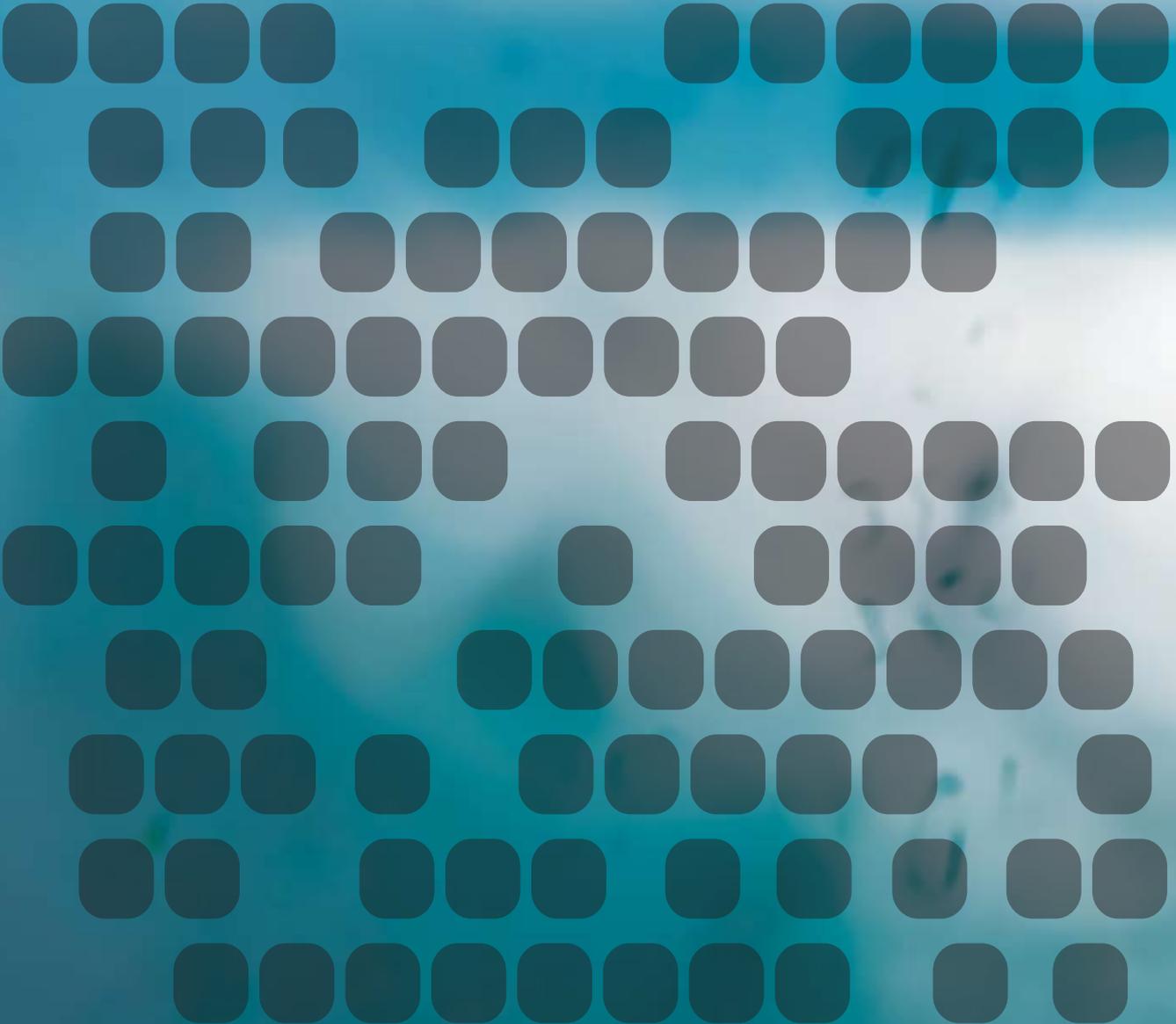


A GUIDE TO THE FINANCIAL REPORTING REQUIREMENTS

of the EU Transparency Directive and to IAASA's role under the Directive



MISSION

**TO SUPPORT AND ENHANCE PUBLIC
CONFIDENCE IN THE ACCOUNTANCY
PROFESSION AND IN FINANCIAL
REPORTING THROUGH THE EXERCISE OF
EFFECTIVE, INDEPENDENT OVERSIGHT
AND THE PROMOTION OF ADHERENCE
TO HIGH STANDARDS**

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DISCLAIMER

This Guide does not constitute legal advice or a legal interpretation of the Transparency Directive or of any aspects of the legislation implementing the Directive in Ireland. It is primarily concerned with the financial reporting requirements of the Directive as transposed into Irish law and the Irish Auditing & Accounting Supervisory Authority's role under it. Therefore, this Guide does not detail all the requirements of the Directive as transposed into Irish law, and is not intended as a substitute for a detailed review of the Directive and its related requirements, including those relating to periodic financial reporting. Where users of this Guide are uncertain regarding the effect of any legal provision, consideration should be given to obtaining independent legal advice.

While every effort has been made to ensure the accuracy of the information contained in this Guide, the Irish Auditing & Accounting Supervisory Authority accepts no responsibility or liability howsoever arising from any errors, inaccuracies or omissions occurring.

The Irish Auditing & Accounting Supervisory Authority reserves the right to take action, which may or may not be in accordance with the provisions of this Guide.

PURPOSE OF THIS GUIDE

The purpose of this Guide, which is divided into two Parts, is to:

Part I: Financial Reporting Requirements

- provide a brief overview of the Transparency Directive and the context for its enactment by the EU;
- provide a summary of the means by which the Directive has been implemented in Irish law;
- set out the scope of the Directive, as transposed into Irish law (i.e. the categories of issuers coming within scope) and, in particular, to identify those classes of issuers for whom Ireland is the 'home Member State';
- provide information regarding the various periodic financial reporting requirements of the Directive, as transposed into Irish law;
- detail the exemptions from the Directive's periodic financial reporting requirements, as transposed into Irish law;
- set out when issuers' various periodic financial reporting obligations take effect under the Directive, as transposed into Irish law;

Part II: The Irish Auditing & Accounting Supervisory Authority's Role

- set the context for the Irish Auditing & Accounting Supervisory Authority's (IAASA) involvement with the Directive and provide information regarding IAASA's functions and powers under the Directive, as transposed into Irish law; and
- provide an overview of the administrative sanctions process applying to contraventions of the Directive's requirements, as transposed into Irish law.

In addition, Appendix 1 provides information of a general nature regarding the considerations that IAASA is likely to have regard to in assessing the risks attaching to issuers' respective financial reports and to selecting financial reports for examination.

Part I

FINANCIAL REPORTING REQUIREMENTS OF THE EU TRANSPARENCY DIRECTIVE

01

THE EU TRANSPARENCY DIRECTIVE - OVERVIEW

EU Directive 2004/109/EC¹ - (the Transparency Directive) (hereinafter referred to as 'the Directive') was adopted by the European Parliament and Council on 15 December, 2004 and came into effect in Ireland from 13 June, 2007. The Directive is one of the elements of the European Commission's Financial Services Action Plan (FSAP), the purpose of which is to create a single European capital market. The Directive works alongside other pieces of FSAP legislation, including the Market Abuse and Prospectus Directives.

The Directive is concerned with the harmonisation of information requirements applying to entities whose securities have been admitted to trading on a regulated market situated, or operating, within the EU². Specifically, the Directive seeks to enhance transparency in EU capital markets through a common framework which requires:

- the production of periodic financial reports;
- shareholders to disclose major shareholdings;
- the dissemination of regulated information; and
- the provision of central mechanisms for sharing regulated information.

¹ Available on the Authority's website (<http://www.iaasa.ie>).

² 'EU' should be read as including all EEA States i.e. EU Member States and Norway, Iceland and Liechtenstein. Similarly, 'Member State' throughout this Guide means a Member State of the EU or an EEA State.

02

TRANSPPOSITION OF THE DIRECTIVE INTO IRISH LAW

The Directive has been transposed into Irish law through a combination of primary legislation (the Investment Funds, Companies and Miscellaneous Provisions Act, 2006)¹ ('the 2006 Act') and secondary legislation (the Transparency (Directive 2004/109/EC) Regulations, 2007¹('the Regulations')).

