

2019

Consultation Paper

Proposal to issue

**Companies Act 2014 (Procedures
Governing the Conduct of Section
933 Enquiries) Regulations**

August 2019

MISSION

To contribute to Ireland having a strong regulatory environment in which to do business by supervising and promoting high quality financial reporting, auditing and effective regulation of the accounting profession in the public interest

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1. Summary

The purpose of this consultation paper is to obtain the views of stakeholders with regard to IAASA's proposal to issue Companies Act 2014 (Procedures Governing the Conduct of Section 933 Enquiries) Regulations 2019 ('S933 Regulations').

2. Background

IAASA was established by the Companies (Auditing and Accounting) Act 2003 ('the 2003 Act'). Section 23 of that Act provided that IAASA had the power to carry out enquiries for the purpose of determining whether a prescribed accountancy body ('PAB') had complied with its approved investigation and disciplinary procedures. The 2003 Act also required IAASA to issue Regulations setting out the procedures to be followed in conducting enquiries under section 23, the most recent version of which are the Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 23 Enquiries) Regulations 2012 ('SI 96 of 2012').

The Companies Act 2014 consolidated Irish company legislation in a single Act. IAASA's powers of enquiry under section 23 of the 2003 Act were continued by section 933 ('S933') of the new Act. The Companies Act 2014 further provides that the current Regulations shall continue in effect until they are revoked or amended. In this context, at present any new S933 Enquiries initiated by IAASA would be carried out in accordance with the provisions of SI 96 of 2012.

In 2018, the Companies Act 2014 was amended by the Companies (Statutory Audits) Act 2018. The amendments included a number of substantive changes to the provisions relating to the conduct of enquiries by IAASA under Section 933:

- (a) Subject matter – as well as enquiries regarding a PAB's disciplinary process, IAASA's powers of enquiry under Section 933 were expanded to include enquiries relating to a recognised accountancy body's ('RAB') performance of its regulatory functions in relation to statutory auditors, i.e. licensing, quality assurance, continuing professional development and discipline ('Part 27 functions');
- (b) Delegation – IAASA may now delegate any of its functions under a S933 enquiry to its officers or employees or any other person duly authorised by it. Previously, IAASA could only delegate these functions to a committee;
- (c) Settlement – while IAASA previously had the power to settle under secondary legislation, section 933A of the Companies Act 2014 now provides that IAASA may enter into a settlement agreement with the subject of a S933 Enquiry to resolve the matter at any stage of a S933 Enquiry; and
- (d) S933 Regulations – Previously, IAASA was obliged to make S933 Regulations. It now has discretion to decide whether to make regulations in respect of the procedures to be followed when conducting S933 enquiries.

3. Main areas of change in draft Regulations

Given the significant changes to IAASA's statutory enquiry functions since 2012, as detailed in Section 2 above, it is now proposed to replace SI 96 of 2012 with revised Regulations. As well as changes to reflect the provisions of the Companies Act 2014, as amended, it is also proposed to amend the operation of the S933 enquiry process to improve its effectiveness and to enable enquiries to be conducted and concluded in a more efficient manner.

In this context, the principle proposed differences from SI 96 of 2012 are set out below.

3.1. Role of the executive

To ensure that the S933 process operates in an efficient manner, while providing for flexibility where appropriate, the draft Regulations propose that a number of tasks within the process shall be performed by IAASA. While the delegation of these tasks to specific

individuals will be dealt with through internal IAASA policies, job titles have been used in the bullet points below to assist users' understanding of how the revised S933 process is likely to operate in practice.

