

European Communities (Statutory Audits) (Directive
2006/43/EC) Regulations 2010

August 2010

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INTRODUCTION

The European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 ('the Regulations') were signed into law on the 20th May 2010. The Regulations implement in Ireland the EU Statutory Audit Directive (Directive 2006/43/EC) ('the SAD'). The Regulations are available to download from the Department of Enterprise, Trade and Innovation's website at: <http://www.deti.ie/publications/sis/2010/si220.pdf>.

The purpose of this Information Sheet is to highlight the principal provisions affecting companies and their auditors. It is therefore not an alternative to reading the Regulations in full, nor is it intended as such. Members are accordingly encouraged to review the Regulations in full prior to reading this document. Also, this document is for information purposes only and does not give, or purport to give, professional advice. It should, accordingly, not be relied upon as such. No party should act or refrain from acting on the basis of any material contained in this document without seeking appropriate professional advice. While every care has been taken by ACCA in the preparation of this document, ACCA does not guarantee the accuracy or veracity of any information or opinion, or the appropriateness, suitability or applicability of any practice or procedure contained therein.

A key aim of the Statutory Audit Directive ('SAD') is the establishment of minimum criteria for the education, regulation, and oversight of statutory auditors. The Directive contains requirements with regard to the conduct of statutory audits. It also provides for movement of statutory auditors/audit firms between Member States (subject to certain conditions) and the regulation of so-called 'third country auditors' and 'third country audit entities' from countries outside the European Union. Additionally, it introduces statutory requirements regarding the appointment and functions of audit committees by public interest entities.

The SAD repeals Directive 84/253/EEC, (known as the 8th Company Law Directive). While the SAD repeats much of what was required by the 8th Company Law Directive in the areas of educational requirements, approval criteria and formal registration of auditors, its scope is much wider and includes requirements that are of relevance to the 'recognised accountancy bodies', auditors themselves, as well as companies and their directors.

Much that is contained in the Regulations will not be new to auditors. So while the Regulations do contain measures that address, for example, continuing education, ethics and independence, confidentiality requirements, these requirements are essentially a statutory underpinning of professional obligations that already exist in the rules and regulations of the recognised accountancy bodies and in the international Standards on Auditing (UK & Ireland). The

Regulations also introduce a number of definitions. Some of these are included in Appendix 1 to this document.

Many of the provisions take effect from the date of signing of the Regulations – 20th May 2010. However, most of these relate to issues of a regulatory or supervisory nature that are of more relevance to the various competent authorities than to statutory auditors/audit firms and companies. Provisions that impact directly on statutory auditors/audit firms and companies have mostly been implemented on the basis of ‘financial years’ beginning on or after a specified date or, alternatively, with a certain ‘lead in time’ allowed.

The remainder of this document addresses the key issues that will impact statutory auditors and companies. In some cases, further information on the application of these provisions will issue in due course.

1. REQUIREMENTS WITH IMMEDIATE EFFECT FROM 20TH MAY 2010

1.1 Incorporation of statutory auditors/statutory audit firms (Regulation 6(b))

By the deletion of section 187(2) of the Companies Act, 1990, a statutory auditor or audit firm may now undertake statutory audit work through corporate bodies. Legal advice is currently being sought on a number of aspects of this amendment to the Companies Acts; specifically, clarification relating to financial years to which this ‘new’ regime is applicable (expected to be statutory audits conducted for financial years beginning on or after 20th May 2010), types of corporate entities that may be established and also the legal position with regard to audit appointments held as ‘public auditors’. Further information on these matters will be issued in due course.

It should also be noted that the ‘recognised accountancy bodies’ may have regulatory requirements of their own that relate to audit firms that are incorporated. Statutory auditors/audit firms should consult with their own regulatory body in this regard.

1.2 Requirements relating to signing of audit report (Regulation 57) (effective for financial years beginning on or after 20th May 2010)

Section 193 of the Companies Act, 1990 is amended to require that, for audit reports on financial statements for financial years beginning on or after 20th May 2010, the audit report shall state the individual name of the auditor and be signed and dated;

- (i) By the statutory auditor; or
- (ii) By the statutory auditor designated by the statutory audit firm as being primarily responsible for carrying out the particular audit (or group audit) on behalf of the firm.

In the case of a statutory audit firm, the signature shall be in the individual auditor's own name 'for, and on behalf of', the audit firm.

While the designation 'statutory auditor' or 'statutory audit firm' will appear on the audit report, practitioners may continue to describe themselves as 'Registered Auditor(s)' on letterheads, publicity material etc.