2.1 *Investment Funds, Companies and Miscellaneous Provisions Act, 2006*³

The principal provisions of the 2006 Act of relevance in this context are:

- section 20(1), which confers upon the Minister for Enterprise, Trade & Employment ('the Minister')⁴ the power to make Regulations for the purpose of giving effect to the Directive;
- section 20(2), which permits the Minister, in making Regulations, to:
 - create offences; and
 - create civil liability in respect of contraventions of the Regulations so as to enable any person suffering loss to recover compensation for that loss⁵;

- section 21, which provides that a person guilty of an offence created by Regulations shall be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years; and
- section 22, which provides that the central competent administrative authority for Directive purposes (i.e. the Central Bank and Financial Services Authority of Ireland) ('the Bank')⁶ may make Rules for specified purposes.

2.2 *Transparency (Directive 2004/109/EC) Regulations, 2007*

The Regulations, which are made under the authority granted by section 20(1) as detailed above, contain the detailed provisions for transposing the Directive, relevant aspects of which are set out in this Guide.

2.3 *Other requirements*

In addition to the aforementioned pieces of legislation, parties affected by the Directive and its requirements should also have regard to:

- (i) Commission Directive 2007/14/EC of 8 March, 2007 ('the Implementing Directive')^{1 & 7}; and
- (ii) Interim Transparency Rules issued by the Financial Regulator ('the Transparency Rules')⁸.

³ Other relevant provisions of the 2006 Act, i.e. those relating to IAASA's functions and powers, are set out in sections 10 & 11 of this Guide.

⁴ The Government has delegated all Ministerial functions provided for by the Companies (Auditing and Accounting) Act, 2003 to the Minister for Trade & Commerce. This delegation was effected by the Enterprise, Trade and Employment (Delegation of Ministerial Functions) (No. 2) Order 2007 (Statutory Instrument No. 560 of 2007).

⁵ Civil liability may only be created in respect of contraventions of Regulations that involve either (i) an untrue or misleading statement; or (ii) the omission from a statement of any matter required to be included therein being, in either case, a statement (i) that is contained in a publication made in purported compliance with a provision of transparency law; and (ii) in respect of which a person suffers loss by reason of the person acquiring,

or contracting to acquire, securities (or an interest in them) in reliance on that publication at a time when, and in circumstances in which, it was reasonable for that person to rely on that publication; and the following condition is fulfilled in respect of that publication, i.e. the person discharging responsibilities within the issuer in relation to the publication (i) knew the statement concerned to be untrue or misleading or was reckless as to whether it was untrue or misleading; or (ii) knew the omission concerned to be dishonest concealment of a material fact (Sections 20(3) and (4) refer).

⁶ The Bank is designated as the central competent administrative authority by Regulation 36(1). Section 33C(1) of the Central Bank Act 1942, as amended by Section 34 of the 2006 Act, provides that the Irish Financial Services Regulatory Authority ('the Financial Regulator') is responsible for performing the functions of the Bank under the Transparency Regulations. The Financial Regulator is a constituent part of the Bank.

⁷ Relevant aspects of the Implementing Directive are reflected in the Regulations.

⁸ Made under the authority granted by section 22 of the 2006 Act.

2.4 Respective responsibilities of various authorities under the Regulations

The Bank is the central competent administrative authority for the implementation of the Regulations. It has chosen to delegate certain of its functions to the Irish Stock Exchange (ISE), including the monitoring of issuers for compliance with their general obligations under the Regulations and the Transparency Rules. Under the Regulations, IAASA is the designated competent authority for examining whether the annual and half-yearly financial reports of certain entities have been drawn up in accordance with the relevant reporting framework. Moreover, IAASA has been conferred with powers to take appropriate measures in cases of suspected infringements⁹.

Where a breach of the Regulations would constitute a criminal offence and such a breach is suspected, the investigation of such a suspected breach is a matter for the Director of Corporate Enforcement, whose statutory functions include the enforcement of criminal breaches of the Companies Acts. Section 31 of the Companies (Auditing and Accounting) Act, 2003 ('the 2003 Act') provides a mechanism whereby IAASA can share information with the Director of Corporate Enforcement.

⁹ See Part II of this Guide for further details.

03

SCOPE OF THE DIRECTIVE

3.1 Scope

The Directive applies to entities whose securities are admitted to trading on a regulated market, situated, or operating, within the EU (hereinafter referred to as 'issuers'). 'Securities' in the context of the Directive includes:

- shares;
- bonds or other forms of securitised debt;
- derivative securities; and
- units issued by closed-end investment funds.

3.2 'Regulated Market'

The term 'Regulated Market' refers to a market as defined by Article 4(1), point 14, of Directive 2004/39/EC (Markets in Financial Instruments Directive ('MiFID')), i.e. *'A multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments - in the system and in accordance with its nondiscretionary rules - in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III'*.

In an Irish context, the vast majority¹⁰ of securities trading on the Official List of the ISE are traded on the Exchange's regulated market. Securities listed on the Irish Enterprise Exchange ('IEX') are exempt

from the requirements of the Directive as the ISE has not designated the IEX as a Regulated Market. Notwithstanding the foregoing, section 24 of the 2006 Act provides that the Minister may provide that one or more provisions of transparency (regulated markets) law that apply in relation to a regulated market may be applied to a market other than a regulated market.

3.3 Issuers outside of the Directive's scope

The Directive does not apply to units issued by open-ended investment funds or, as noted above, to issuers whose securities have been admitted to trading on an unregulated market. In addition, certain classes of issuers are exempted from certain aspects of the Directive. Further details regarding exemptions in respect of the periodic financial reporting requirements of the Directive are given in section 7 of this Guide.

¹⁰ While the Alternative Securities Market ('ASM') is part of the Official List of the Irish Stock Exchange, securities listed on the ASM are not traded on a regulated market, as defined by the Directive.

04

ISSUERS WHOSE HOME MEMBER STATE IS IRELAND¹¹

The concept of 'home Member State' is relevant for the purposes of identifying:

- the Member State to whose transparency law an issuer is subject; and
- the competent authority(ies) responsible for the ongoing supervision of issuers' adherence to the Directive's requirements.

Home Member State is defined in the Regulations as:

(a) in the case of an issuer of debt securities the denomination per unit of which is less than €1,000 or an issuer of shares:

- (i) if the issuer is incorporated or formed in a Member State, the Member State in which it has its registered office,*
- (ii) if the issuer is incorporated or formed in a state or territory which is not a Member State, the Member State in which it is required to file the annual information with the competent authority in accordance with Article 10 of Directive 2003/71/EC¹² of the European Parliament and of the Council of 4 November 2003, and*

(b) in the case of an issuer of debt securities not falling within paragraph (a), the Member State chosen by the issuer from among the Member State in which the issuer has its registered office and those Member States which have admitted its securities to trading on a regulated market on their territory¹³.

In other words, Ireland is home Member State for the following:

- (i) issuers of shares that are incorporated or formed in a Member State and which have their registered office in Ireland;
- (ii) issuers of shares - that are incorporated or formed in a state or territory which is not a Member State - that are required to file an annual information document with the Bank in accordance with Article 10 of the Prospectus Directive;
- (iii) issuers of debt securities - the denomination per unit of which is less than €1,000 - that are incorporated or formed in a Member State and which have their registered office in Ireland;
- (iv) issuers of debt securities - the denomination per unit of which is less than €1,000 and that are incorporated or formed in a state or territory which is not a Member State - that are required to file an annual information document with the Bank in accordance with Article 10 of the Prospectus Directive; and
- (v) issuers of debt securities - the denomination per unit of which is €1,000 or greater - who have chosen Ireland as their home Member State from among the Member State in which they have their registered office (where applicable) and those Member States which have admitted their securities to trading on a regulated market on their territory¹⁴.

¹¹ References to 'Ireland' in this Guide refer to the Republic of Ireland

¹² The Prospectus Directive

¹³ Regulation 2

¹⁴ Regulation 35 (and Article 2 of the Implementing Directive) requires that such issuers disclose that choice in accordance with Part 7 of the Regulations - 'Dissemination of Information'.

05

NUMBER OF ISSUERS LISTED ON THE IRISH STOCK EXCHANGE WHOSE HOME MEMBER STATE IS IRELAND

On the basis of data provided by the ISE, the following is the number of issuers listed on the Official List of the ISE as at the date of the publication of this Guide, whose home Member State is Ireland. As at the date of publication of this Guide, accurate data is not available regarding the number of issuers whose home Member State is Ireland but whose securities have been admitted to trading on an EU regulated market other than the ISE. European securities regulators are seeking to establish such data in respect of each Member State.

