



**GUIDE TO THE PROVISIONS OF THE
EUROPEAN COMMUNITIES (STATUTORY AUDITS)
(DIRECTIVE 2006/43/EC) *REGULATIONS* 2010**

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**

DISCLAIMER

The purpose of this Guide is to provide guidance as to the principal provisions of the *Regulations* and the various competent authorities' principal functions and responsibilities thereunder. It does not constitute legal advice or a legal interpretation and is, therefore, not intended as a substitute for a detailed review of the *Regulations*. Where users of this Guide are uncertain regarding the effect of any legal provision, consideration should be given to obtaining independent professional legal advice.

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GLOSSARY OF DEFINED TERMS

Throughout this Guide defined terms are indicated in italics.
Where defined terms are the exact text used in *Regulation 3 (Interpretation)* this is denoted below by means of an asterisk (*)

<i>1963 Act</i>	Companies Act 1963
<i>1986 Act</i>	Companies (Amendment) Act 1986
<i>1990 Act</i>	Companies Act 1990
<i>2003 Act</i>	Companies (Auditing and Accounting) Act 2003
<i>AGM</i>	Annual General Meeting
<i>Auditor</i>	A <i>Statutory Auditor</i> or <i>Statutory Audit Firm</i> within the meaning of the European Communities (Statutory Audits) (Directive 2006/43/EC) <i>Regulations 2010</i> . (refer also below to defined terms for <i>Statutory Auditor</i> or <i>Statutory Audit Firm</i>)
<i>Audit Working Papers*</i>	In relation to a <i>Statutory Auditor</i> or <i>Statutory Audit Firm</i> , means material (whether in the form of data stored on paper, film, electronic media or other media or otherwise) prepared by or for, or obtained by the <i>Statutory Auditor</i> or audit firm in connection with the performance of the audit concerned, and includes- a) the record of audit procedures performed, b) relevant audit evidence obtained, and c) conclusions reached, and a reference to audit working papers in relation to: (i) a Member State auditor or audit firm, or (ii) a third-country auditor or audit entity, shall be read accordingly’.
<i>Commission*/European Commission</i>	Commission of the European Communities
<i>Companies Legislation</i>	All primary and secondary legislation relating to companies
<i>Competent authority with registration functions</i>	The <i>Registrar</i>
<i>Competent authority with supervisory and other functions</i>	IAASA
<i>Directive*</i>	Directive No. 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC

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<i>Director</i>	Director of Corporate Enforcement
<i>EU</i>	European Union
<i>Guide</i>	Guide to the Provisions of the European Communities (Statutory Audits) (Directive 2006/43/EC) <i>Regulations</i> 2010, i.e. this document
<i>Group Auditor*</i>	The <i>Statutory Auditor</i> or <i>Statutory Audit Firm</i> carrying out the <i>Statutory Audit</i> of the group accounts in question.
<i>IAASA</i>	Irish Auditing & Accounting Supervisory Authority
<i>Individually Authorised Auditor (IAA)</i>	A person who was authorised to be qualified for appointment as an auditor of a company or as a <i>Public Auditor</i> by the Minister before the 3 rd day of February 1983.
<i>Issuer</i>	An entity whose transferable securities are admitted to trading on a <i>Regulated Market</i> in the State.
<i>Key Audit Partner(s)*</i>	<ol style="list-style-type: none">a) the one or more <i>Statutory Auditors</i> designated by a <i>Statutory Audit Firm</i> for a particular audit engagement as being primarily responsible for carrying out the <i>Statutory Audit</i> on behalf of the audit firm; orb) in the case of a group audit, at least the one or more <i>Statutory Auditors</i> designated by the <i>Statutory Audit Firm</i> as being primarily responsible for carrying out the <i>Statutory Audit</i> at the level of the group and one or more <i>Statutory Auditors</i> designated as being primarily responsible at the level of material subsidiaries; orc) the one or more <i>Statutory Auditors</i> who sign the audit report.
<i>Member State*</i>	Member State of the European Union or an EEA State
<i>Member State Auditor*</i>	An auditor approved in accordance with the Directive by a competent authority of another Member State to carry out audits of annual or group accounts as required by Community law
<i>Member State Audit Firm*</i>	An audit entity approved in accordance with the Directive by a competent authority of another Member State to carry out audits of annual or group accounts as required by Community law
<i>Network*</i>	In relation to a <i>Statutory Auditor</i> or <i>Statutory Audit Firm</i> , means the larger structure: <ol style="list-style-type: none">a) which is aimed at cooperation and to which the <i>Statutory Auditor</i> or <i>Statutory Audit Firm</i> belongs; andb) either-

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	<ul style="list-style-type: none">(i) the clear objective of which is profit or cost sharing; or(ii) which shares-<ul style="list-style-type: none">(I) common ownership, control or management,(II) common quality control policies and procedures,(III) a common business strategy, or(IV) the use of a common brand name or a significant part of professional resources.
<i>Practising Certificate</i>	A certificate awarded to a person by a body of accountants entitling that person to practise as auditor of a company or as a <i>Public Auditor</i> .
<i>Prescribed Accountancy Body (PAB)</i>	A <i>Recognised Accountancy Body</i> or any other body of accountants that is prescribed under section 48 (1) (a) of the 2003 Act
<i>Public Auditor</i>	A public auditor for the purposes of the Industrial and Provident Societies Acts, 1893 to 1978, and the Friendly Societies Acts, 1896 to 1993.'
<i>Public-Interest Entities (PIEs)*</i>	<ul style="list-style-type: none">a) companies or other bodies corporate governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC,b) credit institutions, as defined in point 1 of Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, andc) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC.
<i>Recognised Accountancy Body* (RAB)</i>	A body of accountants – <ul style="list-style-type: none">a) recognised, orb) deemed, by virtue of section 191(3) or (4) of the Act of 1990 to be recognised, by the <i>competent authority with supervisory and other functions</i> for the purposes of <ul style="list-style-type: none">(i) section 187 of the Act of 1990, or(ii) these <i>Regulations</i>;
<i>Register</i>	The Register of (a) <i>Statutory Auditors</i> and <i>Statutory Audit Firms</i> and (b) <i>Third Country Auditors</i> and <i>Third Country Audit Entities</i> , which the <i>Registrar</i> of Companies must maintain in accordance with Regulation 63.

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<i>Registrar</i>	The Registrar of Companies
<i>Regulations</i>	European Communities (Statutory Audits) (Directive 2006/43/EC) <i>Regulations 2010</i> ¹
<i>Regulated Market</i>	A market within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC
<i>State</i>	Ireland
<i>Statutory Audit</i> *	An audit of individual accounts or group accounts in so far as required by Community law.
<i>Statutory Auditor</i> *	A natural person who is approved in accordance with the <i>Regulations</i> to carry out statutory audits.
<i>Statutory Audit Firm</i> *	An audit firm which is approved in accordance with the <i>Regulations</i> to carry out statutory audits.
<i>Third Country</i> *	A country or territory that is not a <i>Member State</i> or part of a <i>Member State</i> .
<i>Third Country Auditor</i> *	A natural person who is entitled, under or by virtue of the laws, <i>Regulations</i> or administrative provisions of a third country, to carry out audits of the annual or group accounts of a company incorporated in that <i>Third Country</i> .
<i>Third Country Audit Entity</i> *	An entity that is entitled, under or by virtue of the laws, <i>Regulations</i> or administrative provisions of a third country, to carry out audits of the annual or group accounts of a company incorporated in that third country.
<i>Third Country Competent Authority</i> *	An authority in a third country with responsibilities, as respects auditors and audit entities in that country, equivalent to those of a competent authority or the <i>Competent authority with supervisory and other functions</i> .
<i>Transparency Report</i>	The report that a <i>Statutory Auditor</i> or <i>Statutory Audit Firm</i> that carries out the <i>Statutory Audit</i> of one or more <i>Public-Interest Entities</i> has to prepare and publish within 3 months of the end of a financial year in accordance with <i>Regulations 58 to 61</i> .

¹ European Communities (Statutory Audits) (Directive 2006/43/EC) *Regulations 2010*, which can be obtained at: http://www.IAASA.ie/legislation/s220_2010.pdf

1. THE *REGULATIONS* – AN OVERVIEW

1.1. Summary of the matters dealt with by the *Regulations*

At a high level the *Directive* and the *Regulations* are concerned with, amongst other matters:

- the approval of *Auditors*;
- the *Register* of *Auditors*;
- professional ethics and other requirements applicable to *Auditors*;
- auditing standards and reporting;
- quality assurance of *Auditors*' work;
- systems of investigations and penalties;
- public oversight of *Auditors*;
- regulatory arrangements between *Member States*;
- *Member States*' relations with *Third Country Auditors* and *Third Country Competent Authorities*; and
- Audit Committees.

1.2. High level considerations giving rise to the adoption of the *Directive*

The *Directive* was enacted on 17 May, 2006, and was transposed into national law on 20 May, 2010 by the *Regulations*². Per the *Directive*'s recitals, the considerations that lead the European Parliament and Council to adopt the *Directive* included the following:

- audit qualifications obtained by *Statutory Auditors* on the basis of the *Directive* should be considered equivalent. It should, therefore, no longer be possible for *Member States* to insist that a majority of the voting rights in a *Statutory Audit Firm* must be held by locally approved *Statutory Auditors* or that a majority of the members of the administrative or management body of a *Statutory Audit Firm* must be locally approved;
- in order to protect third parties, all approved *Statutory Auditors* and *Statutory Audit Firms* should be entered in a *Register* which is accessible to the public and which contains basic information concerning *Statutory Auditors* and *Statutory Audit Firms*;
- *Statutory Auditors* should adhere to the highest ethical standards. They should, therefore, be subject to professional ethics, covering at least their public-interest function, their integrity and objectivity and their professional competence and due care. The public-interest function of *Statutory Auditors* means that a broader community of people and institutions rely on the quality of a *Statutory Auditor*'s work. Good audit quality contributes to the orderly functioning of markets by enhancing the integrity and efficiency of financial statements;
- *Statutory Auditors* and *Statutory Audit Firms* should be independent when carrying out *Statutory Audits*;

² The *Regulations* can be accessed at http://www.IAASA.ie/legislation/si220_2010.pdf

- it is important to ensure consistently high quality in all *Statutory Audits* required by EU law. All *Statutory Audits* should therefore be carried out on the basis of international auditing standards;
- regular inspections are a good means of achieving a consistently high quality in *Statutory Audits*. *Statutory Auditors* and *Statutory Audit Firms* should therefore be subject to a system of quality assurance that is organised in a manner which is independent from the reviewed *Statutory Auditors* and *Statutory Audit Firms*;
- investigations and appropriate penalties help to prevent and correct inadequate execution of a *Statutory Audit*;
- *Member States* should organise an effective system of public oversight for *Statutory Auditors* and *Statutory Audit Firms* on the basis of home country control. The regulatory arrangements for public oversight should make possible effective co-operation at EU level in respect of the *Member States'* oversight activities. The public oversight system should be governed by non-practitioners who are knowledgeable in the areas relevant to *Statutory Audit*;
- since *Public-Interest Entities* have a higher visibility and are economically more important, stricter requirements should apply in the case of a *Statutory Audit* of their annual or consolidated accounts;
- audit committees and an effective internal control system help to minimise financial, operational and compliance risks and enhance the quality of financial reporting;
- the interrelation of capital markets underlines the need also to ensure that high-quality work is performed by *Auditors* from third countries in relation to the EU capital markets. The *Statutory Auditors* concerned should therefore be registered so as to make them subject to quality assurance reviews and to the system of investigations and penalties. Derogations on the basis of reciprocity should be possible subject to an equivalence testing to be performed by the *Commission* in co-operation with *Member States*. In any case, an entity which has issued transferable securities on a *Regulated Market* should always be audited by a *Statutory Auditor* either registered in a *Member State* or overseen by competent authorities of the *Third Country* from which the *Statutory Auditor* comes from, provided that the said *Third Country* is acknowledged by the *Commission* or a *Member State* as meeting the requirements equivalent to EU requirements in the field of principles of oversight, quality assurance systems and systems of investigations and penalties, and that the basis of this arrangement is reciprocity; and
- the complexity of international group audits requires good co-operation between the competent authorities of *Member States* and those of *Third Countries*. *Member States* should therefore ensure that competent authorities of *Third Countries* can have access to *Audit Working Papers* and other documents through the national competent authorities.

1.3. Commencement arrangements

Under the *Regulations*, there are varying commencement arrangements as set out below.

- I. Those provisions relating to the:
 - conduct of *Statutory Audits*; and
 - duties and powers of *Statutory Auditors* and *Statutory Audit Firms*,

apply to the conduct of *Statutory Audits* for financial years commencing on or after 20 May, 2010³;

II. those provisions relating to:

- the requirement to provide access to information to incoming *Statutory Auditors* or *Statutory Audit Firms*⁴;
- notifications to IAASA by *Auditors* and companies regarding cessation from office by *Auditors*⁵;
- restrictions on the removal of *Auditors*⁶;
- *Transparency Reports* by *Auditors* of *Public-Interest Entities*⁷;
- disclosure of remuneration for audit, audit-related and non-audit work⁸;
- requirement for the *Registrar* to maintain a *Register*⁹;

apply from 20 August, 2010;

III. those provisions relating to:

- the issuance of guidance by IAASA on exempting a *Member State Auditor* or *Third-Country Auditor* from the aptitude test requirements¹⁰;
- audit committees;
- the required system of quality assurance of registered *Third-Country Auditors* and *Audit Entities*¹¹;

apply from 20 November, 2010; and

IV. all other provisions apply from 20 May 2010¹².

1.4. Approach adopted towards the regulation and supervision of *Auditors* in the *Regulations*

Consistent with the model of supervised self regulation provided for by the *2003 Act*, the approach adopted by the *Regulations* is, with the exception of *Third Country Auditors*, one under which:

- the *RABs* are responsible for the regulation, monitoring and disciplining of their members and member firms; and
- IAASA is responsible for:

³ Regulation 2 refers

⁴ Regulation 47 refers

⁵ Regulation 62 refers

⁶ Regulation 62 refers

⁷ Regulation 58-61 refers

⁸ Regulation 120 refers

⁹ Regulation 63 refers

¹⁰ *Regulations* 30(3) and (4) refer

¹¹ Regulation 83 (2) refers

¹² Regulation 2 refers

- granting *RAB* status to bodies of accountants (subject to certain criteria being satisfied); and
- supervising the *RABs'* regulation, monitoring and disciplining of their members and member firms.

