

2019

Consultation Paper

Proposal to issue

**Companies Act 2014 (Procedures
Governing the Conduct of Section
934 Investigations) Regulations**

October 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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1. Summary

The purpose of this consultation paper is to obtain the views of stakeholders with regard to IAASA's proposal to issue Companies Act 2014 (Procedures Governing the Conduct of Section 934 Investigations) Regulations 2019 ('S934 Regulations').

2. Context – subject of investigations

Section 934 of the Companies Act 2014 provides that IAASA may investigate a potential breach of a prescribed accountancy body's ('PAB') standards by a member or a potential contravention by an auditor of statutory audit legislation, as set out in the Companies Act 2014 and Regulation (EU) 537/2014 of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities ('Regulation 537'). This includes the power to investigate statutory auditors and statutory audit firms.

In addition, Article 24.1 of Regulation 537 requires that investigations relating to the audit of public interest entities ('PIEs') arising from quality assurance reviews conducted by IAASA or from referrals from other authorities are to be conducted by IAASA in Ireland. Such investigations shall be conducted within the scope of Section 934.

Under the model of independent statutory oversight set out in the Companies Act 2014, IAASA's role is to supervise how the PABs regulate and monitor their members which includes their complaints handling, investigation and disciplinary processes. Primary responsibility for the receipt and investigation of complaints relating to the PABs' members/member firms resides with the PABs, who are required to process complaints in accordance with procedures approved by IAASA. The decision to initiate a Section 934 is at IAASA's discretion and it is IAASA's view that investigations relating to audits of non-PIEs and PAB members should normally be undertaken by the relevant PAB unless IAASA considers that, in the particular circumstances arising, a Section 934 investigation is warranted.

In this context, it is anticipated that IAASA's powers under Section 934 investigations will primarily be used to investigate:

- Potential breaches of the statutory audit legislation identified during the course of IAASA's inspection of PIE audits; and
- Referrals from other authorities that relate to the audit of a PIE.

3. Background

IAASA was established by the Companies (Auditing and Accounting) Act 2003 ('the 2003 Act'). Section 24 of that Act provided that IAASA had the power to conduct investigations into possible breaches of the standards of a prescribed accountancy body ('PAB') by a member. The 2003 Act also required IAASA to issue Regulations setting out the procedures to be followed in conducting investigations under section 24, the most recent version of which are the Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 24 Investigations) Regulations 2012 ('SI 97 of 2012').

The Companies Act 2014 consolidated Irish company legislation in a single Act. IAASA's powers of investigation under section 24 of the 2003 Act were continued by section 934 ('S934') of the new Act. The Companies Act 2014 further provides that the current Regulations shall continue in effect until they are revoked or amended. In this context, at present any new S934 Investigations initiated by IAASA would be carried out in accordance with the provisions of SI 97 of 2012.

In 2018, the Companies Act 2014 was amended by the Companies (Statutory Audits) Act 2018. The amendments included a number of substantive changes to the provisions relating to the conduct of investigations by IAASA under Section 934:

- (a) Subject matter – as well as investigations regarding a possible breach of a PAB's standards by a member of that PAB, IAASA's powers of investigation under S934 were expanded to include investigations relating to a possible contravention of statutory audit

legislation by an auditor (i.e. an individual statutory auditor or a statutory audit firm). IAASA also now has the power to conduct investigations under Section 934 regarding former PAB members and former auditors;

- (b) Delegation – IAASA may now delegate any of its functions under a S934 investigation to its officers or employees or any other person duly authorised by it. Previously, IAASA could only delegate these functions to a committee;
- (c) Settlement – while IAASA previously had the power to settle under secondary legislation, section 934E of the Companies Act 2014 now provides that IAASA may enter into a settlement agreement with the subject of a S934 Investigation to resolve the matter at any stage of a S934 Investigation;
- (d) S934 Regulations – Previously, IAASA was obliged to make S934 Regulations. It now has discretion to decide whether to make regulations in respect of the procedures to be followed when conducting S934 investigations; and
- (e) Detailed S934 provisions - Section 934 has been expanded to set out additional provisions regarding S934 investigations including:
 - a. The sanctions which may be imposed on auditors, including but not limited to, banning (for a temporary or indefinite period) an auditor from carrying out statutory audits or signing audit reports, declaring an audit report does not meet certain requirements and imposing financial sanctions;
 - b. The relevant circumstances to be considered when imposing sanctions; and
 - c. Provisions regarding the publication of sanctions.

4. Main areas of change in draft Regulations

Given the significant changes to IAASA's statutory investigation functions since 2012, as detailed in Section 2 above, it now proposes to replace SI 97 of 2012 with revised Regulations. As well as changes to reflect the provisions of the Companies Act 2014, as amended, it also proposed to amend the operation of the S934 investigation process to improve its effectiveness and to enable enquires to be conducted and concluded in a more efficient manner.

