



STATUTORY INSTRUMENTS.

S.I. No. 667 of 2007

COMPANIES (AUDITING AND ACCOUNTING) ACT 2003
(PROCEDURES GOVERNING THE CONDUCT OF SECTION 23
ENQUIRIES) REGULATIONS 2007

(Prn. A7/1771)

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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 23 Enquiries) Regulations 2007.

(2) Section 23 of the Act provides that, following a complaint or on its own initiative, the Authority may, for the purpose of determining whether a prescribed accountancy body has complied with its approved investigation and disciplinary procedures enquire into—

- (a) a decision by that body not to undertake an investigation into a possible breach of its standards by a member;
- (b) the conduct of an investigation by that body into a possible breach of its standards by a member; or
- (c) any other decision of that body relating to a possible breach of its standards by a member.

(3) These Regulations apply to any matter that appears to the Authority may constitute grounds for the initiation of an enquiry under section 23.

(4) These Regulations shall be construed in accordance with the Act.

Interpretation

2. (1) Except where otherwise stated, words and expressions used in these Regulations that are used in the Act 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);

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 5th October, 2007.*

“adverse finding” means a finding by an Enquiry Committee that a prescribed accountancy body has failed to comply with its approved investigation and disciplinary procedures;

“approved investigation and disciplinary procedures” means—

- (a) in relation to a prescribed accountancy body that is a recognised accountancy body, the investigation and disciplinary procedures approved under section 9(2)(c) of the Act or approved under the Companies Act 1990 before or after the amendment of that Act by section 32 of the Act; and
- (b) in relation to any other prescribed accountancy body, the investigation and disciplinary procedures approved under section 9(2)(c) of the Act;

“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;

“complainant” means a person who has lodged a complaint with the Authority regarding an alleged breach of the approved investigation and disciplinary procedures of a prescribed accountancy body;

“Court” means the High Court;

“decision of a prescribed accountancy body” is—

- (a) a decision by that body not to undertake an investigation into a possible breach of its standards by a member; and
- (b) any other decision of that body relating to a possible breach of its standards by a member,

and, for the purposes of these Regulations, and in accordance with section 23(12) of the Act, any decision made or any investigation conducted by the disciplinary committee of a prescribed accountancy body is considered to have been made or conducted by the prescribed accountancy body;

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

“enquiry” means an enquiry initiated under section 23(2) of the Act;

“Enquiry Committee” means a committee appointed to conduct a full enquiry in accordance with these Regulations;

“full enquiry” means the proceedings to be conducted by an Enquiry Committee;

“member” has the same meaning as provided for in section 4 of the Act;

“negative finding” means a finding by an Enquiry Committee that a prescribed accountancy body has not breached its approved investigation and disciplinary procedures;

“preliminary enquiry” means the proceedings to be conducted by a Preliminary Enquiry Committee;

“Preliminary Enquiry Committee” means a committee appointed to conduct a preliminary enquiry in accordance with these Regulations;

“Section 23 Committee” means both or either a Preliminary Enquiry Committee and an Enquiry 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 23 COMMITTEES

Section 23 Committees

3. (1) Subject to paragraph (2), and in accordance with section 27(1) of the Act, a Section 23 Committee shall consist of directors of the Authority and such professional and other advisers as the Authority considers necessary or appropriate.

(2) The Chief Executive shall not be a member of a Section 23 Committee.

(3) Each Committee shall number at least 3 persons, 2 of whom are directors of the Authority.

(4) The quorum necessary for the transaction of business by a Section 23 Committee may be fixed by the Authority and, unless so fixed, shall be three, provided that three persons are personally present, that the majority of persons present are not members of a prescribed accountancy body and that at least one person present is a director of the Authority.

(5) A Chairperson of a Section 23 Committee shall be appointed by the Chairperson of the Authority.

(6) Any decision of a Section 23 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.

(7) 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 23 Committee.

(8) No person who may have (or may appear to have) any interest in the outcome of the enquiry or any relationship with any party to the matters which

are the subject of the enquiry which may create, or appear to create, a conflict of interest may be appointed to a Section 23 Committee.

