

Reporting to the Financial Regulator under The Central Bank and Financial Services  
Authority of Ireland Act 2004

*This guidance is issued by Association of Chartered Certified Accountants in  
September 2006 to assist auditors in meeting certain obligations under the Central  
Bank and Financial Services Authority of Ireland Act 2004.*

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*This guidance does not constitute an auditing standard. Professional judgement should be used in its application.*

*No responsibilities for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the Association.*

**INTRODUCTION**

1. Auditors of entities regulated by the Irish Financial Services Regulatory Authority (“IFSRA”, the Financial Regulator) have a statutory duty<sup>1</sup> to report specified matters to the Financial Regulator. The Central Bank and Financial Services Authority of Ireland Act 2004 (“CBFSAI Act”) introduces additional obligations on auditors of financial institutions<sup>2</sup>, namely:
  - to make an annual confirmation to the Financial Regulator as to whether there are matters to report in addition to and including any reports already submitted under ‘prescribed enactments’<sup>3</sup>;
  - to provide to the Financial Regulator copies of any reports provided to the financial services provider or those concerned with its management on matters that have come to the auditors notice while auditing the accounts of the financial services provider or carrying out any work for the financial services provider of a kind specified<sup>8</sup> by the Financial Regulator<sup>4</sup>, and
  - to provide to the Financial Regulator copies of any reports issued to the Office of the Director of Corporate Enforcement<sup>5</sup>.
2. The purpose of this Guidance is to assist auditors in meeting these new reporting requirements. The document has been prepared in consultation with the Financial Regulator.
3. In addition to the reports considered in this guidance, the Financial Regulator has the power to request specifically the auditors of the regulated entity to provide reports as listed in section 27E of the CBFSAI Act (reproduced in Appendix 3).
4. Section 27F also provides that the Financial Regulator may:

*“by notice in writing, require an auditor of a regulated financial service provider, or an affiliate of the auditor, to provide the Bank with a copy of any record or information provided or obtained by the auditor or affiliate in connection with an audit of the financial service provider’s accounts that is in the possession of the auditor or affiliate”.*

This may include the Financial Regulator seeking access to the working papers of the auditor in relation to such information.

5. The penalties for failing to provide (without reasonable excuse) the Financial Regulator with the reports required under the CBFSAI Act are listed in section 27G and are reproduced in Appendix 3.
6. Auditors have certain protections in making a report in accordance with the statutory duty and these are set out in section 27H, see Appendix 3.

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<sup>1</sup> Appendix 1 lists the various types of financial institutions and the enactments under which the statutory duty to report arises.

<sup>2</sup> Sections 27B, 27C and 27D of the Central Bank Act 1997, as inserted by section 26 of the CBFSAI Act.

<sup>3</sup> “Prescribed Enactments” are set out in section 27B(4) of the CBFSAI Act 2004, see Appendix 3

