS.

S.I. No. 97 of 2012

COMPANIES (AUDITING AND ACCOUNTING) ACT 2003
(PROCEDURES GOVERNING THE CONDUCT OF SECTION 24
INVESTIGATIONS) REGULATIONS 2012

(Prn. A12/0538)

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The IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY, in exercise of its powers conferred on it by section 28(4) of the Companies (Auditing and Accounting) Act 2003 (No. 44 of 2003), hereby makes the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation and application

1. (1) These Regulations may be cited as the Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 24 Investigations) Regulations, 2012.

(2) Section 24 of the Companies (Auditing and Accounting) Act, 2003 provides that, following a complaint or on its own initiative, the Authority may, if in its opinion it is appropriate or in the public interest to do so, undertake an investigation into a possible breach of a prescribed accountancy body's standards by a member or member firm of that body.

Commencement

(3) These Regulations come into operation on the 29th day of March 2012.

Revocation

(4) The Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 24 Investigations) Regulations 2009 (S.I. No. 355 of 2009) are revoked.

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(5) Nothing in these Regulations shall affect any existing investigations instituted or ongoing before the commencement of these Regulations and such investigations shall continue to operate pursuant to the previous Regulations as if these Regulations had not come into operation.

(6) Section 28(4) of the Act provides, inter alia, that the Authority shall make Regulations respecting the procedures to be followed in conducting investigations under section 24 of the Companies (Auditing and Accounting) Act 2003.

(7) These Regulations apply to any matter that appears to the Authority may constitute grounds for the initiation of an investigation under section 24 of the Companies (Auditing and Accounting) Act 2003.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 3rd April, 2012.*

(8) These Regulations shall be construed in accordance with the Companies Acts 1963 to 2009.

(9) Headings and sub-headings are for convenience only and shall not affect the interpretation of these Regulations.

Interpretation

2. (1) Except where otherwise stated, words and expressions used in these Regulations that are used in the Companies (Auditing and Accounting) Act 2003 as amended, shall have the same meaning.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the Companies (Auditing and Accounting) Act 2003, (No. 44 of 2003) as amended;

“the Authority” means the Irish Auditing and Accounting Supervisory Authority, and includes any committee established to assist the Authority under section 27(1) of the Act;

“client” includes an individual, a body corporate, an unincorporated body of persons and a partnership;

“complainant” means a person (other than an officer or employee of the Authority) who has lodged a complaint with the Authority regarding a possible breach of a prescribed accountancy body’s standards by a member or member firm of that prescribed accountancy body;

“Court” means the High Court;

“documents” include any books, documents, records, telephone recordings or computer held information of whatsoever kind;

“investigation” means an investigation initiated under section 24(2) of the Act and includes a preliminary investigation initiated under these Regulations;

“Investigation Committee” means a committee established by the Authority to conduct a full investigation in accordance with these Regulations;

“member” has the same meaning as provided for in the Act and includes a member firm unless otherwise indicated in these Regulations;

“Preliminary Investigation Committee” means a committee established by the Authority to conduct a preliminary investigation in accordance with these Regulations;

“relevant person” means—

- (a) a member of a prescribed accountancy body,
- (b) a client or former client of such 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,
- (d) the prescribed accountancy body or any person who is or was an officer, employee or agent of that body, or
- (e) any person whom the 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.

“Section 24 Committee” means both or either a Preliminary Investigation Committee and an Investigation Committee;

“standards” means the rules, regulations and standards that a prescribed accountancy body applies to its members and to which, by virtue of their membership, they are obliged to adhere.

PART 2

SECTION 24 COMMITTEES

Section 24 Committees

3. (1) Subject to paragraph (2) and in accordance with section 27(1) of the Act, a Section 24 Committee shall consist of persons from one or more of the following categories of persons:

- (a) persons who are, at the time the committee is established, directors of the Authority,
- (b) other persons that the Authority considers appropriate.

(2) Neither the Chief Executive of the Authority nor any member of the staff of the Authority shall be a member of a Section 24 Committee.

(3) Each Section 24 Committee shall number at least 3 persons. The members who are not directors shall be chosen from a panel of suitable independent persons which shall be prepared and maintained by the Authority. The Chairperson of each Section 24 Committee shall be chosen by the Chairperson of the Authority.

(4) The quorum necessary for the transaction of the business by a Section 24 Committee may be fixed by the Authority and, unless so fixed, shall be three, provided that three persons are personally present and that the majority of members present are not members of a prescribed accountancy body.

