

2019

Feedback Paper

Guidance Note on The Duty of
Auditors to Report to the Director of
Corporate Enforcement

September 2019

MISSION

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

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Appendix – Responses to Consultation

1. CAI
2. CPA
3. Ernst & Young
4. Member of the Public

1. Summary

In June 2019, IAASA issued a consultation paper to obtain the views of stakeholders with regard to IAASA's proposal to issue a [Guidance Note on The Duty of Auditors to Report to the Director of Corporate Enforcement](#).

The purpose of this feedback paper is to provide details of responses received and changes made to the Guidance Note as a result of that consultation.

2. Responses Received

IAASA's consultation closed on 19 July 2019. IAASA received 4 responses - two from professional accountancy bodies, one from an audit firm and one from a member of the public.

1. Chartered Accountants Ireland
2. CPA Ireland
3. Ernst & Young
4. Member of the Public

3. Matters on which IAASA Consulted and Summary of Responses

No.	Matter on which views were sought
1.	Is the guidance provided in the draft Guidance Note appropriate and clear regarding the duty of statutory auditors to report suspected offences to Director of Corporate Enforcement under the Companies Act 2014 and the ICAV Act? If you think it should be amended, please explain why and how.
Summary of Responses	All respondents were supportive of the draft Guidance Note though some respondents did suggest that additional guidance would be helpful in areas relating to other regulatory bodies and the insertion of some additional legislative references.
IAASA Response	IAASA at this stage does not intend to widen the scope of the Guidance Note beyond reporting to the Director of Corporate Enforcement. Some redrafting has been done to incorporate additional guidance and legislative referencing.
2.	Are there any other areas of the ISAs (Ireland) that you believe are relevant to the duty of auditors to report to the Director of Corporate Enforcement? If so, please identify which standard(s) and the areas that you believe should be addressed in the Guidance Note.
Summary of Responses	One respondent suggested greater guidance for ISA (Ireland) 705 and ISA (Ireland) 240.
IAASA Response	Having reviewed the draft and the ISA's again, IAASA considers that the guidance provided is sufficient in light of the fact that the Guidance Note is

not designed to replace the reading of the ISA's but is supplemental to their use by auditors.

4. Conclusion

Two respondents made some additional observations which were also considered in the drafting of the final Guidance Note, and reflected where considered appropriate. All responses are provided as an Appendix to this Feedback Paper.

Appendix



IAASA

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Supervisory Authority

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Kevin Prendergast
Irish Auditing and Accounting Supervisory Authority
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submissions@iaasa.ie

19 July 2019

Dear Kevin

Proposed Guidance Note relating to the auditor's duty to report to the Director of Corporate Enforcement

We are pleased to provide the Authority with views on the proposed Guidance Note relating to the statutory duty of auditors under the Companies Act 2014 and the Irish Collective Asset-Management Vehicles Act 2015 to report specified matters to the Director of Corporate Enforcement.

Clarification of those matters and the process for reporting by auditors is welcome. In terms of the specific questions raised in the Authority's Consultation Paper, we comment as follows:

- 1. Is the guidance provided in the draft Guidance Note appropriate and clear regarding the duty of statutory auditors to report suspected offences to Director of Corporate Enforcement under the Companies Act 2014 and the ICAV Act? If you think it should be amended, please explain why and how.*

We consider that, in overall terms, the Guidance Note's commentary on the duty of statutory auditors to report to the Director of Corporate Enforcement is appropriate and clear. However, we do have a number of observations regarding areas in which further details or clarification may be of benefit, as set out in the attachment to this letter.

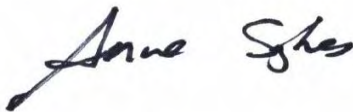
We would also welcome development of equivalent commentary on the auditor's duty to report to the Central Bank of Ireland, both in respect of the ICAV Act and other legislation giving rise to a statutory duty to report specified matters: following withdrawal of the FRC Practice Notes dealing with the audits of banks and insurers no current authoritative guidance on the matter is in issue. The Institute would be happy to contribute to such work.

