



STATUTORY INSTRUMENTS.

S.I. No. 220 of 2010



EUROPEAN COMMUNITIES (STATUTORY AUDITS) (DIRECTIVE
2006/43/EC) REGULATIONS 2010

(Prn. A10/0688)

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NATURAL PERSON AS STATUTORY AUDITOR

EUROPEAN COMMUNITIES (STATUTORY AUDITS) (DIRECTIVE
2006/43/EC) REGULATIONS 2010

I, BATT O'KEEFFE, Minister for Enterprise, Trade 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 2006, hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation and construction

1. (1) These Regulations may be cited as the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010.

(2) These Regulations shall be read as one with the Companies Acts.

Application

2. Save where otherwise provided, 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 the date of the making of these Regulations; and
- (b) as regards each other matter provision for which is made by these Regulations — on and from the date of the making of these Regulations.

Interpretation

3. (1) In these Regulations—

“Act of 1990” means the Companies Act 1990 (No. 33 of 1990);

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

“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;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 25th May, 2010.*

“audit report” means the report issued by the statutory auditor or audit firm to the members of a company in accordance with section 193 of the Act of 1990;

“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—

- (i) a Member State auditor or audit firm, or
- (ii) a third-country auditor or audit entity,

shall be read accordingly;

“Commission” means Commission of the European Communities;

“competent authorities under these Regulations” has the meaning assigned to it by Regulation 16(3);

“competent authority”, where used without qualification, has the meaning assigned to it by Regulation 16(2);

“competent authority with registration functions” has the meaning assigned to it by Regulation 16(2);

“competent authority with supervisory and other functions” has the meaning assigned to it by Regulation 16(2);

“Directive” means Directive No. 2006/43/EC of the European Parliament and of the Council of 17 May 2006 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;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

“EEA State” means a state that is a contracting party to the EEA Agreement;

“enactment” includes an instrument made under an enactment;

“financial year”, in relation to a statutory auditor or audit firm, means—

- (a) subject to paragraph (b), 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
- (b) in the case of a statutory audit firm that is a company, any period in respect of which accounts under the Companies Acts 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 in question;

“key audit partner” or “key audit partners” 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, or
- (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;

“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 Directive by a competent authority of another Member State to carry out audits of annual or group accounts as required by Community law;

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

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

“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, and
- (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;

“Principal Act” means the Companies Act 1963 (No. 33 of 1963);

“public-interest entities” means—

- (a) companies or other bodies corporate 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,
- (b) credit institutions as defined in point 1 of Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, and
- (c) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC;

“recognised accountancy body” means a body of accountants—

- (a) recognised, or
- (b) deemed, by virtue of section 191(3) or (4) of the Act of 1990, to be recognised,

by the competent authority with supervisory and other functions for the purposes of—

- (i) section 187 of the Act of 1990, or
- (ii) these Regulations;

“standards” means those standards of a recognised accountancy body as defined in section 4 of the Act of 2003;

“statutory audit” means an audit of individual accounts or group accounts in so far as required by Community law;

“statutory audit firm” means an audit firm which is approved in accordance with these Regulations to carry out statutory audits;

“statutory auditor” means a natural person who is approved in accordance with these Regulations to carry out statutory audits;

“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 that is entitled, under or by virtue of the laws, regulations or administrative provisions of a third country, to carry out audits of the annual or group accounts of a company incorporated in that third country;

“third-country auditor” means a natural person who is entitled, under or by virtue of the laws, regulations or administrative provisions of a third country, to carry out audits of the annual or group accounts of a company incorporated in that third country;

“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 a competent authority or the competent authority with supervisory and other functions;

“transparency report” shall be read in accordance with Regulation 58.

(2) A reference in these Regulations to a registered third-country auditor or audit entity is a reference to a third-country auditor or 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 Directive shall have in these Regulations the same meaning as it has in the Directive.

PART 2

MISCELLANEOUS AMENDMENTS — AMENDMENTS OF PRELIMINARY AND GENERAL NATURE, AMENDMENTS ADAPTING CERTAIN PROVISIONS OF COMPANIES ACTS IN CONSEQUENCE OF DIRECTIVE, ETC.

Amendment of Principal Act

4. (1) Section 2(1) of the Principal Act is amended—

(a) by inserting the following definition after the definition of “articles”:

“ ‘auditor’ means a statutory auditor or statutory audit firm within the meaning of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010;”,

and

(b) by inserting the following definition after the definition of “subsidiary”:

“ ‘Supervisory Authority’ means the Irish Auditing and Accounting Supervisory Authority;”.

(2) Section 149A(1)(b)(xi) of the Principal Act is amended by deleting “paragraph 39(5) of the Schedule to the Act of 1986 and”.

(3) Section 150B(2)(k) of the Principal Act is amended by deleting “paragraph 39(5) of the Schedule to the Act of 1986 and”.

(4) Section 160 of the Principal Act is amended, in subsection (9), by inserting “(not being a body corporate)” after “firm” where it firstly occurs.

(5) The amendments effected by paragraphs (2) and (3) apply to accounts for financial years ending on or after the date falling 3 months after the date of the making of these Regulations.

Amendment of Companies (Amendment) Act 1986

5. (1) Part IV of the Schedule to the Companies (Amendment) Act 1986 (No. 25 of 1986) is amended by deleting subparagraph (5) of paragraph 39.

(2) The amendment effected by this Regulation applies to accounts for financial years ending on or after the date falling 3 months after the date of the making of these Regulations.

Amendment of section 187 of Act of 1990

6. Section 187 of the Act of 1990 is amended—

(a) in subsection (1), by deleting “either as auditor of a company or”;

(b) by deleting subsection (2);

(c) in subsection (3), by substituting the following paragraph for paragraph (f):

“(f) a person who is disqualified under Regulation 71 of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 for appointment as auditor of a company that is a subsidiary or holding company of the society;”;

(d) in subsection (6), by deleting “as auditor of a company or”;

(e) in subsection (7), by deleting “auditor of a company or”; and

(f) in subsection (12), by deleting “as an auditor of a company or”.

Amendment of section 188 of Act of 1990

7. Section 188 of the Act of 1990 is amended, in subsection (1), by deleting “auditor of a company or”.

Amendment of section 189 of Act of 1990

8. Section 189 of the Act of 1990 is amended—

- (a) in subsection (1), by deleting “auditor of a company or”; and
- (b) in subsection (2)(a) and (c), by deleting “auditor of a company or”.

Amendment of section 190 of Act of 1990

9. The following section is substituted for section 190 of the Act of 1990:

“Consultation by Supervisory Authority regarding standards and qualifications.

190. (1) Before granting, renewing, withdrawing, revoking, suspending or refusing a recognition of a body of accountants under or for the purposes of—

- (a) the Companies Acts; or
- (b) the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (the ‘Regulations of 2010’),

the Supervisory Authority may consult with any body of persons or other person as to the conditions or standards required by the body of accountants concerned in connection with membership of that body or, as the case may be, the awarding to persons of practising certificates or the approval of persons as auditors.

(2) Without prejudice to any obligations in that behalf in connection with the performance of the foregoing functions as they relate to the Regulations of 2010, the Supervisory Authority may also consult with any body of persons or other person before forming any opinion or making any declaration in relation to the qualifications held by any person or class of persons as respects qualification for appointment as a public auditor.”.

Amendment of section 191 of Act of 1990

10. The following section is substituted for section 191 of the Act of 1990:

“Recognition of body of accountants.

191. (1) The Supervisory Authority may grant recognition to a body of accountants under or for the purposes of section 187 or the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 but may only grant such recognition if satisfied—

- (a) in the case of a grant of recognition—
 - (i) to a body of accountants under or for the purposes of section 187, that the standards relating to training, qualifications and repute required by that body for the awarding of a practising certificate to a person are not

less than those that were specified in Articles 3 to 6, 8 and 19 of the Council Directive before the repeal thereof by Directive No. 2006/43/EC of the European Parliament and of the Council of 17 May 2006; and

- (ii) to a body of accountants under or for the purposes of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010, that the standards relating to training, qualifications and repute required by that body for the approval of a person as an auditor are not less than those specified in Articles 4, 6 to 8 and 10 of Directive No. 2006/43/EC of the European Parliament and of the Council of 17 May 2006;

and

- (b) in either of those 2 cases, as to the standards that body applies to its members in the area of ethics, codes of conduct and practice, independence, professional integrity, auditing and accounting standards and investigation and disciplinary procedures.

(2) In subsection (3) ‘relevant amendment’ means the amendment of this section by Regulation 10 of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010.

(3) Each of the following—

- (a) the Association of Chartered Certified Accountants;
- (b) the Institute of Chartered Accountants in Ireland;
- (c) the Institute of Chartered Accountants in England and Wales;
- (d) the Institute of Chartered Accountants of Scotland;
- (e) the Institute of Certified Public Accountants in Ireland;
- (f) the Institute of Incorporated Public Accountants,

being a body of accountants that stood recognised under or for the purposes of section 187 immediately before the relevant amendment, continues to stand recognised under or for the purposes of section 187 (and such recognition shall be deemed to have been granted by the Supervisory Authority).

(4) Each of the bodies of accountants referred to in subsection (3) shall be deemed to have been granted recognition by the Supervisory Authority under or for the purposes of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010.”.

Amendment of section 192 of Act of 1990

11. Section 192 of the Act of 1990 is amended—

- (a) in subsections (1) to (3), by inserting “or the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010” after “under or for the purposes of section 187”;
- (b) in subsection (4)(a), by inserting “or the Regulations referred to in the preceding subsections” after “the said section 187”; and
- (c) in subsection (6), by inserting “or the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010” after “for the purposes of section 187”.

Amendment of section 198 of Act of 1990

12. (1) Section 198 of the Act of 1990 is amended—

- (a) in subsection (1)—
 - (i) by inserting “(‘the register of public auditors’)” after “a register”; and
 - (ii) by deleting “as auditor of a company or”;
- (b) in subsection (2)—
 - (i) by deleting “as an auditor of a company or” in paragraphs (a) and (b);
 - (ii) by deleting “an auditor of a company or” in paragraph (c);and
 - (iii) by substituting “register of public auditors” for “register of auditors” in paragraph (c)(i);and
- (c) in subsection (3)—
 - (i) by substituting “register of public auditors” for “register of auditors” where it firstly occurs;
 - (ii) by substituting “a public auditor” for “an auditor” in paragraph (a); and
 - (iii) by substituting “register of public auditors” for “register of auditors” in paragraph (b).

Amendment of sections 199 and 200 of Act of 1990

13. (1) Section 199 of the Act of 1990 is amended—

- (a) in subsection (1), by deleting “auditor of a company or”;
- (b) in subsection (2), by adding “as public auditors” after “in the State”;
and
- (c) in subsection (3), by deleting “as auditor of a company or”.

(2) Section 200 of the Act of 1990 is amended—

- (a) in subsection (1), by deleting “as auditor of a company or”;
- (b) in subsection (2), by adding “as public auditors” after “in the State”;
and
- (c) in subsection (3), by deleting “as auditor of a company or”.

Amendments of Act of 2003

14. The Act of 2003 is amended—

- (a) in section 4(1), by substituting the following definition for the definition of “recognised accountancy body”:

“ ‘recognised accountancy body’ means a body of accountants—

- (a) recognised, or
- (b) deemed, by virtue of section 191(3) or (4) of the Act of 1990,
to be recognised,

by the Supervisory Authority for the purposes of—

- (i) section 187 of the Act of 1990, or
 - (ii) the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010;” and
- (b) in section 9(2), by inserting the following paragraph after paragraph (ma) (inserted by the Investment Funds, Companies and Miscellaneous Provisions Act 2006 (No. 41 of 2006)):

“(mb) to perform the functions (and in particular the functions of public oversight) conferred on it by the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010;”.

Revocation of certain secondary legislation

15. (1) Regulations 1 to 4 of the Companies Act 1990 (Auditors) Regulations 1992 (S.I. No. 259 of 1992) are revoked save in so far as they relate to public auditors.

