

# GENERAL SCHEME OF COMPANIES (STATUTORY AUDITS) BILL 2017

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## Part 1

### Preliminary and General

#### **Head 1: Short title, collective citation, construction and commencement**

To provide for –

(1) This Act may be cited as the Companies (Statutory Audits) Act 2016.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either general or with reference to any particular purpose or provision or financial year of part thereof, and different days be so appointed for different purposes, different provisions or different financial years or parts thereof.

#### **Explanatory Note**

The Head provides for short title, collective citation, construction and commencement arrangements.

## **Head 2: Repeals and Revocations**

To provide for –

(1) Subject to subsection paragraph (2), the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, And Regulation (EU) No 537/2014) Regulations 2016 are revoked.

(2) The 2016 Audits Regulations, as in force immediately before 17 June 2016 -

- (a) in so far as they related to the conduct of statutory audits and the duties and powers of statutory auditors and audit firms in relation thereto for financial years commencing before that date, shall continue to apply to the conduct of statutory audits and the duties and powers of statutory auditors and audit firms in relation thereto for those financial years, and
- (b) as regards each other matter provision for which was made by those Regulations before that date, shall continue to make such provision before that date.

### **Explanatory Note**

The Head provides for the revocation of S.I. 312 of 2016 except where an action has commenced under S.I. 312 of 2016 before it is repealed, the application of the provisions of those Regulations will continue to apply after it has repealed in the particular case in question with no break in application. The provisions of the Companies (Statutory Audits) Act 2016 will apply to actions that commence after the commencement of the relevant provisions of that Act.

The actions that arise may be in the areas of approvals, quality assurance reviews or investigations underway at the time S.I. 312 of 2016 is repealed. In addition the rules of that instrument in so far as they relate to audits will continue to apply to the current financial year. The rules of that instrument in so far as they relate to the conduct of auditors shall be replaced with the relevant provisions in this act from its enactment.

Regulation 44 of S.I. No. 312 of 2016 provided transitional arrangements for the approval of authorised persons or firms who were so authorised or approved immediately before the coming into force of those Regulations. However, the provisions contain references to regulations in S.I. No. 220 of 2010, which is now repealed. The continued approval of extant auditors and audit firms on the commencement of the Bill will also be provided for.

### **Head 3: Interpretation — general**

To provide for –

3. (1) In this Act—

"AAPA report" means the annual audit programme and activity report referred to in subhead 47(1);

"additional report to the audit committee" means the report submitted to the audit committee of a public-interest entity by the statutory auditor or audit firm carrying out statutory audits as set out in Article 11 of Regulation (EU) No 537/2014;

"affiliate", in relation to a statutory audit firm, means any undertaking, regardless of legal form, which is connected to the statutory audit firm by means of common ownership, control or management;

"approved", in relation to a statutory auditor or audit firm, means approved under this Act;

"aptitude test" means an aptitude test referred to in subhead 60(1);

"audit committee", in relation to a public-interest entity, means the audit committee established for the entity under Head 118;

"Audit Directive" means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 on statutory audits of annual accounts and consolidated accounts;

"audit working papers", in relation to a statutory auditor or audit firm, means material (whether in the form of data stored on paper, film, electronic media or other media or otherwise) prepared by or for, or obtained by the statutory auditor or audit firm in connection with, the performance of the audit concerned, and includes—

- (a) the record of audit procedures performed,
- (b) relevant audit evidence obtained, and
- (c) conclusions reached,

and a reference to audit working papers in relation to a Member State auditor or audit firm, or a third-country auditor or audit entity, shall be read accordingly;

"auditing standards" means the standards adopted by the Supervisory Authority under Head 93 in accordance with which statutory audits shall be carried out;

"Commission" means Commission of the European Union;

"counterpart authority" shall be construed in accordance with Head 119;

"financial year"—

- (a) in relation to the Supervisory Authority and an audited entity, shall be construed in accordance with section 288 of the Act, and

(b) in relation to a statutory auditor or audit firm, means-

- (i) subject to subparagraph (ii), any period in respect of which a profit and loss account or income statement is prepared by the auditor or audit firm for income tax or other business purposes, or
- (ii) in the case of a statutory audit firm that is a company, any period in respect of which accounts under the Act are prepared by the firm,

whether that period is of a year's duration or not;

"firm" includes a body corporate;

"group auditor" means the statutory auditor or audit firm carrying out the statutory audit of the group accounts concerned;

