

## Private & Confidential

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### By Courier

Department of Jobs, Enterprise & Innovation  
Company Law  
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## Submission in relation to the public consultation on Section 279 of the Companies Act 2014

Dear Sir

We write regarding the public consultation entitled "the exemption at Section 279 of the Companies Act 2014 allowing certain companies to prepare and file financial statements according to US Generally Accepted Accounting Principles" (the **Consultation**) currently being conducted by the Department of Jobs, Enterprise and Innovation (the **DJEI**).

By way of background, A&L Goodbody (the **Firm**) is internationally recognised as one of Ireland's leading law firms. The Firm has 88 partners, employs over 700 staff and has offices in Dublin, Belfast, London, New York, San Francisco and Palo Alto.

We wish to respond to the queries posed by the DJEI as part of the Consultation on the exemption at Section 279 of the Companies Act 2014 (the **Act**), allowing the use of US GAAP by certain companies in the preparation of their accounts (the **Exemption**).

### 1. Should the time period provided for at Section 279 of the Act be extended beyond December 2020?

Yes, we believe that the time period should be extended for the reasons outlined below.

**A. The Exemption is practical and has objective merit.** The Exemption allows US listed companies incorporated in Ireland and registered with the US Securities and Exchange Commission (the **SEC**) or otherwise subject to SEC reporting requirements, to prepare their accounts using US GAAP, the accounting principles which they are required to use by the SEC. The Exemption is a common sense provision which acknowledges the reality that producing one comprehensive set of financial accounts, based on a market recognized set of accounting principles, is sufficient disclosure of the results of a particular listed group. It also recognizes the fact that the activities of the particular group are separately subject to the rigorous external regulatory oversight of the SEC. In that context, requiring the production of two sets of financial accounts for the same group, using different accounting principles solely to comply with differing regulatory/legal regimes, lacks objective value. It is also likely that IFRS financial accounts would, in practice, be of little or no value to investors or creditors. We understand that in most, if not all, cases the vast majority of these are US-based and they would likely continue to rely solely on the US GAAP-based accounts with which they are familiar.

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Consultants: J.R. Osborne S.W. Haughey Professor J.C.W. Wylie A.F. Browne M.A. Greene A.V. Fanagan J.A. O'Farrell I.B. Moore

The original legislation granting the Exemption (the Companies (Miscellaneous Provisions) Act 2009) was introduced amidst representations by various bodies which indicated that companies faced huge financial burdens in transferring to Irish or international financial reporting standards. Feedback we have received from market participants who rely on this provision indicates that this very much remains the case.

- B. Ireland must maintain its competitive offering to businesses.** Global competition for inward investment has intensified in recent times. It is important that Ireland maintains its competitive offerings to sustain current and future investment. Ireland is the current location of choice for many multinationals due to a range of factors including, amongst other things, access to a highly skilled workforce, corporate tax regime and relative cost competitiveness. We are also aware that part of Ireland's attraction was and remains its stable legal regime and progressive legislation which contains innovative provisions to support businesses, such as the Exemption.
- C. The Exemption corresponds with accepted practice globally.** The Exemption was introduced in 2009 against a backdrop of EU institutional recognition of different, but equally valid, accounting standards. In 2008, both the European Parliament and Commission iterated a number of principles regarding the use of third-country accounting standards to prepare financial statements including that "*third-country Generally Accepted Accounting Principles (third-country GAAP) should be considered equivalent to IFRS as adopted pursuant to Regulation (EC) No 1606/2002 in the event that investors are able to make similar decisions irrespective of whether they are provided with financial statements in accordance with IFRS or on third-country GAAP and in the event that audit assurance and enforcement at entity level are sufficient for investors to rely on*".<sup>1</sup>

Following on from the establishment of the principles noted above, there are now a number of examples where particular EU jurisdictions (for example France and Germany) and other non-EU countries (such as Switzerland) permit the use of third country GAAP to satisfy certain domestic legal and regulatory requirements. Permitting the continued use of US GAAP in Ireland under the limited conditions of the Exemption is a rational reflection of the realities of doing business in multiple jurisdictions and is a type of exemption widely accepted as standard practice in the global market.

- D. The status of convergence between US GAAP and IFRS should not affect the Exemption at this time.** The Exemption was enacted at a time when there was an expectation that accounting principles under US GAAP and IFRS would converge. We note the lack of progress in this regard and while it is possible that convergence may be achieved in the future, given the current lack of certainty in this regard, we believe the Exemption should be preserved for the foreseeable future. In any event, for the reasons outlined above, we believe that the rationale and merits of the Exemption are compelling, irrespective of the status of convergence.
- 2. If extended, should this be for a specified period of time or on an open-ended basis?**

We are not aware of any reason why the Exemption should not be available on a permanent basis. At a minimum, we would suggest a long-term extension to 2030. In our view, a shorter extension would be less favourable as there is a need for large corporations to plan several

<sup>1</sup> European Parliament resolution of 23 October 2008

years in advance. An extension to 2025 would likely require revisiting this issue within a short period of time.

**3. Conclusion**

For the reasons outlined above, we recommend that the Exemption be maintained and extended. Please do not hesitate to contact Alan Casey or Ronan Lyons of the Firm if you have any queries or wish to discuss further. We greatly appreciate your attention to this matter.

Yours faithfully

*Ath Goodbody*