(9) Any person who served as a member of the Preliminary Enquiry Committee may not be appointed as a member of the Enquiry Committee with respect to the same enquiry.

(10) No person who is a member of the prescribed accountancy body that is the subject of the enquiry may be appointed to a Section 23 Committee involved in such matter.

(11) The Secretary to the Authority or another person selected and appointed by the Authority may act as Secretary to a Section 23 Committee.

Preliminary Enquiry Committee

4. (1) Where the Authority has reason to believe that a prescribed accountancy body may have failed to comply with its approved investigation and disciplinary procedures, the Authority may appoint a Committee (a “Preliminary Enquiry Committee”) to determine whether the Authority should initiate a full enquiry into:

- (a) a decision by that body not to undertake an investigation into a possible breach of its standards by a member;
- (b) the conduct of an investigation by that body into a possible breach of its standards by a member; or
- (c) any other decision of that body relating to a possible breach of its standards by a member.

(2) In appointing such a Preliminary Enquiry Committee, the Authority shall be deemed to have delegated to that Preliminary Enquiry Committee such of its functions and powers under section 23 of the Act as are required by the Preliminary Enquiry Committee to conduct the functions for which these Regulations provide, up to the point of making such a determination.

(3) A full enquiry will be initiated where a Preliminary Enquiry Committee determines that:

- (a) there is a *prima facie* case that a prescribed accountancy body has failed to comply with its approved investigation and disciplinary procedures; and
- (b) the circumstances of the matter are such as to warrant the initiation of a full enquiry by the Authority.

(4) Where a Preliminary Enquiry Committee forms the view that the matter under investigation is better dealt with by way of supervisory action by the Authority rather than through the initiation of a full enquiry, 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

Enquiry Committee report such facts and circumstances to the Chief Executive and the Head of Regulatory & Monitoring Supervision.

(5) If, in the course of considering whether there is a *prima facie* case that a prescribed accountancy body has failed to comply with its approved investigation and disciplinary procedures and whether a full enquiry should be initiated, a Preliminary Enquiry Committee discovers facts or circumstances which appear to warrant examination but which are outside of the scope of its remit, the Preliminary Enquiry Committee will report such facts and circumstances to the Authority and the Authority may, provided such matters fall within the scope of section 23 of the Act, direct in writing that the scope of the preliminary enquiry shall include such facts or circumstances and shall inform the prescribed accountancy body accordingly.

(6) A Preliminary Enquiry Committee shall notify the prescribed accountancy body involved of its appointment and of the initiation of the preliminary enquiry.

(7) A Preliminary Enquiry Committee shall notify all members of the prescribed accountancy body who were the subject of the decision(s) of the prescribed accountancy body under examination, and may, if considered appropriate and in accordance with law, inform the complainant, if any, of the appointment of the Preliminary Enquiry Committee, of the initiation of the preliminary enquiry and of any extension of the scope of the preliminary enquiry made under paragraph (5), if such extension is relevant to such members and complainant, if any.

(8) A Preliminary Enquiry Committee shall, prior to making a determination under paragraph (3), provide the prescribed accountancy body that is the subject of the preliminary enquiry, and all members of the prescribed accountancy body who were the subject of the decision(s) under examination, with:

- (a) the grounds upon which the preliminary enquiry has been initiated;
- (b) any relevant information about such grounds; and
- (c) an opportunity to comment in writing on such grounds and information, if any.

(9) To assist a Preliminary Enquiry Committee in determining whether there is a *prima facie* case that a prescribed accountancy body has failed to comply with its approved investigation and disciplinary procedures and whether a full enquiry should be initiated, the Committee may:

- (a) inspect and make copies of all relevant documents in the possession or control of the prescribed accountancy body;
- (b) require the prescribed accountancy body to explain why it reached a decision not to undertake an investigation into a possible breach of its standards by a member or any other decision of that body relating to a possible breach of its standards by a member; and

- (c) if a prescribed accountancy body conducted an investigation, require it to explain how it conducted its investigation.