"home Member State" means the Member State in which a statutory auditor or audit firm is approved in accordance with Article 3(1) of the Audit Directive;

"host Member State" means—

- (a) a Member State in which a statutory auditor approved by his or her home Member State seeks to be also approved in accordance with Article 14 of the Audit Directive, or
- (b) a Member State in which an audit firm approved by its home Member State seeks to be registered, or is registered, in accordance with Article 3a of the Audit Directive;

"key audit partner" means—

- (a) 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,
- (b) 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
- (c) the one or more statutory auditors who sign the audit report;

"medium-sized undertakings" means the undertakings referred to in Article 3(3) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013<sup>4</sup> on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

"Member State" means a Member State of the European Union or an EEA state;

"Member State audit firm" means an audit entity approved in accordance with the Audit Directive by the counterpart authority of another Member State to carry out audits of annual or group accounts as required by European Union law;

"Member State auditor" means an auditor approved in accordance with the Audit Directive by a counterpart authority of another Member State to carry out audits of annual or group accounts as required by European Union law;

"network", in relation to a statutory auditor or audit firm, means the larger structure:

- (a) which is aimed at cooperation and to which the statutory auditor or audit firm belongs;
- (b) either-
  - (i) the clear objective of which is profit or cost-sharing, or
  - (ii) which shares—
    - (I) common ownership, control or management,
    - (II) common quality control policies and procedures,
    - (III) a common business strategy, or
    - (IV) the use of a common brand-name or a significant part of professional resources;

"Principal Act" means the Companies Act 2014

"public-interest entities" means—

- (a) entities 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 of the European Parliament and of the Council of 21 April 2004<sup>5</sup> on markets in financial instruments amending Council Directives 85/611/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EC,
- (b) credit institutions as defined in point 1 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013<sup>6</sup> on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (but excluding credit institutions referred to in Article 2 of Directive 2013/36/EU), and
- (c) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC of 19 December 1991<sup>7</sup> on the annual accounts and consolidated accounts of insurance undertakings;
- (d) undertakings that are otherwise designated, by or under any other enactment, to be entities referred to in point 2(13) of Directive 2006/43/EC;

"public register" shall be construed in accordance with Head 65;

"recognised accountancy body" has the same meaning as in section 900 of the Act;

"Regulation (EU) No 537/2014" means Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC;

"small undertakings" means the undertakings referred to in Article 3(2) of Directive 2013/34/EU;

"standards" means those standards, as defined in section 900 of the Act, of a prescribed accountancy body which is a recognised accountancy body;

"statutory audit" means an audit of individual accounts or group accounts in so far as—

- (a) required by European Union law, or
- (b) required by national law as regards small undertakings;

"statutory audit firm" means—

- (a) an audit firm which is approved in accordance with this Act to carry out statutory audits, or
- (b) an audit firm which is registered in accordance with Head 50 to carry out statutory audits;

"statutory auditor" means an individual who is approved in accordance with this Act to carry out statutory audits;

"statutory auditors' report" means the report made under section 391 of the Act in the form required by section 336 of that Act;

"Supervisory Authority" has the same meaning as in section 900 of the Act;

"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, regardless of its legal form, which carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than an entity which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3 of the Audit Directive;

"third-country auditor" means an individual who carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than an individual who is registered as a statutory auditor in any Member State as a consequence of approval in accordance with Articles 3 and 44 of the Audit Directive;

"third-country competent authority" means an authority in a third country with responsibilities, as respects auditors and audit entities in that country, equivalent to those of the Supervisory Authority.

(2) A reference in this Part to a registered third-country auditor or audit entity is a reference to a third-country auditor or audit entity registered under Chapter 2 of Part 11.



## **Explanatory Note**

The following definitions are required for the purposes of transposing the Directive and the Regulation. These are based on the definitions contained in S.I. 312 of 2016 with additions and amendments where necessary. The Companies Act 2014, at section 2, already includes a number of relevant definitions for the purposes of these Heads. The definitions in this Head will be included in Part 27 of the 2014 Act.