Table 1: Number of issuers listed on the ISE whose home Member State is Ireland

Category of issuer	No. of Issuers
Equity issuers	36
Closed ended funds	74
Debt issuers	225
Total	335

Source: ISE

06

PERIODIC FINANCIAL REPORTING REQUIREMENTS (FOR ISSUERS WHOSE HOME MEMBER STATE IS IRELAND)

The Directive's financial reporting requirements regarding the publication, timing, content, and applicable financial reporting framework of issuers' financial reports, as provided for by the Regulations and the Transparency Rules, are detailed hereunder.

6.1 Annual financial reports¹⁵

Issuers are required to make their annual financial reports public no later than four months after the end of their financial years and to ensure that those financial reports remain publicly available for at least five years thereafter. An issuer's annual financial report shall comprise, at a minimum:

- audited financial statements;
- a management report; and
- statements made by persons responsible within the issuer to the effect that, to the best of their knowledge, the financial statements, prepared in accordance with applicable accounting standards, give a true and fair view of the profit/loss and assets, liabilities and financial position of the issuer and the undertakings included in the consolidation taken as a whole, and that the management report includes a fair review of the development and performance of the business and position of the issuer and the undertakings included in the consolidation taken as a whole, together with a statement of the principal risks and uncertainties that they face.

According to Regulation 4(4), where an issuer is required to prepare consolidated financial statements:

- the audited financial statements must be prepared in accordance with the IAS Regulation¹⁶; and
- the parent entity's financial statements must be prepared in accordance with the national law of the Member State in which the parent is incorporated.

If an issuer is not required to prepare consolidated financial statements, the audited financial statements must be prepared in accordance with the national law of the Member State in which the issuer is incorporated¹⁷.

Regulation 5(2) requires that the audit report, signed by the person or persons responsible for auditing the financial statements, should be disclosed in full to the public together with the annual financial report.

The Transparency Rules¹⁵ outline the more detailed requirements regarding the content of the review to be included in issuers' annual management reports, including the requirement that reports be a balanced and comprehensive analysis - using key performance indicators - of the development and performance during the year and position of the business at year end, consistent with the issuer's size and complexity. In accordance with the Transparency Rules, reviews should also include reference to:

- important events after the balance sheet date;
- likely future developments;
- research and development activity;
- certain information concerning acquisitions of own shares;

¹⁵ Article 4 of the Directive, Regulations 4, 5 and Rule 6.1 of the Transparency Rules

¹⁶ EU Regulation (EC) No. 1606/2002, which was implemented in Irish law by S.I. 116 of 2005 - European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations, 2005 (a copy of which can be accessed on the Authority's website at <http://www.iaasa.ie>).

¹⁷ Regulation 4(4)(b)

- existence of any branches; and
- where an issuer uses financial instruments, information about financial risk management objectives and policies and issuers' exposure to certain risks.

6.2 Half-yearly financial reports¹⁸

Issuers of shares or debt securities¹⁹ are required to make public half-yearly financial reports (covering the first six months of their financial years) as soon as possible after the end of the relevant period, but not later than two months thereafter²⁰. Similar to the requirement regarding annual financial reports, issuers are also required to ensure that these half-yearly financial reports remain publicly available for at least five years after publication.

Half-yearly financial reports shall comprise, at a minimum:

- a condensed set of financial statements;
- an interim management report²¹; and
- statements made by persons responsible within the issuer to the effect that, to the best of their knowledge, the condensed financial statements, prepared in accordance with applicable accounting standards, give a true and fair view of the profit/loss and assets, liabilities and financial position of the issuer, or the undertakings included in the consolidation as a whole, and that the interim management report includes a fair review of:
 - important events that have occurred during the first six months of the year;
 - the impact of those events on the condensed financial statements;
 - a description of the principal risks and uncertainties for the remaining six months of the financial year; and
 - for issuers of shares, details of material related party transactions.

Where a half-yearly financial report is audited, or reviewed in accordance with Auditing Practice Board (APB) standards or guidance²², the audit report or

review report must be reproduced in full. Where a half-yearly financial report has not been audited or reviewed, an issuer must make a statement to this effect in its half-yearly report²³.

6.2.1 Requirements regarding the content of condensed financial statements

For all issuers producing half-yearly financial reports, Transparency Rule 6.2 requires that the accounting policies and presentation applied are consistent with those applied in the latest published annual financial statements unless:

- '(1) the accounting policies and presentation are to be changed in the subsequent annual financial statements, in which case the new accounting policies and presentation should be followed and the changes and the reasons for the changes shall be disclosed in the half-yearly report; or*
- (2) the Financial Regulator otherwise agrees.'*

Where an issuer is required to produce consolidated financial statements, the condensed set of financial statements must be prepared in accordance with the IAS Regulation. Where the issuer is not required to prepare consolidated financial statements, the condensed set of financial statements must at least include:

- a condensed balance sheet;
- a condensed profit and loss account; and
- explanatory notes²⁴.

The Regulations further outline certain requirements that apply to issuers that are not required to prepare consolidated financial statements²⁵, viz:

'In preparing the condensed balance sheet and the condensed profit and loss account an issuer shall follow the same principles for recognition and measuring as when preparing annual financial reports;

The condensed balance sheet and condensed profit and loss account shall show each of the headings and subtotals included in the most recent annual financial statements of the issuer. Additional line items shall be included if, as a result of their omission, the half-yearly financial statements would

¹⁸ Article 5 of the Directive, Regulations 6 to 8, Rule 6.2 and 6.3 of the Transparency Rules and Articles 3 and 4 of the Implementing Directive refer.

¹⁹ See section 7.2 of this Guide for details of exemptions available to certain debt issuers from half-yearly reporting requirements.

²⁰ Where an issuer changes its accounting reference date so that the accounting period is extended to more than 14 months, Transparency Rule 6.3 requires the issuer to prepare and publish a second interim report.

²¹ See Appendix 2 for details of what should be contained in the Interim Management Report (Regulations 8(2) and 8(3)), including details relating to Related Party Disclosures (Regulation 8(3)).

²² The relevant APB document is entitled *'International Standard on Review Engagements (UK and Ireland) 2410: Review of Interim Financial Information performed by the Independent Auditor of the Entity'*.

²³ Regulation 8(4)

²⁴ Regulation 7(2)

²⁵ Regulation 7(3) and Article 3 of the Implementing Directive

give a misleading view of the assets, liabilities, financial position and profit or loss of the issuer;

The half-yearly financial information shall include comparative information presented as follows:

- (i) balance sheet as at the end of the first 6 months of the current financial year and comparative balance sheet as at the end of the immediate preceding financial year; and
- (ii) profit and loss account for the first 6 months of the current financial year with, from 2 years after 29th March 2007, comparative information for the comparable period for the preceding financial year.

The explanatory notes shall include the following:

- (i) sufficient information to ensure the comparability of the condensed half-yearly financial statements with the annual financial statements; and
- (ii) sufficient information and explanations to ensure users' proper understanding of any material changes in amounts and of any developments in the half-year period concerned, which are reflected in the balance sheet and the profit and loss account.'

6.2.2 'True and fair view' in the context of condensed financial statements

Regulation 8(5)(d) provides that a person making a responsibility statement shall be regarded as satisfying the requirement to confirm that, to the best of their knowledge, the condensed financial statements, which have been prepared in accordance with the applicable set of accounting standards, give a true and fair view of the assets, liabilities, financial position and profit or loss by including a statement to the effect that the condensed set of financial statements have been prepared in accordance with:

- (i) the international accounting standard applicable to interim financial reporting, currently IAS 34 'Interim Financial Reporting'; or
- (ii) for Irish issuers²⁶ not using IFRS, pronouncements on half yearly reports as issued by the Accounting Standards Board (ASB), currently a Statement entitled 'Half-Yearly Financial Reports'; or
- (iii) for all other issuers not using IFRS, a national accounting standard relating to interim reporting,

provided always that a person making such a statement has reasonable grounds to be satisfied that the condensed set of financial statements prepared in accordance with such a standard is not misleading.