(10) A Preliminary Enquiry Committee may also consider any submissions made to it during its preliminary enquiry by any person (including a complainant, a prescribed accountancy body or a member) 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 the preliminary enquiry.

(11) On the completion of its preliminary enquiry, a Preliminary Enquiry Committee shall notify the Authority and the prescribed accountancy body and the affected members of its determination under paragraph (3).

(12) Confidential information provided by a Preliminary Enquiry 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 Preliminary Enquiry Committee under these Regulations, shall remain confidential and shall be treated as information the disclosure of which to any other party is governed by the provisions of section 31 of the Act.

Enquiry Committee

5. (1) Where a Preliminary Enquiry Committee notifies the Authority of its determination that there is a *prima facie* case that a prescribed accountancy body has failed to comply with its approved investigation and disciplinary procedures and that the Authority should initiate a full enquiry, the Authority shall appoint a Committee to conduct the full enquiry on behalf of the Authority (an “Enquiry Committee”).

(2) In establishing such an Enquiry Committee, the Authority shall be deemed to have delegated to that Enquiry Committee such of its functions and powers under section 23 of the Act as are required by the Enquiry Committee to conduct the full enquiry for which these Regulations provide.

(3) An Enquiry Committee shall issue a Notice to the prescribed accountancy body and to all members who were the subject of the relevant decision(s) of the prescribed accountancy body setting out:

- (a) the scope of the full enquiry;
- (b) formal notification of the Authority’s decision to establish an Enquiry Committee and the composition of the Committee;
- (c) all documents and any other material that will be presented to the Enquiry Committee by the Preliminary Enquiry Committee;
- (d) the Authority’s powers of enquiry, including its powers to:
 - (i) inspect and make copies of all relevant documents in the possession or control of the prescribed accountancy body;

- (ii) require the prescribed accountancy body to explain why it reached a decision or to explain how it conducted its investigation;
- (iii) conduct oral hearings;
- (e) a statement to the effect that, within a reasonable period of time, as specified by the Enquiry Committee in the Notice, the prescribed accountancy body and/or a member may make submissions in writing to the Enquiry Committee and request the Enquiry Committee to be permitted to make oral submissions about the matters to which the Notice relates; and
- (f) a statement that the Enquiry Committee shall conduct the enquiry irrespective of whether submissions referred to in subparagraph (e) above are made.

(4) An Enquiry Committee may, if considered appropriate and in accordance with law, notify any other relevant person, including a complainant, if any, of the appointment of the Enquiry Committee and of the initiation of the full enquiry.

(5) An Enquiry Committee shall conduct a full enquiry into whether the relevant prescribed accountancy body has failed to comply with its approved investigation and disciplinary procedures and, if the Enquiry Committee makes an adverse finding under Regulation 11(1), shall determine what sanctions, if any, to impose under these Regulations.

(6) Confidential information provided in confidence by an Enquiry 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 Enquiry Committee under these Regulations shall remain confidential and shall be treated as information the disclosure of which to any other party is governed by the provisions of section 31 of the Act.

Appointment of Legal Advisers

6. The Authority may appoint a legal adviser or advisers to provide assistance to a Section 23 Committee, to bring evidence against the prescribed accountancy body the subject of the preliminary or full enquiry before a Section 23 Committee and, if necessary, to act as petitioner (before the Enquiry Committee) or respondent (before the High Court on any appeal). 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 enquiry.

Conduct of the full Enquiry

7. (1) An Enquiry Committee established under these Regulations shall consider any submissions made by the relevant prescribed accountancy body and by members who were the subject of the decision(s) of the prescribed accountancy body concerned and may conduct such investigations relating to the full enquiry as the Enquiry Committee considers appropriate before issuing its decision.

(2) An Enquiry Committee may also consider any submissions made to it during the full enquiry by any other person (including a complainant) 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 the full enquiry.

(3) A prescribed accountancy body, and members who were the subject of the decision(s) of the prescribed accountancy body which is/are the subject of the enquiry, may submit any statement or information in answer to the charge(s) within the time provided by the Enquiry Committee, which shall be reasonable under the circumstances.