1. "APPA Report" – is an annual audit programme and activity report drawn up by IAASA not later than 4 months at the end of each financial year on its oversight functions performed during the year.
2. "additional report to the audit committee" – this report is a new requirement under Article 11 of the Regulation. This report will explain the results of the statutory audit and will include, inter alia, a declaration of independence, identification of the key audit partner where relevant, a description of the nature, frequency and extent of communication with the audit committee, a description of the scope and timing of the audit, a description of the methodology used, a report of significant deficiencies in the internal financial control system and/or accounting system, a report of significant matters regarding actual or suspected non-compliance with laws/regulations or articles of association, a report of significant difficulties during the course of audit and any significant matters arising.
3. "affiliate" – the definition in S.I. 312 of 2016 is restated.
4. "approved" – the definition in S.I. 312 of 2016 is restated.
5. "aptitude test" – the definition in S.I. 312 of 2016 is restated.
6. "audit committee" – the definition in S.I. 312 of 2016 is restated.
7. "Audit Directive" – the definition in S.I. 312 of 2016 is restated.
8. "audit working papers" - the definition in S.I. 312 of 2016 is restated.
9. "auditing standards" – the definition in S.I. 312 of 2016 is restated.
10. "Commission" - the definition in S.I. 312 of 2016 is restated.
11. "counterpart authority" – shall be construed in accordance with Head 119.
12. "financial year" - the definition in S.I. 312 of 2016 is restated.
13. "firm" - the definition in S.I. 312 of 2016 is restated.
14. "group auditor" - the definition in S.I. 312 of 2016 is restated.
15. "home Member State" - the definition in S.I. 312 of 2016 is restated.
16. "host Member State" - the definition in S.I. 312 of 2016 is restated.
17. "key audit partner" - the definition in S.I. 312 of 2016 is restated.
18. "medium-sized undertakings" - the definition in S.I. 312 of 2016 is restated.
19. "Member State" - the definition in S.I. 312 of 2016 is restated.

20. "Member State audit firm" - the definition in S.I. 312 of 2016 is restated.
21. "Member State auditor" - the definition in S.I. 312 of 2016 is restated.
22. "network" - the definition in S.I. 312 of 2016 is restated.
23. "Principal Act" - the definition in S.I. 312 of 2016 is restated.
24. "public-interest entities" - the definition in S.I. 312 of 2016 is restated. This Head also includes a Member State option at Article 2(d) of the Directive to add to the categories of public interest entities however this must be done by way of primary legislation.
25. "public register" shall be construed in accordance with Head 65;
26. "recognised accountancy body" - the definition in S.I. 312 of 2016 is restated.
27. "Regulation (EU) No 537/2014" means Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC;
28. "small undertakings" means the undertakings referred to in Article 3(2) of Directive 2013/34/EU;
29. "standards" means those standards, as defined in section 900 of the Act, of a prescribed accountancy body which is a recognised accountancy body;
30. "statutory audit" - the definition in S.I. 312 of 2016 is restated.
31. "statutory audit firm" - the definition in S.I. 312 of 2016 is restated.
37. "statutory auditor" - the definition in S.I. 312 of 2016 is restated.
38. "statutory auditors' report" - the definition in S.I. 312 of 2016 is restated.
39. "Supervisory Authority" - the definition in S.I. 312 of 2016 is restated.
40. "third country" - the definition in S.I. 312 of 2016 is restated.
41. "third-country audit entity" - the definition in S.I. 312 of 2016 is restated.
42. "third-country auditor" - the definition in S.I. 312 of 2016 is restated.
43. "third-country competent authority" - the definition in S.I. 312 of 2016 is restated.

Subhead 3(2) provides that a reference to a registered third-country auditor or audit entity means those that are registered in accordance with the requirements in Chapter 2, Part 9.

Regulations 3(3) and (4) of S.I. No. 312 of 2016 are not included above but may be considered appropriate to include during drafting. Regulation 3(3) relates to a word/expression used in S.I. 312 of 2016 having the same meaning as it has in the Audit Directive. Regulation 3(4) refers to the definition of "court" as applied in the Companies Act 2014.

## Part 2

### Amendment of Companies Act 2014

#### **Head 4: Amendment of section 2 of Principal Act**

To provide for –

4. Section 2 of the Principal Act is amended, in subsection (1)-

- (a) in the definition of "statutory auditor", by the deletion of "(within the meaning of those Regulations)" and the deletion of "the 2016 Audits Regulations, and includes a firm registered in accordance with Regulation 38 of those Regulations", and the insertion of "Part 27 of this Act" after the word "under".
- (b) by the deletion of the following definition:

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

#### **Explanatory Note**

The Head amends the definition of statutory auditor in the Companies Act 2014 to reflect the revocation of S.I. 312 of 2016 and its replacement with the relevant provisions in these Heads.