1.5. Conduct of *Statutory Audits*

Statutory Audits may only be performed by individuals or entities approved as *Statutory Auditors* or *Statutory Audit Firms* under the *Regulations*¹³. A person who contravenes the foregoing provision is guilty of an indictable offence¹⁴.

1.6. *Statutory Auditors* and *Statutory Audit Firms* – transitional provisions

*1.6.1. Transitional provisions – individuals*¹⁵

A person who, immediately before the commencement of Regulation 25, was qualified for appointment as *Auditor* of a company pursuant to Part X of the *1990 Act* is deemed to have been approved as a *Statutory Auditor* in accordance with the *Regulations*.

*1.6.2. Transitional provisions – Individually Authorised Auditors ('IAAs')*¹⁶

Whilst *IAAs* are, similarly, deemed to have been approved as *Statutory Auditors* in accordance with the above provisions, that deemed approval shall cease to have effect unless, 'as soon as may be', those individuals become either a member of, or subject to regulation by, a *RAB*.

*1.6.3. Transitional provisions – firms*¹⁷

A firm that, immediately before the commencement of these *Regulations*, was qualified for appointment as *Auditor* of a company pursuant to Part X of the *1990 Act* is deemed to have been approved as a *Statutory Audit Firm* in accordance with the *Regulations*.

¹³ Regulation 20 refers

¹⁴ Regulation 23 refers

¹⁵ Regulation 25(1) refers

¹⁶ Regulation 25(3) refers

¹⁷ Regulation 27(4) refers

2. RECOGNITION OF BODIES OF ACCOUNTANTS

Whereas previously section 191 of the *1990 Act* provided that *IAASA* could grant recognition to bodies of accountants for the purpose of section 187 of that Act¹⁸ (provided that those bodies satisfied certain criteria), Regulation 10 has replaced the previous section 191 with a new section 191.

As a result, section 191 now provides for two separate classes of recognition, *viz*:

- i. recognition for the purposes of section 187 of the *1990 Act* (i.e. bodies entitled to grant approval to members to act solely as *Public Auditors*); and
- ii. recognition for the purposes of the *Regulations*.

In accordance with the provisions of *Regulations* 10(3) and 10(4), the six bodies of accountants¹⁹ that, prior to the enactment of the *Regulations*, were *RABs* for the purpose of section 187:

- continue to stand recognised by *IAASA* under or for the purpose of section 187²⁰; and
- are deemed to have been granted recognition by *IAASA* under or for the purposes of the *Regulations*²¹.

Regulation 9 effects a conforming amendment to section 190 of the *1990 Act*, which provides that, before granting recognition to a body of accountants, *IAASA* may consult:

- as to the conditions or standards required by the body of accountants concerned; or
- before forming any opinion or making any declaration in relation to the qualifications held by any person or class of persons as respects qualification for appointment as a *Public Auditor*.

¹⁸ i.e. for the purpose of entitling those bodies to authorise members to act as *Auditors*

¹⁹ The six bodies of accountants concerned are the:

- Association of Chartered Certified Accountants ('ACCA')
- Institute of Chartered Accountants in England & Wales ('ICAEW')
- Institute of Chartered Accountants in Ireland ('ICAI')
- Institute of Chartered Accountants of Scotland ('ICAS')
- Institute of Certified Public Accountants in Ireland ('ICPAI'); and
- Institute of Incorporated Public Accountants ('IIPA').

²⁰ Regulation 10(3) refers

²¹ Regulation 10(4) refers

3. APPROVAL OF *STATUTORY AUDITORS AND STATUTORY AUDIT FIRMS*

3.1. Approval of *Statutory Auditors*

A *RAB* can, subject to certain conditions having been met, approve an individual as a *Statutory Auditor*. Three categories of person can be approved as *Statutory Auditors* under the *Regulations*, i.e.:

1. members of the *RABs* holding appropriate qualifications;
2. *Member State Auditors* meeting certain requirements; and
3. *Third Country Auditors* meeting certain requirements.

3.1.1 *Approval of members of the RABs holding appropriate qualifications as Statutory Auditors*²²
Prerequisites for approval of such persons as *Statutory Auditors* include satisfying requirements relating to:

- good repute;
- educational qualifications; and
- relevant experience.

The standards relating to educational qualifications and relevant experience are set out in detail in Schedule 2 to the *Regulations* and they replicate Articles 6, 7, 8 and 10 of the *Directive*. A copy of Schedule 2 to the *Regulations* is included as Appendix 1 to this *Guide* for reference purposes.

3.1.2 *Approval of Member State Auditors as Statutory Auditors*²³

Prerequisites for approval of such persons as *Statutory Auditors* include satisfying requirements relating to:

- good repute; and
- an aptitude test relating to knowledge of the enactments and practice relevant to *Statutory Audits* in the *State*.

The fact that the applicant is a *Member State Auditor* shall constitute conclusive evidence that the applicant is of good repute unless a counterpart authority in the *Member State* where the applicant has been approved has notified the relevant *RAB* or *IAASA* that it has reasonable grounds for believing that the good repute of the applicant has been seriously compromised²⁴.

3.1.3 *Approval of Third Country Auditors as Statutory Auditors*²⁵

Prerequisites for approval of *Third Country Auditors* as *Statutory Auditors* include satisfying requirements relating to:

- good repute;
- an aptitude test relating to knowledge of the enactments and practice relevant to *Statutory Audits* in the *State*;
- educational qualifications;
- relevant experience; and
- continuing education.

²² *Regulations* 19(2), 24 and 26 refer

²³ *Regulations* 19(2), 24, 30 and 31(1) refer

²⁴ Regulation 19(4) refers

²⁵ *Regulations* 19(2), 24, 30, 31(1) and 112 refer

In addition, a *RAB* may not approve a *Third Country Auditor* as a *Statutory Auditor* unless reciprocal arrangements are in place with the *Third Country* in question such that:

- by virtue of the law of that *Third Country*; and
- on fulfilment by the *Statutory Auditor* concerned of requirements no more onerous than the requirements referred to above,

a *Statutory Auditor* may carry out audits in that *Third Country*.

3.2. Approval of *Statutory Audit Firms*

A *RAB* can, subject to certain conditions having been met, approve a firm as a *Statutory Audit Firm*.

Prerequisites for approval as a *Statutory Audit Firm* include satisfying requirements relating to good repute²⁶. In that context, the fact that the applicant firm is a *Member State Audit Firm* shall constitute conclusive evidence that the applicant is of good repute unless a counterpart authority in the *Member State* where the applicant firm has been approved has notified a relevant Irish authority that it has reasonable grounds for believing that the good repute of the applicant firm has been seriously compromised²⁷.

By way of further requirements in this regard, a firm (including a *Member State Audit Firm*) shall not be eligible for approval as a *Statutory Audit Firm* unless:

- the natural persons who carry out *Statutory Audits* in the *State* on behalf of the firm are approved as *Statutory Auditors* in accordance with the *Regulations*;
- the majority of the voting rights in the firm are held by:
 - natural persons who are eligible for approval in the *State* or in any other *Member State* as *Statutory Auditors*; or
 - audit firms approved as *Statutory Audit Firms* in the *State* or in any other *Member State*; and
- the majority of the members of the administrative or management body of the firm are:
 - natural persons who are eligible for approval in the *State* or in any other *Member State* as *Statutory Auditors*; or
 - audit firms approved as *Statutory Audit Firms* in the *State* or in any other *Member State*²⁸.

3.3. *Statutory Auditors' and Statutory Audit Firms' identification numbers*²⁹

On approving a *Statutory Auditor* or *Statutory Audit Firm*, a *RAB* must assign an individual identification number to that *Statutory Auditor/Statutory Audit Firm* and maintain a record of all such numbers assigned.

²⁶ Regulation 19(2) refers

²⁷ Regulation 19(4) refers

²⁸ Regulation 27(2) refers

²⁹ Regulation 19(6) refers

3.4. Offences - restrictions on acting as a *Statutory Auditor* or *Statutory Audit Firm*³⁰
Statutory Audits shall be carried out only by *Auditors*³¹. A person shall not:

- act as a *Statutory Auditor*;
- describe himself as a *Statutory Auditor*; or
- so hold himself out as to indicate, or be reasonably understood to indicate, that he is a *Statutory Auditor*,

unless he has been approved in accordance with the *Regulations*.

Similarly, a firm shall not:

- act as a *Statutory Audit Firm*;
- describe itself as a *Statutory Audit Firm*; or
- so hold itself out as to indicate, or be reasonably understood to indicate, that it is a *Statutory Audit Firm*,

unless it has been approved in accordance with the *Regulations*.

A person who contravenes the foregoing provisions is guilty of an indictable offence³².

³⁰ *Regulations* 21, 22 and 23 refer

³¹ Regulation 20 refers

³² Regulation 23 sets out the liability for these offences.

4. PROCEDURE FOR DETERMINING WHICH *RAB* HAS RESPONSIBILITY IN RELATION TO *STATUTORY AUDITORS* AND *STATUTORY AUDIT FIRMS* AND ASSOCIATED MATTERS³³

4.1. Procedure in relation to members or member firms of a *RAB*³⁴

Due to there currently being six *RABs*, this section endeavours to set out the respective reference points between the *Statutory Auditor*, *Statutory Audit Firm* and the *RABs*.

A provision of the *Regulations* that confers a function on a *RAB* in relation to an *Auditor* shall be read as conferring that function:

- i. in the case of a *Statutory Auditor* who is not a member of a *Statutory Audit Firm*, on the *RAB* of which the *Statutory Auditor* is a member;
- ii. in the case of a *Statutory Auditor* who is a member of a *Statutory Audit Firm*, on the *RAB* of which the *Statutory Audit Firm* is a member; and
- iii. in the case of a *Statutory Audit Firm*, on the *RAB* of which the *Statutory Audit Firm* is a member.

Similarly, a provision of the *Regulations* requiring, or enabling an act to be done, by a person in relation to a *RAB* shall be read as requiring or enabling it to be done by the person in relation to:

- i. if the person is not a member of a *Statutory Audit Firm*, the *RAB* of which the person is a member;
- ii. if the person is a member of a *Statutory Audit Firm*, the *RAB* of which the *Statutory Audit Firm* is a member; and
- iii. if the person is a *Statutory Audit Firm*, the *RAB* of which the *Statutory Audit Firm* is a member.

4.2. Procedure in relation to other parties

In the case of a provision of the *Regulations* as referred to above where the provision falls to be applied to a *Member State Auditor*, a *Member State Audit Firm*, a *Third Country Auditor*, *Third Country Audit Entity* or any other person who, or which, is not a member of a *RAB*, the *RAB* that shall perform the function concerned or, as the case may be, in relation to the act concerned is required or enabled to be done shall be determined:

- by reference to arrangements, in writing, entered into by the *RABs* amongst themselves; or
- in default of:
 - such arrangements being entered into; or
 - the provisions of such arrangements dealing with the particular case falling to be determined,

by *IAASA*.

In relation to the arrangements referred to above, the *RABs* shall not enter into such arrangements without having consulted with *IAASA*³⁵.

In circumstances where *IAASA* makes a determination pursuant to the foregoing, a direction in writing, reflecting the terms of the determination, shall be given by *IAASA*³⁶.

³³ Regulation 17 refers

³⁴ *Regulations* 17(2) and (4) refer

³⁵ Regulation 17(7) refers

³⁶ Regulation 17(6) refers

5. WITHDRAWAL OF THE APPROVAL OF *STATUTORY AUDITORS AND STATUTORY AUDIT FIRMS*

5.1. Grounds for mandatory withdrawal of approval – *Statutory Auditors*³⁷

A *RAB* shall withdraw the approval of a *Statutory Auditor* if, but only if:

- (i) circumstances arise (involving acts or omissions on the part of the *Statutory Auditor*) from which the *RAB* can reasonably conclude that the *Statutory Auditor's* good repute is seriously compromised; or
- (ii) the *Statutory Auditor* ceases to satisfy any of the conditions laid down by Regulation 24, i.e., that the *Statutory Auditor* must be a:
 - a. member of a *RAB* holding an appropriate qualification;
 - b. *Member State Auditor* satisfying certain requirements; or
 - c. *Third Country Auditor* satisfying certain requirements.

With reference to (i) above, instances that can constitute circumstances of a *Statutory Auditor's* good repute being seriously compromised include cases of professional misconduct or want of professional skill on the part of the *Statutory Auditor*.

Where, having:

- complied with procedural fairness; and
- served any notices required of it by its investigation and disciplinary procedures,

a *RAB* is satisfied that circumstances referred to in (i) above have arisen or that non-compliance as referred to in (ii) above has occurred, it shall serve a notice on the *Statutory Auditor* stating that:

- (a) it is satisfied that:
 - those circumstances have arisen in relation to; or
 - such non-compliance has occurred on the part of,the *Statutory Auditor*;
- (b) as the case may be, the *Statutory Auditor* must take specified steps to restore his/her repute to good standing, or comply with the condition concerned, within a specified period (which shall not be less than one month); and
- (c) if those steps are not taken, or the condition concerned is not complied with, within the specified period, it shall withdraw the *Statutory Auditor's* approval.

If, but only if, as the case may be:

- those steps are not taken; or
- the condition concerned is not complied with,

³⁷ Regulation 33 refers

by the *Statutory Auditor* within the specified period, the *RAB* shall withdraw the *Statutory Auditor's* approval.

Where the acts or omissions concerned constitute, in the opinion of the *RAB*, professional misconduct or the want of professional skill to a degree that employing the procedure referred to in paragraphs (a) to (c) above would not be in the public-interest, the *RAB* need not comply with those provisions. However, nothing in the foregoing provision affects the *RAB's* obligation to comply with procedural fairness in withdrawing an approval. The *Regulations* similarly provide for the removal of approval from a *Statutory Auditor* who was deemed to have been approved under the transitional provisions³⁸, but who is no longer complying with conditions of eligibility.

5.2. Appeal procedures on withdrawal of approval – *Statutory Auditors*

The provisions of the preceding section are subject to:

- a right of appeal to the concerned *RAB's* internal appeal procedures; or
- in certain circumstances, a right on the part of the *Statutory Auditor* concerned to seek suspension of the withdrawal decision pending the conclusion of the internal appeal procedures³⁹.

Following a final decision to withdraw approval (i.e. after the exhaustion of the *RAB's* internal appeals process where such a process exists), the *Statutory Auditor* concerned may apply to the High Court for an order suspending the operation of the withdrawal pending the determination by the High Court of an appeal against the withdrawal⁴⁰. However, no such appeal may be made unless the person concerned has exhausted the *RAB's* internal appeals process (where such process exists). Moreover, appeals are subject to the time limits set out in Regulation 35(3).