2. *Are there any other areas of the ISAs (Ireland) that you believe are relevant to the duty of auditors to report to the Director of Corporate Enforcement? If so, please identify which standard(s) and the areas that you believe should be addressed in the Guidance Note.*

We consider that the draft Guidance Note provides an appropriate and adequate reflection of the requirements of current ISAs.

Our more detailed observations on specific aspects of the draft Guidance, noted above, are attached for your consideration. We hope that these, together with the views noted above, will be of assistance in finalising the Guidance Note and would be happy to discuss any aspects of our views in more detail if that would be helpful.

Yours sincerely,



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Anne Sykes
Secretary
Audit & Assurance Committee
Chartered Accountants Ireland

*Attachment: Proposed Guidance Note 'The Duty to Auditors to Report to the Directors of Corporate Enforcement'
– drafting observations for consideration*

Proposed Guidance Note ‘The Duty to Auditors to Report to the Directors of Corporate Enforcement’ – drafting observations for consideration

Observation 1 – standard of certainty

In the light of the difference between the Companies Act and the ICAV Act regarding the level of certainty giving rise to a duty to report, as noted in paragraph 3.7.1., an example of the circumstances where an auditor has obtained reasonable grounds to believe an offence has been committed and one where they have obtained reasonable grounds to believe an offence may have been committed could perhaps be included to assist in explaining the difference in standard of certainty, and the higher standard required in relation to ICAVs.

The use of a sliding scale to illustrate the difference might also be useful. This could perhaps be set out along the lines below:

No offence -----> Conclusive proof

A B C

A = Less than reasonable grounds to believe

B = Reasonable grounds to believe an offence may have been committed

C = Reasonable grounds to believe an offence has been committed

Observation 2 – identification of offences to be reported by the auditor

In relation to section 3.8, which focusses on the distinction between an indictable offence from a category 1 or 2 offence in the Companies Act, and those reportable under section 176 of the ICAV Act, we would suggest that there would be benefit in further and more specific delineation of offences that are applicable to the DOCE and fall within the auditor’s duty to report. We also note that paragraph 3.8.4 (bullets 2 and 3) indicates that offences committed by an auditor fall within the auditor’s duty to report, whereas the auditor’s duty to report relates to offence committed by an officer or agent of an ICAV (as stated in paragraph 3.6.6). We suggest that amendment of that the draft Guidance Note may be helpful in respect of this matter.

Observation 3 – responding to matters identified other than in the course of audit work

Section 2.2. appears to distinguish between the responsibility of the auditor involved in the engagement in relation to matters identified by them in their capacity of performing work other than the audit (Agreed Upon Procedures would be a common example) to the auditor’s responsibility of when other members in the firm perform the non-audit work (tax services, for instances) as:

- Paragraph 2.2.3 states “it will be prudent for them to make enquiries” and;
- Paragraph 2.2.5 states that “the partner responsible for the audit needs to make appropriate inquiries”

We suggest that the latter is amended to refer to ‘as noted above, it is prudent for the partner responsible to make appropriate inquiries’.

Observation 4 - offences relating to an entity other than the audited company

Paragraph 2.5.8 states that “a suspected Category 1 or 2 offence by an officer of Company A relating to his or her involvement in Company B is eligible to be reported by the auditor of Company A.”

This is not consistent with the legal requirement (and Section 2.2 of the Guidance Note) which requires the information to be obtained “in the course of, and by virtue of, their carrying out an audit of the financial statements of the Company” – For Company A’s auditors to report on an offence committed by an officer of Company B, they would have to demonstrate that they obtained the information as part of the audit of Company B. I.e. What would make this situation different than a situation in paragraph 2.5.1 where the auditor of Company A is not required to report a matter identified in Company B?

