

Incoming statutory auditor or audit firm to be afforded access to information

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INTRODUCTION

1. The European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010, SI 220 of 2010, ('the Regulations') were signed into law on 20th May 2010. This statutory instrument was then made into primary law by Section 1521 of the companies Act 2018. The Law and earlier Regulations implement in Ireland the EU Statutory Audit Directive (Directive 2006/43/EC) ('the SAD'). The law is available to download from the Irish Statute book at <http://www.irishstatutebook.ie/eli/2018/act/22/enacted/en/html>.

Section 1521 – Incoming statutory auditor or audit firm to be afforded access to information

2. Section 1521 of the Companies Act 2014 (as inserted by the Companies (Statutory Audits) Act 2018), is applicable to a statutory auditor or audit firm as defined in the Act and is effective for 'replacements' that occur on or after 20th August 2010. It states:

Where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall provide access to all relevant information concerning the audited undertaking and the most recent audit of that undertaking to the incoming statutory auditor or audit firm.

This requirement arises from Article 23(3) of the SAD which states that: '*where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall provide the incoming statutory auditor or audit firm with access to all relevant information concerning the audited entity*'.

The effect of Section 1521 and Article 23(3) is to create an exception to the normal duty of confidentiality. They also facilitate an orderly handover when a new auditor is appointed. The obligation is triggered by a request for access being made by the successor auditor to the predecessor auditor.

SCOPE OF APPLICATION

3. 'Statutory audit' is defined in the Act as 'an audit of entity financial statements or group financial statements in so far as—(a) required by European Union law, or (b) required by national law as regards small companies'." Consequently, audits of entities that are not established under company law do not appear to come within the scope of Section 1521. This would include, for example, entities established under building societies legislation, credit union legislation, pension scheme legislation, various types of insurance entities, investment funds established as trusts, unincorporated charities. Any voluntary extension of Section 1521 to such entities is 'extra statutory' and therefore beyond the protection provided by the Act (see below).

4. The Act applies to audits of Irish companies. It does not apply to Irish auditors carrying out audits of foreign entities (although it can be expected that similar requirements will exist in respect of such entities if established under the law of an EU Member State).

MEANING OF 'ALL RELEVANT INFORMATION'

5. The Act does not define what constitutes 'all relevant information'. Legal advice received is that 'relevant information concerning the audited entity' means information which the predecessor has obtained during the course of, and for the purpose of, carrying out the audit, regardless of its source. It should be noted, however, that 'relevant information' would not be regarded as including information relating to the administration of the audit, for example, budget schedules, audit visit arrangements etc. Where information concerning the audited entity is obtained during the course of providing non-audit services, this will only constitute 'relevant information concerning the audited entity' in circumstances where applicable auditing standards require such information to be disclosed to those responsible for the audit for the purpose of the audit. If, at the time of the handover, personnel within the predecessor firm who are responsible for the audit have not made such inquiries of 'non-audit colleagues', Section 1521 does not create such a requirement. At the time of any handover, it would be prudent for the successor auditor to assume that information arising from non-audit work is not included.

LEGAL PROFESSIONAL PRIVILEGE

6. Section 1524 of the Act provides that the predecessor auditor is not compelled to disclose any information that the predecessor would be entitled to refuse to produce on the grounds of legal professional privilege. It is important to appreciate, however, that the privilege is that of a legal adviser's client and not that of the legal adviser. It will be important to identify the legal adviser's client, who may be the predecessor auditor or the audited entity, because, if that client who is entitled to claim privilege consents, disclosure may be made.

LEGAL PROTECTION

7. Where a predecessor auditor acts in compliance with the obligations imposed by the Act, Section 1525 provides that the predecessor's actions;

- do not constitute a breach of any professional or legal duty to which a statutory auditor is subject by virtue of his or her appointment as a statutory auditor or audit firm; and
- will not give rise to any liability to the company audited or being audited, its shareholders, creditors, or 'other interested parties'.

It should be noted, however, that the protection provided by Section 1525 only applies where the predecessor's action or omission occurs 'by reason of compliance with the obligations imposed by the Act. An action which goes beyond that required by the Act would not be protected.

PRACTICAL APPLICATION/GENERAL PROCEDURES

8. A key purpose of Section 1521 is to achieve an effective transfer of the audit to a successor auditor and to reduce the risk of audit failure due to a change in auditor. Mutually agreed practical arrangements are essential for establishing an appropriate environment in which information is shared.