5.3. Grounds for mandatory withdrawal of approval – *Statutory Audit Firms*⁴¹

A *RAB* shall withdraw the approval of a *Statutory Audit Firm* if, but only if:

- (i) circumstances arise from which the *RAB* can reasonably conclude that the *Statutory Audit Firm's* good repute is seriously compromised; or
- (ii) the *Statutory Audit Firm* ceases to satisfy any of the conditions laid down by Regulation 27(2), i.e. that:
 - the natural persons who carry out *Statutory Audits* in the *State* on behalf of the firm are approved as *Statutory Auditors* in accordance with the *Regulations*;
 - the majority of the voting rights in the firm are held by:
 - natural persons who are eligible for approval in the *State* or in any other *Member State* as *Statutory Auditors*; or
 - audit firms approved as *Statutory Audit Firms* in the *State* or in any other *Member State*; and
 - the majority of the members of the administrative or management body of the *Statutory Audit Firm* are:

³⁸ Regulation 25(1) refers

³⁹ *Regulations* 33(7) and 33(8) refer

⁴⁰ Regulation 33(11) refers

⁴¹ Regulation 34 refers

- natural persons who are eligible for approval in the *State* or in any other *Member State* as *Statutory Auditors*; or
- audit firms approved as *Statutory Audit Firms* in the *State* or in any other *Member State*.

With reference to (i) above, instances that can constitute circumstances of a *Statutory Audit Firm's* good repute being seriously compromised include cases of professional misconduct or want of professional skill on the part of the *Statutory Audit Firm* or any one or more *Statutory Auditors* through whom it acts.

Where, having:

- complied with procedural fairness; and
- served any notices required of it by its investigation and disciplinary procedures,

a *RAB* is satisfied that circumstances referred to in (i) above have arisen, or that non-compliance as referred to in (ii) above has occurred, it shall serve a notice on the *Statutory Audit Firm* stating that:

(a) it is satisfied that:

- those circumstances have arisen in relation to; or
- such non-compliance has occurred on the part of,

the *Statutory Audit Firm*;

(b) as the case may be, the *Statutory Audit Firm* must take specified steps to restore its repute to good standing, or comply with the condition concerned, within a specified period (which shall not be less than one month); and

(c) if those steps are not taken, or the condition concerned is not complied with, within the specified period, it shall withdraw the *Statutory Audit Firm's* approval.

If, but only if, as the case may be:

- those steps are not taken; or
- the condition concerned is not complied with,

by the *Statutory Audit Firm* within the specified period, the *RAB* shall withdraw the *Statutory Audit Firm's* approval.

Where the acts or omissions concerned constitute, in the opinion of the *RAB*, professional misconduct or the want of professional skill to a degree that employing the procedure referred to in paragraphs (a) to (c) above would not be in the public-interest, the *RAB* need not comply with those provisions. However, nothing in the foregoing provision affects the *RAB's* obligation to comply with procedural fairness in withdrawing an approval.

The *Regulations* similarly provide for the removal of approval from a *Statutory Audit Firm* who was deemed to have been approved under the transitional provisions⁴², but who is no longer complying with conditions of eligibility.

⁴² Regulation 27(4) refers

5.4. Appeal procedures on withdrawal of approval – *Statutory Audit Firms*

The provisions of the preceding section are subject to:

- a right of appeal to the concerned *RAB*'s internal appeal procedures; or
- in certain circumstances, a right on the part of the *Statutory Audit Firm* concerned to seek suspension of the withdrawal decision pending the conclusion of the internal appeal procedures⁴³.

Following a final decision to withdraw approval (i.e. after the exhaustion of the *RAB*'s internal appeals process where such a process exists), the *Statutory Audit Firm* concerned may apply to the High Court for an order suspending the operation of the withdrawal pending the determination by the High Court of an appeal against the withdrawal⁴⁴. However, no such appeal may be made unless the firm concerned has exhausted the *RAB*'s internal appeals process (where such process exists). Moreover, appeals are subject to the time limits set out in Regulation 35(3).

5.5. Notification of withdrawal⁴⁵

Where a *RAB* withdraws a *Statutory Auditor's* or *Statutory Audit Firm's* approval for any reason, the *RAB* concerned must notify that fact, and the reasons for withdrawal, to both *IAASA* and the *Registrar*. Notification must be made within one month of withdrawal.

Where the approval under the *Regulations* of a *Statutory Auditor* or *Statutory Audit Firm* is withdrawn for any reason by a *RAB* and the *Statutory Auditor* or *Statutory Audit Firm* is also approved in another *Member State*, the *RAB* concerned shall, in addition to notifying *IAASA* and the *Registrar*, notify the relevant competent authorities of other *Member States* in which the *Statutory Auditor* or *Statutory Audit Firm* has been approved and entered into the relevant register. The notification shall include details of the fact of the withdrawal and the reasons for same. Notification must be made as soon as possible and, in any event, not later than one month after withdrawal⁴⁶.

In the event that approval is withdrawn by *IAASA* pursuant to section 24 of the 2003 Act, *IAASA* shall, as applicable, make the notifications required by *Regulations* 37 and 38⁴⁷. *IAASA*'s powers under section 24 of the 2003 Act are discussed in further detail in Section 11.10 of this *Guide*.

5.6. Co-operation between *RABs*

If, in consequence of the operation of the provisions of Regulation 17, the function of withdrawal of a particular approval falls to be discharged by a *RAB* that is different from the *RAB* that granted the approval:

- the first mentioned *RAB* shall notify in writing the second mentioned *RAB* of the proposal by it to withdraw approval; and
- the second mentioned *RAB* shall provide such assistance, by way of the provision of information or clarification of any matter, to the first mentioned *RAB* as the latter considers it may require so as to inform itself better on any issue bearing on the performance of the function of withdrawal,

and the procedures adopted for those purposes by the abovementioned *RABs* shall be such as will:

⁴³ *Regulations* 34(7) and 34(8) refer

⁴⁴ Regulation 34(11) refers

⁴⁵ Regulation 37 refers

⁴⁶ *Regulations* 38(1) and (2) refer

⁴⁷ Regulation 38(3) refers

- avoid any unnecessary delay in the performance of the function of withdrawal; and
- respect the requirements of procedural fairness as concerns the *Statutory Auditor* or *Statutory Audit Firm* in question being able to answer any part of the case made against him, her or it that is informed by the procedures being employed.

Where approval is subsequently withdrawn, the first mentioned *RAB* shall notify the second mentioned *RAB* of that fact⁴⁸.

⁴⁸ Regulation 17(9) refers

6. STANDARDS AND PROVISIONS APPLICABLE TO *STATUTORY AUDITORS AND STATUTORY AUDIT FIRMS* AND RELATED MATTERS

6.1. Introduction

The *Regulations* provide for a number of obligations with which *Statutory Auditors* and *Statutory Audit Firms* must comply. These obligations arise under the following categories:

- continuing education;
- professional ethics;
- independence and objectivity;
- confidentiality; and
- the provision of access to information/documents.

6.2. Continuing education⁴⁹

The *Regulations* provide that the *RABs* shall attach to each approval as a *Statutory Auditor* a condition requiring the person concerned to take part in appropriate programmes of continuing education to maintain their theoretical knowledge, professional skills and values at a sufficiently high level.

6.3. Professional ethics⁵⁰

The *Regulations* provide that the *RABs* shall subject *Statutory Auditors* and *Statutory Audit Firms* to principles of professional ethics, covering at least their public-interest functions, their integrity and objectivity and their professional competence and due care.

6.4. Independence and objectivity⁵¹

The *Regulations* provide that *Auditors* are required to be subject to the following independence and objectivity requirements:

6.4.1 Requirement for independence – general

When carrying out *Statutory Audits*, *Auditors* are required to be independent of audited entities and shall not be involved in audited entities' decision making.

6.4.2 Prohibited relationships – specific provisions to secure independence⁵²

An *Auditor* shall not carry out a *Statutory Audit* in circumstances where certain relationships exist between the *Auditor* (or a *Network* to which they belong) and the audited entity. The relationships in question are any direct or indirect financial, business, employment or other relationships (which may include the provision of additional non-audit services) from which an objective, reasonable and informed third party would conclude that the *Auditor's* independence is compromised.

If an *Auditor's* independence is affected by threats such as self-review, self-interest, advocacy, familiarity or trust or intimidation, the *Auditor* shall apply safeguards in order to mitigate those threats. If the significance of the threats compared to the safeguards applied is such that independence is compromised, the *Auditor* should not carry out the *Statutory Audit* in question.

In addition, a person is precluded from acting as a *Statutory Auditor* to a company in circumstances where the person concerned⁵³:

⁴⁹ Regulation 39 refers

⁵⁰ Regulation 40 refers

⁵¹ *Regulations* 41, 70, 71 and 73 to 75 refer

⁵² Regulation 71 refers

- is an officer or servant of the company;
- was an officer or servant of the company during a period in respect of which the accounts would fall to be audited by the person were they to be appointed as *Statutory Auditor*;
- is a parent, spouse, brother, sister, or child of an officer of the company;
- is a person who is a partner, or in the employment, of an officer of the company;
- is a person who is disqualified from acting as a *Statutory Auditor*; or
- is a person in whose name a share in the company is registered.

Similar provisions apply in respect of *Statutory Audit Firms*, as applicable⁵⁴.

6.4.3 Recording of threats to independence⁵⁵

Auditors shall document in their *Audit Working Papers* all significant threats to their independence as well as the safeguards applied to mitigate those threats.

6.4.4 Non-intervention by certain persons in the execution of audit⁵⁶

Neither:

- the owners or shareholders of a *Statutory Audit Firm* or the owners or shareholders of an affiliated firm; nor
- the members of the administrative, management or supervisory body of such a firm or of an affiliated firm,

shall intervene in the execution of a *Statutory Audit* in any way which jeopardises the independence and objectivity of the *Statutory Auditor* who carries out the *Statutory Audit* on behalf of the *Statutory Audit Firm*.

6.4.5 Restrictions with regard to fees⁵⁷

The *RABs* are required to ensure that their standards include provisions stipulating that fees for *Statutory Audits* are not:

- influenced or determined by the provision of additional services to the audited entity; and
- are not based on any form of contingency.

6.5. Independence and objectivity – additional requirements applicable in the case of *Public-Interest Entities/PIEs*⁵⁸

The *Regulations* include certain additional provisions regarding *Statutory Auditors'* and *Statutory Audit Firms'* independence and objectivity in the context of *Statutory Audits* of *PIEs*. Details of those additional provisions, together with what is encompassed within the definition of *PIEs*, are set out in the following paragraphs.

⁵³Regulation 71(4) refers

⁵⁴ *Regulations* 71(5) and 71(6) refer

⁵⁵ Regulation 73 refers

⁵⁶ Regulation 74 refers

⁵⁷ Regulation 75 refers

⁵⁸ *Regulations* 72 and 76 to 78 refer

6.5.1 Self-review/self-interest⁵⁹

Without prejudice to the generality of *Regulations 70 and 71*, a *Statutory Auditor* or *Statutory Audit Firm* shall not carry out a *Statutory Audit* of a *PIE*:

- in circumstances which involve a case of self-review or self-interest; and
- from the circumstances of which case an objective, reasonable and informed third party would conclude that (so as to safeguard the *Statutory Auditor's* or *Statutory Audit Firm's* independence) the *Auditor's* not carrying out the audit would be appropriate.

6.5.2 Reporting to the Audit Committee⁶⁰

The *Auditor* shall report to the Audit Committee on key matters arising from the *Statutory Audit* and, in particular, on material weaknesses in internal control in relation to the financial reporting process⁶¹.

An *Auditor* that carries out the *Statutory Audit* of a *PIE* shall:

- confirm annually, in writing, to the Audit Committee of the entity his, her or its independence from the *PIE*;
- disclose annually to the Audit Committee any additional services provided to the *PIE*; and
- discuss with the Audit Committee the threats to the independence of the *Auditor* and the safeguards applied to mitigate those threats⁶².

6.5.3 Rotation of Key Audit Partner(s)⁶³

The *Key Audit Partner(s)* responsible for carrying out a *Statutory Audit* of a *PIE* shall not engage in a *Statutory Audit* of the entity at any time that is subsequent to the period of seven years after the relevant date⁶⁴ (such period being referred to as the '*seven year period*'). However, this prohibition ceases to have effect two years after the *seven year period* (i.e. after a two year cooling off period).

In the event of any period elapsing subsequent to the seven year period, such period being a period of seven years' duration during which the *Statutory Audit Firm* continues to be the *PIE's Auditor*, a prohibition similar to that set out above in relation to *Key Audit Partner(s)* (and similar two year cooling off period) shall apply.

6.5.4 Moratorium on taking up a management position in an audited PIE⁶⁵

A *Statutory Auditor* who carries out the *Statutory Audit* of a *PIE* or a *Key Audit Partner* who carries out the *Statutory Audit* of a *PIE* on behalf of a *Statutory Audit Firm* shall not take up a management position in the *PIE* concerned before a period of two years has elapsed from the day following (should such occur) his or her resignation as a *Statutory Auditor* or *Key Audit Partner* from the audit engagement.

⁵⁹ Regulation 72 refers

⁶⁰ Regulation 76 refers

⁶¹ Regulation 91(8) refers

⁶² Regulation 76 refers

⁶³ Regulation 77 refers

⁶⁴ The relevant date is the date of appointment, being a date falling on or after 29 June, 2008, of the *Statutory Auditor* or *Statutory Audit Firm* of the *PIE* to which the key audit partner(s) belong(s). Regulation 77 refers.

⁶⁵ Regulation 78 refers

6.6. RABs' standards⁶⁶

The *Regulations* provide that the *RABs* shall, in respect of *Statutory Auditors* and *Statutory Audit Firms*:

- have adequate standards requiring those *Statutory Auditors* and *Statutory Audit Firms* to comply with the obligations set out above; and
- institute adequate arrangements for the effective monitoring and enforcement of compliance with those standards.

However, no such standards shall be used until they have first been approved by IAASA.

6.7. Enforcement of the RABs' standards⁶⁷

The *RABs'* standards, as referred to above, shall include provision for:

- sanctions which include:
 - at the *RABs'* discretion, withdrawal of approval;
 - appropriate penalties;
 - appropriate disciplinary measures; and
 - appropriate regulatory sanctions; and
- making available to the public information relating to the measures taken and penalties imposed in respect of *Statutory Auditors* and *Statutory Audit Firms*.

6.8. Confidentiality⁶⁸

Statutory Auditors and *Statutory Audit Firms* must comply with the rules of confidentiality and secrecy of the *RAB* of which they are a member with respect to information and documents to which the *Statutory Auditor* or *Statutory Audit Firm* has access when carrying out a *Statutory Audit*.

