

Authority recommends that entitlement to use of the description ‘*accountant*’ be restricted to certain persons

Monday, 2nd April, 2007: The Irish Auditing & Accounting Supervisory Authority has recommended to the Minister for Trade & Commerce that use of the description ‘*accountant*’ should be restricted to certain persons. The Authority’s recommendation is based on, *inter alia*, the following considerations:

- Members of the [prescribed accountancy bodies](#) are subject to a range of significant regulatory and monitoring measures, including:
 - the requirement to successfully complete professional examinations and obtain minimum experience requirements prior to being admitted to membership;
 - the requirement to obtain minimum post admittance experience (and in some cases, successfully complete a further interview/examination) prior to being authorised to offer services to the public;
 - the requirement for members engaging in public practice to have in place minimum levels of professional indemnity insurance and practice continuity arrangements;
 - the requirement that all members adhere to the prescribed accountancy bodies’ respective codes of conduct and standards, including those relating to professional ethics (which require to be approved by the Authority, as do amendments thereto);
 - the requirement for members to continually maintain their competencies by undergoing continuous professional development (CPD) on an annual/cyclical basis;
 - being subject to the prescribed accountancy bodies’ complaints, investigations and disciplinary processes and, by virtue of membership, affording aggrieved parties the right to seek recourse to those processes and procedures;
- Members of the public reasonably assume that any person describing themselves as an ‘*accountant*’:
 - has completed the requisite examinations;

- has satisfied the necessary experience requirements; and
 - is subject to the foregoing regulatory and monitoring measures;
- Persons currently holding themselves out as accountants, but who are not members of the prescribed accountancy bodies (or certain other professional bodies), are not, however, subject to the aforementioned requirements;
- By virtue of not being members of the prescribed accountancy bodies, such persons are not subject to oversight by the Authority, a situation that might reasonably be expected to be difficult for members of the public to understand in circumstances where the legislature has established a statutory body to supervise the accountancy profession;
- The Authority acknowledges that members of the public are entitled, should they so choose, to engage the services of unqualified persons. However, the current entitlement of such persons to hold themselves out as '*accountants*' gives rise to consequential risks that members of the public may inadvertently engage such persons on the understanding that they have in fact satisfied the foregoing requirements and are subject to the aforementioned regulatory, monitoring and oversight arrangements, thereby unknowingly exposing themselves to:
 - the risk of financial or other loss occasioned by acting on advice received from an unqualified person; and
 - a lesser degree of recourse in the context of making a complaint than would have been available had the person engaged been a member of a prescribed accountancy body;
- In the Authority's assessment, the existence of such risks runs counter to, and militates against, the public policy principles underpinning the enactment of the Companies (Auditing and Accounting) Act, 2003 and the Authority's core object of enhancing public confidence in the accountancy profession and its outputs;
- The Authority has to date received a number of complaints from members of the public regarding persons who, while complainants believed them to be members of the prescribed accountancy bodies, have transpired not to be such, thereby resulting in a situation whereby such persons are neither subject to a prescribed accountancy body's investigation and disciplinary process nor to the Authority's oversight, a situation that, in the Authority's assessment, unnecessarily serves to diminish public confidence in the regulatory and oversight system; and

- By virtue of not being subject to any form of regulation and, as a consequence, the costs associated with regulation, unqualified persons can operate at a cost advantage to those who are subject to regulation and oversight, a concept that is considered to be counter-intuitive.

Having consulted with interested parties on two occasions and having conducted a detailed examination of the issue and related issues, the Authority has tabled the following recommendations to the Minister:

1. That a legal restriction on the use of the term '*accountant*' be introduced.
2. That the foregoing restriction should not be accompanied by the introduction of a restriction on the provision of accountancy services.
3. That the aforementioned restriction should apply to persons providing services to members of the public only i.e. should not extend to persons in employment.
4. That the introduction of a restriction on the use of the term be accompanied by a further provision to the effect that only firms controlled by persons entitled to described themselves as '*accountants*' should be entitled to describe themselves as firms of accountants.
5. That members of the nine prescribed accountancy bodies should automatically be entitled to use the description by virtue of their membership of those bodies.
6. That persons, other than members of the prescribed accountancy bodies, currently eligible to act as auditors under the Companies Acts should automatically be entitled to use the description by virtue of their eligibility.
7. That any enabling legislation should further make provision whereby persons other than the foregoing categories of person would have a right to apply to a (to be determined) competent authority for the entitlement to use the description and that their eligibility to do so be based on predetermined considerations including, *inter alia*, their qualifications, experience and the provisions of EU Directives on mutual recognition of qualifications.
8. That all persons entitled to use the description under the preceding recommendations should be subject to a similar level of regulation and oversight, irrespective of whether they are members of a prescribed accountancy body or not.

9. That, with a view to giving effect to the preceding recommendation, consideration should be given to requiring all such persons entitled to use the term - who are not members of the prescribed accountancy bodies – to submit themselves to regulation by a prescribed accountancy body, thereby also subjecting themselves to oversight by the Authority, subject to the provision of appropriate safeguards to ensure that persons deemed eligible by the (to be determined) competent authority to use the description cannot be unfairly or unreasonably denied regulation by those bodies. In the Authority's assessment, the foregoing approach would have the following benefits/advantages:

- the necessity for the Authority to regulate such persons directly – which would be both costly and disproportionately labour intensive – would be avoided;
- regulated persons would, by paying registration fees to the prescribed accountancy bodies (who in turn provide 60% of the Authority's funding), fund their own regulation as well as contributing to the oversight costs associated with their entitlement to use the description;
- such an approach would mirror the approach taken by section 35(c) of the Companies (Auditing and Accounting) Act, 2003 whereby individually authorised auditors must submit themselves to regulation by the recognised accountancy bodies within 3 years of the commencement of the subsection or, failing to do so, their audit authorisations will be rendered void.

10. That, in light of its recent completion of a review of Companies Acts' civil and criminal offence provisions in the context of the forthcoming Companies (Consolidation) Bill, the Company Law Review Group be charged with determining whether breaches of the aforementioned restriction should constitute civil, criminal (or both) offences under the Companies Acts.

11. That consideration should be given to the provision of transitional provisions in the event of legislation being enacted to give effect to the foregoing recommendations.