## **Head 5: Amendment of section 35 of Principal Act**

To provide for –

5. Section 35 of the Principal Act is amended by the substitution of the following subsection for subsection (7):

"(7) An electronic filing agent shall not, by virtue of his or her authorisation under this section to act as such, be regarded as an officer or servant of the company concerned for the purposes of Head 102(2) or (3) ".

### **Explanatory Note**

The Head amends cross-references to electronic filing agents to reflect the revocation of S.I. 312 of 2016 and its replacement with the relevant provisions in this Bill.

**Head 6: Amendment of section 322 of Principal Act**

To provide for –

6. Section 322 of the Principal Act is amended, in subsection (4), by the substitution of “Part 27 of this Act” for “2016 Audits Regulations”.

**Explanatory Note**

The Head amends the cross-references relating to statutory auditors to reflect the revocation of S.I. 312 of 2016 and its replacement with the relevant provisions in this Bill.

## **Head 7: Amendment of section 336 of Principal Act**

To provide for –

7. Section 336 of the Principal Act is amended, by the insertion after subsection (10) - ,

“(10) The Supervisory Authority may prescribe additional requirements in relation to the content of the audit report for all entities or for public interest entities only -

(a) if those requirements are necessary in order to give effect to national legal requirements relating to the scope of statutory audits; or

(b) to the extent necessary to add to the credibility and quality of the audit report.”.

### **Explanatory Note**

The Head exercises a new Member State option at Article 28 of the Directive, the same as the option at Article 10 of the Regulation in relation to public interest entities, which is concerned with the contents of the audit report. The option permits Member States to add to the content of the report.

Section 336 of the Companies Act 2014 which sets out the requirements of the audit report is amended and will permit the Supervisory Authority to lay down additional requirements in relation to the content of the audit report. The purpose of taking this option is to facilitate the Supervisory Authority in carrying out its necessary oversight responsibilities.

**Head 8: Amendment of section 380 of Principal Act**

To provide for –

8. Section 380 of the Principal Act is amended, in subsection (5), by the substitution of the following paragraph for paragraph (iii):

"(iii) the person's becoming disqualified from holding office by virtue of Part 27 of this Act."

**Explanatory Note**

The Head amends the cross-references relating to statutory auditors to reflect the revocation of S.I. 312 of 2016 and its replacement with the relevant provisions in this Bill.

**Head 9: Amendment of section 390 of Principal Act**

To provide for –

9. Section 390 of the Principal Act is amended by the substitution of "Part 27 of this Act." for "2016 Audits Regulations".

**Explanatory Note**

The Head amends the cross-references relating to statutory auditors to reflect the revocation of S.I. 312 of 2016 and its replacement with the relevant provisions in this Bill.



**Head 10: Amendment of section 394 of Principal Act**

To provide for –

10. Section 394 of the Principal Act is amended, in paragraph (a), by the substitution of "Part 27 of this Act" for "2016 Audits Regulations".

**Explanatory Note**

The Head amends the cross-references relating to statutory auditors to reflect the revocation of S.I. 312 of 2016 and its replacement with the relevant provisions in this Bill.

## **Head 11: Amendment of section 900 of Principal Act**

To provide for –

11. Section 900 of the Principal Act is amended—

(a) in subsection (1) in the definition of "recognised accountancy body", by the substitution of "Part 27 of this Act" for "2016 Audits Regulations", and the deletion of " or section 1441"

(b) by the deletion of the following subsection after subsection (2):

"(3) Regulation 4 (except the definitions of 'standards' and 'statutory auditor') of the 2016 Audits Regulations shall apply to the interpretation of this Chapter as that Regulation applies to the interpretation of those Regulations."

### **Explanatory Note**

The Head amends the cross-references relating to statutory auditors to reflect the revocation of S.I. 312 of 2016 and its replacement with the relevant provisions in this Bill. It also deletes a reference to section 1441 in recognition of the removal of the term public auditors.

**Head 12: Amendment of section 904 of Principal Act**

To provide for –

12. Section 904 of the Principal Act is amended, in subsection (1)—

(a) in paragraph (e) by the substitution of “this Act” for “2016 Statutory Audits Regulations” and “this Act” for “those Regulations”.

**Explanatory Note**

The Head amends the references to the 2016 Audits Regulations to reflect the revocation of S.I. 312 of 2016 and its replacement with the relevant provisions in this Bill.