(2) Regulations 5 to 7 of the Companies Act 1990 (Auditors) Regulations 1992 (S.I. No. 259 of 1992) are revoked.

(3) Part I of the Schedule to the European Communities (Credit Institutions: Accounts) Regulations 1992 (S.I. No. 294 of 1992) is amended by revoking subparagraph (3) of paragraph 74.

(4) Part III of the Schedule to the European Communities (Insurance Undertakings: Accounts) Regulations 1996 (S.I. No. 23 of 1996) is amended by revoking subparagraph (d) of paragraph 21.

(5) The amendments effected by paragraphs (3) and (4) apply to accounts for financial years ending on or after the date falling 3 months after the date of the making of these Regulations.

PART 3

DESIGNATION OF COMPETENT AUTHORITIES

Designation of competent authorities and meaning of “competent authority” and related expressions

16. (1) This Regulation—

- (a) designates, for the purposes of the tasks provided for in the Directive, various bodies or other persons as competent authorities in the State; and
- (b) assigns a meaning to each of the following expressions used in these Regulations and which are connected with the foregoing designation, namely:
 - (i) “competent authority” — where that expression is used without qualification;
 - (ii) “competent authorities under these Regulations”;
 - (iii) “competent authority with registration functions”; and
 - (iv) “competent authority with supervisory and other functions”.

(2) In these Regulations, other than this paragraph—

“competent authority”, where used without qualification, means a recognised accountancy body;

“competent authority with registration functions” means the Registrar of Companies;

“competent authority with supervisory and other functions” means the Irish Auditing and Accounting Supervisory Authority,

and, accordingly, each recognised accountancy body, the Registrar of Companies and the Irish Auditing and Accounting Supervisory Authority is designated as a competent authority in the State for the purposes of such of the tasks provided for in the Directive as correspond to the particular functions conferred on it or him or her by the provision concerned of these Regulations.

(3) In these Regulations “competent authorities under these Regulations” means—

- (a) each of the recognised accountancy bodies;
- (b) the Registrar of Companies; and
- (c) the Irish Auditing and Accounting Supervisory Authority,

save that in Regulations 96 to 98, 101 and 103 to 107 the expression does not include the Registrar of Companies.

(4) Regulation 17 supplements paragraph (2) with regard to the operation of a provision of these Regulations that refers to a competent authority without qualification.

Operation of provisions with regard to particular recognised accountancy bodies

17. (1) This Regulation applies where the provision referred to in paragraph (2), (3), (4) or (5) uses the expression “competent authority” 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 competent authority 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 a 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;
- (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 19 on a competent authority in relation to a natural person or firm, paragraph (2) applies as if, for each reference in that paragraph to a statutory auditor or statutory audit firm (as the case may be), there were substituted a reference to the natural person 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 competent authority 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) In the case—

- (a) of a provision of the kind referred to in paragraph (2), (3) or (4);
- (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),

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—

- (i) 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
- (ii) in default of—
 - (I) such arrangements being entered into; or
 - (II) the provisions of such arrangements dealing with the particular case falling to be determined,

by the competent authority with supervisory and other functions.

(6) On a determination being made by the competent authority with supervisory and other functions for the purposes of paragraph (5)(ii), a direction in writing, reflecting the terms of the determination, shall be given by it (which direction that authority is empowered by this paragraph to give).

(7) Arrangements shall not be entered into under paragraph (5)(i) by the recognised accountancy bodies save after consultation by them with the competent authority with supervisory and other functions.

(8) If in consequence of the operation of this Regulation, the function of withdrawal of a particular approval under this Regulation falls to be discharged by a recognised accountancy body that is different from the recognised 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,

and the procedures adopted for those purposes by the foregoing accountancy bodies shall be such as will—

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

(9) In a case falling within paragraph (8), if the approval concerned is withdrawn, the first-mentioned body in that paragraph, in addition to making the notifications required by Regulation 37 and (where it applies) Regulation 38, shall notify the second-mentioned body in that paragraph of the withdrawal of approval.

Conflicts of interest to be avoided

18. The competent authorities under these Regulations shall organise themselves in such a manner so that conflicts of interests are avoided.

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.

19. (1) A competent authority may, on application made to it by a natural person or firm, approve, under these Regulations, the applicant as a statutory auditor or audit firm.

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

- (a) natural persons; or
- (b) firms,

who or which are of good repute.

(3) A competent authority may, on application to it by a third-country auditor and in accordance with Regulation 112, approve, under these Regulations, the applicant as a statutory auditor.

(4) For the purposes of this Regulation, in the case of an application under paragraph (1)—

- (a) by a firm that is a Member State audit firm; or
- (b) by a Member State auditor,

the fact that the applicant is a Member State audit firm or a Member State auditor, as the case may be, shall constitute conclusive evidence that the applicant is of good repute unless, arising out of the cooperation referred to in paragraph (5), a counterpart authority in the Member State where the applicant is approved as a statutory audit firm or auditor has notified the competent authority (or the competent authority with supervisory and other functions) that the counterpart authority has reasonable grounds for believing that the good repute of the audit firm or auditor has been seriously compromised.

(5) The cooperation referred to in paragraph (4) is the cooperation that the State is required to engage in by virtue of Chapter VIII (which relates to, inter alia, regulatory arrangements between Member States) of the Directive.

(6) On approving a person as a statutory auditor or audit firm, the competent authority shall assign an individual identification number to the person and a written record shall be maintained by the competent authority of all such numbers assigned by it under this paragraph.

(7) A competent authority shall, in performing its functions under this Regulation, be subject to the supervision of the competent authority with supervisory and other functions.

(8) In paragraph (4) the reference to counterpart authority shall be construed in accordance with Regulation 93.

Restriction as to the persons who may carry out statutory audits

20. Statutory audits shall be carried out only by auditors or audit firms that are approved under these Regulations.

Restriction on acting as statutory auditor

21. 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 the provisions of these Regulations.

Restriction on acting as statutory audit firm

22. 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 the provisions of these Regulations.

Offence for contravening Regulation 20, 21 or 22

23. (1) A person who contravenes Regulation 20, 21 or 22 is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €5,000; or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 12 months or both.

(2) If the contravention in respect of which a person is convicted of an offence under paragraph (1) is continued after the conviction, the person is guilty of a further offence for each day that the contravention continues and for each such offence the person is liable—

- (a) on summary conviction, to a fine not exceeding €1,000, or
- (b) on conviction on indictment, to a fine not exceeding €10,000.

Conditions for approval as statutory auditor

24. 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 26; or
- (b) a Member State auditor and complies with Regulation 30; or
- (c) a third-country auditor and complies with Regulations 30 and 112.

Transitional provision — deemed approval of persons qualified for appointment pursuant to Part X of Act of 1990

25. (1) Subject to Regulation 121, a person who, immediately before the commencement of this Regulation, is qualified for appointment as auditor of a company pursuant to Part X of the Act of 1990 shall, without prejudice to paragraph (3), be deemed to have been approved as a statutory auditor in accordance with these Regulations.

(2) The following paragraph has effect in the case of a person to whom paragraph (1) applies, being a person who is qualified for appointment as auditor of a company pursuant to Part X of the Act of 1990 by virtue of having been authorised by the Minister to be so appointed before 3 February 1983.

(3) The deemed approval, by virtue of paragraph (1), of a person referred to in paragraph (2) shall cease to have effect unless, as soon as may be after the commencement of this Regulation, the person becomes either—

(a) a member of; or

(b) subject to the regulation of,

a competent authority.

(4) In relation to a person to whom paragraph (1) applies, Regulation 33 shall have effect as if—

(a) in paragraph (3) of that Regulation, the following subparagraph were substituted for subparagraph (b):

“(b) either—

(i) any of the conditions specified in Regulation 24(a) are not being complied with in respect of the auditor; or

(ii) in the case of a person referred to in Regulation 25(2) who has complied with the condition specified in Regulation 25(3)(a) or (b), that condition ceases to be complied with by him or her,”;

and

(b) there were substituted, in paragraph (5), for all the words beginning with “Where, having” and ending immediately before subparagraph (ii) of that paragraph, the following:

“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 competent authority is satisfied that circumstances referred to in paragraph (3)(a) have arisen or that a statutory auditor has failed to comply with any of the conditions specified in Regulation 24(a) or, in the case of a person referred to in Regulation 25(2) who has complied with the condition specified in Regulation 25(3)(a) or (b), that that condition has ceased to be complied with by him or her, it shall, subject to paragraph (6), serve a notice in writing on the auditor stating that—

- (i) it is satisfied that, as appropriate—
 - (I) those circumstances have arisen;
 - (II) such a failure has occurred; or
 - (III) that condition has ceased to be complied with,

in relation to the auditor;”.

Appropriate qualification for purpose of Regulation 24(a)

26. (1) An individual holds an appropriate qualification, as required by Regulation 24(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 2.

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

Conditions for approval as statutory audit firm and transitional provision

27. (1) In this Regulation references to a firm include references to a Member State audit firm.

- (2) A firm shall not be eligible for approval as a statutory audit firm unless:
 - (a) the natural persons 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) natural persons who are eligible for approval in the State or in any other Member State as statutory auditors; or
 - (ii) audit firms approved as statutory audit firms in the State or in any other Member State;
 - and
 - (c) the majority of the members of the administrative or management body of the firm are—

- (i) natural persons who are eligible for approval in the State or in any other Member State as statutory auditors; or
- (ii) audit firms approved as statutory audit firms in the State or in any other Member State,

and, for the avoidance of doubt, a majority, for the purposes of subparagraph (b) or (c), may be constituted by a combination of natural persons so eligible and audit firms so approved.

(3) Where the administrative or management body of the 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 conditions in that subparagraph.

(4) Subject to Regulation 121, a firm that, immediately before the commencement of these Regulations, is qualified for appointment as auditor of a company pursuant to Part X of the Act of 1990 shall be deemed to have been approved as a statutory audit firm in accordance with these Regulations.

(5) In relation to a firm referred to in paragraph (4), Regulation 34 shall have effect as if—

- (a) in paragraph (3) of that Regulation, the following subparagraph were substituted for subparagraph (b):

“(b) the condition specified in Regulation 27(2)(a) is not being complied with in respect of the firm,”; and

- (b) there were substituted, in paragraph (5), for all the words beginning with “Where, having” and ending immediately before subparagraph (ii) of that paragraph, the following:

“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 competent authority is satisfied that circumstances referred to in paragraph (3)(a) have arisen or that a statutory audit firm has failed to comply with the condition specified in Regulation 27(2)(a), it shall, subject to paragraph (6), serve a notice in writing on the audit firm stating—

- (i) it is satisfied that—

- (I) those circumstances have arisen; or

(II) such a failure has occurred,

in relation to the firm;”.

Powers of Director of Corporate Enforcement

28. (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 to so act,

the production of evidence of the person’s approval under these Regulations 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 may allow, the person is guilty of an offence.

(3) A person who is guilty of an offence under this Regulation is liable—

- (a) on summary conviction, to a fine not exceeding €5,000; or
- (b) on conviction on indictment, to a fine not exceeding €12,500.

(4) 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 23

29. (1) Subject to paragraph (2), in proceedings for an offence under Regulation 23, the production to the court of a certificate purporting to be signed by a person on behalf of a competent authority and stating that the defendant is not approved under these Regulations by that competent authority shall be sufficient evidence, until the contrary is shown by the defendant, that the defendant is not so approved.

(2) Paragraph (1) does 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 written notice 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*

30. (1) Subject to paragraph (2), a Member State auditor or a 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 a third-country auditor if the competent authority is satisfied that he or she has otherwise demonstrated sufficient knowledge of the enactments and practice referred to in that paragraph.

(3) The competent authority with supervisory and other functions shall issue guidance to each competent authority as to the specific matters that a competent authority 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 this Regulation.

(4) That guidance shall be issued by the competent authority with supervisory and other functions as soon as may be after the date of the making of these Regulations but, in any event, not later than 6 months thereafter.

(5) A competent authority may charge and impose a fee (of an amount specified from time to time by the Minister sufficient to cover the authority'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.