<sup>4</sup> Section 27C – (1) of the CBFSAI Act 2004, see Appendix 3

<sup>5</sup> S27D CBFSAI Act 2004

**THE ANNUAL STATUTORY DUTY CONFIRMATION TO THE FINANCIAL REGULATOR**

7. Section 27B of the Central Bank Act 1997 as inserted by the CBFSAI Act 2004 places a duty on auditors to make a written report to the Financial Regulator, within one month after the date of the auditor's report on the financial service provider's financial statements or within such extended period as Financial Regulator allows, stating whether or not circumstances have arisen that require the auditor to report a matter to the Financial Regulator under a prescribed enactment and if such circumstances have arisen specify those circumstances (the "Statutory Duty Confirmation").
8. Prescribed enactments are listed in Appendix 1. Auditors make their reports under these sections in accordance with the International Standard on Auditing (UK and Ireland) 250 '*Consideration of laws and regulations in an audit of financial statements*'. ISA (UK and Ireland) 250 came into effect for audits of financial statements for periods beginning on or after 15 December 2004 and replaced SAS 120 '*Consideration of Law and Regulations*' and SAS 620 '*The Auditor's Right and Duty to Report to the Regulators in the Financial Sector*'.
9. Guidance on the identification of matters giving rise to a duty to report in relation to credit institutions and insurers is set out in Practice Note 19(I) '*The audit of Banks in the Republic of Ireland*' and Practice Note 20(I) '*The audit of Insurers in the Republic of Ireland*'.
10. The Statutory Duty Confirmation is sent directly to the Financial Regulator and is a statement to the Financial Regulator that there is no matter, not already reported in writing to the Financial Regulator by the auditor, that has come to the attention of the auditor during the ordinary course of the audit that gives rise to a duty to report<sup>6</sup> to the Financial Regulator. Where matters have already been reported to the Financial Regulator these are referred to in the Statutory Duty Confirmation. The Statutory Duty Confirmation does not in any way replace the auditors' obligations to report under other legislation and regulations listed in Appendix 1 as and when circumstances giving rise to the duty are identified in the course of audit work.
11. Although the Statutory Duty Confirmation is sent directly to the Financial Regulator, auditors may send a copy of it to the entity. There may, however, be cases (for example where a direct report has been made to the Financial Regulator without the entity's knowledge,) where this is inappropriate.
12. An example proforma Statutory Duty Confirmation is included in Appendix 2 of this Miscellaneous Technical Statement.

**Effective Date and Timing of Statutory Duty Confirmation**

13. The relevant sections introducing the three new reporting obligations referred to in paragraph 1 have been commenced with effect from 1st August 2004. The Financial Regulator has indicated that it expects the auditor to provide such reports in accordance with this guidance, following its issue.
14. For each entity, or group of related entities, for which the accounting firm is appointed auditor, section 27B requires the firm to submit a Statutory Duty Confirmation to the Financial Regulator. This Statutory Duty Confirmation should be submitted within one month of the date of the report of the auditor on the entity's financial statements.

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<sup>6</sup> Such matters are determined by statute applicable to each category of financial institution as listed in Appendix 1.

The period covered by the Statutory Duty Confirmation commences from the date of issue of the previous Statutory Duty Confirmation. It covers all matters that require the auditor to report to the Financial Regulator in respect of that period.

15. The Statutory Duty Confirmation must be submitted within **1 month** of the date of the auditors report on the financial statements.

<i>Institution</i>	<i>Latest date for submission of audited financial statements</i>	<i>Reportee</i>
Credit Institutions	3 months post year end	Head of Banking Supervision
Insurance Companies	6 months post year end	Head of Insurance Supervision
Credit Unions,	3 months <sup>7</sup> post year end	Registrar of Credit Unions
UCITS, non-UCITS and service providers to funds	4 months post year end	Head of Investment Service Providers Supervision Department or Head of Markets Supervision Department
Other entities	6 months post year end	Head of Investment Service Providers Supervision Department or Head of Markets Supervision Department

## OTHER REPORTS TO MANAGEMENT

16. Section 27C of the Central Bank Act 1997 as amended by the CBFSAI Act 2004 requires that if the auditor of an entity regulated by the Financial Regulator makes a report to the entity, or those concerned with its management, on any matter that has come to the auditor's notice during the course of the financial statement audit (or while carrying out any work for the entity of a kind specified by the Financial Regulator<sup>8</sup>), the auditor must provide the Financial Regulator with a copy of that report.
17. The copy must be provided at the same time as, or as soon as practicable after, the original is provided to the client or those concerned in its management. Where no such report is to be sent to the entity section 27C (3) of the Central Bank Act 1997 requires the auditors to inform the Financial Regulator that such is the case i.e. a 'nil return'.

<sup>7</sup> The Credit Union Act, 1997 requires that the AGM is held within 3 months of the year end.

<sup>8</sup> No work has yet been specified by the Financial Regulator for this purpose, hence the duty relates to reports on matters arising from the audit.