(5) Any decision of a Section 24 Committee shall be decided by a majority of votes. In case of an equality of votes, the Chairperson of the Committee shall have a second or casting vote.

(6) No serving member of the governing body of any prescribed accountancy body, or any officer or employee of any of the prescribed accountancy bodies, may be appointed to a Section 24 Committee.

(7) No person who, in the view of the Authority may have (or may appear to have) any interest in the outcome of the investigation or any relationship with any party to the matters which are the subject of the investigation which may create, or appear to create, a conflict of interest may be appointed to a Section 24 Committee.

(8) Any person who served as a member of a Preliminary Investigation Committee may not be appointed as a member of an Investigation Committee with respect to the same investigation.

(9) No person who is a member of the same prescribed accountancy body as the member or member firm under investigation may take part in the deliberations of a Section 24 Committee involved in such matter.

(10) The Secretary to the Authority or another person selected and appointed by the Authority may act as Secretary to a Section 24 Committee.

Preliminary Investigation Committee

4. (1) If, in the Authority's opinion, it is appropriate or in the public interest to undertake a preliminary investigation into a possible breach of a prescribed accountancy body's standards, then the Authority may appoint a Preliminary Investigation Committee ("Preliminary Investigation Committee"), to determine whether the Authority should initiate a full investigation.

For the avoidance of doubt, matters referred to in Section 24(11A) of the Act may, without prejudice to the generality of the preceding provisions of that Section, be the subject of an investigation by the Supervisory Authority under this Regulation.

(2) In appointing a Preliminary Investigation Committee, the Authority shall be deemed to have delegated to that Preliminary Investigation Committee such of its functions and powers under section 24 of the Act as are required to conduct the functions of the Preliminary Investigation Committee for which these Regulations provide.

(3) No preliminary investigation may be undertaken into a matter that is, or has been, the subject of an enquiry under section 23 of the Act relating to such member except with the permission of the High Court.

(4) Save in exceptional cases, the Authority should not refer the matter to a Preliminary Investigation Committee on the basis of an anonymous complaint.

(5) The Preliminary Investigation Committee shall notify the member affected and the prescribed accountancy body of which the member is a member of its appointment and of the initiation of the Preliminary Investigation.

(6) A full investigation will be initiated if the Preliminary Investigation Committee determines that:

- (a) there is a *prima facie* case that a member has breached a prescribed accountancy body's standards; and
- (b) in its opinion, it is appropriate or in the public interest that there should be a full investigation by the Authority into such possible breach.

(7) In determining whether it is appropriate or in the public interest that there should be such a full investigation, the Preliminary Investigation Committee shall take into account such matters as it considers appropriate, including but not limited to the question (a) of whether the possible breach has already been investigated or is in the course of investigation by a prescribed accountancy body or another supervisory body, and (b) of whether a possible breach ought to be referred to a prescribed accountancy body or another supervisory body for investigation.

(8) Where the Preliminary Investigation Committee forms the view that a matter before it ought to be referred to a prescribed accountancy body or another supervisory body for investigation, it will refer the matter to such prescribed accountancy body or other supervisory body, provided however that the Authority shall subsequently be entitled to refer the same matter once again to the Preliminary Investigation Committee for its consideration.

(9) Where the Preliminary Investigation Committee forms the view that the matter before it is better dealt with by way of the exercise by the Authority of any of its other powers, or by way of recommendations and observations by the Authority, rather than through the initiation of a full investigation, it will report its view and the facts and circumstances of the matter to the Authority and the Authority may, if it considers it appropriate to do so, direct that the Preliminary Investigation Committee report such facts and circumstances to the Chief Executive and the Head of Regulatory and Monitoring Supervision of the Authority.

(10) If, in the course of considering whether there is a *prima facie* case that a member has breached the standards of the prescribed accountancy body and whether a full investigation should be initiated, the Preliminary Investigation Committee discovers facts or circumstances which appear to warrant examination but which are outside the scope of its remit, the Preliminary Investigation Committee will report such facts and circumstances to the Authority and the Authority may, provided such matters fall within the scope of section 24 of the Act, direct in writing that the scope of the preliminary investigation shall include such facts or circumstances and shall inform the member and relevant prescribed accountancy body accordingly.

(11) For the avoidance of doubt and for the purpose of these Regulations, a preliminary investigation shall only be initiated where the alleged breach of the standards of a prescribed accountancy body occurred after 3 February, 2006.