Observation 5 – definition of “agent”

Section 3.6 of the Guidance Note explains matters related to “an officer or an agent” of the ICAV in relation to requirements of Section 122(1) of the ICAV Act. “Agent” is not defined in the context of the ICAV Act. Whilst the term is widely used in many contexts to denote a person undertaking matters required to be done by another on behalf of that other party, it may be useful to add clarifying comment that the term ‘agent’ is not defined in the ICAV Act but is commonly understood to refer to any person *authorised* to bind another legal person, and to include reference to commonly encountered agents in the context of ICAV activity.



**Irish Auditing and Accounting Supervisory Authority,
Millennium Park,
Naas,
Co. Kildare**

19th July 2019

Submitted by email to: submissions@iaasa.ie

Dear Sir/Madam,

Consultation Paper – Proposal to issue a Guidance Note on the Duty of Auditors to Report to the Director of Corporate Enforcement

We are pleased to have this opportunity to respond to the consultation regarding the proposal to reissue this guidance note. This is essential guidance for auditors given the complexity of the matter and we welcome IAASA's attention to the matter.

- 1. Is the guidance provided in the draft Guidance Note appropriate and clear regarding the duty of statutory auditors to report suspected offences to Director of Corporate Enforcement under the Companies Act 2014 and the ICAV Act? If you think it should be amended, please explain why and how.**

We consider that the guidance is appropriate and clear. However, we believe that the addition of a visual guide such as that presented in part 3 of the ODCE's Information Notice I/2016/1, Reporting Company Law Offences by Statutory Auditors under the Companies Act 2014 (The Statutory Auditor's Decision Process) would enhance the guidance and provide auditors with a clear decision-making tool.

We also note that this Information Notice is not referenced in the proposed guidance and believe that it would be useful for such a reference to be included for completeness.

For completeness purposes we also believe that it would be beneficial to refer to the reporting obligation provided for by S.59 of the Charities Act 2009 in para. 2.7.6.

We also believe that para 2.7.6 could be further extended to provide for a more comprehensive outline of the differences between the various reporting obligations. It is noted in the guidance that there may be different thresholds for the reporting of suspected offences across the various pieces of legislation however it would also be

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useful to reiterate at this point that other differences in the reporting regimes may exist— e.g. a “tipping off” offence is provided for under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to 2018 which does not exist in the Companies Act 2014. At para. 2.9.4 of the proposed guidance there is guidance provided for the compilation of a submission for the DOCE by company officer(s) or agent(s) which may not be appropriate if an offence under the AML legislation were also identified. It would be useful if such potential conflicts were outlined.

2. Are there any other areas of the ISAs (Ireland) that you believe are relevant to the duty of auditors to report to the Director of Corporate Enforcement? If so, please identify which standard(s) and the areas that you believe should be addressed in the Guidance Note.

We have identified the following areas of the ISAs (Ireland) that we believe are relevant to the duty of auditors to report and believe should be referenced within the proposed guidance;

- ISA (Ireland) 705, Modifications to the Opinion in the Independent Auditor’s Report – in the context of a statutory auditor concluding that the financial statements do not show a true and fair view and that a modification in accordance with ISA 705 is necessary, it may be appropriate for an auditor to consider S. 324 (6)¹ of the Companies Act 2014. The identification of such a situation may trigger a reporting obligation. Category 2 offences provided for in sections 291, 292, 294 and 295 of the Companies Act 2014 may also require referencing in this context. Guidance in this area for auditors would be welcome.
- ISA (Ireland) 240, The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements – it may be in the context of an auditor’s consideration and execution of their obligations under ISA 240 that a breach of the Companies Acts is identified which may fall to be reported. Due to the nature of the obligations under ISA 240 we believe that this standard should be addressed in the Guidance Note.

¹ (6) If statutory financial statements are approved which do not give a true and fair view or otherwise comply with the requirements of this Act or, where applicable, of Article 4 of the IAS Regulation, every director of the company who is party to their approval, and who knows that they do not give such view or otherwise so comply or is reckless as to whether that is so, shall be guilty of a category 2 offence.