18. There is no definition contained in the legislation as to what constitutes ‘a report’ for this purpose or the meaning of the term ‘those concerned in its management’. However the Financial Regulator has indicated that it would expect to receive under this section, copies of post audit reports prepared in accordance with International Standards on Auditing (“ISA”) (UK & Ireland) 260, and that particular areas of interest include any concerns relating to solvency/capital adequacy or the entity’s conduct of business with its clients.
19. In many cases, the post audit report required by ISA (UK & Ireland) 260 may constitute the only report made on matters arising from the audit. However, auditors will need to consider the nature of other communications and correspondence with the institution concerned and consider if they contain matters of a substantive nature, arising from the audit, such that they may be regarded as a report for the purposes of Section 27C. In cases of uncertainty as to whether a particular communication to a financial institution constitutes a ‘report’ for the purposes of the section, auditors may wish to take legal advice.
20. Auditors should consider updating their engagement letters to reflect this legal obligation. Auditors also may consider it prudent to include in their report to directors or management, as a matter of course, a statement that:
  - the report has been prepared for the sole use of the entity;
  - it must not be disclosed to another third party, other than the Financial Regulator
  - no responsibility is assumed by the auditors to any other person; and
  - it does not purport to be a comprehensive record of all matters arising, risks or internal control weaknesses in the entity.

#### **REPORTS TO THE OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT (ODCE)**

21. Section 27D of the Central Bank Act 1997 as amended by the CBFSAI Act 2004 requires that auditors of regulated entities submit to the Financial Regulator copies of any reports sent to ODCE. Copies must be submitted at the same time or as soon as practicable after the report is made to ODCE.

**APPENDIX 1 - SUMMARY OF LEGISLATIVE REFERENCES IN RELATION TO THE AUDITOR'S STATUTORY DUTY TO REPORT TO THE FINANCIAL REGULATOR**

**Auditors need to be aware that Regulated Financial Service Providers may be subject to more than one of the prescribed enactments below (for example a credit union may also be authorized under the IIA)**

Auditors of financial institutions have a statutory duty to report specified matters to the Financial Regulator under the following provisions

Insurers	<ul style="list-style-type: none"> <li>• section 35 of the Insurance Act 1989</li> </ul>
Investment Firms	<ul style="list-style-type: none"> <li>• section 33 of the Investment Intermediaries Act 1995</li> <li>• regulations 7, 8 and 9 of the Supervision of Credit Institutions, Stock Exchange Members Firms and Investment Business Firms Regulations 1996</li> </ul>
Stock Exchange member firms	<ul style="list-style-type: none"> <li>• section 34 of the Stock Exchange Act 1995;</li> <li>• regulations 7, 8 and 9 of the Supervision of Credit Institutions, Stock Exchange Members Firms and Investment Business Firms Regulations 1996</li> </ul>
Banks	<ul style="list-style-type: none"> <li>• section 47 of the Central Bank Act 1989;</li> <li>• regulations 7, 8 and 9 of the Supervision of Credit Institutions, Stock Exchange Members Firms and Investment Business Firms Regulations 1996</li> </ul>
Building societies	<ul style="list-style-type: none"> <li>• section 89 of the Building Societies Act 1989;</li> <li>• regulations 7, 8 and 9 of the Supervision of Credit Institutions, Stock Exchange Members Firms and Investment Business Firms Regulations 1996</li> </ul>
Trustee Savings Bank	<ul style="list-style-type: none"> <li>• section 38 of the Trustee Savings Banks Act 1989</li> </ul>
Credit Unions	<ul style="list-style-type: none"> <li>• section 122 of the Credit Union Act 1997</li> </ul>
UCITS	<ul style="list-style-type: none"> <li>• regulation 85 of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003</li> </ul>

**APPENDIX 2 - Illustrative wording of a Statutory Duty Confirmation to the Financial Regulator**

Name

Title: Head of Function (relevant supervisory department)