(12) The Preliminary Investigation Committee may, if considered appropriate and in accordance with law, inform the complainant, if any, of the appointment of the Preliminary Investigation Committee, of the initiation of the preliminary investigation and of any extension of the scope of the preliminary investigation made under paragraph (10), if such extension is relevant to such complainant.

(13) The Preliminary Investigation Committee shall, prior to making a determination under paragraph (6), provide the member that is the subject of the preliminary investigation and the prescribed accountancy body of which the member is a member with:

- (a) a statement of the grounds upon which the preliminary investigation has been initiated;
- (b) any relevant information and copies of all relevant documentation relating to such grounds; and
- (c) an opportunity to comment in writing on such grounds, documentation and information, if any.

(14) The Preliminary Investigation Committee shall reach its determination on the basis of written material alone. To assist the Preliminary Investigation Committee in determining whether there is a *prima facie* case that a member has breached the standards of a prescribed accountancy body and whether a full investigation should be initiated, the Committee may require any relevant person to do one or more of the following:

- (a) provide to the Preliminary Investigation Committee all books or documents relating to the preliminary investigation that are in the relevant person's possession or control; and
- (b) give the Preliminary Investigation Committee any other assistance in connection with the investigation that the relevant person is reasonably able to give.

(15) The Preliminary Investigation Committee may also consider any submissions made to it during its preliminary investigation by any person (including a complainant, a prescribed accountancy body or any member) if it determines that such submissions are relevant to the matters at issue. It is not possible, however, to guarantee the anonymity or the confidentiality of a submission received from any person, including a complainant who participates in a preliminary investigation.

(16) The Preliminary Investigation Committee shall complete its determination as expeditiously as is reasonably practicable and shall notify the Authority, the relevant prescribed accountancy body, and the member who is the subject of the investigation of the decision made by it. If considered appropriate

and in accordance with law, the Preliminary Investigation Committee at its sole discretion may notify the complainant, if any, of such decision.

(17) Confidential information provided in confidence by a Preliminary Investigation Committee to any person, including a member or a prescribed accountancy body under these Regulations, and any confidential information submitted by any person to the Preliminary Investigation Committee under these Regulations, shall be treated as information the disclosure of which to any other party, save as herein provided, is governed by the provisions of section 31 of the Act.

Investigation Committee

5. (1) Where the Preliminary Investigation Committee notifies the Authority of its determination that:

- (a) there is a *prima facie* case that a member has breached the standards of the prescribed accountancy body of which he or she is a member and
- (b) in its opinion, it is appropriate or in the public interest that there should be a full investigation by the Authority into such possible breach,

the Authority shall appoint a committee to conduct a full investigation on behalf of the Authority (“Investigation Committee”).

(2) Where an application to the High Court under section 23(4) of the Act has occurred and where the relevant permission under section 23(4) has been given by the High Court, the Authority shall appoint an Investigation Committee to conduct a full investigation on behalf of the Authority.

(3) In appointing an Investigation Committee, the Authority shall be deemed to have delegated to that Investigation Committee such of its functions and powers under section 24 of the Act as are required by the Investigation Committee to conduct the full investigation for which these Regulations provide.

(4) The Investigation Committee shall issue a Notice to the member who was the subject of the determination of the Preliminary Investigation Committee under paragraph (1), or the decision of the High Court under section 23(4) as appropriate, setting out:

- (a) a statement of the allegations against the member;
- (b) formal notification of the Authority’s decision to establish an Investigation Committee, or the decision of the High Court under section 23(4) of the Act as appropriate, and the composition of the Committee;
- (c) all documents and any other material that will be presented to the Investigation Committee, provided that the Investigation Committee

will be entitled subsequently to give notice of further documents to the member;

- (d) the Investigation Committee's powers of investigation to:
 - (i) require production to the Investigation Committee of all books or documents relating to the investigation that are in the relevant person's possession or control;
 - (ii) require a relevant person to attend before the Investigation Committee;
 - (iii) require a relevant person to give the Investigation Committee any other assistance in connection with the investigation that the relevant person is reasonably able to give; and
 - (iv) conduct oral hearings;
- (e) a statement to the effect that, within a reasonable period of time, as specified in the Notice, the member may make submissions in writing to the Investigation Committee, requesting an oral hearing; and
- (f) a statement that the Investigation Committee shall conduct the investigation, and may conduct an oral hearing, irrespective of whether submissions referred to in subparagraph (e) above are made.