### **Head 13: Amendment of section 905 of Principal Act**

To provide for –

13. Section 905 of the Principal Act is amended—

(a) in subsection (2)-

(i) by the substitution of the following for paragraph (a):

"(a) grant recognition to bodies of accountants for the purposes of this Act and Regulation (EU) No 537/2014,"

(ii) by the substitution of the following for paragraph (d):

"(d) conduct under section 933 enquiries into –

(a) whether a prescribed accountancy body has complied with the investigation and disciplinary procedures approved for that body under paragraph (c) or referred to in subsection (1)(a)(ii) or (iii) or (1)(b) (ii) of that section, or

(b) whether a recognised accountancy body has complied with a delegation under Head 46,"

(iii) by the substitution of the following for paragraph (e):

"(e) impose under section 933 sanctions on prescribed accountancy bodies and recognised accountancy bodies,"

(iv) by the substitution of the following for paragraph (f):

"(f) undertake under section 934 investigations into possible breaches of the standards of a prescribed accountancy body or into possible breaches of section 336, 337, Part 27 of this Act or Regulation (EU) 537/2014 by statutory auditors and audit firms,"

(v) by the insertion of the following paragraph (fa) after (f):

"impose under sections 934 and 934A sanctions on members of prescribed accountancy bodies and statutory auditors and audit firms,"

(vi) by the substitution of the following for paragraph (g):

"(g) supervise how each recognised accountancy body monitors its members, and statutory auditors and audit firms for which the recognised accountancy body has responsibility by virtue of delegation under Head 46 or registration under Head 50,"

(vii) by the deletion of paragraph (h)

(viii) by the deletion of paragraph (l)

(ix) by the insertion of the following paragraph (na):

“(na) delegate tasks in section 905(n) to recognised accountancy bodies under Head 46,”

(x) by the substitution of the following “Part 27 of this Act” for “2016 Audits Regulations” in paragraphs (i), (ma) and (n):

### **Explanatory Note**

Section 905 sets out the functions of the Supervisory Authority. The Head updates the functions to reflect the repeal of S.I. 312 of 2016 and sets out additional functions for the Supervisory Authority which derive from the transposition of Article 32.4b such that the Supervisory Authority may delegate functions under 905(2)(n) to the recognised accountancy bodies.

The amendment to section 905(2)(a) provides that the Supervisory Authority (IAASA) has the function of granting recognition to bodies of accountants for the purposes of the 2016 Audits Regulations. As S.I. 312 of 2016 is being repealed and its provisions inserted into the Companies Act 2014, this Head inserts the references which must be updated. The references to section 1441 are also being deleted here and under separate Heads as part of the abolition of the term public auditors.

Section 905(2)(d),(e) and (f) are amended to include references to recognised accountancy bodies. This is because the General Scheme firstly extends the existing enquiry procedures in section 933 in relation to prescribed accountancy bodies to delegations to recognised accountancy bodies. Secondly the scheme allows the investigation procedures in sections 934 to be applied to a members of . A new function is inserted after (f) to reflect the IAASAs new sanctioning powers in 934A and section 934.

Section 905(2)(g) is amended to reflect the new delegation arrangements to recognised accountancy bodies. The reference to section 936 is deleted as these powers are no longer relevant.

Section 905(2)(h) is deleted as this function has been overtaken by IAASAs remit in relation to auditing standards which is wider than independence and set out in 905(2)(ma).

Section 905(2)(l) is deleted as it is no longer required.

Section 905(2)(na) is inserted to reflect the new delegation powers of IAASA.

Sections 905(2)(i), (ma) and (n) are updated to reflect the repeal of S.I. 312 of 2016.

## **Head 14: Amendment of section 906 of Principal Act**

To provide for –

14. Section 906 of the Principal Act is amended –

(a) in subsection 906(4) by the insertion of -

(i)“(whether an individual or otherwise)” after “person” in (c),

(b) in subsection 906(4) by the insertion after (c) of –

(ca) a recognised accountancy body to comply with a direction or term or condition attached under section 931 to the delegation of tasks to a body.

(c) in subsection 906(5) by the substitution of –

“Part 27 of this Act” for “the 2016 Audits Regulations” in (c).

### **Explanatory Note**

Section 906 of the Companies Act 2014 sets out the general powers of the Supervisory Authority. The Head amends this section to give effect to the new framework of delegation set out in Head 46.

It amends subsection (4) of section 904 to take account of wording in section 10 of the 2003 Act that had not been carried over to the Companies Act 2014 when the 2003 Act was repealed.

It updates reference in subsection 906(4)(c) to reflect the replacement of S.I 312 of 2016 with the new provisions in this Bill.