The Financial Services Regulatory Authority

P.O. Box 9138

College Green

Dublin 2

Dear [Sir/Madam]:

**Statutory Duty Confirmation: Statement by the auditors for [name REGULATED ENTITY] to the Financial Regulator**

The letter and attached schedule constitute a report as required by section 27B of the Central Bank Act 1997 in relation to our statutory duty to report certain matters to the Financial Regulator, as specified in [*insert appropriate reference from list in Appendix 1*]. The schedule to this letter lists the reporting periods in which we acted as auditors of [*insert name of financial institution and related entities if appropriate*] and are therefore subject to the statutory duty from [*date of signing last statutory duty confirmation or date of appointment if later*] to [*date of signing current confirmation*].<sup>9</sup>

**Respective responsibilities of directors and auditors**

It is the responsibility of the directors of [*name of financial institution*]

- to take appropriate steps to provide reasonable assurance that the regulated entity complies with applicable legislation and the requirements of the Financial Regulator set out in Guidance Notes, Notices, Handbooks, Codes and other authoritative pronouncements (the Supervisory Requirements);
- to establish arrangements designed to detect non-compliance with the Guidance Notes, Notices, Handbooks, Codes and other authoritative pronouncements (the Supervisory Requirements and to report any breaches to you;
- to report to the Financial Regulator any information which they know or have reasonable cause to believe is of material significance for the Financial Regulator's supervisory functions.

Our responsibilities are to report to you matters which come to our attention in the course of our work as auditors and are of regulatory concern to you, in accordance with [*insert appropriate reference from list in Appendix 1*] and to report on an annual basis to you in relation to whether circumstances indicating such matters have been identified in the course of our work.

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<sup>9</sup> Where the entity has no subsidiaries or close links with other entities the following sentence may be used:  
“we acted as auditor of X in the financial year ended [date] and we are therefore subject to the statutory duty from [date of signing last statutory duty confirmation or date of appointment if later] to [date of signing current confirmation].”

**Basis of statement**

In discharging our statutory duties to report to you we have had regard to matters identified in [insert appropriate reference from list in Appendix I]<sup>10</sup> In doing so we are required to consider matters of which we have become aware in the capacities as auditors listed in the Annex to this letter.

**Statement**

[Except as already notified to you on <sup>11</sup> .....], no circumstances have come to our attention, in our capacities described in the schedule attached to this letter, that have given rise to a statutory duty on us to report to you under [insert appropriate reference from list in Appendix I].

Our report is prepared solely for the confidential use of the Financial Regulator as required by section 27B of the Central Bank Act 1997. It may not be relied upon by [name of regulated entity] or the Financial Regulator for any other purpose whatsoever. [Name of audit firm] neither owes nor accepts any duty to any other party and shall not be liable for any loss, damage, or expense of whatsoever nature which is caused by reliance on our report.

Yours faithfully

Dated <sup>12</sup>

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<sup>10</sup> In addition the auditor should refer to Practice Note 19(I) Bank or Practice Note 20(I) Insurers where relevant

<sup>11</sup> Insert list of reports issued and dates of such reports or delete as appropriate

<sup>12</sup> Where this confirmation letter is being provided for the first time the period covered is from the date of the previous audit report.



**Appendix 2 - Schedule to Statutory Duty Confirmation: financial institutions to which the firm has acted as appointed auditor.**

Capacity	Reporting period	Reference to basis of work
Auditor of [name of financial institution - XYZ Ltd]	Financial year ended	Audit report dated
Auditor of [name of financial institution - ABC Ltd]	Financial year ended	Audit report dated
Auditors of the following bodies closely linked <sup>13</sup> by control to [name of financial institution (s) - XYZ Ltd and ABC Ltd Subsidiary 1 Ltd Subsidiary 2 Ltd]	Financial year ended	Audit report dated
Auditor of the consolidated financial statements of [name of group - XYZ group]	Financial year ended	Audit report dated