(6) A fee imposed under paragraph (5) 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

31. (1) The aptitude test shall—

(a) be conducted in an official language of the State; and

(b) cover only the applicant's adequate knowledge of the enactments and practice that are relevant to statutory audits in the State.

(2) Any decision by a competent authority—

(a) as to the various matters that shall constitute the contents of the aptitude test; or

(b) that those contents shall stand altered in any manner (which decision the competent authority is empowered, by this paragraph, to make from time to time),

shall require the prior approval of the competent authority with supervisory and other functions.

Adequate standards to be applied in administration of aptitude test

32. (1) The competent authorities shall apply adequate standards in the administration of the aptitude test.

(2) No standards shall be used by a competent authority for that purpose unless those standards have (with respect to that use) first been approved by the competent authority with supervisory and other functions.

Chapter 3

Withdrawal of approval

Grounds for mandatory withdrawal in case of statutory auditor

33. (1) The procedures under this Regulation are in addition to those procedures, in the cases to which those paragraphs (8) and (9) apply, that are required by Regulation 17(8) and (9) to be employed.

(2) For the purposes of this Regulation—

(a) 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; and

(b) "disciplinary committee" has the same meaning as it has in the Act of 2003.

(3) Without prejudice to Regulation 89, a competent authority 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 competent authority can reasonably conclude that the auditor's good repute is seriously compromised; or

(b) any of the conditions specified in Regulation 24 are no longer being complied with in respect of the auditor,

but this paragraph is subject to paragraph (5).

(4) Unless there do not exist internal appeal procedures of the competent authority as referred to in paragraph (7)(a), references in paragraphs (5) and (6) to a competent authority shall be read as references to a competent authority acting through the disciplinary committee that deals with matters at first instance.

(5) 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 competent authority is satisfied that circumstances referred to in paragraph (3)(a) have arisen or that non-compliance, as referred to in paragraph (3)(b), with a condition has occurred, it shall, subject to paragraph (6), serve a notice in writing on the auditor stating that—

- (i) it is satisfied that—
 - (I) those circumstances have arisen in relation to; or
 - (II) such non-compliance has occurred on the part of, the auditor;
- (ii) as the case may be, the auditor must take specified steps to restore his or her repute to good standing, or comply with the condition concerned, within a specified period (which shall not be less than a month); and
- (iii) if those steps are not taken or the condition concerned is not complied with within that specified period, it shall withdraw the approval of the auditor,

and, if but only if, as the case may be—

- (I) those steps are not taken; or
- (II) the condition concerned is not complied with,

within that specified period by the auditor, the competent authority shall withdraw the approval of the auditor under these Regulations.

(6) The procedure specified in paragraph (5) as concerns the service of a notice with respect to the matters specified in subparagraphs (i) to (iii) of it need not be employed if the acts or omissions concerned referred to in paragraph (3)(a) are such as, in the opinion of the competent authority, 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.

(7) If—

- (a) there exist applicable internal appeal procedures of the competent authority; and
- (b) the investigation and disciplinary procedures of the competent authority provide that a decision of its disciplinary committee referred to in paragraph (4), 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 clause (i), (ii) or (iii).

(8) If—

- (a) there exist applicable internal appeal procedures of the competent authority; and
- (b) the investigation and disciplinary procedures of the competent authority do not provide, as mentioned in paragraph (7)(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 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 or she is making under those internal appeal procedures and, where such an application is made, paragraphs (11) to (14) apply to that application with—

- (i) the substitution of references to an appeal under those internal appeal procedures for references to an appeal under Regulation 35; and
- (ii) any other necessary modifications.

(9) If the relevant appellate committee referred to in paragraph (8) is of 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 the provisions of paragraph (5) that follow subparagraphs (a) and (b) of paragraph (5), then, in disposing of that appeal, it shall proceed in the manner so specified.

(10) The competent authority shall take all reasonable steps to ensure that any appeal to the relevant appellate committee referred to in paragraph (8) 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.

(11) Where a competent authority has made a decision to withdraw the approval of an auditor under this Regulation (that is to say a final decision of the competent authority 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 35 that he or she is making against the withdrawal.

(12) On the hearing of an application under paragraph (11), the High Court may, subject to paragraph (14), as it considers appropriate and having heard the competent authority concerned and, if it wishes to be so heard, the competent authority with supervisory and other functions (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).

(13) The High Court may, on application to it by the auditor or competent authority concerned, vary or discharge an order under paragraph (12)(a) if it considers it just to do so.

(14) In considering an application under paragraph (11) or (13), the High Court shall have regard to—

- (a) whether, as regards the appeal the applicant is making under Regulation 35 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 competent authority concerned, as a body designated in the State for the purposes of the Directive, of the function of granting and withdrawing approval.

Grounds for mandatory withdrawal in case of statutory audit firm

34. (1) The procedures under this Regulation are in addition to those procedures, in the cases to which those paragraphs (8) and (9) apply, that are required by Regulation 17(8) and (9) to be employed.

(2) For the purposes of this Regulation—

- (a) 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; and
- (b) "disciplinary committee" has the same meaning as it has in the Act of 2003.

(3) Without prejudice to Regulation 89, a competent authority 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 competent authority can reasonably conclude that the firm's good repute is seriously compromised; or
- (b) any of the conditions specified in Regulation 27(2) are no longer being complied with in respect of the firm,

but this paragraph is subject to paragraph (5).

(4) Unless there do not exist internal appeal procedures of the competent authority as referred to in paragraph (7)(a), references in paragraphs (5) and (6) to a competent authority shall be read as references to a competent authority acting through the disciplinary committee that deals with matters at first instance.

(5) 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 competent authority is satisfied that circumstances referred to in paragraph (3)(a) have arisen or that non-compliance, as referred to in paragraph (3)(b), with a condition has occurred, it shall, subject to paragraph (6), serve a notice in writing on the audit firm stating that—

(i) it is satisfied that—

- (I) those circumstances have arisen in relation to; or
- (II) such non-compliance has occurred on the part of, the firm;

- (ii) as the case may be, the firm must take specified steps to restore its repute to good standing, or comply with the condition concerned, within a specified period (which shall not be less than a month); and
- (iii) if those steps are not taken or the condition concerned is not complied with within that specified period, it shall withdraw the approval of the firm,

and, if but only if, as the case may be—

- (I) those steps are not taken; or
- (II) the condition concerned is not complied with,

within that specified period by the audit firm, the competent authority shall withdraw the approval of the audit firm under these Regulations.

(6) The procedure specified in paragraph (5) as concerns the service of a notice with respect to the matters specified in subparagraphs (i) to (iii) of it need not be employed if the acts or omissions concerned referred to in paragraph (3)(a) are such as, in the opinion of the competent authority, 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.

(7) If—

- (a) there exist applicable internal appeal procedures of the competent authority; and
- (b) the investigation and disciplinary procedures of the competent authority provide that a decision of its disciplinary committee referred to in paragraph (4), 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 clause (i), (ii) or (iii).

(8) If—

- (a) there exist applicable internal appeal procedures of the competent authority; and
- (b) the investigation and disciplinary procedures of the competent authority do not provide, as mentioned in paragraph (7)(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 audit firm to which 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 it is making under those internal appeal procedures and, where such an application is made, paragraphs (10) to (14) apply to that application with—

- (i) the substitution of references to an appeal under those internal appeal procedures for references to an appeal under Regulation 35; and
- (ii) any other necessary modifications.

(9) If the relevant appellate committee referred to in paragraph (8) is of 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 the provisions of paragraph (5) that follow subparagraphs (a) and (b) of paragraph (5), then, in disposing of that appeal, it shall proceed in the manner so specified.

(10) The competent authority shall take all reasonable steps to ensure that any appeal to the relevant appellate committee referred to in paragraph (8) 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.

(11) Where a competent authority has made a decision to withdraw the approval of an audit firm under this Regulation (that is to say a final decision of the competent authority 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 35 that it is making against the withdrawal.

(12) On the hearing of an application under paragraph (11), the High Court may, subject to paragraph (14), as it considers appropriate and having heard the competent authority concerned and, if it wishes to be so heard, the competent authority with supervisory and other functions (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 other statutory audit firms or not to carry out such audits save in specified circumstances).

(13) The High Court may, on application to it by the audit firm or competent authority concerned, vary or discharge an order under paragraph (12)(a) if it considers it just to do so.

(14) In considering an application under paragraph (11) or (13), the High Court shall have regard to—

- (a) whether, as regards the appeal the applicant is making under Regulation 35 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 competent authority concerned, as a body designated in the State for the purposes of the Directive, of the function of granting and withdrawing approval.

Appeals against withdrawal of approval

35. (1) A person may appeal to the High Court against the withdrawal by a competent authority of approval under these Regulations of the person as a statutory auditor or audit firm, but this is subject to paragraph (2).

(2) An appeal shall not lie under paragraph (1) unless and until any applicable internal appeal procedures of the competent authority have been employed and exhausted by the first-mentioned person 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 competent authority having been employed.

(4) On the hearing of such an appeal, 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 competent authority 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 competent authority if, taking into account the expertise and specialist knowledge possessed by the competent authority, 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 competent authority 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 competent authority; 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 to the Supreme Court) shall be made by the competent authority concerned to the same persons to whom a notification of a withdrawal of approval must be made by Regulation 37 and (where it applies) Regulation 38.

Amendment of section 24 of Act of 2003 to clarify relationship between powers thereunder and powers under these Regulations

36. Section 24 of the Act of 2003 is amended by inserting the following subsections after subsection (11):

“(11A) For the avoidance of doubt, the following matters may, without prejudice to the generality of the preceding provisions, be the subject of an investigation by the Supervisory Authority under this section, namely matters—

(a) in relation to which a competent authority (within the meaning of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010) has decided not to withdraw a person’s approval under those Regulations as a statutory auditor or audit firm; or

(b) which either—

- (i) have not been considered by such a competent authority 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.

(11B) 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,

subsection (7)(a) shall be read as requiring or enabling (depending on whether the breach of standards found falls within Part 4 or Chapter 3 of Part 8 of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010) the Supervisory Authority to withdraw the approval under those Regulations of the person concerned as a statutory auditor or audit firm; where such an approval is withdrawn by it, the following provisions of those Regulations shall, with any necessary modifications, apply (and not subsections (8) and (9) of this section) to that withdrawal, namely Regulation 33(11) to (14) (or, as the case may be, Regulation 34(11) to (14)) and Regulation 35.

(11C) Subsection (11B) does not prejudice the imposition, in the circumstances concerned, by the Supervisory Authority of another sanction referred to in subsection (7)(a) in addition to a withdrawal of approval (where withdrawal of the approval is mandatory under the foregoing Regulations) or in lieu of a withdrawal of approval (where such withdrawal is not so mandatory).”.

Certain persons to be notified of withdrawal

37. Without prejudice to Regulation 38, where the approval under these Regulations of a statutory auditor or audit firm is withdrawn for any reason by a competent authority, that fact and the reasons for the withdrawal shall be communicated by the competent authority to—

- (a) the competent authority with supervisory and other functions; and
- (b) the competent authority with registration functions,

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

Other persons to be notified of withdrawal

38. (1) Where—

- (a) the approval under these Regulations of a statutory auditor or audit firm is withdrawn for any reason by a competent authority, and

- (b) the statutory auditor or audit firm is also approved in another Member State,

the competent authority shall, in addition to making the communication specified in Regulation 37, notify the relevant competent authorities of Member States where the statutory auditor or audit firm is also approved and entered in the relevant register of the fact of the withdrawal and the reasons for it.

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

(3) If the approval under these Regulations of a statutory auditor or audit firm is withdrawn by the competent authority with supervisory and other functions under section 24 (as amended by these Regulations) of the Act of 2003, this Regulation and Regulation 37 (other than paragraph (a) of it) shall apply in relation to the withdrawal as if the references in them to the competent authority were references to the competent authority with supervisory and other functions and with any other necessary modifications.