Article 28(1) of the SAD contains an option for Member States to exempt the statutory auditor from disclosing his or her signature on the face of the audit report if such a disclosure could lead to an imminent and significant threat to the personal security of any person. It should be noted that Ireland has not availed of this option in the Regulations.

1.3 Audit of group accounts – responsibility of group auditor (Regulations 55 & 56) (effective for financial years beginning on or after 20th May 2010)

While, in practical terms, there is little that is additional to existing professional requirements whereby the 'group auditor' is responsible for the audit report in relation to the group accounts, statutory underpinning is now provided for this.

Auditors should be aware of the particular documentation requirements contained in these Regulations that relate to the group auditor. In particular, documentation shall be maintained relating to the review of the work of performed by others for the purpose of the group audit – third country auditors/audit entities, statutory auditors/audit firms, Member State auditors/audit firms.

Regulation 56 establishes that the group auditors are responsible for ensuring delivery to IAASA, if requested, documentation relating to audit work performed by others, including relevant working papers. This applies where no reciprocal arrangements are in place between IAASA and an equivalent Third Country oversight body. Details of countries with which reciprocal arrangements are in place are available on the IAASA website at www.iaasa.ie.

The group auditor may satisfy this requirement by retaining copies of such documentation or by agreement with the third country auditor for the necessary access to be provided.

Where legal impediments exist that prevent audit working papers being passed from a third country to the group auditor, the group auditor shall retain sufficient documentation evidencing the procedures that have been undertaken to gain access. If there is an impediment, other than a legal one arising from third country legislation, evidence supporting such an impediment to granting access shall also be retained.

2. REQUIREMENTS COMING INTO EFFECT THREE MONTHS AFTER THE MAKING OF THE REGULATIONS (ON OR AFTER 20TH AUGUST 2010)

2.1 Incoming statutory auditor or audit firm to be afforded access to information (Regulation 47)

Where a statutory auditor or statutory audit firm is 'replaced' on or after 20th August 2010, the former statutory auditor/audit firm shall provide access to 'all relevant information concerns the audited entity' to the incoming statutory auditor/audit firm. Further information on this requirement shall be issued in due course.

2.2 Amendment of Principal Act with regard to removal of auditors (Regulation 62 – insertion of new sections 161A to 161C, Companies Act, 1963)

By virtue of 161A of the Companies Act, 1963, where, on or after 20th August 2010, during the period between the conclusion of the last annual general meeting and the conclusion of the next annual general meeting, an auditor ceases to hold office, either by virtue of section 160 of the Companies Act, 1963 (removal) or section 185 of the Companies Act, 1990 (resignation), an auditor ceases to hold office, this shall be notified by the auditor to IAASA within 1 month after the date of cessation. The form and manner of this notification shall be specified by IAASA. Information to accompany this notification shall include;

- (i) Where the auditor has resigned, a copy of the resignation notice served under section 185(1) of the Companies Act, 1990; or
- (ii) Where the auditor has been removed at a general meeting pursuant to section 160(5) of the Companies Act, 1963, a copy of any representations that have been sent to the members.

For this purpose, 'resignation' includes an indication of unwillingness to be re-appointed at an annual general meeting.

In relation to (i) above, where the auditor has stated that there are no circumstances that the auditor considers need to be brought to the notice of members or creditors of the company, the notification to IAASA shall include a statement of the reasons for the resignation.

In a similar manner, new section 161B of the Companies Act, 1963 requires similar notifications to be made to IAASA by the company concerned to IAASA. Again, the notification shall be in a form and manner as specified by IAASA. Section 161B (2) of the Companies Act 1963 details the additional information that shall accompany such notification.

Section 161C of the Companies Act 1963 also restricts a company from removing an auditor in circumstances where there is a divergence of opinion on accounting treatments. A resolution to remove an auditor has to be "in the best interests of the company" and the best interest of the company is specifically

defined to exclude “illegal or improper motive with regard to avoiding disclosures or detection of any failure by the company to comply with the Companies Acts”.

2.3 Transparency report by auditors of Public Interest Entities (Regulations 58 to 61) (applies to financial years (of the auditor) ending on or after three months after the making of the Regulations – 20th August 2010)

Regulation 58 requires a statutory auditor or statutory audit firm which carries out the statutory audit of a ‘public interest entity’ (see definition in appendix) to prepare and publish a ‘transparency report’. This report must be approved formally by the statutory auditor or statutory audit firm and signed by the statutory auditor or a ‘partner’ or senior executive within the firm.