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<sup>13</sup> The statutory duty of auditors of credit institutions, banks and Building Societies, Stock Exchange Member Firms and investment Business Firms extends to other entities with 'close links to the regulated entity. At the time of publication of this guidance, credit unions operate as stand alone entities and therefore are unlikely to have close links with another entity as defined. The term 'Close links' is defined in Regulation 2 of the Post BCCI Regulations. Close links between two or more entities, as defined by Regulation 2 of the Post-BCCI Regulations, arise as a result of factors indicating either — (a) participation: the ownership, direct or by way of control, of 20 per cent or more of the voting rights or capital of an undertaking, or (b) control: the relationship between a parent undertaking and a subsidiary undertaking (including sub-subsidiaries). Additionally, close links exist if there is an arrangement whereby two or more persons are permanently linked to one and the same person by a control relationship. For guidance, see Practice Note 19(I).

**APPENDIX 3 - EXTRACTS FROM THE CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND ACT 2004****Section 27B:**

- 27B.—(1) This section applies to an auditor who is required by or in accordance with a prescribed enactment to report a matter to the Bank.
- (2) Within 1 month after the date of the auditor's report on the financial service provider's accounts, or within such extended period as the Bank allows, the auditor of the service provider shall deliver a written report to the Bank—
- (a) stating whether or not circumstances have arisen that require the auditor to report a matter to the Bank under a prescribed enactment and, if such circumstances have arisen, specify those circumstances, and
  - (b) where the service provider has, during that financial year, been required to provide the Bank with a compliance statement stating whether or not the requirement has been complied with.
- (3) A report under this section must be in a form publicly notified by the Bank.
- (4) The following are prescribed enactments for the purpose of this section:
- (a) section 35 of the Insurance Act 1989;
  - (b) section 47 of the Central Bank Act 1989;
  - (c) section 89 of the Building Societies Act 1989;
  - (d) section 38 of the Trustee Savings Banks Act 1989;
  - (e) section 258 of the Companies Act 1990;
  - (f) section 15 of the Unit Trusts Act 1990;
  - (g) section 16 of the Investment Limited Partnership Act 1994;
  - (h) section 33 of the Investment Intermediaries Act 1995;
  - (i) section 34 of the Stock Exchange Act 1995;
  - (j) section 122 of the Credit Union Act 1997;
  - (k) regulations 7, 8 and 9 of the Supervision of Credit Institutions, Stock Exchange Members Firms and Investment Business Firms Regulations 1996;
  - (l) regulation 85 of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003;
  - (m) any other provision of an Act or regulations declared under subsection (5) to be a prescribed enactment for the purpose of this section.
- (5) The Bank may, by notice published in *Iris Oifigiúil*, declare a provision of an Act or regulations to be a prescribed enactment for the purpose of this section.

**Section 27C:**

Duty of auditor to provide Bank with copies of certain reports

27C.—(1) If the auditor of a regulated financial service provider provides the financial service provider, or those concerned in its management, with a report on a matter that has come to the auditor's notice while auditing the accounts of the financial service provider or carrying out any other work for the financial service provider of a kind specified by the Bank, the auditor shall provide the Bank with a copy of the report. The copy must be provided at the same time as, or as soon as practicable after, the original is provided to the financial service provider or those concerned in its management.

(2) If—

(a) an auditor of a regulated financial service provider invites the financial service provider, or the persons concerned in its management, to comment on a draft of a report referred to in subsection (1), and

(b) the financial service provider or those persons comment on the draft in response to the invitation,

the obligation of the auditor under that subsection applies only to the final version of the report.

3) If, in relation to the financial year of a regulated financial service provider, there has been no reason for the auditor of the service provider to provide such a report, the auditor shall nevertheless notify the Bank in writing that this is the case.