PART 5

STANDARDS AND PROVISIONS APPLICABLE TO STATUTORY AUDITORS AND AUDIT FIRMS

Chapter 1

Standards for statutory auditors and audit firms

Continuing education

39. (1) A competent authority shall attach the following condition to an approval granted by it under these Regulations to a person as statutory auditor.

(2) That 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 at a sufficiently high level.

(3) In the case of a statutory auditor who is a person in relation to whom a competent authority may, by virtue of Regulation 17, perform functions under these Regulations but either—

(a) the approval of whom as a statutory auditor has not been granted by that competent authority; or

(b) the person is a person referred to in Regulation 25(1),

a like obligation to that mentioned 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

40. The competent authorities 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 and objectivity

41. Statutory auditors and audit firms are subject to the independence and objectivity requirements of Articles 22, 24 and 25 of the Directive as implemented in the State by Part 7.

Standards for purposes of Regulations 39 to 41

42. (1) The competent authorities 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 39 to 41, and
- (b) institute adequate arrangements for the effective monitoring and enforcement of compliance with such standards.

(2) No standards shall be used by a competent authority for that purpose unless those standards have (with respect to that use) first been approved, in accordance with section 9(2)(c) of the Act of 2003, by the competent authority with supervisory and other functions.

Arrangements for enforcement of standards

43. The arrangements for enforcement referred to in Regulation 42(1)(b) shall include, in accordance with Regulations 88 and 89, provision for—

- (a) sanctions which include—
 - (i) at the discretion of the competent authority, in accordance with the third-mentioned Regulation, 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 2

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

44. (1) The rules of confidentiality and secrecy of the competent authority (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) Where the statutory auditor or audit firm is not a member of a recognised accountancy body, then the preceding provisions of this Regulation shall apply as if the references to the rules of confidentiality and secrecy were references to the rules of confidentiality and secrecy of the competent authority that, by virtue of Regulation 17, may perform functions in relation to him, her or it.

Supplemental provisions in relation to Regulation 44

45. (1) Regulation 44 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

46. Nothing in Regulation 44 or 45 shall operate to prevent a competent authority from complying with its obligations under these Regulations or the Companies Acts.

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

47. (1) 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 to the incoming statutory auditor or audit firm.

(2) This Regulation applies to a replacement of a statutory auditor or audit firm that occurs on or after the date falling 3 months after the date of the making of these Regulations.

Access by competent authority to audit documents

48. (1) Where it considers it reasonably necessary to do so for the purpose of performing a particular function or particular functions under these Regulations, a competent authority 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 the 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 audit 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 competent authority that the statutory auditor or audit firm has failed to comply with any requirement of these Regulations.

(3) Where the powers under paragraph (1) are exercisable, the following additional power may be exercised by the competent 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 documents concerned, namely a power to require the statutory auditor or a member of the statutory 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.

(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) is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000, 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 competent authority 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.

(7) Nothing in this Regulation derogates from—

- (a) the powers exercisable by a disciplinary committee in the circumstances, and under the conditions, specified in section 192A of the Act of 1990; or
- (b) the bye-laws of a competent authority.

Access by competent authority with supervisory and other functions to documents in possession of competent authority

49. (1) Where it considers it reasonably necessary to do so for the purposes of performing a particular function or particular functions under these Regulations, the competent authority with supervisory and other functions may inspect and make copies of all relevant documents in the possession or control of a competent authority; for that purpose it may, by notice in writing served on the competent authority, require the authority 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 authority,

within a specified period.

(2) Without prejudice to the generality of paragraph (1), the powers under that paragraph are exercisable in relation to a competent authority where a complaint is made to the competent authority with supervisory and other functions that the first-mentioned competent authority has failed to comply with any requirement of these Regulations.

(3) Where the powers under paragraph (1) are exercisable, the following additional power may be exercised by the competent authority with supervisory and other functions 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 an officer of the competent authority 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.

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

(5) A person who fails, without reasonable excuse, to comply with a requirement under paragraph (1) or (3) is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or
- (b) on conviction on indictment, to a fine not exceeding €12,500.

(6) Nothing in this Regulation derogates from the powers exercisable by the competent authority with supervisory and other functions in the circumstances, and under the conditions, specified in section 23 or 24 of the Act of 2003.

Professional privilege

50. 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

51. (1) No professional or legal duty to which a statutory auditor or audit firm is subject by virtue of his or 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 company 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 31 of Act of 2003

52. Nothing in section 31 of the Act of 2003 shall operate to prevent a competent authority or the competent authority with supervisory and other functions from complying with its obligations under these Regulations.

Further amendment of section 31 of Act of 2003

53. Section 31(3) of the Act of 2003 is amended—

- (a) in paragraph (a), by substituting “section 23, 24 or 26,” for “section 23, 24 or 26, or”;
- (b) in paragraph (b)(xv), by substituting “the purposes of this section, or” for “the purposes of this section.”; and
- (c) by inserting the following paragraph after paragraph (b):

“(c) if the information disclosed is to an individual or entity performing functions in another state which are similar to the functions the Authority has by virtue of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (including functions under this Act which the Authority has by virtue of those Regulations), provided that restrictions equivalent to those provided by this section apply in that state in relation to that individual or entity with respect to disclosure of information so given.”.

Chapter 3

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

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

(2) The reference in paragraph (1) 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 48(2) of the Directive, of international auditing standards.

Audit of group accounts — responsibility of group auditor

55. (1) Where a statutory audit of the group accounts of a group of undertakings is carried out—

- (a) the group auditor shall bear the full responsibility for the audit report in relation to the group accounts;
- (b) the group auditor shall carry out a review, and maintain documentation of such review, of the work of whoever of the following performed audit work for the purposes of the group audit, namely one or more:
 - (i) third-country auditors;
 - (ii) statutory auditors;
 - (iii) third-country audit entities;
 - (iv) statutory audit firms;
 - (v) Member State auditors;
 - (vi) Member State audit firms.

(2) The documentation referred to in paragraph (1)(b) to be retained by the group auditor shall be such as enables the competent authority to review the work of the group auditor properly.

Further responsibility of group auditor

56. (1) Where—

- (a) a statutory audit of the group accounts of a group of undertakings is carried out, and
- (b) a component 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 109(1)(c) or 110(c),

the group auditor is responsible for ensuring proper delivery, when requested, to the competent authority with supervisory and other functions of the documentation of the audit work performed by those auditors or audit entities, including the working papers relevant to the group audit.

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

- (a) agree with the 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.

(3) Where legal or other impediments prevent audit working papers from being passed from a third country to the group auditor, the documentation retained by the group auditor shall include—

- (a) evidence that he or she 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 such an impediment.

Amendment of section 193 of Act of 1990

57. Section 193 of the Act of 1990 is amended—

- (a) in subsection (4D), by deleting paragraph (a); and
- (b) by inserting the following subsection after subsection (4F):

“(4G) (a) The auditors' report shall state the name of the auditor and be signed, as provided for in paragraph (b), and dated.

(b) Where the auditor is—

- (i) a statutory auditor (within the meaning of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010, the report shall be signed by that person, or
- (ii) a statutory audit firm (within the meaning of the foregoing 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, or

- (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,

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

Chapter 4

Transparency report

Transparency report

58. (1) A statutory auditor or audit firm that carries out the statutory audit of one or more public-interest entities shall prepare and publish, within 3 months after the end of—

- (a) the financial year of the statutory auditor or audit firm referred to in paragraph (2); and

(b) each subsequent financial year of the statutory auditor or audit firm, a report in relation to that financial year (in these Regulations referred to as a “transparency report”).

(2) The financial year referred to in paragraph (1)(a) is one ending on or after the date falling 3 months after the date of the making of these Regulations.

Contents of transparency report — general

59. The transparency report shall contain at least the information specified in Regulation 61 and shall be—

- (a) approved by the statutory auditor or audit firm; and

- (b) signed—

(i) in the case of a report prepared by a statutory auditor — by him or her; or

(ii) in the case of a report prepared by a statutory audit firm — by a partner or other member of the firm who has senior executive responsibility in relation to the affairs of the firm.

Publication of transparency report

60. The statutory auditor or audit firm shall ensure that his, her or its transparency report—

- (a) is made available on a website, being a website maintained by or on behalf of the statutory auditor or audit firm, not later than 3 months after the end of the financial year of the statutory auditor or audit firm to which it relates, and

- (b) remains available for a period of 3 years reckoned from the end of the period of 3 months referred to in paragraph (a).

Specific requirements in relation to contents of transparency report

61. The transparency report shall—

- (a) where the subject of the report is a statutory audit firm (referred to in this Regulation as the “subject”), contain at least the information specified hereafter in this Regulation, and
- (b) where the subject of the report is a statutory auditor (also referred to in this Regulation as the “subject”), contain at least so much of the information specified hereafter in this Regulation as is applicable in the case of an individual,

namely—

- (i) a description of the legal structure and ownership of the subject;
- (ii) where the subject belongs to a network, a description of the network and the legal and structural arrangements of the network;
- (iii) a description of the governance structure of the subject;
- (iv) a description of the internal quality control system of the subject and a statement by the administrative or managerial body on the effectiveness of its functioning;
- (v) an indication of when the last quality assurance review referred to in Chapter 2 of Part 8 took place;
- (vi) a list of public-interest entities for which the subject has carried out statutory audits during the preceding financial year;
- (vii) a statement concerning the subject’s independence practices which also confirms that an internal review of independence compliance has been conducted;
- (viii) a statement on the policy followed by the subject concerning the continuing education of statutory auditors referred to in Regulation 39;
- (ix) financial information showing the significance, from the perspective of the market, of the subject, such as the total turnover divided into fees from the statutory audit of annual and group accounts, and fees charged for other assurance services, tax advisory services and other non-audit services;
- (x) information concerning the basis for the remuneration of the principals or partners.

Chapter 5

Duties to notify competent authority with supervisory and other functions in event of cessation of office by statutory auditor or audit firm and restrictions on their removal

Amendment of Principal Act with regard to removal of auditors

62. The Principal Act is further amended, with effect from the date that is 3 months after the date of the making of these Regulations—

- (a) in section 160, by inserting, in subsection (5), “and subject to section 161C” after “in relation to his removal under this subsection”; and
- (b) by inserting the following sections after section 161:

“Duty of auditor to notify Supervisory Authority regarding cessation of office.

161A. (1) Where, for any reason, during the period between the conclusion of the last annual general meeting and the conclusion of the next annual general meeting of a company, an auditor ceases to hold office either by virtue of section 160, or section 185 of the Act of 1990, the auditor shall—

- (a) in such form and manner as the Supervisory Authority specifies, and
- (b) within 1 month after the date of that cessation,

notify the Supervisory Authority that the auditor has ceased to hold office.

(2) That notification shall be accompanied by:

- (a) in the case of resignation of the auditor, the notice served under section 185(1) of the Act of 1990, or
- (b) in the case of removal of the auditor at a general meeting pursuant to section 160(5), a copy of any representations in writing made to the company, pursuant to section 161(3), in relation to the intended resolution except where such representations were not sent out to the members of the company in consequence of an application to the court under section 161(4).

(3) Where, in the case of resignation, the notice served under section 185(1) of the Act of 1990 is to the effect that there are no circumstances connected with the resignation to which it relates that the auditor concerned considers should be brought to the notice of members or creditors of the company, the notification under subsection (1) shall also be accompanied by a statement of the reasons for the auditor’s resignation.

(4) In this section—

- (a) ‘resignation’ includes an indication of unwillingness to be re-appointed at an annual general meeting; and
- (b) a reference to a notice served under section 185(1) of the Act of 1990 includes a reference to a notice given by the auditor under section 160(2)(c).

Duty of company to notify Supervisory Authority of auditor’s cessation of office.

161B. (1) Where, for any reason, during the period between the conclusion of the last annual general meeting and the conclusion of the next annual general meeting, an auditor ceases to hold office either by virtue of section 160, or section 185 of the Act of 1990, the company shall—

- (a) in such form and manner as the Supervisory Authority specifies, and
- (b) within 1 month after the date of that cessation,

notify the Supervisory Authority that the auditor has ceased to hold office.