Formulation of access request

9. A request for access to 'all relevant information' by a successor auditor can only be made once the successor auditor has been appointed as statutory auditor. Therefore, the request will be embedded with the planning of the audit by the successor. The request may be made of the immediate predecessor auditor only.

10. Before making a request for 'relevant information' the successor should, as part of its planning, consider whether there is a need to make a request to the predecessor in accordance with the Act. Of particular relevance is ISA (UK & Ireland) 300 *Planning an audit of financial statements* and, in particular, paragraph 13 and Application paragraph A20. Paragraph 13 states;

'The auditor shall undertake the following activities prior to starting an initial audit....

.....(b) communicating with the predecessor auditor, where there has been a change of auditors, in compliance with relevant ethical requirements.'

11. The successor auditor will also consider the requirements of ISA 510 *Initial audit engagements - opening balances*.

12. The Act does not require that a successor must request access to information in every case. It is likely, however, that such requests for access will be made in most cases. The Act also does not require that a request for extensive information is made when only limited or particular information is necessary.

13. A request should not require the predecessor auditor to make any judgements in respect of the importance of 'relevant information' requested. It should not include qualifications such as 'significant', 'material' or other language that would require the auditor to make qualitative judgements in respect of what relevant information is requested. A request should be made in writing and addressed to the statutory auditor/statutory audit firm. An example letter setting out such a request is set out in Appendix 1.

Relevant information

14. As referred to above, the Act does not define what is meant by 'relevant information'. A request for information should focus on specific details but may include a request for access to some or all of the audit working papers. In addition, relevant information may be held in various locations and formats, including electronically.

15. The predecessor auditor is required to provide access to 'relevant information' but is not required to provide copies of information or to respond to requests for information in writing. Ordinarily, the predecessor will only provide copies of client information, e.g. trial balance and other client prepared schedules/working papers.

16. Some predecessor auditors may find that the most practical manner of complying with this requirement is to simply provide access to audit working paper files, created in compliance with auditing standards. It should be noted,

however, that 'relevant information' would not be regarded as including information relating to the administration of the audit, for example, budget schedules, audit visit arrangements etc.

17. 'Relevant information' will normally be information relating to the last financial statements in respect of which an audit report was issued, although it may also include information received by the predecessor auditor up to the date of ceasing to hold office. There may, however, be situations where access to information relating to previous periods may be needed, and also, information of a permanent nature will often be relevant.

Access to Predecessor's Working Papers

18. Practical arrangements for providing access, including time and place, should be agreed between the parties. Access should be facilitated within, and for, a reasonable period of time and will normally be granted at the premises of the predecessor auditor. In requesting access, the successor auditor has regard to the arrangements that the preceding auditor must make to comply with the request, including retrieval of information, sourcing appropriate accommodation and ensuring the availability of appropriate personnel.

19. There is no obligation to allow electronic copying of working papers or other information. However, it is expected that predecessors would not unreasonably deny the successor copies of any relevant working papers.

20. There will need to be cooperation between the predecessor and successor regarding the period of time during which the successor can have access to information. The period needs to be reasonable.

Explanations in respect of Relevant Information

21. There is no requirement for a predecessor auditor to provide explanations in respect of 'relevant information'. The predecessor auditor may, at its discretion, provide explanations orally or in writing and can request that any questions by the successor be put in writing. In providing such further explanations in relation to information, the predecessor should keep in mind;

- that the obligation does not extend beyond relevant information;
- that explanations should be given a factual or evidential reference point; and
- the desirability of an internal written note or record of the request and explanation given.

The predecessor may re-emphasise at the beginning of any such discussion with the successor that any statements made by the predecessor are done so in accordance with the terms of the predecessor's response letter (Appendix 2).

MANAGING RISK – SUCCESSOR AUDITOR

22. Risks arising for the successor in respect of any potential duty of care that may exist towards the client may be reduced by treating as strictly confidential any information provided by the predecessor auditor. Such information should not be disclosed to a third party, including the client, and no opinion should be expressed to any third party about any aspect of the work performed by the predecessor auditor, unless required by a legal or professional obligation. Relevant

information may be discussed with the client if it is essential for the performance of the audit.