(5) The Investigation Committee shall notify the prescribed accountancy body (whose member is the member the subject of the full investigation) of the appointment of the Investigation Committee and of the initiation of the full investigation, and may forward such material to the prescribed accountancy body as the Investigation Committee considers necessary to enable it to make observations upon the investigation.

(6) An Investigation Committee may, if considered appropriate and in accordance with law, notify or direct the notification of any other relevant person, including a complainant, if any, of the appointment of the Investigation Committee and of the initiation of the full investigation, and may forward such material to the complainant as is necessary to enable him or her to make observations upon the investigation.

(7) It is not possible to guarantee the anonymity of, or the confidentiality of observations received from, any person, including a complainant.

(8) An Investigation Committee shall conduct a full investigation into whether the member has breached the standards of the relevant prescribed accountancy body and, if the Investigation Committee makes a finding that the allegation is proved under Regulation 10(1), shall determine what sanctions, if any, to impose under these Regulations.

(9) Information provided in confidence by an Investigation Committee to any person, including a prescribed accountancy body or a member under these

Regulations, and any confidential information submitted by any person to the Investigation Committee under these Regulations shall remain confidential and shall be treated as information the disclosure of which to any other party save as herein provided is governed by the provisions of section 31 of the Act.

Appointment of Legal Advisers

6. The Authority may appoint legal advisers to provide assistance to a Section 24 Committee to bring evidence against the member the subject of the preliminary or full investigation before a Section 24 Committee and to act otherwise as considered appropriate. A legal adviser may also examine witnesses, participate in any oral hearing and perform any other functions necessary or as required for the conduct of the investigation.

Conduct of the full Investigation

7. (1) An Investigation Committee established under these Regulations shall consider any submissions made by the member concerned and may conduct such investigations as the Investigation Committee considers appropriate before issuing its decision. Such investigations shall be conducted in accordance with rules of fair procedure and natural and constitutional justice.

(2) An Investigation Committee may also consider any submissions made to it during the full investigation by any other person (including a complainant and a prescribed accountancy body) if it determines that such submissions are relevant to the matters at issue. It is not possible, however, to guarantee the anonymity of, or the confidentiality of a submission received from, any person, including a complainant who participates in a full investigation.

(3) A member may submit any statement or information in answer to the allegation(s) within the time provided by the Investigation Committee, which shall be reasonable under the circumstances.

(4) An Investigation Committee may require any relevant person to do one or more of the following:—

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

(5) An Investigation Committee may for the purposes of exercising its functions under these Regulations conduct an oral hearing.

(6) The Investigation Committee may, for the purposes of an investigation, and whether in the context of an oral hearing or otherwise:

- (a) examine on oath, either by word of mouth or on written interrogatories, 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.

(7) An Investigation Committee may take into account any relevant information, whether or not such evidence would be admissible in a court. The strict rules of evidence do not apply to the full investigation, although the Investigation Committee will employ fair procedures.

(8) Any information produced or answer given by a member of a prescribed accountancy body in compliance with a requirement under these Regulations may be used in evidence against the member in any proceedings whatsoever, save proceedings for an offence (other than perjury in respect of such an answer).

(9) Nothing in these Regulations:

- (a) 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, or
- (b) authorises the inspection or copying of any document containing such information that is in the person's possession.

(10) The production of any books or documents under these Regulations by a person who claims a lien on the books or documents does not prejudice the lien.

Oral Hearings

8. (1) As provided for by section 28(1) of the Act, the Investigation Committee may conduct an oral hearing at its own behest or upon the reasonable request of the member that is the subject of the investigation if it considers that an oral hearing is necessary and appropriate in order to conduct the investigation.

(2) Members of the public shall be admitted to oral hearings, provided however that—

- (i) an Investigation Committee may, at its sole discretion, exclude the public from all or part of a hearing to the extent it considers it necessary, for example, where, in the opinion of the Investigation Committee, the circumstances are such that holding an oral hearing, or part thereof, in public would prejudice the interests of justice or adversely affect to an undue extent the rights of a third party, and
- (ii) an Investigation Committee shall in any event exclude the public from all or part of a hearing where, in the opinion of the Investigation Committee, the admission of the public would lead to the disclosure

to the public of information falling within the scope of section 31(1) of the Act.