(2) That notification shall be accompanied by:

- (a) in the case of resignation of the auditor, the notice served by the auditor under section 185(1) of the Act of 1990, or
- (b) in the case of removal of the auditor at a general meeting pursuant to section 160(5)—
 - (i) a copy of the resolution removing the auditor, and
 - (ii) a copy of any representations in writing made to the company, pursuant to section 161(3), by the outgoing auditor in relation to the intended resolution except where such representations were not sent out to the members of the company in consequence of an application to the court under section 161(4).

(3) In this section—

- (a) ‘resignation’ includes an indication of unwillingness to be re-appointed at an annual general meeting; and
- (b) a reference to a notice served under section 185(1) of the Act of 1990 includes a reference to a notice given by the auditor under section 160(2)(c).

Restrictions on removal of auditor.

161C. (1) The passing of a resolution to which this section applies shall not be effective with respect to the matter it provides for unless—

- (a) in case the resolution provides for the auditor's removal from office, there are good and substantial grounds for the removal related to the conduct of the auditor with regard to the performance of his duties as auditor of the company or otherwise; or
- (b) in the case of any other resolution to which this section applies, the passing of the resolution is, in the company's opinion, in the best interests of the company,

but—

- (i) for the foregoing purposes, diverging opinions on accounting treatments or audit procedures cannot constitute the basis for the passing of any such resolution, and
- (ii) in paragraph (b) 'best interests of the company' does not include any illegal or improper motive with regard to avoiding disclosures or detection of any failure by the company to comply with the Companies Acts.

(2) This section applies to—

- (a) a resolution removing an auditor from office,
- (b) a resolution at an annual general meeting appointing somebody other than the retiring auditor as auditor,
- (c) a resolution providing expressly that the retiring auditor shall not be re-appointed.”.

PART 6

PUBLIC REGISTER

Public register

63. (1) From the date specified in paragraph (2), the competent authority with registration functions shall maintain a register (in this Part referred to as the “public register”) which shall contain the information set out in Schedule 1 in relation to—

- (a) statutory auditors and audit firms; and
- (b) third-country auditors and audit entities.

(2) The date referred to in paragraph (1) is the date falling 3 months after the date of making of these Regulations.

Notification of information to competent authority with registration functions

64. (1) An auditor or audit firm or a third-country auditor 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 competent authority.

(2) On receipt of that notification and its having carried out any verification of the information as seems to it to be necessary, the competent authority shall notify to the competent authority with registration functions—

- (a) the relevant information contained in the first-mentioned notification; and
- (b) (i) the individual identification number assigned by it to the auditor, audit firm or third-country auditor under Regulation 19(6); and
- (ii) where—
 - (I) under Regulation 19(6) such a number exists; and
 - (II) by reason of the circumstances referred to in paragraph (4)(b) the relevant information notified to the competent authority does not include that number,

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

(3) The notifications under paragraphs (1) and (2) shall each be made in such form and manner as the competent authority with registration functions specifies.

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

Prohibition on certain acts unless registered

65. (1) On or after the date specified in paragraph (2), a person shall not—

- (a) act as; or
- (b) represent himself or herself, or hold himself or herself 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) The date referred to in paragraph (1) is the date falling 3 months after the date of making of these Regulations.

(3) A person who contravenes paragraph (1) is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

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

(4) If the contravention in respect of which a person is convicted of an offence under paragraph (3) is continued after the conviction, the person is guilty of a further offence for each day that the contravention continues and for each such offence the person is liable—

(a) on summary conviction, to a fine not exceeding €1,000, or

(b) on conviction on indictment, to a fine not exceeding €10,000.

Obligation of statutory auditor or audit firm to notify certain information

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

(2) On receipt of that notification and its having carried out any verification of the information stated to have changed as seems to it to be necessary, the competent authority shall notify the change in information to the competent authority with registration functions.

(3) The competent authority with registration functions 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) is guilty of an offence and is liable, on summary conviction, to a fine not exceeding €5,000.

Information must be signed

67. (1) Information notified under Regulation 64(1) or 66(1) by a statutory auditor or 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/EC 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 competent authority with registration functions 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 64(1) or 66(1) without being signed as required by paragraph (1), the statutory auditor or audit firm concerned is guilty of an offence and is liable, on summary conviction, to a fine not exceeding €5,000.

Transitional provision

68. (1) A body of accountants referred to in subsection (3) of section 191 (inserted by Regulation 10) of the Act of 1990 shall, within one month after the commencement of these Regulations, notify to the competent authority with registration functions the relevant information (within the meaning of Regulation 64) in respect of each of its members deemed to have been approved by virtue of Regulation 25(1) or 27(4).

(2) A person referred to in Regulation 25(2) shall, within one month after the commencement of these Regulations, notify to the competent authority with registration functions the relevant information (within the meaning of Regulation 64) in respect of him or her.

(3) A person who fails, without reasonable excuse, to comply with paragraph (1) or (2) is guilty of an offence and is liable, on summary conviction, to a fine not exceeding €5,000.

Language of information to be entered in register

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

PART 7

INDEPENDENCE

Requirement for independence — general

70. When carrying out a statutory audit—

(a) the statutory auditor or audit firm, as the case may be; and

(b) in the latter case, any statutory auditor of the statutory audit firm,

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

Prohibited relationships — specific provisions to secure independence

71. (1) A statutory auditor or audit firm shall not carry out a statutory audit if there exists a relationship of the following kind between the statutory auditor or audit firm (or a network to which he or she or it belongs) and the audited entity.

(2) That relationship is any direct or indirect financial, business, employment or other relationship (which may include the provision of additional non-audit services) from which an objective, reasonable and informed third party would conclude that the statutory auditor's or audit firm's independence is compromised.

(3) If the statutory auditor's or audit firm's independence is affected by threats, such as self-review, self-interest, advocacy, familiarity or trust or intimidation, the statutory auditor or audit firm shall apply safeguards in order to mitigate those threats. If the significance of the threats compared to the safeguards applied is such that his, her or its independence is compromised, the statutory auditor or audit firm shall not carry out the statutory audit.

(4) Without prejudice to the generality of the preceding paragraphs, a person shall not act as a statutory auditor of a company if he or she is—

- (a) an officer or servant of the company,
- (b) a person who has been an officer or servant of the company 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 company,
- (c) a parent, spouse, brother, sister or child of an officer of the company,
- (d) a person who is a partner of or in the employment of an officer of the company,
- (e) a person who is disqualified under this paragraph for appointment as auditor of any other body corporate that is a subsidiary or holding company of the company or a subsidiary of the company's holding company, or would be so disqualified if the body corporate were a company,
- (f) a person who is disqualified under section 187(2)(f) of the Act of 1990 for appointment as a public auditor of a society that is a subsidiary or holding company of the company or a subsidiary of the company's holding company, or
- (g) a person in whose name a share in the company is registered, whether or not that person is the beneficial owner of the share.

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

- (a) any principal of the audit firm is an officer or servant of the company,
- (b) any principal of the audit firm has been an officer or servant of the company within a period in respect of which accounts would fall to be audited by the firm if the firm was appointed auditor of the company,
- (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 company or a subsidiary of the company's holding company, or would be so disqualified if the body corporate were a company, or

(d) the firm is disqualified under section 187(2)(f) of the Act of 1990 for appointment as a public auditor of a society that is a subsidiary or holding company of the company or a subsidiary of the company's holding company.

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

- (a) a person in whose name a share in the company 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 company.

(7) In this Regulation “society” means a society registered under the Industrial and Provident Societies Acts 1893 to 1978.

Additional requirements in case of public-interest entities

72. Without prejudice to the generality of Regulation 70 or 71, a statutory auditor or audit firm shall not carry out a statutory audit of a public-interest entity—

- (a) in circumstances which involve a case of self-review or self-interest, and
- (b) from the circumstances of which case an objective, reasonable and informed third party would conclude that (so as to safeguard the statutory auditor's or audit firm's independence) the auditor's or firm's not carrying out that audit would be appropriate.

Threats to independence and other information to be recorded

73. 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.

Non-intervention by certain persons in execution of audit

74. Neither—

- (a) the owners or shareholders of a statutory audit firm or the owners or shareholders of an affiliated firm; nor
- (b) the members of the administrative, management or supervisory body of such a firm or of an affiliated firm,

shall intervene in the execution 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 statutory audit firm.

Restrictions with regard to fees

75. A competent authority 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.

Additional reporting and other requirements in case of public-interest entities

76. In addition to the other requirements of this Part, a statutory auditor or audit firm that carries out the statutory audit of a public-interest entity shall—

- (a) confirm annually, in writing, to the audit committee of the entity his, her or its independence from the public-interest entity;
- (b) disclose annually to such audit committee any additional services provided to the public-interest entity; and
- (c) discuss with such audit committee the threats to the independence of the auditor or firm and the safeguards applied to mitigate those threats as documented by him, her or it under Regulation 73.

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

77. (1) In this Regulation—

“7 year period” shall be read in accordance with paragraph (2);

“relevant date” means the date of appointment, being a date falling on or after 29 June 2008—

- (a) of the statutory auditor or audit firm (to which the key audit partner or partners referred to in paragraph (2) belongs or belong);
- (b) to the entity referred to in that paragraph.

(2) The key audit partner or partners responsible for carrying out a statutory audit of a public-interest entity shall not engage in a statutory audit of the entity at any time that, subject to paragraph (3), is subsequent to the period of 7 years after the relevant date (in paragraphs (3) and (4) referred to as the “7 year period”).

(3) The prohibition imposed by paragraph (2) on the key audit partner or partners concerned engaging in a statutory audit of the entity concerned shall cease to have effect 2 years after the 7 year period, but this is without prejudice to paragraph (4).

(4) This Regulation shall be construed and have effect so that, in the event of any period—

- (a) elapsing subsequent to the 7 year period, and
- (b) being a period of a duration of 7 years during which the statutory auditor or audit firm referred to in paragraph (1) continues to stand appointed to the public-interest entity concerned,

a like prohibition, and a like cessation of that prohibition, to that provided by paragraphs (2) and (3), respectively, shall apply to key audit partner or partners responsible for carrying out a statutory audit of that entity.

Moratorium on taking up management position in audited public-interest entity

78. 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 a statutory audit firm, a statutory audit of a public-interest entity,

a key management position in that entity before a period of at least 2 years has elapsed since the day following (should such occur) his or her resignation as a statutory auditor or key audit partner from the audit engagement.

PART 8

PUBLIC OVERSIGHT AND QUALITY ASSURANCE OF STATUTORY AUDITORS AND
AUDIT FIRMS

Chapter 1

Public Oversight

Amendment of section 10 of Act of 2003

79. Section 10 of the Act of 2003 is amended—

- (a) in subsection (4), by inserting “(whether an individual or otherwise)” after “person” in paragraph (c); and
- (b) in subsection (5)—
 - (i) in paragraph (a), by substituting “Part),” for “Part), or”,
 - (ii) in paragraph (b), by substituting “section 9(2)(ma),” for “section 9(2)(ma).”, and
 - (iii) by inserting the following paragraphs after paragraph (b):
 - “(c) provisions of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010, or
 - (d) rules adopted by the Supervisory Authority under subsection (3) concerning the matters that relate to its functions under section 9(2)(mb).”.

System of public oversight — responsibility of competent authority with supervisory and other functions

80. (1) In this Regulation “system of public oversight”, in relation to statutory auditors and audit firms, means the system of oversight in the State of such persons constituted by the collective operation of—

- (a) the provisions of the Act of 2003 and the rules, regulations and guidelines made or adopted under them by the competent authority with supervisory and other functions;
- (b) the provisions of these Regulations; and
- (c) the provisions generally of the Companies Acts.

(2) The competent authority with supervisory and other functions shall be the competent authority in the State with respect to the system of public oversight of statutory auditors and audit firms.