The required content of the transparency report is detailed in Regulation 61. The report must be published on a website, maintained by or on behalf of the statutory auditor/audit firm, within three months of the financial year end of the statutory auditor/audit firm and must remain available for a period of three years from the end of that three month period.

2.4 Disclosure of remuneration for audit, audit-related and non-audit work (Regulation 120)

The law requiring the disclosure of auditors' remuneration changes with effect for accounting periods ending on or after 20 August 2010. Details of the new requirements are relatively complex and it is expected that further information on their effect will be issued in due course. The main change is that the financial statements of certain large companies and groups will be required to disclose (with comparatives) the statutory auditor's remuneration for each of the following categories of work:

- audit of individual accounts (or if a group: the audit of the group accounts);
- other assurance services;
- tax advisory services;
- other non-audit services.

Where all or part of the remuneration is a benefit in kind, the nature and estimated monetary value of the benefit in kind is also to be disclosed separately by category.

Where the auditor is a statutory audit firm, all work carried out by the partners of that firm and statutory auditors on its behalf is to be considered in arriving at the required disclosure.

The Regulations exempt small, medium-sized companies, and subsidiary companies regardless of size, from the disclosure requirement, subject to certain conditions. The Regulations provide, however, that medium sized companies, if requested, are to provide the information to IAASA.

Where there is more than one auditor in a single financial year (e.g. joint auditors), separate disclosure in respect of the remuneration of each of them is to be made.

Failing to make the required disclosure is an offence.

3. REQUIREMENTS COMING INTO EFFECT 6 MONTHS AFTER THE MAKING OF THE REGULATIONS (BY 20TH NOVEMBER 2010)

3.1 Establishment of Audit Committees by Public Interest Entities (Regulation 91) (6 months after commencement of Regulations – 20th November 2010)
Public interest entities are required under the Regulations to establish an audit committee. This requirement commences six months after the date of making the Regulations, giving an operative date of 20 November 2010.

The audit committee must include at least two non-executive directors who must be independent in order to be able to contribute effectively to the committee's functions. Specifically, this means that each director must not have/have had within three years of being appointed, a material business relationship with the company, either directly, or as a partner, shareholder, director or senior employee of a body that has/had a material business relationship with the company in that time period. Neither must they be / have been an employee of the company within three years of being appointed. One of these directors must also have competence in accounting or auditing.

The responsibilities of the audit committee shall include monitoring the financial reporting process, monitoring the effectiveness of the company's systems of internal control, internal audit and risk management and monitoring the statutory audit of the annual and consolidated accounts. Responsibilities shall also include monitoring auditor independence and making recommendations with regard to the appointment of a statutory auditor or audit firm. Statutory auditors or audit firms shall report to the audit committee on key matters arising from the statutory audit of the entity, and in particular, on material weaknesses in internal control in relation to the financial reporting process.

There are a number of exemptions from the requirement to have an audit committee including subsidiaries whose parent undertaking complies with the Regulations, UCITS funds and also most EU non UCITS funds.

APPENDIX

Definitions

The Regulations introduce new terms to describe various parties or entities. These include:

‘competent authority’, where used without qualification, means a recognised accountancy body’;

‘competent authority with registration functions’ means the Registrar of Companies;

‘competent authority with supervisory and other functions’ means the Irish Auditing and Accounting Supervisory Authority (‘IAASA’);

‘key audit partner’ or ‘key audit partners’ means;

- the one or more statutory auditors designated by a statutory audit firm for a particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm, or
- in the case of a group audit, at least the one or more statutory auditors designated by a statutory audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the one or more statutory auditors designated as being primarily responsible at the level of material subsidiaries, or
- the one or more statutory auditors who sign the audit report.

‘public interest entities’ (‘PIE’) means;

- 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;
- credit institutions as defined in point 1 of Article 1 of Directive 2000/12/EC relating to the taking up and pursuit of business of credit institutions, and
- insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC.

‘statutory audit firm’ means an audit firm which is approved in accordance with the Regulations to carry out statutory audits;

‘statutory auditor’ means a natural person who is approved in accordance with the Regulations to carry out statutory audits;

‘third country’ means a country or territory that is not a Member State or part of a Member State;

‘third country audit entity’ means an entity that is entitled, under or by virtue of the laws, regulations 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;

‘third country auditor’ means a natural person who is entitled, under or by virtue of the laws, regulations 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.