(3) Any member of an Investigation Committee who is absent during an oral hearing shall not take part in the deliberations on, and the making of, the decision of the Investigation Committee.

(4) Oral hearings shall be conducted in accordance with rules of fair procedure and natural and constitutional justice. Without prejudice to the generality of that provision, where an oral hearing is taking place, the Investigation Committee will, save as may be appropriate, permit the member concerned:

- (a) to be legally represented;
- (b) to call and to give evidence;
- (c) to present information and submissions in his or her behalf; and
- (d) to cross-examine witnesses;

during the oral hearing.

(5) Subject to Section 31 of the Act, an Investigation Committee may, at its sole discretion, permit any other person with an interest in the proceedings (including a complainant and a prescribed accountancy body) to participate in an oral hearing and to present relevant information and submissions on his or her behalf.

Standard of Proof

9. The standard of proof on which an Investigation Committee shall make its findings is on the balance of probabilities.

Decision of the Authority

10. (1) An Investigation Committee shall, in respect of each alleged breach of a standard of a prescribed accountancy body, make a finding either that the allegation is proved or that the allegation is not proved.

(2) Where the Investigation Committee makes a finding that an allegation is proved it will make a decision as to:

- (a) which, if any, of the sanctions set out in Regulation 11(1) shall apply; and
- (b) the amount (if any) that the member is liable to pay to the Authority towards its costs in investigating and determining the case.

(3) An Investigation Committee shall issue its decision to the Authority when its decision is made, which shall occur as soon as is reasonably practicable from the date of the initiation of the full investigation, taking into account the circumstances of the case.

(4) An Investigation Committee's decision must provide the reasons underlying its decision, including any decision that there has not been a breach.

(5) An Investigation Committee's decision shall set out the sanctions to be imposed and the reasons underlying the imposition of such sanctions and the amount (if any) that the member is liable to pay to the Authority towards its costs in investigating and determining the case.

(6) The decision of the Investigation Committee issued to the Authority under paragraph (3) shall be the decision of the Authority.

(7) Where an Investigation Committee notifies the Authority of a finding that an allegation has been proved, the Authority shall—

- (a) issue the member and the prescribed accountancy body of which the member is a member and any other relevant person as may be determined by the Authority with a copy of the findings of the Investigation Committee, including the decision of the Investigation Committee as to the imposition of sanctions, if any, and the amount that the member is liable to pay to the Authority under section 24(7)(a) or (b) of the Act, if any;
- (b) advise the member of the Authority's obligation to seek and obtain High Court approval for decisions to require the payment of an amount under section 24(7)(a) or (b) of the Act;
- (c) advise the affected member of the right of appeal to the High Court under section 24(8) of the Act and the time limits for making such an appeal; and
- (d) advise the affected member that the Authority may, in accordance with the provisions of section 31(3)(a) of the Act, publish details of the decision.

(8) Where the Investigation Committee notifies the Authority of a finding that an allegation has not been proved, the Authority shall issue the relevant prescribed accountancy body and the member concerned with a statement to that effect.

Sanctions

11. (1) In the case of a finding that an allegation has been proved, the Investigation Committee may impose on the member any sanction to which the member is liable under the approved constitution and bye-laws of the prescribed accountancy body (including a monetary sanction). The Investigation Committee shall not impose a sanction on a member unless the relevant prescribed accountancy body could, if finding the member guilty of the breach in question, have imposed that sanction upon him. In addition, the member is liable to pay the amount specified by the Authority towards its costs in investigating and determining the case.

For the avoidance of doubt, the Investigation Committee shall be permitted, where it considers it appropriate to do so, to withdraw the approval of the member as a statutory auditor or audit firm and in this regard, the provisions of Section 24(11B) and 24(11C) of the Act shall be deemed to be incorporated into these Regulations.

(2) In determining the level of sanctions to apply, the Investigation Committee will have regard to all of the circumstances of the matter, which may include, among other things, the following factors:

- (a) whether the failure to comply with the standard(s) was deliberate, dishonest, reckless or negligent;
- (b) the duration and frequency of the breach of standard; and
- (c) the gravity and nature of the breach of standard.

(3) The Investigation Committee shall set out in its decision issued to the Authority under Regulation 10(3) the reasons underlying the imposition or non-imposition of sanctions and the level and type of any sanctions imposed.