In circumstances where a *Statutory Auditor* or *Statutory Audit Firm* is not a member of a *RAB*, the *RAB's* rules to which the *Statutory Auditor* or *Statutory Audit Firm* is subject shall be determined by reference to Regulation 17 as set out in Section 4 above.

The confidentiality requirements set out above shall continue to apply with respect to an audit assignment notwithstanding that the *Statutory Auditor* or *Statutory Audit Firm* has ceased to be engaged on that audit assignment.

It is important to note that nothing in the foregoing shall operate to prevent a *RAB* from complying with its obligations under the *Regulations* or under *Companies Legislation* more generally.

6.9. Provision of information to incoming Statutory Auditor⁶⁹

Where a *Statutory Auditor* or *Statutory Audit Firm* is replaced by another *Statutory Auditor* or *Statutory Audit Firm*, the former *Statutory Auditor* or *Statutory Audit Firm* shall provide access to all relevant information concerning the audited entity to the incoming *Statutory Auditor* or *Statutory Audit Firm*.

⁶⁶ Regulation 42 refers

⁶⁷ Regulation 43 refers

⁶⁸ *Regulations* 44 to 46 refer

⁶⁹ Regulation 47 refers

The above provision applies to a replacement of a *Statutory Auditor* or *Statutory Audit Firm* that occurs on or after 20 August, 2010.

6.10. Auditors' and companies' duty to notify IAASA in the event of cessation of office by an Auditor⁷⁰

The *Auditor* and the company concerned must notify IAASA in the event of the cessation of office by an *Auditor*, either by resignation or removal from office. The *Regulations* amend the *1963 Act* by inserting new sections 161A and 161B.

6.10.1 Auditors' obligations

Within one month of ceasing to hold office, the outgoing *Auditor* shall provide to IAASA, in such a form and manner as specified by IAASA:

- a notice that the *Auditor* concerned has ceased to hold office;
- in the case of resignation, a copy of the notice served under section 185(1) of the *1990 Act*; or
- in the case of removal pursuant to section 160(5) of the *1963 Act*, a copy of any representations in writing made to the company pursuant to section 161(3) in relation to the intended resolution, except where such representations were not sent to the members of the company in consequence of an application to the court under section 161(4).

Where, in the case of resignation, the notice served under section 185(1) of the *1990 Act* is to the effect that there are no circumstances connected with the resignation that the *Auditor* considers necessary to be brought to the notice of members or creditors of the company, the notification to IAASA shall also be accompanied by a statement of the reasons for the *Auditor's* resignation.

6.10.2 Companies' obligations

Within one month of the *Auditor* ceasing to hold office, the company shall provide to IAASA, in such a form and manner as specified by IAASA:

- a notice that the *Auditor* concerned has ceased to hold office;
- in the case of resignation, a copy of the notice served by the *Auditor* under section 185(1) of the *1990 Act*; or
- in the case of removal, pursuant to section 160(5) of the *1963 Act*:
 - a copy of the resolution removing the *Auditor*; and
 - a copy of any representations in writing made to the company pursuant to section 161(3) by the outgoing *Auditor* in relation to the intended resolution except where such representations were not sent to the members of the company in consequence of an application to the court under section 161(4).

6.11. Restrictions on the removal of Auditors⁷¹

The *Regulations* amend the *1963 Act* by inserting a new section 161C, which came into effect on 20 August, 2010. Section 161C provides that a resolution:

⁷⁰ Regulation 62 refers

⁷¹ Regulation 62 refers

- to remove an *Auditor*; or
- not to reappoint an *Auditor*,

shall not be effective unless:

- in the case of a resolution providing for an *Auditor's* removal from office, there are good and substantial grounds for the removal, such grounds being related to the conduct of the *Auditor* with regard to the performance of his/her duties as auditor of the company or otherwise; or
- the passing of the resolution is, in the company's opinion, in the best interests of the company.

However:

- for the foregoing purposes, diverging opinions on accounting treatments or audit procedures cannot constitute the basis for the passing of any such resolution; and
- the '*best interests of the company*' does not include any illegal or improper motive with regard to avoiding disclosures or detection of any failure by the company to comply with the *Companies Legislation*.

Section 161C applies to:

- a resolution removing an *Auditor* from office;
- a resolution at an *AGM* appointing someone other than the retiring *Auditor* as *Auditor*, and
- a resolution providing expressly that the retiring *Auditor* shall not be reappointed.

6.12. Disclosure of Auditors' remuneration

Regulation 120 inserts a new section 161D into the *1963 Act* relating to the disclosure of *Auditors'* remuneration and which applies to financial statements (whether individual or consolidated) for financial years ending on or after 20 August, 2010. In summary, section 161D requires the disclosure of *Auditors'* remuneration in the financial statements of certain companies under the following four categories:

- the audit of individual accounts;
- other assurance services;
- tax advisory services; and
- other non-audit services.

7. AUDITING STANDARDS AND AUDIT REPORTING

7.1. International auditing standards

On and from the date of adoption of international auditing standards by the *Commission, Statutory Auditors* and *Statutory Audit Firms* shall carry out *Statutory Audits* in accordance with same⁷².

7.2. Group audits – responsibility of the Group Auditor⁷³

Where the *Statutory Audit* of group accounts is carried out:

- a) the *Group Auditor* shall bear the full responsibility for the audit report in relation to the group accounts; and
- b) the *Group Auditor* shall carry out a review, and maintain documentation of such review, of the work of whomever of the following performed audit work for the purposes of the group audit:
 - i. *Statutory Auditors*;
 - ii. *Statutory Audit Firms*;
 - iii. *Member State Auditors*;
 - iv. *Member State Audit Firms*;
 - v. *Third Country Auditors*; and
 - vi. *Third Country Audit Entities*.

The documentation referred to above shall be such as to enable the relevant *RAB* to review the work of the *Group Auditor* properly.

Where:

- a *Statutory Audit* of the group accounts is carried out; and
- a component of the group is audited by one or more *Third Country Auditors* or *Third Country Audit Entities* that have no working arrangements⁷⁴,

the *Group Auditor* is responsible for ensuring proper delivery to *IAASA*, when requested, of the documentation of the audit work performed by those auditors or audit entities, including the working papers relevant to the group audit.

In order to ensure such delivery, the *Group Auditor* shall retain a copy of such audit documentation or, alternatively:

- agree with the *Third Country Auditors* or *Third Country Audit Entities* concerned arrangements for the *Group Auditor's* proper and unrestricted access, upon request, to the documentation; or
- take any other appropriate action.

Where legal or other impediments prevent *Audit Working Papers* from being passed from a *Third Country* to the *Group Auditor*, the documentation retained by the *Group Auditor* shall include:

⁷² Regulation 54 refers

⁷³ *Regulations* 55 and 56 refer

⁷⁴ i.e. the working arrangements referred to in *Regulations* 109(1)(c) and 110(c) respectively.

- evidence that he or she has undertaken the appropriate procedures in order to gain access to the audit documentation; and
- in the case of an impediment other than a legal impediment arising from legislation of the *Third Country*, or countries, concerned, evidence supporting such an impediment.

7.3. Signing of the audit report

Regulation 57 amends section 193 of the *1990 Act* by inserting a new subsection (4G). The effect of this amendment is that where the *Auditor* is:

- a *Statutory Auditor*, the audit report shall be signed by that person; or
- a *Statutory Audit Firm*, the audit report shall be signed by:
 - the *Statutory Auditor* (or, where more than one, each *Statutory Auditor*) designated by the audit firm for the particular engagement as being primarily responsible for carrying out the *Statutory Audit* on behalf of the *Statutory Audit Firm*; or
 - in the case of a group audit, at least the *Statutory Auditor* (or, where more than one, each *Statutory Auditor*) designated by the *Statutory Audit Firm* as being primarily responsible for carrying out the *Statutory Audit* at the level of the group,

in his or her own name for, and on behalf of, the *Statutory Audit Firm*.

7.4. Transparency Reports – Auditors of PIEs⁷⁵

Each *Statutory Auditor* or *Statutory Audit Firm* that carries out *Statutory Audits* of one or more *PIEs* shall prepare and publish, within three months after the end of:

- the financial year of the *Statutory Auditor* or *Statutory Audit Firm* (such a date being one that falls on or after 20 August, 2010); and
- each subsequent financial year of the *Statutory Auditor* or *Statutory Audit Firm*,

a *Transparency Report*⁷⁶.

7.4.1 Contents of Transparency Reports

At a minimum, the *Transparency Report* shall:

- be approved by the *Statutory Auditor* or *Statutory Audit Firm*; and
- be signed:
 - in the case of a report prepared by a *Statutory Auditor*, by the *Statutory Auditor*, or
 - in the case of a *Statutory Audit Firm*, by a partner or other member of the firm who has senior executive responsibility in relation to the affairs of the firm;
- contain the information set out below:

⁷⁵ Regulations 58 to 61 refer

⁷⁶ Regulation 58 refers

- i. a description of the legal structure and ownership of the *Statutory Audit Firm* (hereinafter referred to as the 'subject') ;
- ii. where the subject belongs to a *Network*, a description of the *Network* and the legal structure and structural arrangements of the *Network*;
- iii. a description of the governance structure of the subject;
- iv. a description of the internal quality control system of the subject and a statement by the administrative or managerial body on the effectiveness of its functioning;
- v. an indication of when the last quality assurance review took place;
- vi. a list of PIEs for which the subject has carried out *Statutory Audits* during the preceding financial year;
- vii. a statement concerning the subject's independence practices which also confirms that an internal review of independence compliance has been conducted;
- viii. a statement on the policy followed by the subject concerning the continuing education of *Statutory Auditors* in the firm;
- ix. financial information showing the significance, from the perspective of the market, of the subject, such as total turnover divided into fees from *Statutory Audit*, other assurance services, tax advisory services and other non-audit services;
- x. information concerning the basis for the remuneration of the principals or partners.

Where a *Transparency Report* relates to a *Statutory Audit Firm*, it shall contain, at a minimum, the information set out above. Where a *Transparency Report* relates to a *Statutory Auditor* (also referred to above as 'the subject'), it shall contain at least so much information as is applicable in the case of an individual.

7.4.2 Publication of Transparency Reports

Statutory Auditors or *Statutory Audit Firms* shall ensure that their *Transparency Reports*:

- are made available on a website, being a website maintained by them, or on their behalf, not later than three months after the end of their financial year to which the *Transparency Report* refers; and
- remain available for a period of three years after the final date for publication as above.

8. QUALITY ASSURANCE

8.1. Competent authorities⁷⁷

The competent authorities with responsibility for the quality assurance of *Auditors* are the *RABs*⁷⁸.

8.2. Oversight of the competent authorities⁷⁹

In performing their quality assurance functions, the *RABs* shall be subject to public oversight by IAASA.

8.3. Scope of system of quality assurance⁸⁰

Each *RAB* is required to ensure that it has in place a system of quality assurance in respect of:

- its members' activities as *Auditors*; and
- the activities, as *Auditors*, of persons who, though not members of the *RABs*, are persons in relation to whom the *RABs* may perform functions under the *Regulations*.

8.4. Organisation of quality assurance systems⁸¹

The *RABs* are required to organise their systems of quality assurance in a manner such that:

- the system is independent of the reviewed *Auditors*;
- the funding for the system is secure and free from any possible undue influence by *Auditors*;
- the system has adequate resources;
- the persons who carry out quality assurance reviews have appropriate professional education and relevant experience in *Statutory Audit* and financial reporting combined with specific training on quality assurance reviews;
- the selection of reviewers for specific assignments is effected in accordance with an objective procedure designed to ensure that there are no conflicts of interest between reviewers and the *Auditor* under review;
- the scope of quality assurance reviews, supported by adequate testing of selected audit files, includes an assessment of:
 - *Auditors'* compliance with applicable auditing standards and independence requirements;
 - the quantity and quality of resources spent;
 - the audit fees charged; and
 - the internal quality control system of the audit firm;

⁷⁷ *Regulations* 16 and 83 refer

⁷⁸ In late October, 2010 the Department of Enterprise, Trade & Innovation announced the decision by Minister for Trade & Commerce, Mr. Billy Kelleher, TD, to implement the European Commission's Recommendation on external quality assurance of the audits of *PIEs*. In implementing the Recommendation, the model to be adopted will be one of direct inspections, such inspections to be carried out by IAASA. At the time of writing, and pursuant to a request from the Minister, IAASA had commenced work on the development of an implementation plan.

⁷⁹ Regulation 82(1) refers

⁸⁰ Regulation 83 refers

⁸¹ Regulation 84 refers

- each quality assurance review is the subject of a written report which includes the main conclusions of the review;
- a quality assurance review of each *Auditor* takes place:
 - in the case of *Auditors* that carry out audits of *PIEs*, at least every three years;
 - in the case of *Auditors* that do not carry out audits of *PIEs*, at least every six years;
- *Auditors* take all reasonable steps to ensure that recommendations arising from quality assurance reviews of them are implemented within a reasonable period; and
- the *RAB* publishes, annually, the overall results of quality assurance reviews carried out by it during the year in question.

If an *Auditor* fails to take all reasonable steps to ensure that recommendations arising from a quality assurance review are implemented within a reasonable period, the *RAB* is required to take appropriate action, including, where applicable, subjecting the *Auditor* to its system of disciplinary actions or penalties.

8.5. Quality assurance reviews of a *Statutory Audit Firm* deemed to include individual *Statutory Auditors* in certain cases⁸²

A quality assurance review conducted in relation to a *Statutory Audit Firm* shall be regarded as a quality assurance review of all *Statutory Auditors* carrying out *Statutory Audits* on behalf of the *Statutory Audit Firm*, provided that the *Statutory Audit Firm* has a common quality assurance policy with which each *Statutory Auditor* is required to comply.

8.6. Right of the *RABs* as regards professional discipline⁸³

Each of the *RABs* shall have the right to take disciplinary action or impose penalties in respect of *Auditors* and shall have procedures in place to facilitate the taking or imposition of such actions or penalties.

⁸² Regulation 85 refers

⁸³ Regulation 86 refers

9. RECOGNISED ACCOUNTANCY BODIES' SYSTEMS OF INVESTIGATIONS AND PENALTIES

9.1. Systems of investigations and penalties⁸⁴

Each of the *RABs* is required to have, in respect of those *Auditors* in relation to which it may perform functions under the *Regulations*, arrangements to ensure that there are:

- effective systems of investigation; and
- penalties,

to detect, correct and prevent the inadequate execution of *Statutory Audits*.