In the context of the foregoing, it should be noted that, in accordance with the provisions of Regulation 8(5)(e), the application of 'true and fair' as set out above regarding condensed financial statements has no effect on the interpretation of the true and fair view for annual financial statements.

6.3 Interim Management Statements²⁷

Issuers whose shares are admitted to trading on a regulated market are required to produce interim management statements:

- during the first six month period of the financial year; and
- during the second six month period of the financial year.

Interim management statements shall contain an explanation of material events and transactions that have taken place during the relevant period and the impact of such material events and transactions on the financial position of the issuer and its controlled undertakings, and a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.

²⁶ 'Irish issuers' in this context refers to issuers incorporated in the State as public limited companies (within the meaning of the Companies (Amendment) Act, 1983) (Regulation 8(5)(f)).

²⁷ Article 6 of the Directive and Regulation 9

07

EXEMPTIONS FROM THE DIRECTIVE'S PERIODIC FINANCIAL REPORTING REQUIREMENTS

Article 8 of the Directive provides a number of exemptions from the Directive's periodic financial reporting requirements. The principal of these exemptions, as implemented by the Regulations, are as follows:

7.1 Exemption from all periodic financial reporting requirements

The following classes of issuers are exempt from all of the periodic financial reporting requirements outlined in sections 6.1 to 6.3 (i.e. annual financial reports, half-yearly financial reports and interim management statements):

- issuers that issue exclusively debt securities admitted to trading on a regulated market, the denomination per unit of which is at least €50,000, or an equivalent amount if denominated in a currency other than Euro (commonly referred to as wholesale debt issuers)²⁸; and
- a State, regional or local authority of a State, a public international body of which at least one Member State is a member, the European Central Bank and Member States' national central banks whether or not they issue shares or other securities²⁹.

7.2 Exemption from requirements to produce half-yearly financial reports

The following are exempt from the half-yearly financial reporting requirements of the Directive, as outlined in section 6.2:

- issuers of debt securities which were admitted to trading on a regulated market in a Member State before 1 January, 2005, provided that

the home Member State has allowed such issuers to benefit from the provisions of Article 27 of Directive 2001/34/EC ('the Consolidated Admissions and Reporting Directive'). This exemption has effect for 10 years from 1 January, 2005³⁰;

- issuers already existing at the date of the entry into force of the Prospectus Directive (i.e. 31 July, 2005) and which exclusively issue debt securities unconditionally and irrevocably guaranteed by the State or by one of its regional or local authorities³¹;
- credit institutions whose shares are not admitted to trading on a regulated market and who have, in a continuous or repeated manner, only issued debt securities provided that:
 - the total nominal amount of all such debt securities remains below €100,000,000; and
 - the credit institution has not published a prospectus in accordance with the Prospectus Directive³².

It should be noted that the aforementioned classes of issuers are not, however, exempt from the annual financial reporting requirements as detailed at section 6.1.

7.3 Exemption from periodic financial reporting requirements through equivalence³³

7.3.1 Equivalence - overview

An issuer:

- whose registered office is in a non Member State (i.e. a 3rd country); and
- whose home Member State is Ireland,

²⁸ Regulation 10(2)(a)

²⁹ Regulation 10(1)

³⁰ Regulation 79(2)

³¹ Regulation 10(2)(c)

³² Regulation 10(2)(b)

³³ Article 23 of the Directive, Regulation 11, Rule 11.1 of the Transparency Rules and Articles 13 to 18 of the Implementing Directive

and who would otherwise be subject to the periodic financial reporting requirements of the Directive, may be exempted by the Bank from having to comply with those requirements provided that:

- the law of the 3rd country in question lays down equivalent requirements; or
- such an issuer complies with the requirements of the law of a 3rd country that the Bank considers as being equivalent to those laid down by the Directive.

Appendix 3 sets out further detail regarding those provisions of the Regulations dealing with the criteria necessary for an equivalence determination.

7.3.2 Effect on a 3rd country issuer of an equivalence determination by the Bank

Where an issuer is granted an exemption from the financial reporting requirements of the Directive by the Bank on the basis of an equivalence determination, the issuer is nevertheless required to disseminate its annual and half-yearly financial reports and interim management statements and to file these with the Bank.

7.3.3 Equivalence - transitional provisions

By way of transitional provisions, the European Commission adopted two measures in December, 2006³⁴, the effect of which is to allow a two-year transitional period (i.e. until January, 2009) during which time 3rd country issuers may continue to prepare their annual consolidated financial statements and half-yearly consolidated financial statements for Directive purposes in accordance with 3rd country GAAP provided that one of the following apply:

- the notes to the financial statements contain an explicit and unreserved statement of compliance with IFRS in accordance with IAS 1 Presentation of Financial Statements;
- the financial statements are prepared in accordance with Canadian, Japanese or US GAAP; or
- the financial statements are prepared using a 3rd country GAAP in relation to which the following conditions are met:
 - the 3rd country standard setting authority responsible for setting that

GAAP has made a public commitment to converge its standards with IFRS; and

- that standard setting authority has established a work programme which demonstrates progress towards convergence with IFRS before 31 December 2008; and
- the issuer provides satisfactory evidence to the Bank demonstrating that the conditions above have been met.

A further transitional provision is provided for an issuer of debt securities that is incorporated in a 3rd country, whose home Member State is Ireland, and whose debt securities were admitted to trading in a Member State prior to 1 January 2005³⁵. Such an issuer need not draw up its annual financial statements in accordance with Regulation 4(4) (as described in section 6.1), or its management report in accordance with Regulation 5(3)³⁶, provided that:

- the annual financial statements give a true and fair view of the assets and liabilities, financial position and results;
- the 3rd country has not made mandatory the application of IAS/IFRS; and
- the EU Commission has not taken any decision, in accordance with the provisions of the Directive, as to whether there is an equivalence between IAS/IFRS and the accounting standards laid down in the 3rd country or the accounting standards of another 3rd country that such an issuer has elected to comply with.

7.3.4 Maintenance of list of 3rd countries determined to be equivalent

The Bank will maintain a published list of 3rd countries that have been determined as being equivalent³⁷.

³⁴ Commission Regulation 1787/2006 of 4 December, 2006 amending Commission Regulation 809/2004 on prospectuses and Commission Decision 2006/891/EC of 4 December 2006 on the use by third country issuers of securities of information prepared under internationally accepted accounting standards ('the Transparency Decision').

³⁵ Regulation 79(5)

³⁶ Regulation 5(3) requires that the management report is drawn up in accordance with Article 36 of the 7th Council Directive 83/349/EEC (where the issuer is required to prepare consolidated accounts) and Article 46 of the 4th Council Directive 78/660/EEC (where the issuer is not required to prepare consolidated accounts).

³⁷ Guidance 11.0.1 of the Transparency Rules

08

EFFECTIVE DATE FOR COMMENCEMENT OF FINANCIAL REPORTING REQUIREMENTS

For issuers whose financial year commences on or after 20 January, 2007, the Directive's financial reporting requirements take effect immediately. Accordingly, such issuers are required to prepare their first set of half-yearly financial reports to the period ended 6 months following the commencement of their financial year³⁸.

In the case of those issuers whose financial year commenced prior to 20 January, 2007, the Directive's financial reporting requirements take effect from the commencement of their next financial year.

As a consequence of the foregoing, issuers whose financial year commences on or after 20 January, 2007 will be required to comply with the new reporting requirements earlier than those whose financial year commenced prior to 20 January, 2007.

The following table illustrates, by way of example, the application of the half-yearly and annual financial reporting requirements to issuers whose financial year commences before and after 20 January, 2007 respectively. It should be noted that the table across does not consider effective dates of the financial reporting requirements relating to Interim Management Statements, as the latter do not come within IAASA's remit (as explained further in section 10.2 of this Guide).

Table 2: Effective dates of financial reporting requirements

	Issuer whose Financial Year begins on 1 January, 2007	Issuer whose Financial Year begins on 1 March, 2007
First application of half-yearly reporting requirement	6 months to 30 June, 2008	6 months to 31 August, 2007
First application of annual reporting requirement	Year ending 31 December, 2008	Year ending 29 February, 2008

³⁸Regulation 79

Part II

IAASA'S ROLE UNDER THE DIRECTIVE

09

CONTEXT FOR IAASA'S INVOLVEMENT WITH THE DIRECTIVE

As alluded to earlier in this Guide, the Bank is the central competent administrative authority for the purposes of the Directive in Ireland. However, the Directive provides that Member States may designate another competent authority other than their central competent administrative authority for the purposes of examining financial information published pursuant to the Directive's requirements³⁹. In that context, having regard to IAASA's financial reporting supervision functions under section 26 of the 2003 Act and having consulted with IAASA, the Minister took the decision that IAASA should be designated as an independent competent authority for the purposes of Article 24(4)(h)⁴⁰ of the Directive. The Minister's decision in this regard was given effect to by Regulation 36(2).