(3) As such, and without prejudice to its functions as provided under the Act of 2003 or Regulation 83, the competent authority with supervisory and other functions shall generally superintend—

- (a) the approval and registration of statutory auditors and audit firms;
- (b) the adoption of standards on professional ethics, internal quality control of audit firms and auditing; and
- (c) continuing education, quality assurance, and investigative and disciplinary systems.

Further amendments of Act of 2003

81. The Act of 2003 is further amended—

- (a) in section 11—
 - (i) in paragraph (b) of subsection (1), by substituting “office, is a director,” for “office, is a director.”, and
 - (ii) by inserting at the end of subsection (1) the following:

“and the persons appointed as such directors shall be persons who are knowledgeable in areas relevant to statutory audit.”;

- (b) in section 23, by adding the following subsection:

“(13) For the purposes of this section ‘member’, in addition to the meaning assigned to that expression by section 4(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 European Communities (Statutory Audits) (Directive 2006/43/EC) 2010.”; and

(c) in section 24, by adding the following subsection:

“(13) For the purposes of this section ‘member’, in addition to the meaning assigned to that expression by section 4(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 European Communities (Statutory Audits) (Directive 2006/43/EC) 2010.”.

Chapter 2

Quality Assurance

Competent authority with supervisory and other functions to engage in oversight of quality assurance

82. (1) In performing their functions under Regulations 83 and 84, the competent authorities shall be subject to public oversight by the competent authority with supervisory and other functions.

(2) The terms and conditions referred to in section 9(2)(b)(i) and (ii) of the Act of 2003 (which relate to the powers, under section 192 of the Act of 1990, of the competent authority with supervisory and other functions) may be attached to the recognition of bodies of accountants for the purpose of facilitating the performance by that competent authority of its function of public oversight of quality assurance under this Chapter as well as for any other lawful purpose.

System of quality assurance to be put in place

83. (1) Each competent authority shall ensure that it has in place a system of quality assurance of—

- (a) its members’ activities as statutory auditors and audit firms; and
- (b) the activities, as statutory auditors and audit firms, of persons who, though not members of the authority, are persons in relation to whom it may perform functions under these Regulations.

(2) On and from the date specified in paragraph (3), the competent authority with supervisory and other functions shall ensure that it has in place a system of quality assurance of registered third-country auditors and audit entities to whom this Part applies by virtue of Regulation 114(1).

(3) The date referred to in paragraph (2) is the date falling 6 months after the date of the making of these Regulations.

Organisation of quality assurance system

84. (1) A competent authority shall organise its system of quality assurance in such a manner so 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, supported by adequate testing of selected audit files, includes 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 written report which includes the main conclusions of the review;
- (h) a quality assurance review of each statutory auditor or audit firm takes place:
 - (i) in the case of a statutory auditor or audit firm that carries out audits of one or more public-interest entities, at least, subject to paragraph (3), every 3 years;
 - (ii) in the case of a statutory auditor or audit firm that does not carry out audits of any public-interest entity, at least, subject to paragraph (4), 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; and
- (j) there is published annually by it the overall results of quality assurance reviews carried out by it in the year in question.

(2) 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 competent authority 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 Regulation 86 and Chapter 3.

(3) For the purpose of paragraph (1)(h)(i), the period of 3 years there mentioned that shall first apply shall be reckoned from a date beginning no earlier than the date of the making of these Regulations.

(4) For the purpose of paragraph (1)(h)(ii), the period of 6 years there mentioned that shall first apply shall be reckoned from a date beginning no earlier than the date of the making of these Regulations.

Quality assurance review deemed to include individual auditors in certain cases

85. For the purpose of Regulation 84(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 competent authority as regards professional discipline

86. (1) Each competent authority shall have the right to take disciplinary actions or impose penalties in respect of statutory auditors and audit firms and shall have procedures in place to facilitate the taking or imposition of such action or penalties.

(2) The powers, under paragraph (c) of section 9(2) of the Act of 2003, of the competent authority with supervisory and other functions to require changes of the kind, and to approve the matters, referred to in that paragraph (c) may be exercised for the purpose of facilitating the performance by that competent authority of its function of public oversight of quality assurance under this Chapter as well as for any other lawful purpose.

Chapter 3

Systems of investigations and penalties

System of investigation and penalties

87. Each competent authority shall, in respect of those auditors and audit firms in relation to whom, by virtue of Regulation 17, 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 competent authority with regard to sanctions

88. (1) Each competent authority 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) Those contractual and other arrangements 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 competent authority and its members shall operate and have effect so as to enable the imposition by the competent authority—

(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 authority, are persons in relation to whom it may, by virtue of Regulation 17, perform functions under these Regulations.

Scope of penalties and publicity in relation to their imposition

89. (1) The penalties referred to in Regulation 88, provision for which must be made by the means referred to in that Regulation, shall, where appropriate, include withdrawal of approval under these Regulations.

(2) Paragraph (1) is without prejudice to Regulations 33 and 34 (conditions for mandatory withdrawal in case of statutory auditor or audit firm).

(3) Unless there do not exist internal appeal procedures of the competent authority as referred to in Regulation 33(7)(a) or 34(7)(a), the reference in paragraph (4) to a competent authority shall be read as a reference to a competent authority acting through the disciplinary committee that deals with matters at first instance.

(4) Without prejudice to Regulation 17(8) and (9), a competent authority may, save where, in its opinion, proceeding in this manner would not be in the public interest, adopt procedures analogous to those in Regulation 33(5) or 34(5) 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 33(7)(a) or 34(7)(a), of the competent authority; and

(b) the investigation and disciplinary procedures of the competent authority 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 clause (i), (ii) or (iii).

(6) If—

- (a) there exist internal appeal procedures, as referred to in Regulation 33(7)(a) or 34(7)(a), of the competent authority; and
- (b) the investigation and disciplinary procedures of the competent authority do not provide, as mentioned 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 and, where such an application is made, paragraphs (9) to (12) apply to that application with—

- (i) the substitution of references to an appeal under those internal appeal procedures for references to an appeal under Regulation 35; and
- (ii) any other necessary modifications.

(7) If the relevant appellate committee referred to in paragraph (6) is of 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 mentioned in paragraph (4), provided by Regulation 33(5) or 34(5) being adopted by it, then, in disposing of that appeal, it shall adopt procedures analogous to those in Regulation 33(5) or 34(5).

(8) The competent authority 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.

(9) Where a competent authority 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 competent authority 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 35 that he, she or it is making against the withdrawal.

(10) On the hearing of an application under paragraph (9), the High Court may, subject to paragraph (12), as it considers appropriate and having heard the competent authority concerned and, if it wishes to be so heard, the competent authority with supervisory and other functions (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).

(11) The High Court may, on application to it by the auditor or audit firm or competent authority concerned, vary or discharge an order under paragraph (10)(a) if it considers it just to do so.

(12) In considering an application under paragraph (9) or (11), the High Court shall have regard to—

- (a) whether, as regards the appeal the applicant is making under Regulation 35 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 competent authority concerned, as a body designated in the State for the purposes of the Directive, of the function of granting and withdrawing approval.

(13) 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 (whether under this Part or Part 4) by a competent authority shall be disclosed by the competent authority to the public and that disclosure shall, if the competent authority considers it appropriate, include such further particulars with respect to the matter as it thinks fit.

(14) Subject to paragraph (15), the manner of such disclosure, and the time at which it is made, shall be such as the competent authority determines to be appropriate.

(15) The competent authority shall establish, and reduce to writing, criteria the purpose of which is to govern the determination by it of the matters referred to in paragraph (14); those criteria shall require the prior approval of the competent authority with supervisory and other functions.

Further amendment of section 24 of Act of 2003

90. Section 24 of the Act of 2003 is further amended—

(a) in paragraph (b) of subsection (7), by substituting “subsection (6),” for “subsection (6).”;

(b) by inserting at the end of subsection (7) the following:

“and the fact of a sanction having been imposed on the member by the Supervisory Authority 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 Supervisory Authority, an indication that that is so, and

(ii) if the Supervisory Authority considers it appropriate, such further particulars with respect to the matter as it thinks fit.”;

and

(c) by inserting the following after subsection (7):

“(7A) The manner of a disclosure under subsection (7), and the time at which it is made, shall be such as the Supervisory Authority determines to be appropriate.”.

PART 9

AUDIT COMMITTEES

Audit committees in respect of public-interest entities

91. (1) From the date specified in paragraph (2), the board of directors of a public-interest entity shall establish an audit committee in respect of the entity.

(2) The date referred to in paragraph (1) is the date falling 6 months after the date of the making of these Regulations.

(3) The members of the audit committee shall include not less than 2 independent 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 (4)) so as to be able to contribute effectively to the committee's functions.

(4) The condition referred to in paragraph (3)(b) is that each director there referred to 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 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.

(5) One of the directors referred to in paragraph (3) shall be a person who has competence in accounting or auditing.

(6) Without prejudice to the responsibility of the board of directors, the responsibilities of the audit committee shall include:

(a) the monitoring of the financial reporting process;

(b) the monitoring of the effectiveness of the entity's systems of internal control, internal audit and risk management;

(c) the monitoring of the statutory audit of the annual and consolidated accounts; and

(d) the review and monitoring of the independence of the statutory auditor or audit firm, and in particular the provision of additional services to the audited entity.

(7) Any proposal of the board of 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 board by the audit committee.

(8) 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.

(9) Subject, in the case of subparagraph (d), to paragraph (10), this Regulation shall not apply to a public-interest entity if it is—

(a) a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC but only if the preceding requirements of this Regulation are complied with by a parent undertaking (within the meaning of that Article) of the first-mentioned undertaking in such a manner as ensures that any statutory audit of the first-mentioned undertaking comes within the purview of the relevant audit committee; or

(b) a collective investment undertaking as defined in Article 1(2) of Directive 85/611/EEC, or

(c) an entity that—

(i) has, as its sole object, the collective investment of capital provided by the public,

(ii) operates on the principle of risk spreading,

(iii) does not seek to take legal or management control over any of the issuers of its underlying investments,

provided that it is authorised by, and subject to the supervision of, a body competent under Community law and has depositary exercising functions equivalent to those under Directive 85/611/EEC, or

(d) an entity that has, as its sole business, the issuing of asset-backed securities as defined in Article 2(5) of Commission Regulation (EC) No. 809/2004, or

(e) a credit institution within the meaning of Article 1(1) of Directive 2000/12/EC which satisfies the following conditions—

(i) its 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,

(ii) it has, in a continuous or repeated manner, issued only debt securities, provided that the total nominal amount of all such debt securities remains below €100,000,000; and

(iii) it has not published a prospectus under Directive 2003/71/EC.

(10) An entity that avails itself of the exemption under paragraph (9)(d) 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 competent authority with registration functions or the Irish Financial Services Regulatory Authority,

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.

(11) Paragraph (7) applies to a proposal of the board of directors (with respect to the appointment of a statutory auditor or audit firm to the public-interest entity) made at any time after the establishment of the audit committee in respect of the entity.

(12) The other provisions of this Regulation with regard to the exercise of any power or the carrying out of any duty by, or in relation to, 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.

PART 10

REGULATORY ARRANGEMENTS BETWEEN MEMBER STATES

Chapter 1

Cooperation with other Member States

Cooperation with other Member States

92. (1) With regard to the cooperation that the State is required to engage in by virtue of Article 33 (cooperation between public oversight systems at Community level) of the Directive, the competent authority with supervisory and other functions is assigned the responsibility in that behalf.

(2) For the purpose of discharging that responsibility, that competent authority shall put in place appropriate mechanisms, including arrangements with competent authorities in other Member States.

Specific requirements with regard to cooperation

93. (1) In this Regulation “counterpart authorities in other Member States” means competent authorities in other Member States with responsibilities corresponding to those of the competent authorities under these Regulations with regard to approval, registration, quality assurance, inspection and discipline.

(2) The competent authorities under these Regulations responsible for approval, registration, quality assurance, inspection and discipline shall co-operate with the counterpart authorities in other Member States whenever necessary for the purpose of those competent authorities (or, as the case may be, the counterpart authorities) carrying out their respective responsibilities under these Regulations or, as the case may be, the laws of the other Member State concerned that implement the Directive.