9.2. Duty of each *RAB* with regard to sanctions⁸⁵

Subject to the requirements of procedural fairness, each *RAB* shall ensure that the contractual and other arrangements that exist between it and its members are such as to enable the imposition by it of effective, proportionate and dissuasive penalties in respect of *Auditors* in cases where *Statutory Audits* are not carried out by them in accordance with the *Regulations*.

The *Regulations* provide that any such contractual arrangements shall, by virtue of Regulation 88 be deemed to also apply to other persons who are subject to the *RAB's* regulation, but who are not members of that *RAB*.

9.3. Withdrawal of approval⁸⁶

The penalties referred to in the preceding section shall, where appropriate, include withdrawal of approval under the *Regulations*.

A *RAB* may, with the exception of where in its opinion proceeding in such a manner would not be in the public-interest, adopt procedures analogous to those set down in Regulation 33(5) or 34(5), i.e., where having:

- complied with the requirements of procedural fairness in that regard; and
- served any notices required for that purpose as required by its investigation and disciplinary procedures,

the *RAB* is satisfied that circumstances warranting withdrawal have arisen, the *RAB* would serve a notice in writing on the *Auditor* stating that:

- it is satisfied that:
 - those circumstances have arisen in relation to; or
 - non-compliance has occurred on the part of,the *Auditor*;
- as the case may be, the *Auditor* must take specified steps within a specified period; and
- if those steps are not taken within the specified period, it shall withdraw the *Auditor's* approval.

The foregoing provisions are subject to:

⁸⁴ Regulation 87 refers

⁸⁵ Regulation 88 refers

⁸⁶ Regulation 89 refers

- a right of appeal to the Appeals Tribunal (howsoever called) of the *RAB* concerned (where such a procedure exists) (the *RAB* concerned has a duty to deal with any such appeal as expeditiously as may be); or
- in certain circumstances, a right on the part of the *Auditor* concerned to seek suspension of the withdrawal decision pending the hearing of an appeal by the Appeals Tribunal (howsoever called).

In addition, Regulation 89(9) provides that, following a final decision to withdraw approval, the *Auditor* concerned may apply to the High Court for an order suspending the operation of the withdrawal pending the determination by the High Court of an appeal under Regulation 35 against the withdrawal.

9.4. Appeals against withdrawal⁸⁷

A person may appeal to the High Court against the withdrawal by a *RAB* of an approval as *Statutory Auditor* or *Statutory Audit Firm*. However, no such appeal may be made unless the person concerned has exhausted the *RAB*'s internal appeals process (where such process exists). Appeals are subject to the time limits set out in Regulation 35(3).

9.5. Publication⁸⁸

The fact of one or more:

- measures having been taken; or
- one or more penalties having been imposed on,

a *Statutory Auditor* or *Statutory Audit Firm* by a *RAB* (whether under Parts 4 or 8 of the *Regulations*) shall be disclosed by the *RAB* concerned to the public and that disclosure shall, if the *RAB* considers it appropriate, include such further particulars with respect to the matter as it thinks fit.

The manner of such disclosure, and the time at which it is made, shall be such as the *RAB* determines to be appropriate. The *RABs* shall, however, establish, and reduce to writing, criteria for determining the timing and manner of disclosure and those criteria shall require *IAASA*'s approval.

9.6. Saving for disciplinary proceedings in being

The objective of these provisions is to ensure that disciplinary proceedings which are in process can be continued after the commencement of the *Regulations*. With the aim of ensuring this, the following has been provided in Regulation 121.

- None of the provisions of the *Regulations* (and, in particular, those amending the *1990 Act* or the *2003 Act*) affect disciplinary proceedings in being before the commencement of the *Regulations* by the *RABs* against any of their members and, accordingly, those proceedings may be continued by the *RABs* against the members concerned after the commencement of the *Regulations*⁸⁹.
- If, as a result of such proceedings, the *Practising Certificate* (within the meaning of Part X of the *1990 Act*) of a person is withdrawn by the *RAB*

⁸⁷ Regulation 35 refers

⁸⁸ *Regulations* 89(13) to (15) refer

⁸⁹ Regulation 121(1) refers

concerned or the person's membership of the *RAB* is terminated, then any deemed approval of the person concerned as a *Statutory Auditor* or *Statutory Audit Firm* by virtue of *Regulations 25(1) or 27(4)* ceases to have effect⁹⁰.

Where the result of the proceedings concerned is neither withdrawal of a *Practising Certificate* nor termination of membership, *IAASA's* powers under section 24 of the *2003 Act* are available to it, and may be exercised by it, in relation to the matters, the subject of those proceedings, and the provisions of that section that shall apply for that purpose are those provisions as they stand amended by the *Regulations*, but subject to Regulation 121(4)⁹¹ (*IAASA's* powers under section 24 of the *2003 Act* are discussed in further detail in Section 11.10 of this *Guide*).

Regulation 121(4) provides that the provisions of section 24 of the *2003 Act*, the basis of which is that it is the law as it stands after the making of the *Regulations*, that govern the disqualification of *Auditors*, shall be read subject to such modifications so that the provisions operate on the basis of the law with respect to those matters as it stood before that making and in particular that:

- there are no circumstances, under the law as it stands before that making, in which it is mandatory for a *RAB*, by withdrawing a *Practising Certificate* or terminating a person's membership, to disqualify a *Statutory Auditor* or *Statutory Audit Firm* from being able to carry out *Statutory Audits*; and
- the standards by reference to which it is determined whether a breach of the kind referred to in section 24(2) of the *2003 Act* has occurred on the part of a *Statutory Auditor* or *Statutory Audit Firm* concerned are those that would have been used for that purpose before that making,

but nothing in Regulation 121(4) prejudices the application of the provisions of the *Regulations* referred to in section 24(11B) of the *2003 Act* in the event that *IAASA* withdraws, on foot of its investigation under that section, the approval of a person or firm as a *Statutory Auditor* or *Statutory Audit Firm*.

⁹⁰ Regulation 121(2) refers

⁹¹ Regulation 121(3) refers

10. RECOGNISED ACCOUNTANCY BODIES' POWERS TO ACCESS DOCUMENTS

10.1. Statutory powers⁹²

Where a *RAB* considers it reasonably necessary to do so for the purpose of performing a particular function under the *Regulations*, the *RAB* may inspect and take copies of all relevant documents in the possession or control of a *Statutory Auditor* or *Statutory Audit Firm*.

For that purpose a *RAB* may, by notice in writing served on the *Statutory Auditor* or *Statutory Audit Firm*, require the auditor or firm to:

- furnish it with specified documents; or
- permit it to have access, under specified circumstances, to all relevant documents in the possession or control of the auditor or audit firm,

within a specified period.

Without prejudice to the generality of the foregoing, the above powers are exercisable in relation to a *Statutory Auditor* or *Statutory Audit Firm* where a complaint is made to a *RAB* that the *Statutory Auditor* or *Statutory Audit Firm* has failed to comply with any requirement of the *Regulations*.

Where the powers referred to above are exercisable, the following additional power may be exercised by the *RAB* concerned if it considers that the exercise of same is reasonably necessary to enable it to clarify any matter arising from its inspection of the documents concerned, namely a power to require the *Statutory Auditor* or a member of the *Statutory Audit Firm* to:

- attend before it; and
- explain any entry in the documents concerned and otherwise give assistance to it in clarifying the matter concerned.

The *Regulations* do not derogate from the powers exercisable by the *RABs'* disciplinary committees in the circumstances, and under the conditions, specified in section 192A⁹³ of the *1990 Act* or the *RABs'* bye-laws⁹⁴.

10.2. Offence provisions⁹⁵

A person who fails, without reasonable excuse, to comply with a requirement under Regulation 48(1) or (3) is guilty of an offence and is liable:

- on summary conviction, to a fine not exceeding €5,000; or
- on conviction on indictment, to a fine not exceeding €12,500.

Where a person fails to comply with a requirement under Regulation 48(1) or (3), the *RAB* concerned may apply to the High Court for an order compelling compliance by the person concerned with the requirement. On hearing such an application, the High Court may make such order as it thinks just.

⁹² *Regulations* 48(1) to 48(4) refer

⁹³ Inserted by section 36 of the *2003 Act*

⁹⁴ Regulation 48(7) refers

⁹⁵ *Regulations* 48(5) and (6) refer

11. AMENDMENTS TO IAASA'S STATUTORY FUNCTIONS AND POWERS (EXCLUDING THOSE RELATING TO *THIRD COUNTRY AUDITORS* AND *THIRD COUNTRY AUDIT ENTITIES*)

11.1. Amendment of IAASA's statutory functions under the 2003 Act

Regulation 14(b), by making an insertion into section 9(2) of the 2003 Act, confers a new statutory function on IAASA, namely:

'...to perform the functions (and in particular the functions of public oversight) conferred on it by the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010'.

11.2. Amendment of IAASA's general powers under the 2003 Act

Section 10 of the 2003 Act, which sets out IAASA's general powers, is amended by Regulation 79 to include reference to the *Regulations*.

11.3. Amendment regarding the composition of IAASA's board of directors

Regulation 81(a) amends section 11 of the 2003 Act, thereby providing that the members of IAASA's board of directors *'...shall be persons who are knowledgeable in areas relevant to statutory audit'*.

11.4. IAASA's power to attach terms and conditions to the recognition of the RABs

Section 192 of the 1990 Act (as amended) provides, amongst other things, that IAASA has the power to attach terms and conditions to the recognition of the RABs. Regulation 11 further amends section 192 to include references to the *Regulations*.

Regulation 82(2) provides that the terms and conditions referred to in section 9(2)(b)(i) and (ii) of the 2003 Act, which relate to IAASA's powers under section 192 of the 1990 Act, may be attached to the recognition of bodies of accountants for the purpose of facilitating IAASA's performance of its function of public oversight of quality assurance as well as for any other lawful purpose.

11.5. IAASA's powers to approve, and require changes to, the RABs' constitutional documents

Section 9(2)(c) of the 2003 Act provides for IAASA's functions of:

- approval of the *Prescribed Accountancy Bodies'* constitutional documents; and
- requiring changes to same as appropriate.

Regulation 86(2) provides that IAASA's powers under section 9(2)(c) of the 2003 Act may be exercised for the purpose of facilitating IAASA's performance of its function of public oversight of quality assurance as well as for any other lawful purpose.

11.6. IAASA's responsibilities as the competent authority for public oversight⁹⁶

The term *'system of public oversight'*, as used in Regulation 80, refers to the system of public oversight of *Statutory Auditors* and *Statutory Audit Firms* in the State and comprises of the collective operation of:

- the provisions of the 2003 Act;
- the provisions of the *Regulations*; and

⁹⁶ Regulation 80 refers

- the provisions of *Companies Legislation* generally.

Regulation 80(2) provides that *IAASA* shall be the competent authority in the *State* with respect to the system of public oversight of *Statutory Auditors* and *Statutory Audit Firms*.

Regulation 80(3) provides that, as such and without prejudice to its functions as provided for by the *2003 Act* or Regulation 83, *IAASA* shall generally superintend:

- the approval and registration of *Statutory Auditors* and *Statutory Audit Firms*;
- the adoption of standards on professional ethics, internal quality control of *Statutory Audit Firms* and auditing; and
- continuing education, quality assurance and investigative and disciplinary systems.

11.7. IAASA's powers to access documents in the possession of the RABs

Regulation 49 provides that, where it considers it reasonably necessary to do so for the purposes of performing a particular function (or functions) under the *Regulations*, *IAASA* may inspect and make copies of all relevant documents in the possession or control of a *RAB*.

For the foregoing purpose, *IAASA* may, by notice in writing served on a *RAB*, require the *RAB* either (as shall be specified) to:

- furnish to it specified documents; or
- permit it to have access, under specified circumstances, to all relevant documents in the possession or control of the *RAB*,

within a specified period.

Without prejudice to the generality of the foregoing, the above powers are exercisable in relation to a *RAB* where a complaint is made to *IAASA* that the *RAB* in question has failed to comply with any requirement of the *Regulations*.

Where the above powers are exercisable, the following additional power may be exercised by *IAASA* if it considers that the exercise of the power is reasonably necessary to enable it to clarify any matter arising from its inspection of the documents concerned, namely a power to require an officer of the *RAB* to:

- attend before it; and
- explain any entry in the documents concerned and otherwise give assistance to it in clarifying the matter concerned.

In accordance with the provisions of Regulation 49(6), nothing in Regulation 49 derogates from the powers exercisable by *IAASA* in the circumstances, and under the conditions, specified in sections 23 and 24 of the *2003 Act*.

11.8. Non-compliance⁹⁷

A person who fails, without reasonable excuse, to comply with a requirement under *Regulations* 49(1) or (3) is guilty of an offence and is liable:

- on summary conviction, to a fine not exceeding €5,000; or

⁹⁷ Regulation 49(5) refers

- on conviction on indictment, to a fine not exceeding €12,500.

11.9. Amendments to section 23 of the 2003 Act

Regulation 81(b) amends section 23 of the *2003 Act* by adding a new subsection (13). The amendment broadens the definition of the term 'member' to include an individual or firm which is subject to regulation by a *RAB* for the purpose of the *Regulations*.

11.10. Amendments to section 24 of the 2003 Act

Section 24 of the *2003 Act* is amended by *Regulations* 36, 81(c) and 90 respectively:

- Regulation 36 facilitates investigations by *IAASA* in relation to *RABs*' powers to withdraw audit approval;
- Regulation 81(c) broadens the definition of the term 'member' to include an individual or firm in relation to whom a *RAB* may exercise powers under the *Directive*; and
- Regulation 90 extends *IAASA*'s ability to publish sanctions imposed on a 'member'.

12. AMENDMENTS TO IAASA'S STATUTORY FUNCTIONS AND POWERS (RELATING TO THIRD COUNTRY AUDITORS AND THIRD COUNTRY AUDIT ENTITIES)

12.1. Registration of *Third Country Auditors* and *Third Country Audit Entities*⁹⁸

Subject to:

- meeting the requirements set out in the following section; and
- the exceptions and possible exemption set out below,

IAASA shall cause to be registered in the *Register*⁹⁹ every *Third Country Auditor* and *Third Country Audit Entity* that indicates to IAASA, in writing, his or her or its intention to provide an audit report concerning the annual or group accounts of a company that is:

- incorporated outside the European Community, not being an open-ended collective investment undertaking; and
- whose transferable securities are admitted to trading on a *Regulated Market* in the *State*.

A written notification of intention (in such form and manner as IAASA specifies) shall be accompanied by the information referred to in paragraph 3 of Schedule 1 to the *Regulations*, excluding information regarding the number under which the auditor or audit firm is entered in the *Register*¹⁰⁰.

