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Our Ref  
PFS

Your Ref

16 September 2016

Dear Mr McLoughlin

## **Section 279 of the Companies Act 2014 Submission in response to consultation paper**

We write in response to the consultation paper issued by the Department of Jobs, Enterprise and Innovation seeking submissions on the exemption contained in section 279 of the Companies Act 2014 (the “**Act**”).

### **1 Transitional accounting standards**

Section 279 (and its predecessor, section 1 of the Companies (Miscellaneous Provisions) Act 2009) allows US Generally Accepted Accounting Principles (“**US GAAP**”) to be used for a limited time in the preparation of financial statements (both standalone and consolidated) of certain Irish incorporated holding companies with securities listed on US stock exchanges, instead of International Financial Reporting Standards (IFRS) or Irish GAAP which would otherwise be required. Section 279 will cease to apply for financial years ending after 31 December 2020.

The exemption was introduced as international negotiations on the convergence of US GAAP and IFRS standards were taking place and in the context of an expectation then held that the US Securities and Exchange Commission (“**SEC**”) would allow IFRS to be used by domestic registrants. The process of convergence was expected to have been concluded by 2015 but, as mentioned in the consultation paper, has not progressed materially since 2009. The extension of the exemption for a further five years (in the Companies (Amendment) Act 2012) reflected the changed circumstances in US GAAP/IFRS convergence.

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## 2 Rationale for section 279

To avail of the exemption, companies must not have securities traded on a regulated market in the European Economic Area and must be registered with, or subject to, reporting to the SEC. Companies in scope must, under current SEC requirements, prepare their financial statements using US GAAP. The exemption is subject to strict conditions, including a requirement “that the use of US Accounting Standards [as defined] does not contravene any provision” of Part 6 of the Act on Financial Statements, Annual Return and Audit.

The underlying rationale for the exemption – the avoidance of duplicative financial reporting requiring new accounting, audit and personnel systems – remains valid in 2016 and beyond. Because IFRS guidelines require the inclusion of comparator figures for the previous two years, new systems and personnel would need to be in place in time for financial years beginning on or after 1 January 2018 unless section 279 is extended.

US GAAP is acknowledged to be a fully transparent internationally accepted standard used by thousands of companies listed on US stock exchanges.

## 3 Other jurisdictions

In other jurisdictions, similar exemption policies are currently in place. In the UK, for example, the Accounting Standards (Prescribed Bodies) (United States of America and Japan) Regulations 2015 extended measures giving certain holding companies listed on US or Japanese stock exchanges a transition period of up to four years to convert to preparing their group accounts in accordance with UK GAAP or IAS. In the US, the SEC allows foreign registrants to use IFRS which represents a similar approach to that currently taken under section 279.

## 4 Submission

We submit that allowing the exemption to lapse would result in no meaningful benefit to the investor community or other fiscal or regulatory benefit but could greatly increase the financial and administrative burden of companies in scope.

For the reasons set out above, we submit that section 279(2) the Act should be amended to:

- **remove the time limit of 31 December 2020 entirely** (given, as mentioned in the consultation paper, that there is no clear timeframe for a future convergence of IFRS and US GAAP and that that the SEC appears unlikely to accept IFRS in the foreseeable future); or
- **at a minimum, extend the exemption period to 31 December 2030 .**

Please do not hesitate to contact Patrick Spicer (patrick.spicer@matheson.com) if you require any further information in relation to this submission.

Yours sincerely

*Sent by email, bears no signature*

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