(3) The competent authorities under these Regulations with the foregoing responsibilities shall render assistance to the counterpart authorities in other Member States and, in particular, shall exchange information and co-operate with them in investigations related to the carrying out of statutory audits.

Confidentiality of information

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

- (a) is obtained in performing the functions, under any provision of these Regulations, of any of the competent authorities under these Regulations; and
- (b) has not otherwise come to the notice of members of the public.

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

- (a) on summary conviction, to a fine not exceeding €5,000, 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 94

95. Without limiting Regulation 94, 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 any competent authority referred to in that Regulation;
- (b) an employee or former employee of any such competent authority; and
- (c) a professional or other advisor to any such competent authority, including a former advisor.

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

96. (1) Each of the competent authorities under these Regulations shall, on request and without undue delay, supply any information required for the purpose referred to in Regulation 93.

(2) Regulation 94 shall not prevent any of those competent authorities from complying with any such request or exchanging confidential information.

Obligation of competent authority to gather information

97. (1) Where necessary, each of the competent authorities under these Regulations, on receiving any request referred to in Regulation 96(1), shall, without undue delay, take the necessary measures to gather the required information.

(2) If a competent authority of whom such a request is made is not able to supply, without undue delay, the required information, it shall notify the competent 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 94 to certain information

98. Regulation 94 shall apply to information received by each of the competent authorities under these Regulations pursuant to the cooperation or exchange of information that is required of competent authorities of Member States by Article 36 of the Directive.

Requesting authority to be notified if its request not complied with

99. (1) If—

- (a) a competent authority of whom a request referred to in Regulation 96(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 97(2) relates; nor
 - (ii) one of a refusal to comply with the request on any of the grounds referred to in Regulation 100,

the competent authority shall notify the competent authority in the other Member State that made the request of the reasons for that failure to comply.

(2) If the competent authority referred to in subparagraph (a) of paragraph (1) is not the competent authority with supervisory and other functions, it shall also notify that competent authority of the reasons for the failure referred to in that paragraph.

Grounds for refusing request for information

100. (1) A competent authority may refuse to comply with a request referred to in Regulation 96(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,
- or
- (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 competent authority in respect of the same actions and the same statutory auditor or audit firm, the subject of the request.

(2) If the competent authority referred to in paragraph (1) is not the competent authority with supervisory and other functions, it shall not exercise the power thereunder to refuse to comply with a request save after consultation with that competent authority.

(3) A competent authority that refuses, under paragraph (1), to comply with a request shall notify the competent authority in the other Member State that made the request of the reasons for the refusal.

(4) If the first-mentioned competent authority in paragraph (3) is not the competent authority with supervisory and other functions, it shall also notify that competent authority of the reasons for the refusal referred to in that paragraph.

Use to which information may be put

101. (1) In this Regulation “relevant information” means information that any of the competent authorities under these Regulations receives pursuant to the cooperation or exchange of information that is required of competent authorities of Member States by Article 36 of the Directive.

(2) Each of the competent authorities under these Regulations may use relevant information only for the performance by it of its functions under these Regulations and then only in the context of steps it takes in—

- (a) investigating and detecting failures to comply with these Regulations; 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 a competent authority is

subject as regards the use to which it may put information referred to in that paragraph.

References in Regulations 103 to 105 to counterpart authority

102. (1) References in Regulations 103 to 105 to a counterpart authority in another Member State shall be construed in accordance with Regulation 93.

Counterpart authority to be notified of non-compliance with Directive

103. Where any of the competent authorities under these Regulations forms, on reasonable grounds, the opinion that activities contrary to the provisions of the Directive are being, or have been, carried on 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

104. (1) In relation to activities that it suspects have been, or are being, carried on contrary to the provisions of the Directive, any of the competent authorities under these Regulations may request a counterpart authority in another Member State to carry out an investigation in the territory of that Member State.

(2) Such a request of a counterpart authority may be accompanied by a further request 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 counterpart authority in the course of the investigation.

(3) If the competent authority referred to in paragraph (1) is not the competent authority with supervisory and other functions, it shall notify that competent authority of the making of the request referred to in that paragraph and, if such be the case, the making of the further request referred to in paragraph (2).

Duty of competent authority to take certain action

105. (1) Where any of the competent authorities under these Regulations receives a notification from—

- (a) the entity specifically responsible, pursuant to the laws of another Member State that implement Article 36 of the 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 Directive are being, or have been, carried on in the State, it shall take appropriate action under these Regulations or the Act of 2003, as the case may be.

(2) The competent authority 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) If the competent authority referred to in paragraph (1) is not the competent authority with supervisory and other functions, it shall—

- (a) notify that competent authority of the taking by it of the action referred to in that paragraph; and
- (b) in addition to so informing, under paragraph (2), the notifying entity or authority of those matters, inform that competent 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

106. (1) Each of the competent authorities under these Regulations shall give due consideration to a request made of it, pursuant to the laws of another Member State that implement Article 36 of the Directive, to carry out an investigation in the State.

(2) If the request is acceded to by the competent authority, the investigation shall be subject to—

- (a) the overall control of the competent authority; and
- (b) unless the competent authority is the competent authority with supervisory and other functions, the supervision of the competent authority with supervisory and other functions.

(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 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 competent authority in the course of the investigation, and
- (b) the investigation is subject to the control as mentioned in paragraph (2) even if that further request is acceded to by the competent authority.

(4) If the competent authority referred to in paragraph (1) is not the competent authority with supervisory and other functions, it shall notify that competent authority—

- (a) of the making of a request of it referred to in that paragraph; 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

107. (1) Each of the competent authorities under these Regulations may refuse to accede to a request referred to in Regulation 106(1) made of it or a further request of the kind referred to in Regulation 106(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,
- or
- (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 competent authority in respect of the same actions and the same statutory auditor or audit firm, the subject of the request.

(2) If the competent authority referred to in paragraph (1) is not the competent authority with supervisory and other functions, it shall not exercise the power thereunder to refuse to accede to a request save after consultation with that competent authority.

(3) A competent authority that refuses, under paragraph (1), to accede to a request shall notify the competent authority in the other Member State that made the request of the reasons for the refusal.

(4) If the first-mentioned competent authority in paragraph (3) is not the competent authority with supervisory and other functions, it shall also notify that competent authority of the reasons for the refusal referred to in that paragraph.

Chapter 2

Mutual recognition of regulatory arrangements between Member States

Article 34 of the Directive — clarification of preceding Regulations' effect

108. To the extent that the preceding provisions of these Regulations do not operate to achieve the following effects in the law of the State, these Regulations

operate, and those preceding provisions (notwithstanding anything in them to the contrary) shall be construed as operating, in a manner so that—

- (a) the principle set out in Article 34(1) of the Directive is respected, and
- (b) the imposition of additional requirements of the kind referred to in Article 34(2) and (3) of the Directive is prohibited.

Chapter 3

Transfer of working papers to third-country competent authorities

Transfer of audit documentation to third-country competent authority

109. (1) Subject to Regulation 110, audit working papers or other documents held by a statutory auditor or audit firm may be transferred to a third-country competent authority only if the competent authority with supervisory and other functions, 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 consolidated accounts 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 Directive;
 - (c) there are working arrangements on the basis of reciprocity agreed between the competent authority with supervisory and other functions 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.
- (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 94 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;

- (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 competent authority with supervisory and other functions 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 competent authority with supervisory and other functions, once the performance of the functions referred to in subparagraph (c) in relation to them is completed;
 - (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 Directive;
 - (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 competent authority with supervisory and other functions:
 - (i) where the provision of those working papers or documents would adversely affect the sovereignty of the Community or any of the following—
 - (I) public order (whether in the State or elsewhere in the Community),
 - (II) the security of the State or the Community,
 - (III) the defence of the State or the Community, or
 - (IV) the international relations of the State or the Community,

or
 - (ii) where proceedings in any court in the State have already been initiated in respect of the same actions and against the same persons.
- (3) The competent authority with supervisory and other functions 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 competent authority with supervisory and other functions.

(5) As soon as may be after—

- (a) if such a determination is made, the making by the competent authority with supervisory and other functions 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 competent authority with supervisory and other functions shall secure the return to the statutory auditor or audit firm concerned of the audit working papers and other documents.

Derogation from Regulation 109 in exceptional cases

110. By way of derogation from Regulation 109, the competent authority with supervisory and other functions 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 competent authorities;
- (c) there are working arrangements with the third-country competent authority of a reciprocal nature that allow the competent authority with supervisory and other functions 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 competent authority with supervisory and other functions of each direct request for information, indicating the reasons therefor;

and

- (e) conditions similar to those specified in Regulation 109(2)(a) to (d) are satisfied.

Particulars of working arrangements to be notified

111. (1) Where the competent authority with supervisory and other functions enters into working arrangements with a third-country competent authority in

accordance with Regulation 109(1)(c), particulars of those working arrangements shall be published by the first-mentioned competent authority 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 competent authority with supervisory and other functions to the Commission.

PART 11

THIRD-COUNTRY AUDITORS

Chapter 1

International Aspects

Approval of third-country auditor

112. (1) Without prejudice to Chapter 2 of Part 4, a competent authority 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 Articles 4 and 6 to 13 of the Directive, but this is subject to paragraph (2).

(2) A third-country auditor shall not be approved under paragraph (1) unless reciprocal arrangements with the third country in question 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

113. (1) Subject to paragraphs (5) and (6) and Regulation 119, the competent authority with supervisory and other functions shall, in accordance with the relevant provisions of Part 6 and Schedule 1, cause to be registered in the public register (within the meaning of that Part) every third-country auditor and audit entity that indicates, in writing, to that competent authority his, her or its intention to provide an audit report concerning the annual or group accounts of a company falling within paragraph (2).

(2) The company referred to in paragraph (1) is one—

- (a) incorporated outside the Community, 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.

(3) There shall accompany the written indication by a third-country auditor or audit entity referred to in paragraph (1) a notification, in such form and manner as that competent authority specifies, of the following information (in relation to the auditor or audit entity) to the competent authority with supervisory and other functions.

(4) That information is the information referred to in paragraph 3 of Schedule 1 but does not include the information referred to in paragraph 1(b) or 2(b) (as applied by that paragraph 3) of that Schedule.

(5) Paragraph (1) does not apply if the company referred to in that paragraph is an issuer exclusively of debt securities admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(b) of Directive 2004/109/EC, the denomination per unit of which is 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.

(6) Paragraph (1) does not apply in respect of an audit report—

- (a) 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; or
- (b) provided by a third-country auditor or audit entity before the date that is 3 months after the date of the making of these Regulations.

(7) Regulation 66 shall apply to third-country auditors and audit entities so registered with the substitution of references to the competent authority with supervisory and other functions for references to the competent authority and any other necessary modifications.

(8) Regulation 67 shall apply, with the necessary modifications, to a notification of information by a third-country auditor or audit entity under—

- (a) paragraph (3) to the competent authority with supervisory and other functions; and
- (b) Regulation 66, as applied by paragraph (7), to that competent authority.

(9) In paragraph (2) “collective investment undertaking” does not include such an undertaking of the closed-ended type.

Application of Part 8 to registered third-country auditors and audit entities

114. (1) Subject to paragraph (2), Part 8 shall apply to a third-country auditor or audit entity registered under Part 6 in pursuance of Regulation 113.

(2) A third-country auditor or audit entity registered under Part 6 in pursuance of Regulation 113 may apply to the competent authority with supervisory and other functions for an exemption from Chapter 2 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.

(3) On the making of that application if—

- (a) the competent authority with supervisory and other functions is satisfied that the quality assurance review referred to in paragraph (2) has been carried out as mentioned in that paragraph; and
- (b) the system of quality assurance referred to in that paragraph has been assessed as equivalent in accordance with Regulation 119,

that competent authority shall grant the exemption and the third-country auditor or audit entity shall be exempted from Chapter 2 of Part 8 accordingly.