(4) An Enquiry Committee may—

- (a) inspect and make copies of all relevant documents in the possession or control of the prescribed accountancy body;
- (b) require the prescribed accountancy body to explain why it reached a decision not to undertake an investigation into a possible breach of its standards by a member, or any other decision of that body relating to a possible breach of its standards by a member;
- (c) if a prescribed accountancy body conducted an investigation, require it to explain how it conducted its investigation; and
- (d) conduct oral hearings.

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

Investigations under Section 24

8. (1) If, at any time during a preliminary enquiry or before completing a full enquiry under these procedures, it appears to a Section 23 Committee that it may be appropriate or in the public interest that the matter in question be investigated under section 24 of the Act, the Committee shall so inform the Authority.

(2) If the Authority decides that it is appropriate or in the public interest to investigate the matter under section 24 and that an application to the High Court will be made, the Section 23 Committee in question shall cease its enquiry.

(3) If the Authority decides that the matter should not be investigated under section 24, the Section 23 Committee in question shall resume its enquiry.

(4) Directors of the Authority that are members of the Section 23 Committee in question shall take no part in any consideration by the Authority as to whether a matter within the remit of such Committee should be investigated under section 24 of the Act.

Oral Hearings

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

(2) Oral hearings shall sit in public but an Enquiry 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 Enquiry Committee, the circumstances are such that holding an oral hearing, or part thereof, in public would prejudice the interests of justice or adversely affect the rights of a third party.

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

(4) Where an oral hearing is taking place, an Enquiry Committee will, save as may be appropriate, permit the prescribed accountancy body or any other person who participates in the proceedings:

(a) to be legally represented;

(b) to present information and submissions in its behalf; and

(c) to cross-examine witnesses,

during the oral hearing.

(5) An Enquiry Committee may, at its sole discretion, provide that members of the prescribed accountancy body who were the subject of the decision(s) which is/are the subject of the full enquiry may participate in any oral hearing and may present evidence and submissions on their behalf.

(6) An Enquiry Committee may, at its sole discretion, permit any other person with an interest in the proceedings to participate in an oral hearing and to present relevant information and submissions on his or her behalf.

Standard of Proof

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

Decision of the Authority

11. (1) An Enquiry Committee shall, in respect of each alleged failure to comply with approved investigation and disciplinary procedures, make a finding either that the allegation is established or that the allegation is not established.

(2) Where the Enquiry Committee makes a finding that an allegation is established it will make a decision as to which, if any, of the sanctions set out in Regulation 12(1) will apply.

(3) An Enquiry 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 enquiry, taking into account the circumstances of the case.

(4) An Enquiry Committee's decision must provide the reasons underlying such decision. The reasoning of an Enquiry Committee shall be detailed and shall address the arguments advanced by the prescribed accountancy body in defence of its position. All significant factual matters shall be addressed.

(5) An Enquiry Committee's decision shall set out the sanctions to be imposed and the reasons underlying the imposition of such sanctions.

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

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

- (a) issue the relevant prescribed accountancy body, and any member who was the subject of the decision(s) of the body that was/were the subject of the enquiry and any other relevant person as may be determined by the Authority, with a copy of the findings of the Enquiry Committee, including the decision of the Enquiry Committee as to the imposition of sanctions;
- (b) advise the prescribed accountancy body and the affected member(s) of the Authority's obligation to seek and obtain High Court approval for decisions to:
 - (i) annul a body's decision;
 - (ii) direct a fresh investigation; or
 - (iii) impose a fine,before such decisions take effect;
- (c) advise the prescribed accountancy body and the affected member(s) of their right of appeal to the High Court under section 23(8) of the Act and the time limits for making such an appeal;
- (d) notify the prescribed accountancy body and the affected members whether the Authority intends to publish the decision made and the reasons for that decision, and (if intending to publish) the time (being not less than three months from the date of notification) within which it will do so;
- (e) if the proposed sanction is a direction to the prescribed accountancy body that it conduct an investigation or conduct a fresh investigation into a matter, advise the body and the affected member(s) that, if the

Authority is not satisfied that, when undertaking the investigation or fresh investigation, the body has complied with its approved investigation and disciplinary procedures, the Authority may appeal to the High Court against any decision of the body relating to the matter.

