



## **Consultation Paper CP 1/06**

# **Invitation to Comment on the Matter of Legal Protection of the Term 'Accountant'**

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## 1. Background & Context

During the passage of the Companies (Auditing and Accounting) Act, 2003 ('the Act') through the Oireachtas<sup>1</sup>, a number of parties made representations to the effect that the term '*accountant*' should be afforded legal protection under the Companies Acts, thereby preventing the term from being used by persons not possessing specified accountancy qualifications.

Furthermore, at that time, and subsequently, a number of accountancy bodies called for an end to the situation whereby persons calling themselves accountants, but who do not belong to a professional accountancy body, can provide services to the public without being subject to any form of regulation or supervision (by either a professional body or by the State).

Given the potential complexities surrounding the issue, and the fact that any such protection would require the enactment of primary legislation, the view was taken at that time that the potential merits and demerits of such a proposal would require careful and detailed consideration before any determination could be arrived at. In that context, the Minister for Trade & Commerce, Mr. Michael Ahern, T.D. ('the Minister'), gave an undertaking that he would refer the matter to the Irish Auditing & Accounting Supervisory Authority ('the Authority') for its consideration once the Authority had been established on a statutory basis<sup>2</sup>.

Subsequent to the recent establishment of the Authority on a statutory basis, the Minister has now formally requested the Authority to:

- consider the question of whether the term '*accountant*' should be afforded legal protection under the Companies Acts; and
- having concluded its deliberations on the matter, to report its views to the Minister.

## 2. Current Position

### 2.1 Use of the Term '*Accountant*'

As the law currently stands, there are no legal provisions under the Companies Acts preventing the use of the term '*accountant*' by persons who are not members of an accountancy body.

### 2.2 Regulation of Accountants

The manner in which the accountancy profession is regulated in Ireland is governed by detailed legislative provisions. The following is, therefore, only a brief summary of the extant Irish regulatory and supervisory regime applicable to the accountancy profession:

- the Prescribed Accountancy Bodies, of which there are nine<sup>3</sup>, are responsible for regulating their members (including handling complaints relating to members, conducting

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<sup>1</sup> Irish Parliament

<sup>2</sup> Pursuant to section 8(1)(d) of the Companies (Auditing and Accounting) Act, 2003, the Authority has a statutory remit '*to act as a specialist source of advice to the Minister on auditing and accounting matters*'.

<sup>3</sup> The nine Prescribed Accountancy Bodies are:

1. Association of Chartered Certified Accountants (ACCA)
2. Association of International Accountants (AIA)
3. Chartered Institute of Management Accountants (CIMA)
4. Chartered Institute of Public Finance & Accountancy (CIPFA)
5. Institute of Chartered Accountants in England & Wales (ICAEW)
6. Institute of Chartered Accountants in Ireland (ICAI)
7. Institute of Chartered Accountants of Scotland (ICAS)
8. Institute of Certified Public Accountants in Ireland (ICPAI)
9. Institute of Incorporated Public Accountants (IIPA)

- investigations into alleged malpractice on the part of members/member firms and imposing disciplinary sanctions in instances where malpractice has been proven);
- the Recognised Accountancy Bodies, of which there are six<sup>4</sup>, are responsible for monitoring those of their members/member firms authorised to perform audit work under the Irish Companies Acts;
  - the Authority has responsibility for supervising all prescribed accountancy bodies (including the six recognised bodies) and for satisfying itself on an ongoing basis that they are discharging their regulatory and associated obligations to the standard required by the Authority. Where this is found by the Authority not to be the case, the Authority has the power to impose sanctions on the relevant prescribed accountancy body. The Authority is also empowered, should it deem it appropriate to do so, to conduct investigations into possible breaches of standards by members/member firms of prescribed accountancy bodies and, in circumstances where breaches are found to have occurred, to impose disciplinary sanctions on the relevant members/member firms;
  - persons providing accountancy services in the State who are members of accountancy bodies other than the prescribed accountancy bodies (e.g. bodies based outside Ireland and/or the UK) are subject – to varying degrees – to regulation by the accountancy bodies of which they are members. However, those accountancy bodies are not currently subject to supervision by the Authority (as they are not prescribed bodies under the Irish Companies Acts).
  - persons providing accountancy services in the State who are not members of any accountancy body are not currently subject to any form of regulation or supervision.