Audit by non-registered auditor or audit entity — consequence

115. Without prejudice to Regulation 119 and unless Regulation 113(5) or (6) applies to it, an audit report provided by a third-country auditor or audit entity concerning the annual or group accounts of a company falling within Regulation 113(2) 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

116. The competent authority with supervisory and other functions may cause to be registered a third-country auditor or audit entity pursuant to Regulation 113 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 hereafter in this Regulation 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 hereafter in this Regulation as are applicable to an individual,

namely—

- (i) the potential registrant meets requirements equivalent to those of Articles 4 and 6 to 10 of the Directive;
- (ii) the majority of the members of the administrative or management body of the potential registrant meet requirements equivalent to those of Articles 4 and 6 to 10 of the Directive;
- (iii) the third-country auditor carrying out the audit on behalf of the potential registrant meets requirements equivalent to those of Articles 4 and 6 to 10 of the Directive;
- (iv) the audits of the annual or group accounts referred to in Regulation 113(1) are carried out in accordance with international auditing standards as referred to in Regulation 54, as well as the requirements referred to in Regulation 41, or with equivalent standards and requirements;
- (v) 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 Regulations 59 and 61 in relation to the year concerned or the potential registrant complies with equivalent disclosure requirements.

Competent authority with supervisory and other functions may assess matter of equivalence for purposes of Regulation 116(iv) in certain circumstances

117. For so long as the Commission has not taken, in accordance with the procedure referred to in Article 48(2) of the Directive, the decision under Article 45(6) thereof in relation to the matter of equivalence of standards and requirements mentioned in Regulation 116(iv), the competent authority with supervisory and other functions may, for the purposes of that provision, make an assessment of that equivalence.

Certain fees chargeable by competent authority with supervisory and other functions

118. (1) The competent authority with supervisory and other functions may charge and impose a fee (of an amount specified from time to time by the Minister sufficient to cover the authority's administrative expenses in respect of the following) on a third-country auditor or audit entity referred to in Regulation 113(1) in respect of—

- (a) the registration; and
- (b) the oversight, the 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.

(2) A fee imposed under paragraph (1) 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.

Exemptions in case of equivalence

119. (1) A third-country auditor or audit entity may apply to the competent authority with supervisory and other functions for an exemption from all or any of the provisions of Regulations 113 and 114 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 Part 8.

(2) On the making of that application if—

- (a) the Commission has, in accordance with Article 46(2) of the Directive, assessed the systems referred to in paragraph (1) as meeting requirements equivalent to those in the corresponding provisions of the Directive; and
- (b) the competent authority with supervisory and other functions 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,

that competent authority shall grant an exemption from all or any, as it considers appropriate, of the provisions of Regulations 113 and 114 and the third-country auditor or audit entity shall be exempted accordingly.

(3) The competent authority with supervisory and other functions 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 mentioned in paragraph (2)(b).

PART 12

MISCELLANEOUS

Disclosure of auditors' remuneration, etc. in accounts

120. (1) The Principal Act is further amended by inserting the following section after section 161C (inserted by Regulation 62):

“Disclosure of remuneration for audit, audit-related and non-audit work.

161D. (1) In this section—

‘group auditor’ means the auditor carrying out the audit of group accounts;

‘relevant undertaking’ means—

- (a) a company, or
- (b) an undertaking referred to in Regulation 6 of the 1993 Regulations;

‘remuneration’ includes benefits in kind and payments in cash.

(2) Subject to subsection (5), a relevant undertaking shall disclose in the notes to its annual accounts relating to each financial year the following information:

- (a) the remuneration for all work in each category specified in subsection (3) that was carried out—
 - (i) for the relevant undertaking;
 - (ii) in respect of that financial year,by the auditor of the relevant undertaking;
- (b) the remuneration for all work in each category specified in subsection (3) that was carried out—
 - (i) for the relevant undertaking;
 - (ii) in respect of the preceding financial year,by the auditor of the relevant undertaking;
- (c) where all or part of the remuneration referred to in paragraph (a) or (b) is in the form of a benefit in kind, the nature and estimated monetary value of the benefit.

(3) Remuneration shall be disclosed under subsection (2) for each of the following categories of work:

- (a) the audit of individual accounts;
- (b) other assurance services;
- (c) tax advisory services;
- (d) other non-audit services.

(4) Where the auditor of a relevant undertaking is a statutory audit firm, any work carried out by a partner in the firm or a statutory auditor on its behalf is considered for the purposes of this section to have been carried out by the audit firm.

- (5) A company need not make the disclosure required by subsection (2) where:
- (a) the company is to be treated as a small company in accordance with section 8(1) of the Act of 1986, or
 - (b) the company is to be treated as a medium-sized company in accordance with section 8(1) of the Act of 1986, or
 - (c) the company is a subsidiary undertaking, the parent of which is required to prepare and does prepare group accounts in accordance with any Regulations mentioned in subsection (7), provided that:
 - (i) the subsidiary undertaking is included in the group accounts, and
 - (ii) the information specified in subsection (3) is disclosed in the notes to the group accounts.
- (6) Where a company that is to be treated as a medium-sized company in accordance with section 8(1) of the Act of 1986 does not make the disclosure of information required by subsection (2) it shall provide such information to the Supervisory Authority when requested so to do.
- (7) A parent undertaking preparing group accounts in accordance with:
- (a) the Group Accounts Regulations,
 - (b) the European Communities (Credit Institutions: Accounts) Regulations, 1992 (S.I. No. 294 of 1992), or
 - (c) the European Communities (Insurance Undertakings: Accounts) Regulations 1996 (S.I. No. 23 of 1996),
- shall disclose in the notes to its consolidated accounts relating to each financial year the following information:
- (i) the remuneration for all work in each category specified in subsection (8) that was carried out in respect of that financial year by the group auditor;
 - (ii) the remuneration for all work in each category specified in subsection (8) that was carried out in respect of the preceding financial year by the group auditor;
 - (iii) where all or part of the remuneration referred to in paragraph (a) or (b) is in the form of a benefit in kind, the nature and estimated monetary value of the benefit.
- (8) Remuneration shall be disclosed under subsection (7) for each of the following categories of work:

- (a) the audit of the group accounts;
- (b) other assurance services;
- (c) tax advisory services;
- (d) other non-audit services.

(9) Where more than one auditor (whether a statutory auditor or a statutory audit firm) has been appointed as the auditor of a relevant undertaking in a single financial year, separate disclosure in respect of the remuneration of each of them must be provided in the notes to the company's individual accounts.

(10) Where a relevant undertaking fails to comply with subsection (2), (3) or (9), each company or other entity that forms all or part of that undertaking shall be guilty of an offence.

(11) For the purpose of applying this section to a partnership that is referred to in Regulation 6 of the 1993 Regulations and that is a relevant undertaking, the partnership is to be treated as though it were a company formed and registered under the Companies Acts.”.

(2) The amendment effected by this Regulation applies to accounts (whether individual or consolidated) for financial years ending on or after the date falling 3 months after the date of the making of these Regulations.

Saving for disciplinary proceedings in being

121. (1) None of the provisions of these Regulations (and, in particular, those amending the Act of 1990 or the Act of 2003) affect disciplinary proceedings in being before the commencement of these Regulations by a recognised accountancy body against any of its members and, accordingly, those proceedings may be continued on after that commencement by that body against the member or members concerned.

(2) If, as a result of such proceedings in relation to a foregoing person, the practising certificate (within the meaning of Part X of the Act of 1990) of the person is withdrawn by the body concerned or the person's membership of the body is terminated by it, then any deemed approval of the person as a statutory auditor or audit firm by virtue of Regulation 25(1) or 27(4) ceases to have effect.

(3) Where the result of the proceedings concerned is not either of those mentioned in paragraph (2), the powers of the competent authority with supervisory and other functions under section 24 of the Act of 2003 are available to that authority, and may be exercised by it, in relation to the matters, the subject of those proceedings, and the provisions of that section 24 that shall apply for that purpose are those provisions as they stand amended by these Regulations but subject to paragraph (4).

(4) The provisions of that section 24, the basis of which is that it is the law as it stands after the making of these Regulations that governs the disqualification

of auditors and audit firms from being able to carry out statutory audits, shall be read subject to such modifications so that the provisions operate on the basis of the law with respect to those matters as it stood before that making and in particular that—

- (a) there are no circumstances, under the law as it stands before that making, in which it is mandatory for a recognised accountancy body, by withdrawing a practising certificate (within the meaning of Part X of the Act of 1990) or terminating a person's membership of the body, to disqualify an auditor or audit firm from being able to carry out statutory audits; and
- (b) the standards by reference to which it is determined whether a breach of the kind referred to in subsection (2) of that section 24 has occurred on the part of the auditor or audit firm concerned are those that would have been used for that purpose before that making,

but nothing in this paragraph prejudices the application of the provisions of these Regulations referred to in subsection (11B) of that section 24 in the event that the competent authority with supervisory and other functions withdraws, on foot of its investigation under that section, the approval of the person or firm as a statutory auditor or audit firm.

SCHEDULE 1

INFORMATION REQUIRED, BY PART 6, TO BE SUPPLIED AND ENTERED IN PUBLIC REGISTER

Statutory auditors

1. In relation to a statutory auditor, the register required to be maintained by Regulation 63 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 competent authority responsible for the regulation of the auditor;
- (e) if he or she is so registered with one or more such authorities—
 - (i) particulars of his or her registration—
 - (I) as a statutory auditor, with each competent authority of another Member State 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 competent authority responsible, in relation to him or her, for—
 - (i) approval as referred to in Article 3 of the Directive,
 - (ii) quality assurance as referred to in Article 29 of the Directive,
 - (iii) investigations, discipline and penalties as referred to in Article 30 of the Directive, and

(iv) public oversight as referred to in Article 32 of the Directive.

Statutory audit firms

2. In relation to a statutory audit firm, the register required to be maintained by Regulation 63 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 3;
- (g) the number under which that individual is entered in the register;
- (h) the name and address of the competent authority responsible for the regulation of the audit firm;
- (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 such authorities—

(i) particulars of the firm's registration—

(I) as a statutory audit firm, with each competent authority of another Member State and the name of the authority; and

(II) as an audit firm, with one or more third-country competent authorities and the name or names of it or them;

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 competent authority responsible, in relation to it, for—

(i) approval as referred to in Article 3 of the Directive,

(ii) quality assurance as referred to in Article 29 of the Directive,

(iii) investigations, discipline and penalties as referred to in Article 30 of the Directive, and

(iv) public oversight as referred to in Article 32 of the Directive.

Third-country auditors and audit entities

3. (1) In relation to the case provided by Regulation 113 of the registration of a third-country auditor or audit entity, the register required to be maintained by Regulation 63 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.

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 register required to be maintained by Regulation 63, being—

(a) in a case where the information entered in respect of the individual or firm is that provided under Regulation 64, the number notified under paragraph (2)(b)(i) of that Regulation to the competent authority with registration functions;

- (b) in any other case, such individual identification number as, subject to subparagraph (2), is determined and allocated by the competent authority with registration functions,

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 competent authority with registration functions 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 doesn't itself provide for the notification of such a number), include in that specification a requirement that the form, as completed, include 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 or the firm's or entity's usual business address.

SCHEDULE 2

STANDARDS RELATING TO TRAINING AND QUALIFICATIONS FOR APPROVAL OF
NATURAL PERSON AS STATUTORY AUDITOR

1. A natural person 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 of university final or equivalent examination level in the State.

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 written.

(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;
- (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.

3. (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 accounts, consolidated accounts or similar financial statements. At least two thirds of such practical training shall be completed with a statutory auditor or audit firm approved in any Member State.

(2) All such training shall be carried out with persons who the competent authority is satisfied possess, to an adequate standard, the ability to provide practical training.



GIVEN under my Official Seal,
20 May 2010.

BATT O'KEEFFE,
Minister for Enterprise, Trade 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 Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC on the annual accounts of certain types of companies and 83/349/EEC on consolidated accounts and repealing Council Directive 84/253/EEC on the approval of persons responsible for carrying out the statutory audits of accounting documents.

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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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