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

³⁹ Recital No. 28 of the Directive states that: 'A single competent authority should be designated in each Member State to assume final responsibility for supervising compliance with the provisions adopted pursuant to this Directive, as well as for international co-operation...Member States may, however, designate another competent authority for examining that information referred to in this Directive is drawn up in accordance with the relevant reporting framework and taking appropriate measures in case of discovered infringements; such an authority need not be of an administrative nature.'

⁴⁰ Article 24(4)(h) of the Directive provides that 'Each competent authority shall have all the powers necessary for the performance of its functions. It shall at least be empowered to...examine that information referred to in this Directive is drawn up in accordance with the relevant reporting framework and take appropriate measures in case of discovered infringements.'

10

IAASA'S STATUTORY FUNCTIONS VIS À VIS THE DIRECTIVE

IAASA's statutory functions *vis à vis* the Directive stem from two sources, viz:

- the 2003 Act (as amended); and
- the Regulations.

10.1 Statutory functions - relevant provisions of the 2003 Act (as amended by the 2006 Act)

IAASA's principal statutory functions are set out in section 9 of the 2003 Act⁴¹. Section 16 of the 2006 Act amends section 9 of the 2003 Act by inserting a new function, viz:

'(ma) to perform the functions conferred on it by transparency...law [i.e. the Regulations]...in respect of the matters referred to in Article 24(4)(h)⁴⁰ of the Transparency Directive...'

10.2 Statutory functions - relevant provisions of the Regulations

Further to the foregoing, Regulation 36(2) provides that *'IAASA is designated as the competent authority for the purposes of subparagraph (h) of Article 24(4) of the Directive and shall be responsible for carrying out the obligations provided for in that subparagraph and for ensuring that the provisions adopted pursuant to the Directive in respect thereof are applied'*.

Regulation 42(2) provides that *'IAASA shall examine information drawn up pursuant to Regulations 4 to 8 [i.e. annual and half-yearly financial reports] by issuers whose home member State is the State for the purpose of considering whether such information is in accordance with the relevant reporting framework'*.

In the context of the foregoing, it should be noted that IAASA does not have a role in reviewing issuers' Interim Management Statements⁴². Responsibility for monitoring issuers' compliance with the Interim Management Statement provisions of the Regulations (i.e. preparation and filing of same) resides with the Bank.

⁴¹ The text of the 2003 Act can be accessed on the Authority's website at <http://www.iaasa.ie/legislation/index.htm>

⁴² Due to the fact that it is not mandatory for Interim Management Statements to contain accounting statements drawn up in accordance with a relevant reporting framework

11

IAASA'S STATUTORY POWERS VIS À VIS THE DIRECTIVE

IAASA's statutory powers *vis à vis* the Directive stem from two sources, *viz*:

- the 2003 Act (as amended); and
- the Regulations.

11.1 Statutory powers - relevant provisions of the 2003 Act (as amended)

IAASA's general statutory powers are set out in section 10 of the 2003 Act. Of particular relevance are the following provisions:

- IAASA has the power to do anything that appears to it to be requisite, advantageous or incidental to, or to facilitate, the performance of its functions and that is not inconsistent with any enactment⁴³;
- a power conferred by section 10(1) of the 2003 Act is not to be considered to be limited merely by implication from another provision, whether of the 2003 Act or any other Act, that confers a power on IAASA⁴⁴; and
- IAASA may adopt Rules and issue Guidelines concerning any matter that relates to its functions or powers⁴⁵.

Section 17 of the 2006 Act amends section 10 of the 2003 Act in the following ways:

- by amending subsection (4), thereby providing that IAASA may apply to the High Court ('the Court') for an order under section 29(7) (of the 2003 Act) compelling a person on whom a relevant obligation or obligations is or are imposed to comply with that obligation or those obligations if, in the Authority's opinion, that person may fail or has failed to comply with the obligation or obligations;

- by inserting a new subsection (5), which provides that *'In subsection (4), the reference to a relevant obligation or obligations that is or are imposed on a person is a reference to an obligation or obligations that is or are imposed on a person by:*

- (a) *provisions of transparency...law [i.e. the Regulations]...that implement Article 24(4)(h) of the Transparency...Directive, or*
- (b) *rules adopted by the Supervisory Authority [i.e. IAASA] under subsection (3) concerning matters that relate to its functions under section 9(2)(ma) [of the 2003 Act]*⁴⁶.

Section 18 of the 2006 Act amends section 29 of the 2003 Act, thereby providing that, on application by IAASA for an order seeking compulsion to comply with an obligation or obligations under section 10(4) of the 2003 Act, the Court may make any order or give any direction it thinks fit.

11.2 Statutory powers - relevant provisions of the Regulations

IAASA's powers are set out in Part 9 of the Regulations.

11.2.1 General powers and limitations thereon (Regulation 42)

Regulation 42(1) provides that *'IAASA shall have all the powers necessary for the performance of its functions under Regulation 36(2)*⁴⁷. Regulation 42(3) provides that *'The powers provided for in this Part in respect of IAASA shall not be exercised in a manner or for a purpose inconsistent with the Directive or [the Regulations]*'.

⁴³ Section 10(1) Companies (Auditing and Accounting) Act, 2003

⁴⁴ Section 10(2) Companies (Auditing and Accounting) Act, 2003

⁴⁵ Section 10(3) Companies (Auditing and Accounting) Act, 2003

⁴⁶ IAASA has not, at the time of publication of this Guide, issued any such Rules.

⁴⁷ Designation of IAASA as a competent authority.

11.2.2 Power to require the supply of documents, information and explanations (Regulation 43)

In accordance with Regulation 43(1)(a), IAASA has the power to require any of the following persons to:

- produce any document in his or her possession or control; and
- make copies of such documents; and
- provide any information or explanations that it may reasonably require for the purpose of examining and reviewing information published pursuant to Regulations 4 to 8⁴⁸:
 - (i) an issuer;
 - (ii) any director, manager, officer or employee of an issuer;
 - (iii) any persons who control, or are controlled by, a person referred to at (i) or (ii);
 - (iv) any person discharging managerial responsibilities of the issuer;
 - (v) an auditor of an issuer; and
 - (vi) any person who fell within any of (i) to (v) at a time when the document or information required by IAASA was prepared or came into existence.

In accordance with Regulation 43(1)(b), IAASA may certify to the Court the refusal or failure of any person referred to in (i) to (v) above to comply with a requirement made by IAASA under Regulation 43(1)(a).

It should be noted that, with regard to (v) above, the disclosure to IAASA by an auditor of any information, document, fact or decision on foot of a requirement made by IAASA under Regulation 43(1)(a) shall not be regarded as constituting a breach of any restriction on disclosure of information imposed by contract or any law, regulation or administrative provision and shall not involve the auditor in liability of any kind⁴⁹.

In accordance with the provisions of Regulation 59, nothing in the Regulations shall compel the disclosure by any person of any information which he or she would, in the opinion of the Court, be entitled to refuse to produce on the grounds of legal professional privilege or authorise the taking possession of any document containing such information which is in his or her possession.

11.2.3 Power relating to the issue of notices and directions to issuers (Regulation 44)

Where it appears to IAASA that there is, or may be, a failure by an issuer whose home Member State is Ireland to ensure that a published annual or half-yearly financial report complies with the relevant reporting framework, IAASA may give notice to the issuer and the directors of such issuer specifying:

- the matters in respect of which it appears to IAASA that the information fails to comply with the relevant reporting framework; and
- a period of not less than 30 days within which the issuer shall either:
 - provide IAASA with a written explanation of the information; or
 - prepare revised information;
- that, in the absence of written explanation or the issuance of revised information, IAASA may:
 - give a direction requiring the issuer to revise the information in accordance with its instructions, as specified in the direction;
 - seek an order of confirmation from the Court of its direction; and
 - recover its costs from the issuer;
- that, in the event that IAASA seeks an order of the Court to enforce its direction, IAASA may publish notice of such application in such manner as it sees fit.