- Decision to launch a S933 enquiry - at present, the decision to launch a S933 enquiry is reserved to the Board of IAASA. It is proposed that, under the revised Regulations, the Head of Conduct will decide whether to initiate a S933 enquiry.
- Preliminary enquiry - if a decision is taken to initiate a S933 enquiry, the Head of Conduct will carry out a preliminary enquiry, which will replace the existing preliminary enquiry committee stage.
- Referral to full enquiry - if one or more potential breaches are identified, and if no S933A settlement agreement has been reached prior to the conclusion of the preliminary enquiry, the Head of Conduct will prepare a recommendation for the Chief Executive for decision. Following consideration of the Head of Conduct's recommendation, the Chief Executive will either refer the matter to an Enquiry Committee ('EC') for full enquiry or close the matter with no further action.
- Notifications – it is proposed in the draft Regulations that notifications relating to the launch of a full enquiry shall be sent by IAASA rather than the Enquiry Committee.

3.2. Settlement

A S933A agreement may be entered into at any stage during the S933 process. SI 96 of 2012 provides that any settlement must be approved by the Board of IAASA. It is proposed that the approval of settlement terms will be delegated to the Chief Executive at preliminary enquiry stage, while the draft Regulations provide that the Enquiry Committee will be required to approve the terms of any S933A settlement agreement reached if a full enquiry has been launched.

3.3. Updates to reflect amendments to legislation

The principal changes proposed to the draft Regulations from SI 96 of 2012 in order to give effect to the current S933 provisions are:

- The updating of legislative references to refer to the relevant provisions of the Companies Act 2014;
- Expansion of the scope of S933 enquiries to include the RABs' compliance with relevant provisions in performing a Part 27 function; and
- The removal of Regulations that repeat the provisions of the Companies Act 2014. This is in the context that the Regulations should be read in conjunction with that Act and are intended to set out how the S933 process shall operate in practice.

4. Matters on which IAASA is consulting

IAASA welcomes comments on all aspects of the draft Regulations. However, a number of matters are set out below on which IAASA is specifically seeking views from stakeholders and interested parties by 5pm on **27th September 2019**.

No.	Matter on which views are sought
1.	Do you agree that SI 96 of 2012 should be replaced with a new statutory instrument setting out IAASA's S933 enquiry procedures? If not, please give your reasons and explain what action(s), if any, you believe should be taken to update the S933 enquiry process.

2.	<p>Do you consider that the Regulations as drafted achieve an appropriate balance between (i) protecting and promoting the public interest; (ii) ensuring that affected parties are fully afforded their rights as regards procedural fairness; and (iii) sanctioning non-compliance by the PABs and RABs?</p> <p>If not please identify which aspect(s) of the draft Regulations you consider to be inconsistent with these objectives. Please provide the reason(s) for your opinion and state how you propose that the issue(s) identified could be addressed.</p>
3.	<p>Do you believe that the proposed changes as outlined in section 3 above will lead to a more efficient and robust S933 enquiry process? If not, please give your reasons and explain what changes, if any, you believe should be made to the draft Regulations, including your rationale for those changes.</p>
4.	<p>Do you consider that the draft Regulations set out and facilitate the implementation of a fair and robust enforcement procedure? If not, please give your reasons and explain what changes, if any, you believe should be made to the draft Regulations, including your rationale for those changes.</p>

5. Making your submission

IAASA invites comments on all aspects of the draft Regulations and, in particular, on the specific matters set out in section 4 above.

Stakeholders and interested parties are invited to provide responses to the above questions by e-mail only to **submissions@iaasa.ie** no later than **5pm on 27th September 2019**.

Any anonymous submissions will not be considered.

Comments are most helpful if they:

- (a) respond directly to the specific question posed;
- (b) provide a clear rationale for the position adopted by the respondent;
- (c) provide supporting evidence underpinning the views expressed/rationale proposed; and
- (d) describe in detail any alternative option(s) you wish IAASA to consider.

All responses from identifiable individuals and organisations received by the deadline will be considered by IAASA. Depending on the nature and scale of responses, IAASA may publish a feedback statement summarising the content of the responses. Respondents should note that, in the interest of transparency, their responses may be published in full or in part (and may be attributed to the respondent) by IAASA in that feedback statement.



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