*Exception 1 – wholesale debt issuers*¹⁰¹

The above requirement does not apply if the *Issuer* concerned is an issuer exclusively of debt securities, the denomination of which is at least €50,000 (or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least €50,000).

*Exception 2 – transitional arrangements*¹⁰²

The above requirement does not apply in respect of an audit report:

- for a financial year referred to in Regulation 4(a) of the European Communities (Transitional Period Measures in Respect of *Third Country Auditors*) *Regulations* 2009¹⁰³ if the audit report is provided by a *Third Country Auditor* or *Third Country Audit Entity* that complies with Regulation 4 of those *Regulations*; or
- provided by a *Third Country Auditor* or *Third Country Audit Entity* before 20 August, 2010.

*Possible exemption – equivalence*¹⁰⁴

The possible exemption provided for by Regulation 119 is discussed in more detail in section 12.4 below.

⁹⁸ Regulation 113 refers

⁹⁹ The public register is maintained by the *Registrar* (www.cro.ie).

¹⁰⁰ Regulation 113(4) excludes IAASA from having to provide information regarding the *Third Country Auditor* or *Third Country Audit Entity*'s registered number.

¹⁰¹ Regulation 113(5) refers

¹⁰² Regulation 113(6) refers

¹⁰³ SI No 229 of 2009 is available at <http://www.IAASA.ie/legislation>

¹⁰⁴ Regulation 119 refers

12.2. Conditions for registration¹⁰⁵

IAASA may only cause a *Third Country Auditor* or *Third Country Audit Entity* to be registered if:¹⁰⁶

- the applicant meets requirements equivalent to those of Articles 4 (good repute) and 6 to 10 (education and experience)¹⁰⁷ of the *Directive*;
- the majority of the members of the applicant's administrative or management body meet requirements equivalent to those of Articles 4 and 6 to 10 of the *Directive*;
- the *Third Country Auditor* carrying out the audit on behalf of the applicant meets requirements equivalent to those of Articles 4 and 6 to 10 of the *Directive*;
- the audits of the annual or group accounts are carried out in accordance with:
 - international auditing standards; and
 - the independence and objectivity requirements set down by Regulation 41; or
 - equivalent standards and requirements;¹⁰⁸
- the applicant publishes annually on a website, being a website maintained by or on behalf of the applicant, an annual report which includes the information required in *Transparency Reports* under the *Regulations* or complies with equivalent disclosure requirements.

12.3. Quality assurance and systems of investigations and penalties¹⁰⁹

The requirements for public oversight, quality assurance and systems of investigations and penalties as set out in Part 8 of the *Regulations* shall apply to *Third Country Auditors* and *Third Country Audit Entities*¹¹⁰. In particular, with effect from 20 November, 2010, IAASA shall ensure that it has in place a system of quality assurance for such auditors.

However, a registered *Third Country Auditor* or *Third Country Audit Entity* may apply to IAASA for an exemption from the quality assurance aspects of Part 8 of the *Regulations* if a quality assurance review, performed under another *Member State's* or *Third Country's* system of quality assurance, has been carried out on the *Third Country Auditor* or *Third Country Audit Entity* during the three years preceding the application.

Upon the making of that application, if:

- IAASA is satisfied that the quality assurance review referred to above has been carried out; and
- the system of quality assurance under which the review was performed has been assessed as equivalent to the requirements of the *Regulations*,

¹⁰⁵ Regulation 116 refers

¹⁰⁶ In reference to the conditions below, where the applicant is an audit entity, the applicant needs to satisfy so much of the conditions as are applicable to an entity; and where the applicant is an individual, the applicant needs to satisfy so much of the conditions set out below as are applicable to an individual.

¹⁰⁷ For reference, the standards relating to educational qualifications and relevant experience for approval as a *Statutory Auditor* are set out in detail in Schedule 2 of the *Regulations* and they replicate Articles 6, 7, 8 and 10 of the *Directive*.

¹⁰⁸ In accordance with the provisions of Regulation 117, for so long as the *Commission* has not taken, in accordance with the procedure referred to in Article 48(2) of the *Directive*, the decision under Article 45(6) thereof in relation to the matter of equivalence of standards and requirements mentioned in Regulation 116(iv), IAASA may, for the purposes of that provision, make an assessment of that equivalence.

¹⁰⁹ Regulation 83(2) refers

¹¹⁰ Regulation 114 refers

IAASA shall grant an exemption from the quality assurance requirements of Part 8 of the *Regulations*.

12.4. Possible exemptions in the case of equivalence¹¹¹

A *Third Country Auditor* or *Third Country Audit Entity* may apply to IAASA for an exemption from all or any of the provisions of:

- Regulation 113 (registration); and
- Regulation 114 (public oversight, quality assurance, systems of investigations and penalties),

on the basis that the *Third Country Auditor* or *Third Country Audit Entity* is subject to systems of public oversight, quality assurance and investigations and penalties in the *Third Country* concerned that meet requirements equivalent to those provided for in Part 8 of the *Regulations*.

On the making of that application if:

- (i) the *European Commission* has, in accordance with Article 46(2) of the *Directive*, assessed the systems referred to above as meeting requirements equivalent to those in the corresponding provisions of the *Directive*; and
- (ii) IAASA is satisfied that the law of the *Third Country* concerned affords reciprocal rights to a *Statutory Auditor* or *Statutory Audit Firm* with regard to being granted corresponding exemptions under that law,

IAASA shall grant an exemption from all or any, as it considers appropriate, of the provisions of *Regulations* 113 and 114 and the *Third Country Auditor* or *Third Country Audit Entity* shall be exempted accordingly.

Pursuant to Regulation 119(3), IAASA shall notify the *European Commission* of the main elements of its co-operative arrangements with systems of public oversight, quality assurance and investigations and penalties of the *Third Country* concerned arising out of arrangements it has entered into with that *Third Country* for the purposes of the reciprocity referred to in (ii) above.

¹¹¹ Regulation 119 refers

13. REGULATORY ARRANGEMENTS BETWEEN MEMBER STATES

13.1. Competent authority for co-operation at EU level¹¹²

IAASA is the competent authority for co-operation at *EU* level and, as such, is required to put in place appropriate arrangements for the purpose of discharging that responsibility.

13.2. Competent authorities' responsibilities to co-operate with their counterparts¹¹³

The competent authorities with responsibility under the *Regulations* for approval, registration, quality assurance, inspection and discipline respectively¹¹⁴ shall co-operate with their counterpart competent authorities in other *Member States* whenever necessary for the purposes of:

- the discharge by the competent authorities of their responsibilities under the *Regulations*; and
- the discharge by the counterpart competent authorities of their responsibilities under the laws of other *Member States* that implement the *Directive*.

The competent authorities under the *Regulations* shall also render assistance to their counterparts in other *Member States* and, in particular, shall exchange information and co-operate with them in investigations related to the carrying out of *Statutory Audits*.

13.3. Statutory duty of confidentiality – scope and application

The *Regulations* impose a statutory duty of confidentiality on all competent authorities designated under the *Regulations*, that duty being similar to that provided for under section 31 of the 2003 *Act*. Specifically, no person shall disclose, except in accordance with law, information that:

- is obtained in performing the functions, under any provision of the *Regulations*, of any of the competent authorities under the *Regulations*; and
- has not otherwise come to the notice of members of the public.

Without limiting its application, the persons to whom the duty of confidentiality as set out above applies include¹¹⁵:

- members and directors, and former members and directors, of any Boards or Committees (howsoever called) of the competent authorities under the *Regulations*;
- employees and former employees of those competent authorities; and
- professional or other advisors to those competent authorities, including former advisors.

A person who contravenes the above provision is guilty of an offence and is liable:

- on summary conviction, to a fine not exceeding €5,000; or
- on conviction on indictment, to a fine not exceeding €12,500 or imprisonment for a term not exceeding 12 months or both¹¹⁶.

¹¹² *Regulations* 92(1) and (2) refer

¹¹³ *Regulations* 93(2) and (3) refer

¹¹⁴ i.e., the *RABs*, the *CRO* and *IAASA*

¹¹⁵ Regulation 95 refers

¹¹⁶ Regulation 94(2) refers

13.4. Competent authorities' obligation to supply information¹¹⁷

Each of the competent authorities under the *Regulations* shall, on request and without undue delay, supply any information required for the purpose of co-operation with their counterpart competent authorities. Nothing in the aforementioned confidentiality provisions shall prevent any of the competent authorities under the *Regulations* from complying with any such request or exchanging confidential information.

Where necessary, each of the competent authorities under the *Regulations* shall, on receiving such a request, take the necessary measures to gather the required information without undue delay. If a competent authority of whom such a request has been made is unable to supply the required information without undue delay, it shall notify the requesting counterpart competent authority of the fact of the delay and the reasons for same.

13.5. Notification requirements in circumstances where a request is not complied with¹¹⁸

If a competent authority of whom a request is made does not comply with the request and the case is neither:

- just one of delay in complying with the request; nor
- one of a refusal to comply with the request on any of the grounds set out in Regulation 100 (see next section),

the competent authority shall notify the counterpart competent authority of the reason(s) for the failure to comply.

If the competent authority that is making the notification is not *IAASA*, it shall, in addition to notifying the counterpart competent authority, also notify *IAASA*.

13.6. Grounds for refusing to comply with a request¹¹⁹

A competent authority under the *Regulations* may refuse to comply with a request for information if:

- there are reasonable grounds for believing that supplying the information concerned might adversely affect:
 - public order;
 - the security of the *State*;
 - the defence of the *State*; or
 - the international relations of the *State*; or
- proceedings in any court in the *State* have already been initiated in respect of the same actions and against the same *Statutory Auditor* or *Statutory Audit Firm* that are the subject of the request; or
- a final determination has already been made by the competent authority in respect of the same actions and the same *Statutory Auditor* or *Statutory Audit Firm* that are the subject of the request.

¹¹⁷ *Regulations* 96 and 97 refer

¹¹⁸ Regulation 99 refers

¹¹⁹ Regulation 100 refers

However, in cases where the competent authority proposing to refuse a request on the basis of one or more of the above grounds is not *IAASA*, the competent authority in question shall not decide to refuse until after having consulted with *IAASA*.

Where a decision is made to refuse on the basis of one or more of the above grounds, the requesting competent authority shall be notified of the reason(s) for the refusal. Where the refusing competent authority is not *IAASA*, it shall also notify *IAASA*.

13.7. Use to which information can be put¹²⁰

The competent authorities under the *Regulations* may only use information obtained pursuant to the co-operation or exchange of information required by Article 36 of the *Directive* for the purposes of the performance of their functions under the *Regulations* and then only in the context of steps taken by them in:

- investigating and detecting failures to comply with the *Regulations*; and
- initiating and employing disciplinary procedures, or maintaining proceedings in any court, in respect of any such failures.

The above restriction is, however, without prejudice to any obligations that a competent authority might be subject to in the context of court proceedings.

13.8. Duty to notify counterpart authorities of non-compliance with the Directive and obligations upon receipt of such notifications¹²¹

13.8.1 Sending a notification

Where any of the competent authorities under the *Regulations* forms the opinion, on reasonable grounds, that activities contrary to the *Directive* are being, or have been, carried on in the territory of another *Member State*, the competent authority concerned shall, as soon as possible:

- notify the counterpart authority in the other *Member State* of that opinion; and
- include in that notification specific details of the matter and the grounds for the competent authority's opinion.

13.8.2 Receiving a notification

Where a competent authority under the *Regulations* receives a notification from:

- an authority in another *Member State* that is responsible for ensuring co-operation as required by Article 36 of the *Directive*; or
- the counterpart authority in another *Member State*,

to the effect that activities contrary to the *Directive* are being, or have been, carried on in the *State*, the receiving competent authority shall take the appropriate action under the *Regulations* or *2003 Act* as applicable. The competent authority shall inform the notifying authority of the outcome of that action and, to the extent possible, of any significant developments in advance of that outcome.

If the competent authority receiving or sending the notification is not *IAASA*, it shall notify *IAASA*:

- that the action required of it is being taken; and

¹²⁰ Regulation 101 refers

¹²¹ *Regulations* 103 and 105 refer

- of any significant developments in advance of the outcome of that action.

13.9. Requesting a counterpart competent authority to carry out an investigation and obligations upon receipt of such a request¹²²

13.9.1 Making a request¹²³

Any of the competent authorities under the *Regulations* may request a counterpart competent authority in another *Member State* to carry out an investigation in the latter's jurisdiction in relation to any activities that the former competent authority suspects have been, or are being, carried out contrary to the *Directive*.

Such a request may be accompanied by a further request that one or more of the requesting authority's staff be allowed to accompany the counterpart authority's staff in the course of the investigation.

In the event that the requesting authority is a competent authority other than *IAASA*, it shall notify *IAASA* of the request.

13.9.2 Receiving a request¹²⁴

A competent authority receiving a request to carry out an investigation in the *State* shall give due consideration to such a request. If the request is acceded to, the investigation shall be subject to:

- the overall control of the competent authority (including in circumstances where the competent authority accedes to the requesting authority's request that its staff accompany the receiving authority's staff in the course of the investigation); and
- *IAASA's* supervision (unless the competent authority is *IAASA*).

The competent authority, where it is not *IAASA*, shall also notify *IAASA*:

- of the receipt of the request; and
- if the request is acceded to, of the fact that the request has been acceded to.

13.9.3 Grounds for refusing a request¹²⁵

A competent authority receiving a request referred to above may refuse to accede to such a request if, in its opinion:

- there are reasonable grounds for believing that acceding to the request might adversely affect:
 - public order;
 - the security of the *State*;
 - the defence of the *State*; or
 - the international relations of the *State*, or
- proceedings in any court in the *State* have already been initiated in respect of the same actions and against the same *Statutory Auditor* or *Statutory Audit Firm*; or

¹²² *Regulations* 104, 106 and 107 refer

¹²³ Regulation 104 refers

¹²⁴ Regulation 106 refers

¹²⁵ Regulation 107 refers

- a final determination has already been made by the competent authority in respect of the same actions and the same *Statutory Auditor* or *Statutory Audit Firm* that are the subject of the request.

However, if the competent authority is not *IAASA*, it shall not refuse to accede to a request without having first consulted with *IAASA*.

Where a competent authority refuses to accede to a request, it shall notify the requesting authority of that fact together with the reason(s) for the refusal. In addition, if the refusing competent authority is not *IAASA*, it shall notify *IAASA* of the refusal together with the reason(s) for same.

13.10. Principle of “home country regulation” and related matters

The *Regulations* shall operate to respect the principle of “*home country regulation*”¹²⁶ and the preceding provisions (notwithstanding anything in them to the contrary) shall be construed as operating to achieve:

- the principle of “*home country regulation*” as set out in Article 34(1) of the *Directive*; and
- the prohibition of additional requirements, as referred to in Articles 34(2) and (3) of the *Directive*.