MANAGING RISK – PREDECESSOR AUDITOR

23. Granting access to relevant information, including working papers, may present risks for the predecessor auditor. This risk may be managed by writing to the successor setting out;

- the bases on which relevant information and explanations (if the predecessor auditor has agreed to provide explanations) are being provided and access to documentation is being granted;
- that the predecessor accepts no liability to the successor auditor, the client, or any third party in connection with the information/access being granted;
- that the successor shall treat any information made available as strictly confidential and shall not disclose it to any third party, including the client, and shall not express opinions on the predecessors work, unless required by a legal or professional obligation.

An example predecessor's response letter is set out in Appendix 2.

OTHER MATTERS

Costs to the predecessor auditor

24. Inevitably, the predecessor auditor will incur some costs associated with complying with this legal obligation. It is reasonable that the predecessor should recover such costs, which might include copying costs, and time spent answering enquiries from the successor.

25. The predecessor may charge the client for such costs. The basis of recovery of costs in this circumstance may be included in the original audit engagement letter to the client so that it is known to the client and contractually binding.

26. The legal obligation to provide access to information applies irrespective of whether fees are outstanding from the client. The successor auditor would normally be expected to draw the attention of the client to fees that are due and suggest that they are paid.

Confidentiality

27. A predecessor auditor who provides relevant information to the successor will not be expected first to obtain his former client's permission, as the predecessor is subject to a legal duty to provide such information.

Group Audits

28. If the predecessor auditor was the principal auditor of a group of companies and a successor is appointed, the requirement in the Act applies only to relevant information in respect of the audit of the parent's single entity and consolidated accounts. The successor, therefore, will have access to that relevant information whether held on a consolidation audit file or elsewhere in accordance with the ISAs.

29. Access to relevant information held only in the capacity as statutory auditor of

Irish subsidiaries will be covered to the extent that the audit appointments change at the individual subsidiary level.

Money Laundering Considerations

30. All auditors are subject to obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to 2018 ('CJ(ML&TF) Act'). The reporting requirements of the money laundering legislation are beyond the scope of this guidance; full information is available from the Anti-Money Laundering Guidance issued by CCAB(I) and available at www.accaglobal.com/technicalireland

31. Under the CJ(ML&TF) Act, it is an offence to make any disclosure that is likely to prejudice an investigation, i.e. the fact that;

- an *external report* has been, or is required to be, made; or
- an investigation into allegations that a *money laundering or terrorist financing* offence has been committed is on-going or is being contemplated.

32. The penalty for this offence on summary conviction is a maximum of 12 months imprisonment, or a fine not exceeding €5,000, or both and on conviction on indictment to imprisonment for a term not exceeding five years, or a fine, or both. There are a number of exceptions to this prohibition on revealing the existence of a report or an actual or contemplated investigation; further detail of those exemptions is outside the scope of this guidance but is provided in the CCAB-I guidance referred to above. However, in the light of the offence:

- any money laundering report and papers recording the predecessor's related consideration of apparently suspicious activities should not be provided by the predecessor to any person (including the successor) unless the predecessor has clear advice that to do so would be lawful. Accordingly it is recommended that such advice is sought from the nominated officer, where appointed (often referred to as the MLRO) and, if considered appropriate, external legal counsel.
- so far as concerns the successor, if any relevant information provided to the successor causes the successor to conclude that there are circumstances that require a report to the money laundering authorities, the successor should make that report whether or not it believes that a report might already have been made by the predecessor or by any other party.

Example Request from Successor Auditor

[Name of predecessor auditor]

[Address]

For the attention of [name of contact]

Dear Sir/Madam

Request for Access to Relevant Information

We have been appointed [statutory auditor/statutory audit firm] of [name of client] as defined by Section 2 of the Companies Act 2014 ('the Act').

In accordance with Section 1521 of the Act and associated guidance issued by CCAB-I, we request the following relevant information in respect of your former office as [statutory auditor/statutory audit firm] of [name of client];

- [Detail information that is relevant to the audited entity in accordance with the guidance contained herein.]
- [If necessary, request access to the predecessor's audit working papers or relevant sections of the working papers, referring to the relevant accounting period(s).]
- Possibly, request access to any documents belonging to the client, (eg statutory books) indicating that the client has given its authority for such access.]

If you are unable to provide any of the information requested above, please advise us accordingly and, if possible, indicate where the information may be held.