⁴⁸ Financial reporting requirements with regard to annual and half-yearly financial reports respectively.

⁴⁹ Regulation 43(2)

11.2.4 Powers consequent upon issuer's response under Regulation 44 - issue of directions (Regulations 45 & 46)

If, at or before the end of the period specified in the notice referred to in the preceding section, or such longer period as IAASA may permit, the issuer prepares revised information, IAASA may, having regard to the circumstances of the matter, require the issuer to pay some or all of the costs which IAASA has incurred in examining the information published by the issuer and in performing its functions under the Regulations.

If, at the end of the period specified in the notice, or such longer period as IAASA may permit:

- the issuer has not revised the information; and
- IAASA, having considered any explanations, information or documents provided, remains of the opinion that the information does not comply with the relevant reporting framework,

IAASA may give a direction to the issuer requiring the issuer or its directors or both to do one or more of the following:

- (i) revise the annual or half-yearly financial report, as applicable, in accordance with instructions of IAASA as specified in the direction;
- (ii) publish the revised information in the same manner as required by Regulations 4 to 8 and to make any consequential amendments to the annual or half-yearly financial reports published in accordance with instructions of IAASA as specified in the direction;
- (iii) publish notice of the direction given by IAASA in a format, and containing such information, as is specified by IAASA in the direction;
- (iv) pay costs specified in the direction, being costs incurred by IAASA in examining and reviewing the financial reports.

A direction referred to above shall be in writing and shall specify the date from which it shall have effect and the period for which it shall have effect (which shall not exceed 12 months).

In accordance with Regulation 46, an issuer or its directors, or both, may apply to the Court for an order setting aside or varying a direction made by IAASA under Regulation 45 and the Court may, if it considers it appropriate to do so, grant such an order. Such an application must be made within 30 days after the notification of the direction, or within such extended period as the Court allows.

11.2.5 Power to seek enforcement of a direction under Regulation 45⁵⁰ (Regulation 47)

IAASA may apply to the Court (in a summary manner) seeking an order to enforce a direction made under Regulation 45 which, in its opinion, has not been complied with. On hearing the application, the Court may, as it thinks fit, make or refuse an order providing such relief.

11.2.6 Powers of the Court on application by IAASA for an order of enforcement (Regulation 49)

If, having heard an application for an order of enforcement from IAASA, the Court is satisfied that an issuer's annual or half-yearly financial report does not comply with the relevant reporting framework, the Court may make a declaration to that effect and may, by order, do one or more of the following:

- (i) require the issuer or its directors, or both, to revise the financial report at issue so that it complies with the relevant reporting framework;
- (ii) give directions respecting one or more of the following:
 - the auditing of the revised financial statements;
 - the revision of any matter contained in any annual or half-yearly financial report as appropriate;
 - the steps to be taken to bring the Court order to the attention of persons likely to rely on the information that was the subject of the declaration;
 - such other matters as the Court thinks fit;
- (iii) require the issuer or directors, or both, to pay the costs incurred by IAASA in performing its functions.

⁵⁰ An application made under Regulation 47(2) shall be by motion and the Court, when considering the motion, may make such interim or interlocutory order as it considers appropriate.

For the purposes of making such an order, the Court may:

- have regard to the extent to which any or all of the directors who approved the annual or half-yearly financial report that was the subject of the direction knew, or ought to have known, that it did not comply with the relevant reporting framework; and
- exempt one or more directors from any order or order the payment of different amounts by different directors.

11.2.7 Publication of court proceedings (Regulation 50)

At the conclusion of Court proceedings, IAASA shall disseminate in such manner as it thinks fit:

- a copy of the court order, or
- notice that the application has failed or been withdrawn.

11.2.8 Provisions in relation to revised financial reports (Regulation 51)

The Regulations referred to in 11.2.3 to 11.2.7 above (with the exception of Regulation 46) apply equally to revised annual and half-yearly financial reports. Therefore, references to revised financial reports in those Regulations are to be construed as references to further revised reports. Similarly, any provision of the Regulations or the Companies Acts regarding the preparation, auditing, circulation and disclosure of annual financial statements applies with the necessary changes to the revised financial report.

11.2.9 Power to appoint, and powers of, an authorised officer (Regulations 53 and 54)

The Regulations give power to IAASA's Chief Executive to appoint one or more authorised officers for the purposes of the Regulations (and, equally, to revoke any such authorisation(s)). An authorised officer, who may be appointed for a specified or unspecified period, is empowered to do all or any of the following:

- at all reasonable times enter any premises⁵¹ at which there are reasonable grounds to believe that there are any relevant records⁵²;
- search and inspect the premises and any relevant records on the premises;
- secure for later inspection the premises or any part of the premises in which relevant records are kept or in which the officer has reasonable grounds for believing the relevant records are kept;
- require any person to whom the Regulations apply to produce to the officer relevant records, and if the information is in a non-legible form, to reproduce it in a legible form or to give to the officer such information as the officer reasonably requires in relation to entries in the relevant records;
- inspect and take copies of relevant records inspected or produced;
- remove and retain any of the relevant records for such period as may be reasonable to facilitate further examination;
- require a person to give to the officer information (including information by way of a written report) that the officer reasonably requires in relation to activities covered by the Regulations and to produce to the officer any relevant records that the person has or has access to;
- require a person by whom or on whose behalf data equipment is or has been used, or any person who has charge of, or is otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to give the officer all reasonable assistance in relation thereto; and
- require a person to explain entries in any relevant records⁵³.

⁵¹ In accordance with Regulation 54(2), an authorised officer shall not, except with the consent of the occupier, enter a private dwelling (other than a part of a dwelling used as a place of work) unless the officer has obtained a warrant from a judge of the District Court.

⁵² Relevant records are defined by Regulation 38 as being 'records relating to the activities of persons to whom these Regulations apply'.

⁵³ Regulation 54(1)

The requirement to produce any relevant information to an authorised officer extends to a liquidator or receiver of, or any person who is or has been an officer or employee or agent of, a person to whom the Regulations apply, and any other person who appears to have the relevant information in their possession or has the ability to provide information or assistance, as the case may be⁵⁴.

An authorised officer may be accompanied by a member of An Garda Síochána or by another authorised officer when exercising their powers⁵⁵.

11.2.10 Warrant to enter premises (Regulation 55)

Where an authorised officer is prevented from entering any premises, or believes that there are relevant records in a private dwelling, the authorised officer or the Chief Executive may apply to the District Court for a warrant authorising the entry by the authorised officer into the premises.

11.2.11 Co-operation with other competent authorities (Regulations 57, 58 and 75)

As envisaged by Article 25 of the Directive, and transposed *via* Regulation 75, IAASA shall co-operate with the competent authorities of other Member States for the purpose of the performance by each of their functions and the exercise of their powers, and shall render assistance to competent authorities of other Member States in the performance of their functions. Accordingly, as required by Article 26 of the Directive, in circumstances where Ireland is a host Member State⁵⁶ and IAASA finds, or has grounds for suspecting, that there has been a contravention of transparency (regulated markets) law by an issuer, Regulation 57 provides that it shall refer those findings, or the fact of those grounds' existence, to the competent authority of the home Member State of that issuer. Where, despite the measures taken by the competent authority in the home Member State, the contravention persists, IAASA (or, where applicable, the Bank) after informing the home Member State's competent authority, shall take all appropriate measures within its power under the Regulations in order to protect investors⁵⁷.

IAASA may conclude co-operation agreements with the competent authorities or bodies of 3rd countries providing for the exchange of information so as to allow the carrying out of any of the tasks assigned by the Directive in accordance with Article 24 of the Directive⁵⁸.

11.3 Other statutory provisions of relevance - charges on issuers (Regulation 78(2))

IAASA may impose charges on issuers, with the consent of the Minister, for the purpose of defraying the expenses incurred in performing its functions under the Regulations.

⁵⁴ Regulation 54(4)

⁵⁵ Regulation 54(5)

⁵⁶ Regulation 2 defines a host member state as 'a Member State in which securities are admitted to trading on a regulated market, if different from the home Member State'.