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

Sanctions

12. (1) In the case of a finding that an allegation has been established, an Enquiry Committee may make a decision to advise or admonish the prescribed accountancy body or to censure it by doing one or more of the following:

- (a) annulling all or part of a decision of the prescribed accountancy body relating to the matter that was the subject of the enquiry;
- (b) directing the prescribed accountancy body to conduct an investigation into the matter;
- (c) directing the prescribed accountancy body to conduct a fresh investigation into the matter;
- (d) requiring the prescribed accountancy body to pay to the Authority an amount not exceeding the greater of the following:
 - (i) €125,000; or
 - (ii) the amount prescribed under section 48(1)(f) of the Act.

(2) In determining the level of sanctions to apply, an Enquiry Committee will have regard to all of the circumstances of the matter, which may include, *inter alia*, the following factors:

- (a) whether the failure to comply with approved investigation and disciplinary procedures was deliberate, dishonest, reckless or negligent;
- (b) the duration and/or the frequency of the failure to comply; and
- (c) the extent to which the failure to comply deviated from the required procedure.

(3) An Enquiry Committee shall set out in its decision issued to the Authority under Regulation 11(3) the reasons underlying the imposition or non-imposition of sanctions and the level and type of any sanctions imposed.

When Sanction takes Effect

13. (1) The following decisions of the Authority take effect when such decisions are confirmed by the Court, either on appeal by the body or member concerned under section 23(8) or on successful application by the Authority under section 29(6):

- (a) a decision of the Authority annulling all or part of a decision of a prescribed accountancy body relating to the matter that was the subject of the enquiry;
- (b) a decision of the Authority directing a fresh investigation; and
- (c) a decision of the Authority requiring the payment of a monetary sum.

Appeal

14. A prescribed accountancy body or the member concerned may appeal a decision of the Authority to advise, admonish or censure a prescribed accountancy body pursuant to section 23(5) of the Act to the High Court within 3 months of the date of the notice given by the Authority under Regulation 11(7), or (if a decision has been made to publish the decision) prior to the expiry of the time within which the Authority has stated that it intends to publish the same.

Publication of decisions

15. In accordance with section 23(7) of the Act, the Authority may publish a decision that an allegation has been established, together with the reasons for that decision, in any manner it sees fit, after having given written notice of no less than 3 months to the relevant prescribed accountancy body and all members concerned of its intention to do so.

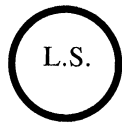
Settlement

16. (1) At any time prior to the conclusion of an enquiry, the matter may be resolved by entering into a settlement agreement between the Authority and the prescribed accountancy body that is the subject of the enquiry, such agreement to be binding on all parties.

(2) Any proposed settlement between the Authority and a prescribed accountancy body 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 directors of the Authority. Directors who served as members of any Committee that conducted proceedings in such matter shall not take part in the decision of the Authority as to whether to approve a proposed settlement.

(4) The Authority may publish notice of any 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 prescribed accountancy body and member(s) concerned unless it determines that publication of the decision to enter into a settlement agreement and/or its terms would be contrary to the public interest.



GIVEN under the Seal of the Irish Auditing and Accounting Supervisory Authority
28 September 2007

IAN DRENNAN.
Chief Executive and Director.

JANE MEEHAN.
Secretary.

EXPLANATORY NOTE

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

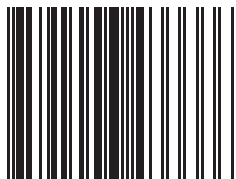
These Regulations set out the procedures governing the conduct of enquiries by the Irish Auditing and Accounting Supervisory Authority pursuant to section 23 of the Companies (Auditing and Accounting) Act 2003.

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FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
51 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2
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(Tel: 01-6476834/35/36/37; Fax: 01-6476843)
or through any bookseller.

€3.81

ISBN 1-4064-3333-0



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Wt. (B25615). 435. 10/07. Cahill. Gr. 30-15.