¹²⁶ Regulation 108 refers

14. TRANSFER OF AUDIT DOCUMENTATION TO *THIRD COUNTRY COMPETENT AUTHORITIES*¹²⁷

14.1. Overview

Audit Working Papers or other documents held by a *Statutory Auditor* or *Statutory Audit Firm* may be transferred to a *Third Country Competent Authority* only if:

- IAASA, in response to receipt of a request, determines that the conditions for transfer, as set out below, are complied with; and
- IAASA authorises such a transfer.

The conditions referred to above are as follows:

- (a) the *Audit Working Papers* or other documents relate to the audit of an entity which:
 - a. has issued securities in the *Third Country* concerned; or
 - b. forms part of a group that issues statutory consolidated accounts in the *Third Country* concerned;
- (b) the *Third Country Competent Authority* meets requirements which have been declared adequate in accordance with Article 47(3) of the *Directive*;
- (c) working arrangements on the basis of reciprocity have been agreed between IAASA and the *Third Country Competent Authority*; and
- (d) the transfer of personal data to the *Third Country* concerned is in accordance with Chapter IV of Directive 95/46/EC¹²⁸.

14.2. Matters to be addressed by working arrangements¹²⁹

The working arrangements referred to in (c) above shall ensure that:

- justification as to the purpose of the request for *Audit Working Papers* and other documents is provided by the *Third Country Competent Authority* concerned;
- the *Audit Working Papers* and other documents are only transferred if:
 - a confidentiality obligation similar to that provided by Regulation 94 is provided for under the laws of the *Third Country* concerned in relation to persons whilst in, and in any period subsequent to their ceasing to be in, the employment of the *Third Country Competent Authority*;
 - the relevant persons in the employment of the *Third Country Competent Authority* that will deal with the matter provide an undertaking in writing to IAASA that they:
 - will comply with their confidentiality obligations; and
 - deliver up possession of the *Audit Working Papers* and other documents to the *Third Country Competent Authority* and will do everything within their power to secure the return of those papers and documents to IAASA;

¹²⁷ Regulation 109 refers

¹²⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

¹²⁹ Regulation 109(2) (a) – (d) refers

- the *Third Country Competent Authority* uses the *Audit Working Papers* and documents only for the performance of its functions of public oversight, quality assurance and investigations that meet requirements equivalent to those of Articles 29, 30 and 32 of the *Directive*;
- the request from a *Third Country Competent Authority* for *Audit Working Papers* or other documents held by a *Statutory Auditor* or *Statutory Audit Firm* can be refused by IAASA:
 - where the provisions of those *Audit Working Papers* or documents would adversely affect the sovereignty of the *EU* or of any of the following:
 - public order (whether in the *State* or elsewhere in the *EU*);
 - the security of the *State* or the *EU*;
 - the defence of the *State* or the *EU*; or
 - the international relations of the *State* or the *EU*; or
 - where proceedings in any court in the *State* have already been initiated in respect of the same actions and against the same persons.

14.3. IAASA's power to require production of Audit Working Papers and other documents¹³⁰

IAASA has the power to require the *Statutory Auditor* or *Statutory Audit Firm* to produce to it the *Audit Working Papers* and other documents for the purposes of performing its functions under Regulation 109. The *Statutory Auditor* or *Statutory Audit Firm* concerned shall comply with such a requirement.

14.4. Return by IAASA of Audit Working Papers and other documents¹³¹

If IAASA determines that the transfer of the *Audit Working Papers* and other documents is to be refused on any of the grounds referred to above, or the papers and other documents are returned by the *Third Country Competent Authority*, IAASA shall secure the return of the papers and documents to the *Statutory Auditor* or *Statutory Audit Firm* as soon as may be.

14.5. Derogation in exceptional cases¹³²

IAASA may, in exceptional cases, allow a *Statutory Auditor* or *Statutory Audit Firm* to transfer *Audit Working Papers* and other documents directly to a *Third Country Competent Authority* provided that:

- an investigation has been initiated by that competent authority in the *Third Country* concerned;
- the transfer does not conflict with the obligations with which *Statutory Auditors* and *Statutory Audit Firms* are required to comply in relation to the transfer of *Audit Working Papers* and other documents to the competent authorities;
- there are reciprocal working arrangements in place with the *Third Country Competent Authority*, i.e. that provide for direct access by IAASA to *Audit Working Papers* and other documents of audit entities in the *Third Country* concerned;

¹³⁰ Regulations 109(3) and (4) refer

¹³¹ Regulation 109(5) refers

¹³² Regulation 110 refers

- the *Third Country Competent Authority* informs IAASA in advance of each direct request for information, together with the reasons for same; and
- working arrangements similar to those outlined in section 14.2 above are satisfied.

14.6. Publication and notification of working arrangements¹³³

Where IAASA enters into working arrangements with a *Third Country Competent Authority* in accordance with Regulation 109(1)(c), IAASA shall publish particulars of those working arrangements without delay. The particulars to be published shall include:

- the name of the *Third Country Competent Authority* concerned; and
- the jurisdiction in which it is established.

Details of such working arrangements shall also be notified by IAASA to the *European Commission*.

¹³³ Regulation 111 refers

15. REGISTER¹³⁴

15.1. Overview

From 20 August, 2010 the *Registrar* shall maintain a *Register* which shall contain the information contained in Schedule 1¹³⁵ to the *Regulations* in respect of:

- *Statutory Auditors and Statutory Audit Firms*; and
- *Third Country Auditors and Third Country Audit Entities*.

15.2. Notification of information to the Registrar¹³⁶

An individual or firm shall, as soon as may be after having been approved under the *Regulations* as a *Statutory Auditor or Statutory Audit Firm*, notify the relevant information to the relevant *RAB*.

On receipt of that notification, and having carried out any verification considered necessary, the relevant *RAB* shall notify to the *Registrar*:

- the relevant information contained in the notification to the *RAB*; and
- the individual identification number assigned to the approved *Statutory Auditor or Statutory Audit Firm*.

The above notifications to the *Registrar* shall be made in such form and manner as the *Registrar* specifies.

15.3. Prohibition on certain acts unless registered¹³⁷

From 20 August, 2010, a person shall not:

- act as; or
- represent him/herself, or hold him/herself out, as being,

a person falling within a category of person entered, or entitled to be entered, in the *Register* unless the person is entitled to be entered, and the name of the person is duly entered, in the *Register*.

A person who contravenes the above provision is guilty of an offence and is liable:

- on summary conviction, to a fine not exceeding €5,000; or
- on conviction on indictment, to a fine not exceeding €50,000.

If the contravention in respect of which a person is convicted is continued after the conviction, the person is guilty of a further offence for each day that the contravention continues and for each such offence the person is liable:

- on summary conviction, to a fine not exceeding €1,000; or
- on conviction on indictment, to a fine not exceeding €10,000.

¹³⁴ Regulation 63 refers

¹³⁵ Schedule 1 to the *Regulations* is reproduced in Appendix 2 to this *Guide* for ease of reference.

¹³⁶ Regulation 64 refers

¹³⁷ Regulation 65 refers

15.4. Obligation of *Statutory Auditors* and *Statutory Audit Firms* to notify certain information¹³⁸

Each *Statutory Auditor* or *Statutory Audit Firm* shall, as soon as may be but not later than one month after the event, notify the relevant *RAB* of any change in the information contained in the *Register* relating to him, her or it.

A person who fails without reasonable excuse to comply with the above requirement is guilty of an offence and is liable, on summary conviction, to a fine not exceeding €5,000.

On receipt of that notification, and having carried out any verification considered necessary, the *RAB* shall notify the change in information to the *Registrar*. The *Registrar* shall as soon as may be but no later than one month after receipt of the notification amend the *Register* to reflect the change of information so notified.

15.5. Requirement that information be signed¹³⁹

Information provided to a *RAB* by a *Statutory Auditor* or *Statutory Audit Firm* regarding initial approval under the *Regulations* and any subsequent changes to that information shall be signed by the *Statutory Auditor* or, as the case may be, by a person on behalf of a *Statutory Audit Firm*. However, the signature may be an electronic signature provided that such signature complies with the stipulations set out in Regulation 67(2).

If the above information is notified without having been signed, the *Statutory Auditor* or *Statutory Audit Firm* concerned is guilty of an offence and is liable, on summary conviction, to a fine not exceeding €5,000.

15.6. Transitional provisions¹⁴⁰

Regulation 68(1) provides that the six *RABs* shall, by 20 June, 2010, notify to the *Registrar* the relevant information, referred to in Regulation 64, in respect of each of its members deemed to have been approved by virtue of *Regulations* 25(1) (i.e. *Statutory Auditors*) or 27(4) (i.e. *Statutory Audit Firms*).

Regulation 68(2) provides that the persons referred to in Regulation 25(2) (i.e. *Individually Authorised Auditors*) shall, by 20 June, 2010, notify the *Registrar* with the relevant information (within the meaning of Regulation 64) in respect of him/herself.

A person who fails without reasonable excuse to comply with the foregoing requirements is guilty of an offence and is liable, on summary conviction, to a fine not exceeding €5,000.

15.7. Language¹⁴¹

The *Register* shall be drawn up in either English or Irish.

15.8. Amendment and revocation of certain legislation

Sections 198, 199 and 200 of the *1990 Act* relating to the *Register* have been amended to relate only to *Public Auditors*¹⁴². Similarly, *Regulations* 5 to 7 of the *Companies Act 1990 (Auditors) Regulations* (S.I. No 259 of 1992) have been revoked by the *Regulations*¹⁴³.

¹³⁸ Regulation 66 refers

¹³⁹ Regulation 67 refers

¹⁴⁰ Regulation 68 refers

¹⁴¹ Regulation 69 refers

¹⁴² *Regulations* 12 and 13 refer

¹⁴³ Regulation 15(2) refers

15.9. Notification of information to the Registrar regarding *Third Country Auditors or Third Country Audit Entities*

Subject to a *Third Country Auditor* or *Third Country Audit Entity* satisfying the registration requirements outlined in Section 12 above, IAASA shall cause that *Third Country Auditor* or *Third Country Audit Entity* to be registered in the *Register*.

Therefore, a *Third Country Auditor* or *Third Country Audit Entity*, shall, as soon as may be after having been registered under the *Regulations* as a *Third country Auditor or Statutory Audit Firm*, notify to IAASA the relevant information as set out in Schedule 1 to the *Regulations*.¹⁴⁴

On receipt of that notification, and having carried out any verification considered necessary, IAASA shall notify to the *Registrar*:

- the relevant information contained in the notification to IAASA; and
- the individual identification number assigned to the registered *Third Country Auditor* or *Third Country Audit Entity*.

The above notifications to the *Registrar* shall be made in such form and manner as the *Registrar* specifies.

Additionally, the requirements set out for *Statutory Auditors* and *Statutory Audit Firms* above similarly apply to *Third Country Auditors* or *Third Country Audit Entities* in relation to¹⁴⁵:

- notification of information;
- obligation to notify certain information; and
- requirement that information be signed.

¹⁴⁴ Schedule 1 to the *Regulations* is reproduced in Appendix 2 to this *Guide* for ease of reference.

¹⁴⁵ *Regulations* 113 (7) and (8) refer

16. AUDIT COMMITTEES¹⁴⁶

16.1. Effective date

The Board of directors of each *PIE* is required to establish an Audit Committee with effect from 20 November, 2010.

16.2. Audit Committee membership

The members of an Audit Committee shall include not less than two independent directors of the *PIE*:

- the terms of whose appointment indicate or state that they are being appointed in a non-executive capacity; and
- who otherwise possess the requisite degree of independence (particularly with regard to satisfying the condition referred to below) so as to be able to contribute effectively to the Committee's functions.

The condition referred to above is that each director does not have, and at no time during the three years preceding his/her appointment to the Committee did have:

- a material business relationship with the entity, either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the entity; or
- a position of employment in the entity.

In addition, one of the directors referred to above shall be a person who has competence in accounting or auditing.

16.3. Audit Committees' responsibilities¹⁴⁷

Without prejudice to Boards of directors' responsibilities, Audit Committees' responsibilities shall include the:

- monitoring of the financial reporting process;
- monitoring of the effectiveness of the entity's systems of internal control, internal audit and risk management;
- the monitoring of the *Statutory Audit* of the annual and, as applicable, consolidated accounts; and
- the review and monitoring of the independence of the *Auditor* and, in particular, the provision of additional services to the audited entity.

Any proposal of the Board of directors of a *PIE* with respect to the appointment of an *Auditor* to the entity shall be based on a recommendation made to the Board by the Audit Committee.

The *Regulations* also provide for reporting responsibilities by the *Auditor* to the Audit Committee and those responsibilities are set out in Section 6 above.

¹⁴⁶ Regulation 91

¹⁴⁷ Audit Committees' duties apply in respect of financial years beginning on or after the establishment of the Committee.

16.4. Exemptions¹⁴⁸

The aforementioned requirements shall not apply to a *PIE* if it is:

- a subsidiary undertaking¹⁴⁹, but only if the requirements of Regulation 91 are met by the parent undertaking such that any *Statutory Audit* of the subsidiary undertaking comes within the remit of the relevant Audit Committee; or
- a collective investment undertaking¹⁵⁰; or
- an entity that:
 - has, as its sole object, the collective investment of capital provided by the public;
 - operates on the basis of risk spreading;
 - does not seek to take legal or management control over any the issuers of its underlying investments,

provided that it is authorised by, and subject to the supervision of, a body competent under EU law and has depositary exercising functions equivalent to those under Directive 85/611/EEC¹⁵¹; or

- an entity that has as its sole business the issuing of asset backed securities^{152, 153}; or
- a credit institution within the meaning of Article 1(1) of Directive 2000/12/EC¹⁵⁴ which satisfies the following conditions:
 - its shares are not admitted to trading on a *Regulated Market* of any *Member State*;
 - it has, in a continuous or repeated manner, issued only debt securities, provided that the total nominal amount of all such debt securities remains below €100m; and
 - it has not published a prospectus¹⁵⁵.

¹⁴⁸ *Regulations* 91(9) and (10) refer

¹⁴⁹ Within the meaning of Article 1 of Directive 83/349/EEC (Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts).

¹⁵⁰ As defined in Article 1(2) of Directive 85/611/EEC (Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, *Regulations* and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)).

¹⁵¹ Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, *Regulations* and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

¹⁵² As defined in Article 2(5) of Commission Regulation (EC) No. 809/2004 (Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisement.)