⁵⁷ Regulation 58

⁵⁸ Article 25 of the Directive and Regulation 75

12

ADMINISTRATIVE SANCTIONS

12.1 Context for administrative sanctions

Article 28 of the Directive requires Member States to put in place appropriate administrative measures which may be imposed in respect of breaches of the Directive's requirements. Part 10 of the Regulations (Regulations 60 to 74 inclusive), details the administrative sanctions process, which is summarised below⁵⁹.

It should also be noted that section 22(6) of the 2006 Act provides that those provisions of the Regulations concerning the imposition of administrative sanctions in relation to the contravention of transparency (regulated markets) law, apply to rules adopted by IAASA under section 10(3) of the 2003 Act concerning its functions under the Directive.

12.2 IAASA's power to request the appointment of an assessor (Regulation 61)

In accordance with the provisions of Regulation 61(1)(b), where IAASA has reason to suspect that a prescribed contravention⁶⁰ is being committed or has been committed, and requests the Bank to do so, the Bank shall appoint an assessor (or, if the Bank thinks fit, more than one assessor).

12.3 Purpose of an assessment (Regulation 61)

The purpose of an assessment conducted by an assessor (or assessors) is:

- to determine whether or not the assessee is committing, or has committed, the contravention; and
- if the assessor finds that the assessee is committing, or has committed, the contravention, to determine the sanction, or sanctions, if any, which the assessor considers are appropriate to be imposed on the assessee in respect of the contravention.

12.4 Notification of the assessment (Regulation 61)

As soon as practicable after his/her/their appointment, the assessor(s) shall give notice of their appointment to the assessee. The notice shall contain:

- a statement that the assessor has been appointed by the Bank at the request of IAASA;
- a statement in summary form of the grounds for conducting the assessment;
- a statement that, within a reasonable time specified by the assessor, the assessee may:
 - make submissions in writing to the assessor; and
 - request the assessor to be permitted to make oral submissions about the matters to which the notice relates; and
- a statement that the assessor shall conduct the assessment even if no submissions are made.

12.5 Conduct of the assessment (Regulations 61 and 63)

The assessor shall:

- consider any submissions made by the assessee; and
- conduct such investigations relating to the assessment as the assessor considers appropriate before issuing an assessment.

⁵⁹ Reference should also be made to the Financial Regulator's publication 'Outline of Administrative Sanctions Procedure' at [http://www.financialregulator.ie/data/pub_files/Outline Of Administrative Sanctions Procedure - October 2005.pdf](http://www.financialregulator.ie/data/pub_files/Outline%20Of%20Administrative%20Sanctions%20Procedure%20-%20October%202005.pdf).

⁶⁰ The term 'prescribed contravention' is defined in Regulation 60 as 'a contravention of -
(a) these Regulations,
(b) any obligation imposed by the Bank pursuant to a power exercised under these Regulations, or
(c) any other provision of transparency (regulated markets) law;'

An assessor may, by notice given in or outside the State, require witnesses to:

- appear before him to give evidence (and may administer oaths for that purpose);
- produce documents which are in the person's custody or control; and
- for the foregoing purposes, attend before him from day to day.

Where a person fails to comply with a notice given by the assessor or otherwise threatens, insults or obstructs the assessor, the assessor may apply to the Court for an order requiring compliance and/or a discontinuation of the inappropriate behaviour, and the Court may grant the order and make such other orders as it considers appropriate to ensure the co-operation of the person concerned.

12.6 Notification of outcome of assessment to assessee (Regulations 61 and 65)

Having considered any submissions made by the assessee and conducted such investigations as s/he considers appropriate, an assessor shall issue the assessment to the Bank, which the Bank shall immediately transmit to IAASA. Such assessment shall, however, constitute a decision of the Bank as opposed to a decision of IAASA.

Where the assessor decides that the assessee is committing or has committed a prescribed contravention, the assessment is termed an 'adverse assessment'. The assessee will, under such circumstances, be issued with a copy of the adverse assessment. The assessee will further be advised of their right of appeal against the adverse assessment.

Where an assessment results in an adverse assessment, the assessor shall ensure that the assessment includes statements detailing:

- the grounds for the adverse assessment;
- a summary of the evidence upon which the decision is based; and
- any sanctions which the assessor considers appropriate.

Where the assessor finds that the assessee is neither committing nor has committed a prescribed contravention, the Bank shall issue the assessee with a statement to that effect and shall advise IAASA accordingly.

12.7 Sanctions that may be imposed (Regulation 67)

In the case of an adverse assessment, the Bank may impose on the assessee such of the following sanctions as are specified sanctions⁶¹:

- a public or private caution or reprimand;
- a direction to pay a monetary penalty not exceeding €2,500,000⁶²;
- a direction disqualifying the assessee from being concerned in the management of, or having a qualifying holding in, any regulated financial service provider for a period of time;
- a direction to cease the contravention (if the contravention is continuing);
- a direction to pay all or part of the costs of the Bank in investigating and holding the assessment⁶³.

Where an assessor was appointed at IAASA's request, the Bank shall consult with IAASA before imposing any sanction⁶⁴.

12.8 Appeal against adverse assessment (Regulation 66)

An assessee may appeal to the Court against an adverse assessment within 28 days of the issue of a copy of the assessment, or such further period as the Court allows. Having adjudicated on the appeal, the Court may make an order either:

- confirming, varying or setting aside the adverse assessment, whether in whole or in part; or alternatively,
- remitting the case to be decided again by the Bank in accordance with the Court's directions.

Such determination may be appealed to the Supreme Court on a question of law.

⁶¹ 'Specified sanctions' are the sanctions referred to in the assessor's assessment, which the assessor considers are appropriate to be imposed on the assessee in respect of the contravention (Regulation 60(1)).

⁶² Regulation 72(2) provides that this monetary penalty shall not be imposed where '(a) the assessee has been found guilty or not guilty of having committed an offence under a provision of these Regulations, and (b) all or some of the acts constituting that offence also constitute the prescribed contravention.'

⁶³ Regulation 67(1)

⁶⁴ Regulation 67(2)

12.9 Enforcement of adverse assessment (Regulation 70)

IAASA may request the Bank to make an application to the High Court for an order confirming the adverse assessment, including the specified sanctions. In such circumstances, the Court can:

- make an order confirming, varying or setting aside the adverse assessment; or
- remit the case to be decided again by the Bank,

but the Court shall not hear such an application unless:

- the assessee appears as respondent; or
- the Court is satisfied that a copy of the application was served on the assessee.

As above, the determination of the Court may be appealed to the Supreme Court on a question of law.

12.10 Publication of certain specified sanctions (Regulation 71)

Article 28 of the Directive provides that Member States shall provide that every measure taken, or penalty imposed, may be disclosed to the public. Accordingly, unless, in the view of the Bank, a disclosure would seriously jeopardise the financial markets, or cause disproportionate damage to the parties concerned, the Bank shall publicly disclose any direction imposed as a sanction, as described in section 12.7 above.

12.11 Power to resolve suspected contraventions (Regulation 74)

The Regulations provide that, where IAASA has reason to suspect that a person is committing or has committed a prescribed contravention, it may enter into a written agreement with that person to resolve the matter. Such an agreement:

- may include the imposition of sanctions;
- is binding on both IAASA and the person concerned; and
- may be enforced in a court of competent jurisdiction.

APPENDICES

APPENDIX 01

OVERVIEW OF CONSIDERATIONS AFFECTING RISK ASSESSMENT AND SELECTION

In the context of the discharge of its financial reporting review remit, IAASA has undertaken to apply CESR⁶⁵ Standards on enforcement of financial reporting and related guidelines. CESR Standards require, *inter alia*, that selection methodologies must include risk-based methodologies. It is not, for example, permitted under CESR Standards to adopt selection methodologies based purely on cycles or random selections.

As a consequence of the foregoing, IAASA has resolved to adopt a mixed model, whereby selections of issuers' financial reports for review will be based on risk assessments, supplemented by cyclical and/or random selections (thereby ensuring that entities that might not be selected as a consequence of a risk-based approach nevertheless stand to be selected for review). IAASA has further decided that a risk-based approach should have regard, *inter alia*, to:

- the risk of material misstatement in issuers' financial reports; and
- the potential impact of such a misstatement on the users of financial reports.