When Decision takes effect

12. A decision of the Authority requiring the payment of an amount under Regulation 11(1) takes effect when such decision is confirmed by the Court either on appeal by the member under section 24(8) of the Act or on application by the Authority under section 29(6) of the Act.

Appeal

13. A member may appeal a decision of the Investigation Committee to the High Court within three months after the member has been notified by the Authority of the Investigation Committee's decision pursuant to Regulation 10(7).

Publication of decision

14. Subject to the provisions of Section 31(3)(a) of the Act, the Authority may publish a decision under these Regulations and the grounds on which the decision was made in any manner in which it sees fit.

Where a sanction has been imposed on the member by the Authority, this fact shall be disclosed by the Authority to the public and that disclosure shall include—

- (i) in a case where the member is making an appeal to the High Court against the decision of the Authority, an indication that that is so, and
- (ii) if the Authority considers it appropriate, such further particulars with respect to the matter as it thinks fit.

The manner of such publication and the time at which it is made, shall be such as the Authority determines to be appropriate.

Settlement

15. (1) At any time prior to the conclusion of an investigation, the matter may be resolved by entering into a binding settlement agreement between the Authority and the member that is the subject of the investigation, whereby the Authority can make on consent a decision under section 24(7) of the Act.

(2) Any proposed settlement between the Authority and a member must be approved by parties who are duly authorised to sign on behalf of each party.

(3) Any proposed settlement must be approved by a majority of the members of the Authority. Directors of the Authority who served as members of any Section 24 Committee that conducted proceedings in the matter shall not take part in the decision of the Authority as to whether to approve a proposed settlement.

(4) The Authority may, in its absolute discretion but subject to section 31 of the Act, publish notice of any decision reached on foot of a settlement agreement and the terms thereof in summary form or in its entirety after giving written notice of no less than 3 months to the member or members concerned unless it determines that such publication would be contrary to the public interest or otherwise inappropriate.

Notices

16. (1) Where any document is required or authorised by or under these Regulations to be furnished to any person, unless otherwise expressly provided under a Regulation, such document shall be furnished by delivering it to that person or by sending it by registered post in an envelope addressed to that person at his or her last known place of business or residence in the State or, if the person is a member, at the last address last notified by him or her to the prescribed accountancy body to which he or she belongs.

(2) In the case of a member firm subject to paragraphs (3) and (4) below, all notices and other communications required by these Regulations to be given or made to a member firm shall be delivered to the senior member/partner or equivalent in the case of a partnership, or to the managing director or equivalent in the case of a body corporate, at its present or last known principal place of business. If a member firm so requests in writing, all notices and communications directed to that member firm may thereafter be addressed to a partner designated by such member firm to receive them on behalf of the member firm.

(3) If a member firm ceases to be a member firm, discontinues its business or otherwise ceases to exist, the Preliminary Investigation Committee or the Investigation Committee may designate a partner or equivalent in the case of a partnership, or the managing director or equivalent in the case of a body corporate, to receive all notices or documents to be given to such member firm by the Authority (subject to prior notice to all members who were partners at the material time in such member firm as far as is practical).

(4) If a member so requests in writing, all notices and communications directed to that member or member firm may thereafter be addressed to his or her legal adviser.

(5) Where a person to whom a document is required or authorised by these Regulations to be furnished is absent from the State, or his or her whereabouts are unknown and cannot be ascertained by reasonable enquiries, or where the document, having been sent by registered post in the manner specified in paragraphs (1) to (2) has been returned undelivered, the Authority or other applicant may make application to the Court for an order for substituted service of notice of the content of the document, by advertisement or otherwise, as may seem just.

Designation of an “authorised person” by a relevant person

17. (1) Where a relevant person is a member firm, body corporate or prescribed accountancy body and the relevant person has an obligation to:

- (a) produce books or documents relating to the investigation that are in the relevant person’s possession or control;
- (b) attend before the Preliminary Investigation or Investigation Committee;
- (c) give the Authority any other assistance in connection with the investigation that the relevant person is reasonably able to give;
- (d) attend any oral hearing; or
- (e) be examined under oath under Regulation 7(6);

that obligation shall be performed by an “authorised person”, being either:

- (i) a partner designated by such member firm,
- (ii) a competent person designated by the body corporate, or
- (iii) a competent person designated by the prescribed accountancy body.

(2) A designation of an “authorised person” does not limit the Authority’s power to require any relevant person (including any person who is, or was, an officer, employee or agent of any member firm, body corporate or prescribed accountancy body) to comply with any of the obligations listed above pursuant to any other provision of the Act.