Should we consider it appropriate, we may also request you to give explanations in relation to the above information.

We look forward to receiving your response which should be addressed to [name of contact]

Yours faithfully

[Name of successor auditor]

Example Response from Predecessor Auditor

[Name of successor auditor]

[Address]

For the attention of [name of contact]

Dear Sir/Madam

[Name of client] ('the audited entity')

We are writing in response to your letter dated [insert date] requesting us to allow you, as successor [statutory auditor/statutory audit firm], access to relevant information concerning the audited entity ('relevant information') as provided for in Section 1521 of the companies Act 2014.

We are prepared to grant you, as successor [statutory auditor/statutory audit firm], [access to our audit file for the audited entity for the audit of the period ended [insert date] which contains all of the relevant information] OR [access to the relevant information requested which is detailed below]:

[Detail the information to which access is granted having regard to being consistent with the request formulated by the successor auditor.]

[We are also prepared to give explanations in relation to the above relevant information following a specific request from you.] OR

[We do not commit to provide any explanations in relation to the above relevant information but any explanations provided shall be done so on the basis that they form part of the relevant information.]

This letter sets out the understanding in relation to the conditions upon which access to relevant information is granted to you and upon which explanations in relation thereto can be given.

We shall provide supervised access to relevant information at our offices at [insert address].

We are prepared to grant access to you:

a. pursuant to our obligation, under Section 1521 of the Companies Act 2014, to make available to you relevant information and in accordance with guidance outlined in the CCABI guidance and

b. exclusively in your capacity as legally appointed [statutory auditor/statutory audit firm], as defined by the Companies Act 2014 and appointed under 383 of the Companies Act 2014, of [insert name of company].

The fact that we are granting you access to relevant information in relation to our former office as [statutory auditor/statutory audit firm] concerning the audited entity does not modify any existing, or create any additional, responsibility that we owe to the audited entity or its members as a body under the statutory provisions relating to our former engagement as [statutory auditor/statutory audit firm].

In granting access to our audit working papers, we point out that the audit papers

were prepared solely for the purpose of our forming an opinion, in accordance with the statutory requirement for audit, on whether the financial statements, which are the responsibility of the directors of the company, give a true and fair view of the state of affairs as at the end of the financial year and of the profit or loss for the period then ended. Our audit of the company's financial statements and the audit papers was not planned in contemplation of, or for the purpose of, providing support to the tasks required of your appointment as [statutory auditor/statutory audit firm]. Accordingly, we do not acknowledge any responsibility and deny any liability to you in relation to the audited accounts and to the access to information relevant to [insert name of audited entity].

We, [insert name of statutory auditor/statutory audit firm], its partners and staff neither owe nor accept any duty to you or to any other third party whether in contract or in tort (including without limitation, negligence and breach of statutory duty) or howsoever otherwise arising, and shall not be liable, in respect of any loss, damage or expense of whatsoever nature which is caused by your, or any other third party's reliance upon the working papers or explanations given in relation thereto or which is otherwise consequent upon your access to working papers or receipt of such explanations. In addition we do not warrant or represent that the information in our working papers, or any explanations thereto provided, is sufficient or even appropriate for the purpose of your appointment as [statutory auditor/statutory audit firm]. That is a matter for your judgement. Nor have we expressed an opinion or other form of assurance on individual account balances, financial amounts, financial information or the adequacy of financial accounting or management systems. For the foregoing reasons, the working papers, or any explanations thereto provided, cannot in any way serve as a substitute for other enquiries and procedures that you should undertake for the purpose of conducting your appointment as [statutory auditor/statutory audit firm].

You shall not use the access to the relevant information or any other information provided by [insert name of statutory auditor/statutory audit firm], for any other purpose other than conducting your appointment as [statutory auditor/statutory audit firm].

You shall not allow access to the relevant information, or give information obtained from the relevant information or from explanations given by [insert name of statutory auditor/statutory audit firm] in relation thereto, to any other party including the audited entity, unless there is a legal or professional duty to do so. That would not preclude discussing relevant information with the audited entity if that would be indispensable for the performance of your audit. In addition, you should not express opinions, whether in the context of a specific engagement to do so or not, to any third party relating to the appropriateness of the audit work performed by [insert name of statutory auditor/statutory audit firm] and based on the information we have made available to you.

Yours faithfully

[Name of predecessor statutory auditor/statutory audit firm]