In that context, there are, in IAASA's assessment, numerous risk factors, or combinations thereof, that might usefully be considered in assessing the relative risk of an incidence of material misstatement in an issuers' financial reports. These include, amongst others:

- financial structure and business/economic trends;

- financial position and ratios;
- industry specific issues;
- audit qualifications and related issues;
- corporate governance and control environment issues;
- incidence of related party transactions;
- incidence of business combinations and/or disposals;
- administrative, court and/or regulatory actions; and
- third party signals (e.g. complaints received by IAASA, press *reportage* etc.)

In assessing the potential impact of a material misstatement on the users of financial reports, the following are among the factors that might usefully be considered:

- share trading activity and volatility in stock price;
- market capitalisation;
- number and nature of investors;
- nature of securities traded; and
- public profile.

⁶⁵ Committee of European Securities Regulators

APPENDIX 02

INTERIM MANAGEMENT REPORTS

Regulations 8(2) and (3) - detail required in interim management reports, including disclosures required in relation to related parties' transactions

'[8](2) The interim management report shall include at least:

- (a) an indication of important events that have occurred during the first 6 months of the financial year, and their impact on the condensed set of financial statements, and
- (b) a description of the principal risks and uncertainties for the remaining 6 months of the financial year.

[8](3) (a) In addition to the requirement contained in the preceding paragraph, an issuer of shares shall disclose in the interim management report the following information, as a minimum:

- (i) related parties' transactions that have taken place in the first 6 months of the current financial year and that have materially affected the financial position or the performance of the enterprise during that period; and
- (ii) any changes in the related parties' transactions described in the last annual report that could have a material effect on the financial position or performance of the enterprise in the first 6 months of the current financial year.

(b) If an issuer of shares is not required to prepare consolidated accounts, it shall disclose, as a minimum, any transactions which have been entered into with related parties by the issuer, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the issuer, if such transactions are material and have not been concluded under normal market conditions.

(c) In relation to transactions referred to in subparagraph (b), information about such transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the issuer.'

APPENDIX 03

3rd COUNTRY EQUIVALENCE DETERMINATIONS

Detailed provisions of Regulation 11 regarding the criteria for 3rd country equivalence determinations in respect of periodic financial reporting requirements.

1. A 3rd country shall be deemed to lay down requirements equivalent to those of Regulation 4(3)(b) (i.e. requirement to include a management report in the annual financial report) where, under the law of that country, the annual management report is required to include at least the following information:
 - a fair review of the development and performance of the issuer's business and of its position, together with a description of the principal risks and uncertainties that it faces, such that the review presents a balanced and comprehensive analysis⁶⁶ of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business;
 - an indication of any important events that have occurred since the end of the financial year;
 - indications of the issuer's likely future development⁶⁷.
2. A 3rd country shall be deemed to lay down requirements equivalent to those of Regulations 8(2) and 8(3) (i.e. required minimum content of interim management reports and related party disclosures respectively) where, under the law of that country, a condensed set of financial statements is required in addition to the interim management report, and the interim management report is required to include at least the following information:
 - a review of the period covered;
 - indications of the issuer's likely future development for the remaining six months of the financial year;
 - for issuers of shares, and if already not disclosed on an ongoing basis, major related parties transactions⁶⁸.
3. A 3rd country shall be deemed to lay down requirements equivalent to those of Regulations 5(3) and 8(5) (i.e. basis of preparation of management reports; and responsibility statements in the context of half-yearly financial reports respectively) where, under the law of that country, a person or persons within the issuer are responsible for the annual and half-yearly financial information, and in particular the following:
 - the compliance of the financial statements with the applicable reporting framework or set of accounting standards; and
 - the fairness of the management review included in the management report⁶⁹.
4. A 3rd country shall be deemed to lay down requirements equivalent to those of Regulation 9 (i.e. interim management statements) where, under the law of that country, an issuer is required to publish quarterly financial reports⁷⁰.

⁶⁶ In accordance with Regulation 11(3), this analysis shall to the extent necessary for an understanding of the issuer's development, performance and position, include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business.

⁶⁷ Regulation 11(2)

⁶⁸ Regulation 11(4)

⁶⁹ Regulation 11(5)

⁷⁰ Regulation 11(6)

5. A 3rd country shall be deemed to lay down requirements equivalent to those of Regulation 4(4)(a) (i.e. requirement that where required to prepare consolidated financial statements, those audited consolidated financial statements comprise consolidated financial statements prepared in accordance with the IAS Regulation and financial statements of the parent company prepared in accordance with the national law of the Member State in which the parent company is incorporated) where, under the law of that country, the provision of individual accounts by the parent company is not required but the issuer whose registered office is in that 3rd country is required, in preparing consolidated financial statements, to include the following information:
- (i) for issuers of shares, dividends computation and ability to pay dividends;
 - (ii) for all issuers, where applicable, minimum capital and equity requirements and liquidity issues⁷¹.
6. A 3rd country shall be deemed to lay down requirements equivalent to those of Regulation 4(4)(b) (i.e. the requirement that where an issuer is not required to prepare consolidated financial statements, the audited financial statements shall comprise financial statements prepared in accordance with the national law of the Member State in which the issuer is incorporated) where, under the law of a 3rd country, an issuer whose registered office is in that 3rd country is not required to prepare consolidated financial statements but is required to prepare its individual financial statements in accordance with:
- international accounting standards, as endorsed by the EU pursuant to the IAS Regulation; or
 - 3rd country national accounting standards equivalent to those standards⁷³.

For the purpose of equivalence, if the financial information is not in line with the aforementioned standards, it must be presented in the form of restated financial statements. In addition, the individual financial statements must be audited independently.

For the purposes of equivalence, the issuer must also be able to provide the Bank with additional audited disclosures giving information on the individual financial statements of the issuer as a standalone, relevant to the elements of information referred to in (i) and (ii) above⁷².

⁷¹ Regulation 11(7)

⁷² Regulation 11(8)

⁷³ Regulation 11(9)

GLOSSARY OF TERMS

The 2003 Act	Companies (Auditing and Accounting) Act, 2003	GAAP	Generally Accepted Accounting Principles
The 2006 Act	Investment Funds, Companies and Miscellaneous Provisions Act, 2006	IAASA	Irish Auditing and Accounting Supervisory Authority
Adverse assessment	An assessment in which the assessor has decided that the assessee is committing or has committed a prescribed contravention.	IAS Regulation	Regulation (EC) No. 1606/2002 of the European Parliament and of the Council, as implemented in Ireland by Statutory Instrument 116 of 2005.
APB	Auditing Practices Board	IFRS	International Financial Reporting Standards
ASB	Accounting Standards Board	Implementing Directive	Commission Directive 2007/14/EC
The Bank	Central Bank and Financial Services Authority of Ireland	Irish issuer	Issuers incorporated in the State as public limited companies (within the meaning of the Companies (Amendment) Act, 1983)
CESR	Committee of European Securities Regulators	Issuers	Entities whose securities are admitted to trading on a regulated market, situated, or operating, within the EU/EEA
The Consolidated Admissions & Reporting Directive	Directive 2001/34/EC of the European Parliament and of the Council	Member State	A Member State of the European Union or an EEA State
The Court	The High Court	MiFID	Directive 2004/39/EC of the European Parliament and of the Council (Markets in Financial Instruments Directive)
The Directive (Transparency Directive)	Directive 2004/109/EC of the European Parliament and of the Council	Minister	Minister for Enterprise, Trade & Employment
EECS	European Enforcer Co-ordination Sessions		
The Financial Regulator	The Irish Financial Services Regulatory Authority		
FSAP	Financial Services Action Plan		

Prescribed contravention	A contravention of - (a) the [Transparency (Directive 2004/109/EC)] Regulations, (b) any obligation imposed by the Bank pursuant to a power exercised under the Regulations, or (c) any other provision of transparency (regulated markets) law.	S.I. 116	Statutory Instrument No. 116 of 2005: European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations, 2005
Prospectus Directive	Directive 2003/71/EC of the European Parliament and of the Council	Specified sanction	The sanctions referred to in the assessor's assessment, which the assessor considers are appropriate to be imposed on the assessee in respect of the contravention.
Regulated Market	A market as defined by Article 4(1), point 14, of Directive 2004/39/EC ('MiFID')	The Transparency Decision	Commission Decision 2006/891/EC
The Regulations	Transparency (Directive 2004/109/EC) Regulations 2007	Transparency Rules	Interim Transparency Rules of the Financial Regulator
Relevant records	Records relating to the activities of persons to whom the Regulations apply.		

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