(3) If a member firm, body corporate or prescribed accountancy body fails to designate a partner or competent person as an “authorised person”, the Section 24 Committee, as appropriate, may do so.

(4) Where a member firm, body corporate or prescribed accountancy body has a right to submit any statement or information or to make oral and written submissions and any other right as provided in the Regulations, that right may be exercised by an “authorised person”.

(5) The partner or competent person designated as an “authorised person” under paragraph (1) shall be authorised and competent to exercise the functions

of the designated partner or competent person and to have the power to bind the member firm, body corporate or prescribed accountancy body with respect to the rights exercised and obligations performed on behalf of the member firm, body corporate or prescribed accountancy body, as relevant.

- (6) For the avoidance of doubt, anything said, done or omitted by:
- (a) an employee of a member firm within the scope of his or her employment, actual or ostensible; or
 - (b) an agent of the member firm within the scope of his or her employment, actual or ostensible,

shall be taken as having been said, done or omitted by that member firm.

Deferral of Investigation

18. The investigation of the matter may, if the Preliminary Investigation or Investigation Committee so decides, be deferred, or where a Section 24 Committee's investigations have been commenced, suspended, if the relevant Committee decides that it is appropriate to do so, such as where, for example, criminal or civil proceedings concerning the matters under investigation are subsequently initiated or pending.

Transcripts and copies of evidence

19. (1) If so requested by any witness who has given oral evidence to it, the Investigation Committee may in its discretion provide that witness, at a charge, if any, to be determined by the Investigation Committee, with a transcript of his or her evidence.

(2) The Investigation Committee shall, at a charge, if any, to be determined by the Investigation Committee, provide a transcript of the proceedings and copies of any documentary evidence given before it, if so requested, to a member who is a party to the proceedings under these Regulations or their legal adviser.

Confidentiality of Information

20. (1) All information that has not otherwise come to the notice of members of the public and which was obtained in performing the functions or exercising the powers of the Authority is subject to the confidentiality provisions imposed by section 31(1) of the Act.

(2) All persons who are involved in the investigatory process under the provisions of these Regulations are persons to whom section 31(1) of the Act applies, a breach of which may constitute a criminal offence and/or result in possible civil liability.

(3) Confidential information provided to the member under these Regulations shall be treated as information the disclosure to any other party of which may be prohibited under section 31 of the Act.

(4) Notwithstanding paragraphs (1) to (3), nothing in these Regulations prohibits the disclosure of information by any person during the course of the investigation under these Regulations:

- (a) at a public hearing;
- (b) to his or her legal advisers for the purposes of obtaining advice in relation to the Investigation;
- (c) if he is partner in or director of, or employed by, a member firm, to the partners in or directors of that firm;
- (d) to any person to whom disclosure is necessary for the purpose of ensuring fair procedures, or for the purpose of obtaining evidence, information or assistance in connection with the investigation; or
- (e) as otherwise required by these Regulations or by the law generally.

Payments

21. (1) Any decision that a sum be paid must be complied with within 30 days from the date the decision becomes effective (unless the Authority otherwise agrees).

(2) Where the Investigation Committee makes a decision imposing a financial penalty and/or costs against a member, such monies shall be due from and paid by the member even if he or she ceased to be a member on or after the date of the issuance of notice of the Committee under these Regulations.

(3) Where the subject of the decision to pay a sum is a member firm, such monies—

- (a) shall be due from the member firm concerned; and/or
- (b) shall be jointly and severally due from, and shall be paid by, those members who were partners in, members of, directors of or the proprietor of such member firm during any part of the time relevant to the adverse finding or thereafter, whether or not they were members or it was a member firm during any part of that time; and/or
- (c) shall be so due from, and shall be paid by, the member firm and the persons referred to in Regulation 21(3)(b) even if it ceased to be a member firm or they ceased to be members on or after the date of the report of the Committee.



GIVEN under the seal of the Irish Auditing and Accounting
Supervisory Authority,
29 March 2012.

IAN DRENNAN,
Chief Executive and Director.

JOHN O'MALLEY,
Secretary.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations set out the procedures governing the conduct of investigations by the Irish Auditing and Accounting Supervisory Authority pursuant to section 24 of the Companies (Auditing and Accounting) Act 2003 as amended and revoke the Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 24 Investigations) Regulations 2009, (S.I. No. 355 of 2009).

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