¹⁵³ An entity that avails of this exemption shall, by means of a statement to that effect included:

- in any annual report published by it; or
- in an annual return or other periodic statement delivered by it to the Registrar or the Central Bank,

set forth the reasons why it considers the establishment of an audit committee by it not to be appropriate and, accordingly, why it has availed itself of that exemption.

¹⁵⁴ Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions.

¹⁵⁵ i.e. under Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

17. PUBLIC AUDITORS

17.1. Overview

As set out in the Glossary, a “*Public Auditor*” means a public auditor for the purposes of the:

- Industrial and Provident Societies Acts, 1893 to 1978; and
- Friendly Societies Acts, 1896 to 1993¹⁵⁶.

Whereas, previously, the provisions of the *1990 Act* relating to auditors were relevant for both *Public Auditors* and company *Auditors*, as a result of the enactment of the *Regulations*, the legislative provisions relating to:

- *Auditors* are now dealt with in the *Regulations*; and
- *Public Auditors* are now dealt with in the 1990 Act.

17.2. Amendment and Revocation of certain legislation

Set out below are details of certain amendments and revocations to other legislation effected by the *Regulations*:

- *Regulation 6* amends section 187 of the *1990 Act* such that the amended section 187 applies only to *Public Auditors*, i.e. references to company auditors are deleted from that section. This is because, as indicated above, the legislative provisions relating to qualification as an *Auditor* are now dealt with in the *Regulations*;
- *Regulation 7* makes a similar amendment to section 188 of the *1990 Act* and *Regulation 8* effects a further, similar, amendment to section 189;
- *Regulation 12* makes further amendments to section 198 of the *1990 Act*, which dealt with the registration of *Auditors* by removing references in that section to *Auditors*, thereby leaving that section now only to deal only with *Public Auditors*;
- Similarly, *Regulation 13* amends sections 199 and 200 of the *1990 Act* respectively (both of which also deal with the registration of *Auditors*) removing references in those sections to *Auditors*, thereby leaving those sections now only to deal with *Public Auditors*; and
- *Regulation 15* revokes *Regulations 1* to *4* of the Companies Act 1990 (*Auditors Regulations* (S.I. No. 259 of 1992) save as insofar as they relate to *Public Auditors* (i.e. those *Regulations* now only apply to *Public Auditors*).

17.3. Impact of amendments

In summary the foregoing amendments have the following impact:

- there are now separate approval provisions for *Auditors* and *Public Auditors*;
- there are now separate registration provisions for *Auditors* and *Public Auditors*;
- *Public Auditors* not permitted to incorporate (whereas company auditors are now so permitted - see also Section 18.1 below); and
- There is now separate recognition for *RABs* in relation to conferring *Public Auditor* status and *Auditor* status respectively (see Section 2 of this *Guide*).

¹⁵⁶ As defined in section 182 of the *1990 Act*

18. MISCELLANEOUS

18.1. Removal of prohibition on Auditors' incorporation

The previous provision, whereby a body corporate was not eligible to act as an *Auditor*, has been removed by the deletion of section 187(2).¹⁵⁷

It should be noted, however, that, by virtue of the provisions of section 187(3)(g) – which is unaffected by the *Regulations* – the prohibition on incorporation remains in place with respect of the auditing activities of a *Public Auditor*.

18.2. Professional privilege

Nothing in the confidentiality and professional secrecy provisions of the *Regulations*¹⁵⁸ compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege¹⁵⁹.

18.3. Liability for acts done in compliance with the *Regulations*

No professional or legal duty to which a *Statutory Auditor* or *Statutory Audit Firm* is subject by virtue of his or her or its appointment as a *Statutory Auditor* or *Statutory Audit Firm* shall be regarded as contravened by reason of compliance with the obligations imposed by the *Regulations*¹⁶⁰.

No liability to the company audited or being audited, its shareholders, creditors, or other interested parties shall attach to the *Statutory Auditor* or *Statutory Audit Firm* by reason of such compliance¹⁶¹.

For the avoidance of doubt, nothing in Regulation 51 affects the liability of a *Statutory Auditor* or *Statutory Audit Firm* for negligence or breach of duty in the conduct of a *Statutory Audit* by him, her or it¹⁶².

18.4. Restriction of section 31 of the 2003 Act

Nothing in section 31 of the *2003 Act* shall operate to prevent *IAASA* or a *RAB* from complying with its obligations under the *Regulations*¹⁶³.

18.5. Evidence in prosecutions under Regulation 23¹⁶⁴ of the *Regulations*

In any proceedings regarding an alleged offence under Regulation 23, the production to the court of a certificate purporting to be signed by a person on behalf of a *RAB* and stating that the defendant is not approved under the *Regulations* by that *RAB* shall be sufficient evidence, until the contrary is shown by the defendant, that the defendant is not so approved¹⁶⁵.

¹⁵⁷ Regulation 6 (b) refers

¹⁵⁸ *Regulations* 44 to 53 refer

¹⁵⁹ Regulation 50 refers

¹⁶⁰ Regulation 51(1) refers

¹⁶¹ Regulation 51(2) refers

¹⁶² Regulation 51(3) refers

¹⁶³ Regulation 52 refers

¹⁶⁴ Regulation 29 refers

¹⁶⁵ This provision does not, however, apply unless a copy of the certificate concerned is served on the defendant, by registered post, not later than 28 days before the certificate is produced in court in the proceedings concerned. If the defendant intends to contest the statement contained in the certificate, s/he shall give written notice of that intention to the prosecution within 21 days, or such longer period as the court may allow, after the date of receipt by him or her of the copy of the certificate from the prosecution.

18.6. Conferral of additional powers on the Director of Corporate Enforcement¹⁶⁶
Regulation 28(1) provides that the *Director* may demand of a person:

- acting as a *Statutory Auditor* or *Statutory Audit Firm* of a company; or
- purporting to have obtained approval under the *Regulations* to act as such,

the production of evidence of the person's approval under the *Regulations* in respect of any period during which the person so acted or purported to have obtained such approval.

If the person concerned refuses or fails to produce the evidence referred to above within 30 days of the date of the demand (or such longer period as the *Director* may allow), the person is guilty of an offence. A person guilty of an offence as referred to above is liable:

- on summary conviction, to a fine not exceeding €5,000; or
- on conviction on indictment, to a fine not exceeding €12,500.

In any prosecution under Regulation 28, it shall be presumed, until the contrary is shown, that the defendant did not, within the 30 days (or such longer period as allowed), produce the necessary evidence.

¹⁶⁶ Regulation 28

**COPY OF SCHEDULE 2 TO THE *REGULATIONS*
STANDARDS RELATING TO TRAINING AND QUALIFICATIONS FOR APPROVAL OF
NATURAL PERSON AS *STATUTORY AUDITOR***

1. A natural person shall have attained university entrance or equivalent level and then—
 - a) completed a course of theoretical instruction;
 - b) undergone practical training; and
 - c) passed an examination of professional competence of university final or equivalent examination level in the State.

2. (1) The examination of professional competence referred to in paragraph 1 shall be such as guarantees the necessary level of theoretical knowledge of subjects relevant to statutory audit and the ability to apply such knowledge in practice. Part at least of that examination shall be written.

(2) The test of theoretical knowledge included in the examination shall cover the following subjects in particular:
 - a) general accounting theory and principles;
 - b) legal requirements and standards relating to the preparation of annual and consolidated accounts;
 - c) international accounting standards;
 - d) financial analysis;
 - e) cost and management accounting;
 - f) risk management and internal control;
 - g) auditing and professional skills;
 - h) legal requirements and professional standards relating to statutory audit and *Statutory Auditors*;
 - i) international auditing standards;
 - j) professional ethics and independence.

- (3) The examination shall also cover at least the following subjects in so far as they are relevant to auditing:
 - a) company law and corporate governance;
 - b) the law of insolvency and similar procedures;
 - c) tax law;
 - d) civil and commercial law;

**COPY OF SCHEDULE 2 TO THE *REGULATIONS*
STANDARDS RELATING TO TRAINING AND QUALIFICATIONS FOR APPROVAL OF
NATURAL PERSON AS *STATUTORY AUDITOR***

- e) social security law and employment law;
 - f) information technology and computer systems;
 - g) business, general and financial economics;
 - h) mathematics and statistics;
 - i) basic principles of the financial management of undertakings.
3. (1) In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee shall complete a minimum of 3 years' practical training in, *inter alia*, the auditing of annual accounts, consolidated accounts or similar financial statements. At least two thirds of such practical training shall be completed with a *Statutory Auditor* or audit firm approved in any Member State.
- (2) All such training shall be carried out with persons who the competent authority is satisfied possess, to an adequate standard, the ability to provide practical training.

**COPY OF SCHEDULE 1 TO THE REGULATIONS
INFORMATION REQUIRED, BY PART 6, TO BE SUPPLIED AND ENTERED IN THE REGISTER**

Statutory Auditors

1. In relation to a *Statutory Auditor*, the register required to be maintained by Regulation 63 shall contain at least the following information:
 - (a) the name and address of the auditor;
 - (b) the number under which the auditor is entered in that register;
 - (c) if applicable—
 - (i) the name and address and the website address (if any) of the *Statutory Audit Firm* by which the auditor is employed, or with whom he or she is associated as a partner or otherwise; and
 - (ii) the number under which that *Statutory Audit Firm* is entered in that register;
 - (d) the name and address of the competent authority responsible for the regulation of the auditor;
 - (e) if he or she is so registered with one or more such authorities—
 - (i) particulars of his or her registration—
 - (I) as a *Statutory Auditor*, with each competent authority of another Member State and the name of the authority; and
 - (II) as auditor, with one or more third-country competent authorities and the name or names of it or them;
 - and
 - (ii) the number under which he or she is registered with each such authority;
 - (f) without prejudice to subparagraph (e), with regard to the auditor's status (if such be the case) as a Member State *Statutory Auditor*, the name and address of each competent authority responsible, in relation to him or her, for—
 - (i) approval as referred to in Article 3 of the Directive,
 - (ii) quality assurance as referred to in Article 29 of the Directive,
 - (iii) investigations, discipline and penalties as referred to in Article 30 of the Directive, and
 - (iv) public oversight as referred to in Article 32 of the Directive.

**COPY OF SCHEDULE 1 TO THE REGULATIONS
INFORMATION REQUIRED, BY PART 6, TO BE SUPPLIED AND ENTERED IN THE REGISTER**

Statutory Audit Firms

2. In relation to a *Statutory Audit Firm*, the register required to be maintained by Regulation 63 shall contain at least the following information:

- (a) the name and address of the audit firm;
- (b) the number under which the audit firm is entered in that register;
- (c) the legal form of the audit firm;
- (d) the primary contact person in the audit firm and contact details;
- (e) the address of each office in the State of the audit firm and the website address (if any) of the audit firm;
- (f) the name of every individual employed by or associated as partner or otherwise with the audit firm who is approved as *Statutory Auditor* under Part 3;
- (g) the number under which that individual is entered in the register;
- (h) the name and address of the competent authority responsible for the regulation of the audit firm;
- (i) the names and addresses of the owners of, or as appropriate, shareholders in, the audit firm;
- (j) the names and addresses of the directors, or other members of, as appropriate—
 - (i) the board of directors,
 - (ii) board of management, or
 - (iii) other administrative or management body,
 of the audit firm — but where the audit firm comprises a partnership with no management structure, the provision of the address of each individual named, under subparagraph (f), as partner suffices;
- (k) if applicable — the fact of the audit firm's membership of a network and either—
 - (i) a list of the names and addresses of member firms and affiliates of the network or,
 - (ii) an indication of where such information is publicly available;
- (l) if the audit firm is so registered with one or more such authorities—
 - (i) particulars of the firm's registration—

COPY OF SCHEDULE 1 TO THE REGULATIONS
INFORMATION REQUIRED, BY PART 6, TO BE SUPPLIED AND ENTERED IN THE REGISTER

- (I) as a *Statutory Audit Firm*, with each competent authority of another Member State and the name of the authority; and
 - (II) as an audit firm, with one or more third-country competent authorities and the name or names of it or them;
- and
- (ii) the number under which the firm is registered with each such authority;
 - (m) without prejudice to subparagraph (I), with regard to the audit firm's status (if such be the case) as a Member State *Statutory Audit Firm*, the name and address of each competent authority responsible, in relation to it, for—
 - (i) approval as referred to in Article 3 of the Directive,
 - (ii) quality assurance as referred to in Article 29 of the Directive,
 - (iii) investigations, discipline and penalties as referred to in Article 30 of the Directive, and
 - (iv) public oversight as referred to in Article 32 of the Directive.

Third-country auditors and audit entities

3. (1) In relation to the case provided by Regulation 113 of the registration of a third-country auditor or audit entity, the register required to be maintained by Regulation 63 shall contain at least the information specified in the provisions of paragraph 1 or, as the case may be, 2 (as, in either case, those provisions are applied by subparagraph (2)).
- (2) The provisions of paragraph 1 or 2, as the case may be, apply for the purposes of this paragraph save so much of them as are inapplicable in the case of a third-country auditor or audit entity, as appropriate.

Individual identification number and storage of information in electronic form

4. (1) There shall be assigned an individual identification number to each individual, firm and entity that is being entered in the register required to be maintained by Regulation 63, being—
 - (a) in a case where the information entered in respect of the individual or firm is that provided under Regulation 64, the number notified under paragraph (2)(b)(i) of that Regulation to the competent authority with registration functions;
 - (b) in any other case, such individual identification number as, subject to subparagraph (2), is determined and allocated by the competent authority with registration functions,

and references in paragraphs 1 and 2 to the number under which any of the foregoing persons is entered in the register shall be read as references to that identification number.

(2) Instead of its allocating a number for the purposes of subparagraph (1)(b) that has been determined by it, the competent authority with registration functions may—

- (a) in specifying under any provision of these *Regulations* the form in which information is to be notified to it for registration (and the provision concerned of these *Regulations* doesn't itself provide for the notification of such a number), include in that specification a requirement that the form, as completed, include an identification number allocated to the subject of the notification by the notifier of the information; and

COPY OF SCHEDULE 1 TO THE REGULATIONS
INFORMATION REQUIRED, BY PART 6, TO BE SUPPLIED AND ENTERED IN THE REGISTER

(b) if the number so provided in that form is satisfactory for the purpose of distinguishing the subject from other registrants, allocate, for the purposes of subparagraph (1)(b), that number so provided.

(3) The information contained in that register shall be stored in electronic form and be capable of being accessed by members of the public by electronic means.

Definition of "address"

5. In this Schedule "address", in relation to an individual, firm or entity, means the individual's or the firm's or entity's usual business address