Explanatory Note

S.I. No. 312/2016 - European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016

(This is not a part of the instrument and does not purport to be a legal interpretation.)

Introduction

The purpose of the statutory instrument is to transpose the EU Audit Directive into Irish law and to give effect to some provisions of the EU Audit Regulation in Ireland. It repeals and replaces the existing statutory instrument on audit, which are the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations (S.I. 220 of 2010).

The statutory instrument designates the Irish Auditing and Accounting Supervisory Authority (IAASA) as the competent authority with ultimate responsibility for the oversight of statutory auditors. It contains new obligations on statutory auditors that are designed to enhance their independence and support the quality of their audits.

The statutory instrument, in conjunction with the EU Audit Regulation which is directly applicable, also places new obligations on companies such as banks, other financial institutions, insurers, funds, or listed companies. These types of companies are categorised as public interest entities and more stringent rules apply to them and their auditors.

Part 1 – Preliminary Matters

Part 1 provides that the new Regulations will generally apply from 17 June 2016, the same date as the EU Regulation. However, auditors will only apply the new rules for the conduct of audits to audits of financial years that begin on or after 17 June 2016.

Part 1 also repeals the existing Regulations (S.I. 220 of 2010) on statutory audits.

Part 1 sets out definitions for the purposes of the Regulations in particular the definition of a “public interest entity”, which is an entity that is a bank, other credit institution, an insurer, or entity with a debt or security listing on a main EU market.

Part 2 – Amendment of Companies Act 2014

Part 2 amends existing provisions in the Companies Act 2014. For for the most part these amend sections in Parts 6 and 15.

The amendments to Part 6 introduce additional requirements for the content of the auditor's report and clarify that this report must be in writing. It requires a statutory auditor to consider its client's ability to continue as a going concern in the audit report. It clarifies which auditor finally signs off on the audit report in the situation where there is more than one auditor, for example with a group of companies or in the context of a joint audit.

Part 2 also makes changes to the objects, functions, powers, governance and funding of IAASA that are in Part 15 of the Companies Act. IAASA will be responsible for the oversight of statutory audit in Ireland, which includes both performing inspections of auditors and their work and the supervision of the 6 recognised accountancy bodies as they perform many of the daily tasks associated with the regulation of auditors.

A new function for IAASA in these Regulations will be the adoption of standards on professional ethics, internal quality control of audit firms and auditing. Other new functions for IAASA include cooperation with audit oversight bodies in the 27 other EU Member States and with the European Commission. This will be done through the newly established Committee of European Auditing Oversight Bodies (CEAOB).

Part 2 introduces procedures and powers for the investigation of breaches of audit law and the imposition of new administrative sanctions by IAASA on statutory auditors. The Regulations prescribe the process for investigations and set out the obligation on auditors and others to cooperate. If there is a finding of a breach, IAASA may impose one or more sanctions from the following list –

- A direction to an auditor to cease the conduct that constitutes a breach and to abstain from any repetition
- A ban, lasting up to 3 years, on an auditor from conducting statutory audits
- A declaration that the auditor's report does not meet the requirements of the Companies Act 2014
- A direction to a partner or other officer or member of an audit firm prohibiting that person from performing functions in a public interest entity
- A fine. The maximum administrative fine for a statutory auditor will be €100,000 and the maximum administrative fine for an audit firm will be €500,000.

There are similar provisions for imposing administrative sanctions on a director of a public interest entity who has contributed to a breach by a statutory auditor or audit firm. These sanctions will be imposed by the Office of the Director of Corporate Enforcement.

It will be necessary to have any administrative sanctions confirmed by the High Court, before they take effect. The Regulations also provide for the publication of sanctions by IAASA on its website.

Part 2 makes other consequential amendments to the Companies Act 2014 arising from the repeal of SI 220 of 2010 and its replacement with these Regulations, in particular updating references in the Act so that they now refer to S.I.312 of 2016.

Part 3 – Designation of competent authority and assignment of functions

Part 3 designates IAASA as the competent authority for the EU Audit Directive and the EU Audit Regulation. As a result it will have ultimate responsibility for the oversight of audit regulation in Ireland and will be the body that inspects the auditors of public interest entities under the quality assurance inspection system. It will also be the authority for conducting investigations into any issues that arise from those quality assurance inspections and, if breaches are found, for imposing the administrative sanction. IAASA will also be the competent authority for "third country auditors". This category includes non-EU audit firms and individuals that audit companies that are registered outside the EU but are listed within the EU. IAASA also has some reporting obligations, to prepare an annual activity report and work programme on its activities pursuant to the EU Directive and Regulation, and these are provided for here.

The Office of the Director of Corporate Enforcement is also designated as a competent authority in this Part, but this is limited to one specific aspect of the audit oversight regime. That is the imposition of administrative sanctions on directors of public interest entities.

Part 3 assigns the performance of many of the regulatory tasks to the 6 recognised accountancy bodies. A "recognised accountancy body" is a body that is recognised by IAASA under the Companies Act 2014 for the purposes of statutory audits.

This Part also places an obligation on IAASA, the recognised accountancy bodies and the other bodies with roles under these Regulations to avoid conflicts of interest.

Part 4 – Approval of statutory auditors and audit firms, prohibition on unapproved persons acting as auditor, etc.

Part 4 sets out the requirements and procedures for a person or a firm to be approved as a statutory auditor or audit firm. Approvals are given by a recognised accountancy body. To be approved individuals and firms must be of good repute and meet certain other conditions such as membership of a recognised accountancy body and appropriate qualifications.