In August 2019, IAASA issued a consultation on proposals to replace the current Regulations relating to its powers of enquiry under Section 933 of the Companies Act 2014 with a revised statutory instrument. This consultation closed on 27 September 2019 and IAASA is currently considering the responses received. The principal difference between Section 933 enquiries and Section 934 investigations is that Section 933 enquiries relate to the PABs while Section 934 investigations relate to PAB members, including auditors. Consistent with the approach in the current Regulations, it is intended that both processes will operate in a similar manner. In this context, the draft Section 934 Regulations reflect the process set out in the draft S933 Regulations except where differences are considered necessary to reflect the different focus of the two processes and the relevant legislative provisions as set out in the Companies Act 2014.

In this context, the principal proposed differences from SI 97 of 2012 are set out below.

4.1. Role of the executive

To ensure that the S934 process operates in an efficient manner, while providing for flexibility where appropriate, the draft Regulations propose that a number of tasks within the process shall be performed by IAASA. While the delegation of these tasks to specific individuals will be dealt with through internal IAASA policies, job titles have been used in the bullet points below to assist users' understanding of how the revised S934 process is likely to operate in practice.

- Decision to launch a S934 investigation - at present, the decision to launch a S934 investigation is reserved to the Board of IAASA. It is proposed that, under the revised Regulations, the Head of Conduct will decide whether to initiate a S934 investigation.

- Preliminary Investigation - if a decision is taken to initiate a S934 investigation, the Head of Conduct will carry out a preliminary investigation, which will replace the existing preliminary investigation committee stage.
- Referral to full investigation - if one or more potential contraventions are identified, and if no S934E settlement agreement has been reached prior to the conclusion of the preliminary investigation, the Head of Conduct will prepare a recommendation for the Chief Executive for decision. Following consideration of the Head of Conduct's recommendation, the Chief Executive will either refer the matter to an Investigation Committee ('IC') for full investigation or close the matter with no further action.

4.2. Settlement

A S934E settlement agreement may be entered into at any stage during the S934 process. SI 97 of 2012 provides that any settlement must be approved by the Board of IAASA. It is proposed that the approval of settlement terms will be delegated to the Chief Executive at preliminary investigation stage, while the draft Regulations provide that the Investigation Committee will be required to approve the terms of any S934E settlement agreement reached if a full investigation has been launched.

4.3. Updates to reflect amendments to legislation

The principal changes proposed to the draft Regulations from SI 97 of 2012 in order to give effect to the current S934 provisions are:

- The updating of legislative references to refer to the relevant provisions of the Companies Act 2014;
- Expansion of the scope of S934 investigations to include auditors' compliance with legislation; and
- The removal of Regulations that replicate the provisions of the Companies Act 2014. This is in the context that the Regulations should be read in conjunction with that Act and are intended to set out how the S934 process shall operate in practice.

5. Matters on which IAASA is consulting

IAASA welcomes comments on all aspects of the draft Regulations. However, a number of matters are set out below on which IAASA is specifically seeking views from stakeholders and interested parties by 5pm on **13th December 2019**.

No.	Matter on which views are sought
1.	Do you agree that SI 97 of 2012 should be replaced with a new statutory instrument setting out IAASA's S934 investigation procedures? If not, please give your reasons and explain what action(s), if any, you believe should be taken to update the S934 investigation process.
2.	Do you consider that the Regulations as drafted achieve an appropriate balance between (i) protecting and promoting the public interest; (ii) ensuring that the subjects of S934 investigations and other affected parties are fully afforded their rights as regards procedural fairness; and (iii) sanctioning contraventions of the PABs' standards and audit legislation? If not please identify which aspect(s) of the draft Regulations you consider to be inconsistent with a particular objective or objectives. Please provide the reason(s) for your opinion and state how you propose that the issue(s) identified could be addressed.

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| <p>3. Do you believe that the proposed changes as outlined in section 4 above will lead to a more efficient and robust S934 investigation process? If not, please give your reasons and explain what changes, if any, you believe should be made to the draft Regulations, including your rationale for those changes.</p> |
| <p>4. Do you consider that the draft Regulations set out and facilitate the implementation of a fair and robust enforcement procedure? If not, please give your reasons and explain what changes, if any, you believe should be made to the draft Regulations, including your rationale for those changes.</p> |

6. Making your submission

IAASA invites comments on all aspects of the draft Regulations and, in particular, on the specific matters set out in section 4 above.

Stakeholders and interested parties are invited to provide responses to the above questions by e-mail only to **submissions@iaasa.ie** no later than **5pm on 13th December 2019**.

Any anonymous submissions will not be considered.

Comments are most helpful if they:

- (a) respond directly to the specific question posed;
- (b) provide a clear rationale for the position adopted by the respondent;
- (c) provide supporting evidence underpinning the views expressed/rationale proposed; and
- (d) describe in detail any alternative option(s) you wish IAASA to consider.

All responses from identifiable individuals and organisations received by the deadline will be considered by IAASA. Depending on the nature and scale of responses, IAASA may publish a feedback statement summarising the content of the responses. Respondents should note that, in the interest of transparency, their responses may be published in full or in part (and may be attributed to the respondent) by IAASA in that feedback statement.



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