If you have any queries on any aspect of our response, please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink that reads 'Emer Kelly'.

Emer Kelly
Secretary – Audit Practices Sub Committee



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22 July 2019

Mr. Kevin Prendergast
Chief Executive Officer
Irish Auditing and Accounting Supervisory Authority
Willow House
Millennium Park
Naas
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Dear Mr Prendergast

IAASA Consultation Paper: Proposal to issue a Guidance Note on The Duty of Auditors to Report to the Director of Corporate Enforcement

EY welcomes IAASA's ("The Authority's") consultation paper on its proposal to issue a Guidance Note on The Duty of Auditors to Report to the Director of Corporate Enforcement. We outline in this letter our overall views with our responses to the questions raised in the consultation paper set out further below.

We also welcome the Authority proceeding with updating and adopting the 2007 Bulletin – "The duty of Auditors in the Republic of Ireland to report to the Director of Corporate Enforcement". We previously indicated our support for such adoption in our submission to the Authority's consultation on Supplementary Standards and Guidance, dated November 2017. We believe this proposed updated Guidance Note on The Duty of Auditors to Report to the Director of Corporate Enforcement ("Guidance Note") will be an important reference for statutory auditors given the increased reporting obligations of statutory auditors provided for in the Companies Act 2014, the ICAV Act 2015 and further amendments in Companies (Accounting) Act 2017 ("the legal requirements"). The Guidance Note should help to ensure appropriate and consistent application of the reporting obligations of statutory auditors.

As a general point we are in full support of guidance issued to assist statutory auditors in discharging their legal and regulatory responsibilities to report matters to the relevant authorities. Relevant guidance is beneficial for ensuring clarity of process, consistency of practice and facilitates appropriate and timely attention being paid to the matter arising by the relevant authority.

We would however wish to take this opportunity to raise a point on one of the key differences on the auditor's obligations to report to the Director of Corporate Enforcement under the Companies Act 2014 and the ICAV Act 2015 legislation, as outlined in section 1.6 of the Draft Guidance Note. It is unclear why the provisions in law for reporting to the Director of Corporate Enforcement attach differing threshold levels for a Company to that threshold level for an ICAV. We believe that proper consideration needs to be given to the basis for this difference on the reporting responsibility of the statutory auditor, as it would be our view that the threshold level for this statutory auditor reporting requirement in law should be consistent for both types of corporate vehicle.



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Our response to the specific questions raised in the consultation paper are as follows:

Q.1 Is the guidance provided in the draft Guidance Note appropriate and clear regarding the duty of statutory auditors to report suspected offences to Director of Corporate Enforcement under the Companies Act 2014 and the ICAV Act? If you think it should be amended, please explain why and how.

Yes we believe that the guidance in the draft Guidance Note is appropriate and helps provide clarity regarding the process and relevant considerations for statutory auditors when they have information which might require that they report matters to the Director of Corporate Enforcement under the Companies Act 2014 and the ICAV Act.

Q.2 Are there any other areas of the ISAs (Ireland) that you believe are relevant to the duty of auditors to report to the Director of Corporate Enforcement? If so, please identify which standard(s) and the areas that you believe should be addressed in the Guidance Note.

We don't believe there are any other areas of the extant ISAs (Ireland) that are specifically relevant to the duty of statutory auditors to report to the Director of Corporate Enforcement that warrant inclusion in the guidance proposed in the Guidance Note.

We hope that you find our comments useful and would be happy to discuss further or provide further clarity on any of the points raised. Please do not hesitate to contact us if you would like to discuss our comments further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dermot Quinn', is written over a light grey circular watermark.

Dermot Quinn
Audit Compliance Principal
Ernst & Young

Member of Public Response

Hi,

I believe the guidance note is very important. This is long overdue and closes a key gap in the current guidance framework. A step by step reporting process should be included. Areas of ambiguity should be kept to a minimum. Enforcement measures for failure to report should be noted along with the establishment of a designated unit to monitor and pursue same.

Thanks,
Ed