Part 4 introduces a new procedure for audit firms that are approved in another EU Member State to be registered to conduct statutory audits in Ireland. In order to avail of this procedure, the key audit partner must be approved to carry out statutory audits in Ireland. For other applications for approval from individuals outside Ireland, Part 4 requires that they sit an aptitude test.

Alongside the provisions on approval, this Part sets out the grounds and procedures for mandatory withdrawal of approval, and prohibits an unapproved person from purporting to be a statutory auditor. It is an offence to hold oneself out as a statutory auditor if not so approved.

Part 5 – Standards and provisions applicable to statutory auditors and audit firms

Part 5 supplements provisions in the Companies Act 2014 on the appointment of statutory auditors by companies to conduct those companies' audits. This Part prohibits any contractual clauses that attempt to restrict a company's freedom to choose any statutory auditor. It goes on to provide the procedures that a public interest entity must put in place when selecting a new auditor. This Part also provides that either IAASA or a percentage of shareholders of a public interest entity may apply to the courts for an auditor to be removed under certain circumstances.

Part 5 sets out the requirements on and responsibilities of statutory auditors and audit firms. Under these Regulations statutory auditors must participate in programmes of continuing education, must abide by principles of professional ethics and meet requirements for independence, objectivity and professional scepticism. Some of these obligations are expanded on in Part 7 of the Regulations. IAASA will adopt the auditing and ethical standards to be used by statutory auditors and the recognised accountancy bodies will oblige their members to abide by supplementary standards.

Part 5 provides that statutory auditors are subject to confidentiality and professional secrecy and are required to keep appropriate records. Where a company changes its auditor, the outgoing auditor must ensure that the incoming auditor gets relevant information.

Part 5 sets out certain obligations on group auditors.

Part 6 – Public register

Part 6 provides the requirements for registration of statutory auditors and audit firms. The Registrar of Companies maintains the register of auditors. In the case of statutory auditors approved or recognised in Ireland, the information is supplied to the Registrar through the recognised accountancy bodies. In the case of third country auditors, this is supplied through IAASA. There is an obligation on auditors to ensure that any changes are notified.

Part 7 – Independence

Part 7 provides that statutory auditors and audit firms must be independent of, and not involved in the decision making of, the entities that they audit. They must avoid conflicts of interest and specified business or other relationships with their clients. Statutory auditors and audit firms must maintain professional scepticism. They are obliged to assess possible threats to their independence in advance of taking up an engagement and to organise themselves so that they meet certain standards. There are also restrictions on audit fees, a requirement for the key audit partner to change at least every 5 years, and a moratorium on an auditor taking up positions within the entities that they have audited. The EU Regulation prohibits the provision of certain non-audit services and allows the provision of other non-audit services, subject to conditions. Part 7 provides that some tax and valuation services may be provided by the auditor under the conditions set out in the EU Regulation.

Under the EU Regulation, public interest entities are required to change their auditor every so often. In Ireland that period will be at least every 10 years. Part 7 allows for a public interest entity to apply to IAASA for an extension of up to 2 years in exceptional circumstances. It also provides for a statutory auditor or audit firm to apply to IAASA for a determination if there is uncertainty about the date of commencement of the audit engagement.

Part 8 – Quality assurance of statutory auditors and audit firms

Part 8 obliges IAASA to put in place a system of quality assurance to inspect the statutory auditors and audit firms of public interest entities and of specified third country auditors. It also obliges the recognised accountancy bodies to have a system of quality assurance for other statutory auditors and audit firms, which will be overseen by IAASA.

Part 8 requires the recognised accountancy bodies to have in place a system of investigations and sanctions to detect, correct and prevent inadequate execution of statutory audits. The Regulations set out the scope of the penalties that are available to the recognised accountancy bodies.

Part 9 – Audit Committees

Part 9 obliges public interest entities to have an audit committee, separate from the board of directors, and provides for the composition of those committees. The Regulations exempt certain types of public interest entities as the structures of these entities do not support the establishment of a separate audit committee. These types of entities include collective investment funds and asset backed securities.

For public interest entities that are exempt from the requirement to have audit committees it is an offence not to set out the reasons for availing of this exemption in either its annual report or certain other returns to the Registrar of Companies or the Central Bank.

Part 10 – Regulatory arrangements between Member States

Part 10 provides for the cooperation between IAASA, the recognised accountancy bodies and the Registrar of Companies with their counterparts in other Member States of the European Union.

Part 10 has provisions on the gathering, exchange and confidentiality of information when cooperating with counterparts abroad. The grounds for refusing information are also set out here. There are also provisions on the use to which such information may be put.

Part 10 sets out the rules and procedures that are to apply where IAASA or a recognised accountancy body requests an authority in another EU Member State to carry out an investigation and where an authority in another EU Member State makes such a request of IAASA or a recognised accountancy body in Ireland.

Part 10 also makes provision for cooperation with competent authorities outside the EU.

Part 11 – Third-country auditors

Part 11 provides the conditions for recognised accountancy bodies to approve third country auditors as statutory auditors in Ireland.

Part 11 also sets out the requirements concerning IAASA's registration of certain third country auditors and the exemptions from those requirements.

There are also provisions here as to how quality assurance is to operate and concerning fees that IAASA may change.

Schedule 1 – Standards relating to training and qualifications for approval of individuals as statutory auditors

Schedule 1 sets out the subjects that an individual must be tested in before being approved as a statutory auditor. It also prescribes the level to which a person must be educated.

Schedule 2 – Information required by Part 6 to be supplied and entered in the Public Register

Schedule 2 prescribes the information that is to be supplied and made available on the public register of auditors. This information will vary depending on whether the auditor is an individual statutory auditor, an audit firm, an audit firm approved in another EU Member State, or a third country auditor.

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