**Section 27D:**

Duty of auditor to provide Bank with copies of reports sent to Director of Corporate Enforcement

27D.—Whenever an auditor of a regulated financial service provider that is a company provides the Director of Corporate Enforcement with a report or other document in accordance with a requirement imposed by the Companies Acts or any other enactment, the auditor shall also provide the Bank with a copy of that report or document. The copy must be provided at the same time as, or as soon as practicable after, the original is provided to the Director of Corporate Enforcement.

**Section 27E:**

Bank may request auditor of regulated financial service provider to provide Bank with report on certain matters

27E.—(1) The Bank may, by notice in writing, request an auditor of a regulated financial service provider, or an affiliate of the auditor, to provide the Bank with a report on all or any of the following:

(a) the service provider's accounting or other records;

(b) the systems (if any) that the service provider has in place to ensure that the service provider acts prudently in the interests of its members (if a company or firm) and the interests of those to

whom the service provider provides financial services;

(c) any other matter in respect of which the Bank requires information about the service provider, or the service provider's activities, to enable the Bank to perform a function imposed on it by or under an Act.

(2) The auditor or affiliate shall comply with such a request within such period as is specified in the request, or within such extended period as the Bank may allow.

(3) If the Bank so directs, the auditor or affiliate shall not, without the consent of the Bank, disclose to the financial service provider concerned, or any person concerned in the management of, or employed by, that service provider—

(a) the fact that the auditor or affiliate has received a request under subsection (1), or

(b) any information that might lead that service provider, or any such person, to suspect that the auditor or affiliate has received such a request.

**Section 27F:**

Bank may require auditor of regulated financial service provider to provide certain documents

27F.—(1) The Bank may, by notice in writing, require an auditor of a regulated financial service provider, or an affiliate of the auditor, to provide the Bank with a copy of any record or information provided or obtained by the auditor or affiliate in connection with an audit of the financial service provider's accounts that is in the possession of the auditor or affiliate.

(2) The auditor or affiliate shall comply with such a request within such period as is specified in the request, or within such extended period as the Bank may allow.

(3) If the Bank so directs, the auditor or affiliate shall not, without the consent of the Bank, disclose to the financial service provider concerned, or any person concerned in the management of, or employed by, that service provider—

(a) the fact that the auditor or affiliate has received a request under subsection (1), or

(b) any information that might lead that service provider, or any such person, to suspect that the auditor or affiliate has received such a request.

**Section 27G:**

Offences by auditors and affiliates under this Chapter

27G.—(1) An auditor of a regulated financial service provider who, without reasonable excuse, fails to comply with section 27B (2), 27C(1), 27D, 27E(2) or 27F(2), or contravenes section 27E(3) or 27F(3), commits an offence and—

(a) if tried summarily, is liable on conviction to a fine not exceeding €2,000,

or

(b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

(2) An affiliate of an auditor of a regulated financial service provider who, without reasonable excuse, fails to comply with section 27E(2) or 27F(2), or contravenes section 27E(3) or 27F(3), commits an offence and—

(a) if tried summarily, is liable on conviction to a fine not exceeding €2,000,

or

(b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

(3) An auditor who, having been convicted of an offence of failing to comply with a provision of section 27B, 27C, 27D, 27E or 27F, continues to fail to comply with the provision commits a further offence on each day or part of a day during which the failure continues after that conviction and—

(a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day,

or

(b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day.

(4) An affiliate of an auditor who, having been convicted of an offence of failing to comply with a provision of section 27E or 27F, continues to fail to comply with the provision commits a further offence on each day or part of a day during which the failure continues after that conviction and—

(a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day,

or

(b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day.

**Section 27G:**

Auditors to have certain protections in making a report in accordance with the statutory

27H.—An auditor or an affiliate of a regulated financial service provider does not—

(a) contravene any duty of confidentiality

duty

owed to the service provider or to its creditors or clients or, if the service provider is an incorporated or unincorporated body, to its members, or  
(b) incur any tortious liability, only because the auditor or affiliate complies with a duty imposed on the auditor or affiliate by this Part.