

**Irish Auditing and Accounting Supervisory Authority
Companies (Auditing and Accounting) Act, 2003 ('the Act')
Statutory Investigations pursuant to Section 24**

1. Introduction to IAASA

The Irish Auditing & Accounting Supervisory Authority ('IAASA') is a statutory body responsible for supervising the Prescribed Accountancy Bodies' ('PABs') regulation and monitoring of their members and member firms. IAASA was established in 2006 in accordance with the provisions of the *Companies (Auditing and Accounting) Act, 2003* ('the 2003 Act').

Nine PABs come with IAASA's supervisory remit, i.e. the:

- Association of Chartered Certified Accountants (ACCA);
- Association of International Accountants (AIA);
- Chartered Institute of Management Accountants (CIMA);
- Chartered Institute of Public Finance & Accountancy (CIPFA);
- Institute of Certified Public Accountants in Ireland (ICPAI);
- Institute of Chartered Accountants in England & Wales (ICAEW);
- Institute of Chartered Accountants in Ireland (ICAI);
- Institute of Chartered Accountants of Scotland (ICAS); and
- Institute of Incorporated Public Accountants (IIPA).

2. Overview of Section 24 investigations

Section 24 of the Act provides that if, in IAASA's opinion, it is appropriate or in the public interest to undertake an investigation into a possible breach of a PAB's standards by a member, the Authority may undertake such an investigation, either following a complaint, or on its own initiative.

[Statutory Instrument 97 of 2012: Companies \(Auditing and Accounting\) Act, 2003 \(Procedures Governing the Conduct of Section 24 Investigations\) Regulations, 2012](#) (*the Regulations*) was published in March 2012. The Regulations are based on the premise that the exercise of investigative and enforcement powers must be performed in a manner that accords with applicable principles of procedural fairness, natural and constitutional justice, the requirements of administrative law and applicable human rights legislation.

To that end, the Regulations provide that, once initiated, Investigations under Section 24 are split into two discrete phases. The first phase is conducted by a Preliminary Investigation Committee, and where applicable, the second phase is conducted by an Investigation Committee. The Regulations further provide that such Committees (known generically as Section 24 Committees) shall have among their membership either directors of IAASA, external appointees, or a combination of both. Moreover, no person may serve on both the Preliminary Investigation Committee and Investigation Committee in relation to the same matter.

The Regulations further provide that members of the PABs may not constitute a majority of any Section 24 Committee.

3. Key features of the Section 24 process

Set out below are some of the key features of the Section 24 process.

Preliminary Investigation Committees

The purpose of a Preliminary Investigation Committee is to determine whether the Authority should initiate a full investigation under Section 24. Under the Regulations, a full investigation will be initiated where:

(i) a Preliminary Investigation Committee determines that there is a *prima facie* case that a member has breached a PAB's standards; **and**

(ii) in its opinion, it is appropriate or in the public interest that there should be a full investigation by the Authority into such possible breach.

Alternatively, where the Preliminary Investigation Committee forms the view that a matter before it ought to be referred to a PAB or another supervisory body for investigation, it will refer the matter to that PAB or other supervisory body. However, the Authority shall subsequently be entitled to refer the same matter once again to the Preliminary Investigation Committee for its consideration

Where the Preliminary Investigation Committee forms the view that the matter before it is better dealt with by way of the exercise by the Authority of any of its other powers, or by way of recommendations and observations by the Authority, rather than through the initiation of a full investigation, it will report its view and the facts and circumstances of the matter to IAASA. . The Authority may, if it considers it appropriate to do so, IAASA may direct that the Preliminary Investigation Committee report such facts and circumstances to the Chief Executive and the Head of Regulatory and Monitoring Supervision of the Authority.

The Preliminary Investigation Committee reaches its determination on the basis of written material alone. In conducting its preliminary investigation, the Preliminary Investigation Committee may require any relevant person to do one or more of the following:

- (a) provide to the Preliminary Investigation Committee all books or documents relating to the preliminary investigation that are in the relevant person's possession or control; and
- (b) give the Preliminary Investigation Committee any other assistance in connection with the investigation that the relevant person is reasonably able to give.

Investigation Committees

The second phase of a section 24 investigation (i.e. that element conducted by an Investigation Committee) only becomes relevant in circumstances where a Preliminary Investigation Committee determines that there is a *prima facie* case that a member has breached a PAB's standards **and** in its opinion, it is appropriate or in the public interest that there should be a full investigation into such possible breach.

The role of an Investigation Committee is to conduct a full investigation into whether a PAB member has breached a PAB's standards and, in the event that this is found to be the case, to determine what sanctions, if any, should be imposed on the member concerned.

In conducting its investigation, an Investigation Committee may, among other things, require any relevant person to:

- produce all books or documents relating to the investigation that are in the relevant person's possession or control;
- attend before the Investigation Committee;
- give the Investigation Committee any other assistance in connection with the investigation that the relevant person is reasonably able to give; and
- conduct oral hearings.

The Investigation Committee is further entitled to:

- examine on oath, either by word of mouth or on written interrogatories, a relevant person;
- administer oaths for the purposes of the examination; and

- record in writing, the answers of a person so examined and require that person to sign them.

In arriving at a determination, the standard of proof on which an Investigation Committee shall make its findings is on the balance of probabilities.

The Regulations provide that, having completed its investigation, an Investigation Committee shall, in respect of each alleged breach of a standard of a PAB, make a finding as to whether the allegation has been proved or that the allegation is not proved.

Sanctions

Where an allegation is determined to have been proved, the Regulations provide that the Investigation Committee will make a decision as to which, if any, sanctions shall apply and the amount, if any, that the member is liable to pay to IAASA towards its costs in investigating and determining the case. The Investigation Committee may impose on the member any sanction to which the member is liable under the approved constitution and bye-laws of the PAB (including a monetary sanction). The Investigation Committee may not impose a sanction on a member unless the relevant PAB could, if finding the member guilty of the breach in question, have imposed that sanction upon him.

The Regulations further provide that, in determining the level of sanctions that should apply, an Investigation Committee will have regard to all of the circumstances of the matter, which may include, among other things, the following factors:

- whether the failure to comply with the standard(s) was deliberate, dishonest, reckless or negligent;
- the duration/frequency of the breach of standard; and
- the gravity and nature of the breach of standard.

Appeal

A member may appeal a decision of the Investigation Committee to the High Court within three months after the member has been notified by the Authority of the Investigation Committee's decision.

Further information regarding IAASA and its activities can be accessed at www.iaasa.ie