### 3. Invitation to Comment

The Board of the Authority considered the Minister's request at its meeting of 28 February and resolved at that meeting to initiate a review as to whether the term '*accountant*' should be afforded legal protection under the Companies Acts. While a separate issue, given that it is closely related to the legal protection issue, the Authority also proposes to consider whether it is desirable/appropriate that persons providing accountancy services to the public, other than those who are members of prescribed accountancy bodies, should be subject to regulation and/or supervision and, if so, to what extent and how such regulation/supervision might be facilitated.

As part of its review, the Authority wishes to obtain the views of parties having a particular interest in these matters. Accordingly, the Authority now invites interested parties to make their views known in order that such views might, to the extent deemed appropriate and practicable, be factored into the Authority's overall deliberative process.

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<sup>4</sup> Of the nine Prescribed Accountancy Bodies, six are also 'Recognised Accountancy Bodies'. A Recognised Body is an accountancy body that is permitted to authorise its members/member firms to perform statutory audit work, provided that certain requirements are met by those members/member firms. The six Recognised Bodies are:

1. Association of Chartered Certified Accountants (ACCA)
2. Institute of Chartered Accountants in England & Wales (ICAEW)
3. Institute of Chartered Accountants in Ireland (ICAI)
4. Institute of Chartered Accountants of Scotland (ICAS)
5. Institute of Certified Public Accountants in Ireland (ICPAI)
6. Institute of Incorporated Public Accountants (IIPA)

#### 4. Format of Submissions

Contributors are welcome to address any matters they deem to be of relevance to the issues under consideration in their submissions. However, in the interests of facilitating an expeditious review of same, the Authority would ideally like to see a significant degree of consistency in the format of contributors' comments. To that end, contributors are requested, *inter alia*, to have regard to the specific considerations set out hereunder in framing their submissions.

##### 4.1 Contributors Supportive of the Introduction of Legal Protection of the Term 'Accountant'

As referred to earlier in this document, the introduction of legal protection of the term 'accountant' would require the enactment of primary legislation by the Oireachtas, and a clear definition therein of precisely what the term 'accountant' would, and would not, encompass. Contributors supportive of the introduction of legal protection are therefore requested, to the extent practicable, to address the following issues in their submissions:

- I. Their reasons for supporting the introduction of legal protection together with their reasons for holding the view that such protection is required/desirable at this time;
- II. Their proposals as to how the term 'accountant' might be defined in statute in the event that the Minister and Government were to decide that such a course of action is appropriate. In this context, the Authority would, in particular, welcome contributors' views as to how, under such circumstances, they would envisage legal protection for the term 'accountant' affecting/interacting with:
  - o persons who are members of accountancy bodies other than the nine prescribed accountancy bodies;
  - o persons currently individually authorised to act as auditors who are not members of a prescribed accountancy body<sup>5</sup>; and
  - o persons currently describing themselves in terms similar to 'accountant' e.g. turf accountants and legal cost accountants.
- III. Whether they would advocate, in the event of legal protection being introduced, that protection of the term 'accountant' should apply only to persons providing services to the public or whether any prohibition on the use of the term should be wider in scope;
- IV. In the event of a decision being taken to introduce legal protection, whether, and if so what, transitional provisions might apply to persons currently not precluded from describing themselves as accountants who would, in the event of protecting legislation being enacted, no longer be entitled to use the term;
- V. Whether contributors would advocate that, in the event of legal protection being introduced, use of the term 'accountant' in contravention of any such provisions would give rise to a civil breach of company law or whether it would constitute a criminal offence, together with details of the rationale underpinning the views expressed. Contributors are further asked to indicate their views as to what, in their estimation, would constitute appropriate remedies and/or sanctions in such circumstances;
- VI. Contributors are also asked to indicate whether they advocate that all persons who would be entitled to use the term 'accountant' under their proposals to introduce legal protection – but who are not members of a prescribed accountancy body - should be subject to some

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<sup>5</sup> Certain persons who were authorised by the Minister prior to February, 1983 are qualified for appointment as auditors.

form of regulation/supervision and, if so, how they would envisage that such regulation and/or supervision might be facilitated. Mechanisms for facilitating regulation/supervision of such persons might, for example, include:

- requiring those persons entitled to use the term but who are not members of a prescribed accountancy body to submit to regulation by a prescribed body; or
- by the creation of a register of such persons, with registrants who are not members of a prescribed body being subject to direct supervision by the Authority, etc.

In addition to the foregoing, as any proposal for new legislation would require to be subjected to a Regulatory Impact Assessment in advance of being considered for enactment, contributors are also requested to:

- identify the benefits (economic or otherwise) that they believe would derive from their proposals to introduce legal protection and, if they are proposing same, from the introduction of a regulatory regime for persons entitled to use the term ‘*accountant*’ who are not members of a prescribed accountancy body; and
- identify any costs and/or other adverse economic (or other) consequences that could, or would, arise from giving effect to their proposals.

#### *4.2 Contributors Opposed to the Introduction of Legal Protection of the Term ‘Accountant’*

Contributors opposed to the introduction of legal protection are requested, to the extent practicable, to address the following issues in their submissions:

- I. The reasoning underpinning their opposition to the introduction of legal protection, together with the basis for their views that legal protection is not required/desirable at this time;
- II. Where applicable, the adverse, injurious and/or prejudicial consequences that they believe might/would arise from the introduction of such a legislative provision;
- III. Notwithstanding their opposition to the introduction of legal protection of the term ‘*accountant*’, whether, in their view, it is desirable that persons providing accounting and/or similar services to members of the public, but who are not members of a prescribed accountancy body, should be subject to some form of regulation/supervision, together with the basis for their views on this issue and, if applicable, how they would envisage that such regulation/supervision might be facilitated. As alluded to in the preceding section, the mechanisms for facilitating regulation/supervision of such persons might, for example, include:
  - requiring such persons to submit to regulation by a prescribed body; or
  - by the creation of a register of such persons, with registrants being subject to direct supervision by the Authority, etc.
- IV. Any other considerations deemed relevant to the Authority’s deliberations.

In addition to the foregoing, as any proposal for new legislation would require to be subjected to a Regulatory Impact Assessment in advance of being considered for enactment, contributors opposed to the introduction of legislative protection are also requested to:

- identify the benefits (economic or otherwise) that they believe would derive from their proposals to maintain the *status quo* of:
  - no legal protection of the term ‘*accountant*’; and/or
  - no regulation/supervision of persons providing accountancy services to the public who are not members of a prescribed accountancy body; and
- identify any costs and/or other adverse economic (or other) consequences that could, or would, arise from their proposals to maintain the *status quo*.

## **5. Additional Considerations of Relevance to Contributors in Favour of Legislative Change - Comparable Statutory Provisions and Relevant EU Legislation**

### *5.1 Comparable Statutory Provisions*

Where practicable, contributors in favour of legislative change are requested to support their specific proposals by citing similar relevant legislative provisions applying in other jurisdictions and/or similar relevant legislative provisions conferring statutory protection on other professions under Irish law.

### *5.2 Relevant EU Legislation*

By virtue of Ireland’s membership of the European Union (‘EU’), matters such as that dealt with in this Consultation Paper cannot be considered in isolation. Rather, regard must also be had to relevant EU legislative developments. In that context, EU Directive 2005/36/EU (‘the Directive’)<sup>6</sup> establishes rules according to which a Member State (of the EU), which makes access to, or pursuit of, a ‘*Regulated Profession*’<sup>7</sup> in its territory contingent upon possession of specific professional qualifications, shall recognise professional qualifications obtained in one or more other Member States and which allow the holder of those qualifications to pursue the same profession there, for access to, and pursuit of, that profession. As a consequence of the foregoing, contributors advocating the enactment of protective legislative provisions should also, to the extent practicable, have regard to the provisions of the Directive in framing their proposals.

## **6. Deadline for Comments**

Submissions, which should be marked ‘**CP 1/06**’, should be sent to the Authority at the address set out below or emailed to [info@iaasa.ie](mailto:info@iaasa.ie). The closing date for submissions is **28 April, 2006**. All responses will be considered to be on the public record unless confidentiality is specifically requested.

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<sup>6</sup> The text of the Directive can be accessed at the EU Commission’s website - address: <http://register.consilium.eu.int/pdf/en/05/st03/st03627.en05.pdf>

<sup>7</sup> The Directive defines a ‘*Regulated Profession*’ as ‘*A professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit.*’

Further copies of this document can be obtained from the Authority at the address set out hereunder or, alternatively, can be downloaded from the Authority's website at [www.iaasa.ie](http://www.iaasa.ie)

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**2 March, 2006**