It includes a new reference to the delegations in section 931, as amended, to clearly extend the Supervisory Authority’s powers to apply to the court where a recognised accountancy body does not comply with certain directions, terms or conditions under the new delegation framework set out in Head 46.

## **Head 15: Amendment of section 907 of Principal Act**

To provide for –

15. Section 907 of the Principal Act is amended in subsection (2A) –

- (i) by the substitution of “at least one area” for “areas”
- (ii) by the insertion of "Schedule 19 to this Act" for “Schedule 1 to the 2016 Audits Regulations”

### **Explanatory Note**

Section 907 of the Companies Act 2014 sets out the make-up and appointment procedures for the Board of directors of the Supervisory Authority. Article 32.3 of the Directive requires that the competent authority shall be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit.

Recital 21 elaborates that ‘in order to ensure compliance with Article 32.3 on principles of public oversight, a non-practitioner is deemed to be knowledgeable in the areas relevant to the statutory audit either because of his or her past professional skill or, alternatively, because he or she has knowledge of at least one of the subjects listed in Article 8. These are contained in the Schedule at Head 149 which will be a new Schedule to the Act. It is considered appropriate to amend the transposition of Article 32.3, effected by S.I. 312 of 2016, in line with the recital.

The Head also amends the cross-references relating to statutory auditors to reflect the revocation of S.I. 312 of 2016 and its replacement with the relevant provisions in this Bill.

## **Head 16: Amendment of section 915 of Principal Act**

To provide for –

16. Section 915 of the Principal Act is amended by the insertion of a new section (3) -

“(3) The reference to money in subsection (2) is with the exception of amounts paid to the Supervisory Authority under section 934A which may only be used for the purposes of investigations under section 934.”

### **Explanatory Note**

This Head provides for the amendment in relation to the application of money from the Supervisory Authority's reserve fund such that pecuniary sanctions paid to the Supervisory Authority can only be used for the purposes of investigations under section 934.

This is a new provision in Section 915.



## **Head 17: Amendment of section 918 of Principal Act**

To provide for –

17. Section 918 of the Principal Act is amended by the replacement of subsection (3) with the following subsection -

"(3) Money received by the Supervisory Authority under this section may be used only for the purposes of meeting expenses properly incurred by it in performing its functions as the competent authority under Regulation (EU) No 537/2014 or this Act (including a function referred to in section 905(2)(n)) in relation to statutory auditors of public-interest entities."

### **Explanatory Note**

This Head provides for the amendment of the levy on the statutory auditor and audit firms of public interest entities in relation to the funding of quality assurance of the audits of public interest entities. This Head replaces the references to the 2016 Audits Regulations with a reference to this Act but otherwise the provision is the same as in S.I. 312 of 2016.

## **Head 18: Amendment of section 919 of Principal Act**

To provide for –

18. Section 919 of the Principal Act is amended by the deletion of subsection (6).

### **Explanatory Note**

This Head deletes a provision in relation to the application of money received by the Supervisory Authority from pecuniary sanctions. The interaction of existing provisions of section 919 and section 915 are such that it appears that the money received by the Supervisory Authority from pecuniary sanctions may not be used. An amendment in Head 16 to section 915 addresses this question and accordingly subsection (6) is no longer required.

## Head 19: Amendment of section 930 of Principal Act

To provide for –

19. Section 930 of the Principal Act is amended –

(a) in subsection (1) –

- (i) by the substitution of “this Act” for “the 2016 Audits Regulations or section 1441”;
- (ii) by the deletion of subparagraph (a)(ii);
- (iii) by the insertion of after auditing standards in (b) “quality assurance, continuing education”
- (iv) by the substitution of “; and” for “.” in (b);

(b) in subsection (1) by the insertion after (b) of -

“(c) as to the capacity of the body to institute and apply effective arrangements to ensure compliance and enforce the standards at (a) and (b) in relation to its members effectively having regard to its ongoing performance, financial soundness, staffing and other relevant resources of the body; and ”

(c) in subsection (1) by the insertion after (c) of –

“(d) as to the acceptance and compliance of the body with a delegation under Head 46.”

(d) in subsection (2) by the substitution of “this Act” for “the 2016 Audits Regulations and section 1441.”

(e) by the insertion after subsection (2) of a new subsections (3) and (4) –

“(3) A body granted recognition under subsection (1) or (2) shall continue to satisfy the requirements in subsection (1)(a) to (d) for the duration of its recognition under this section and failure to do so may lead to the revocation or suspension for a specified period of a recognition so granted.

(4) A body granted recognition under subsection (1) or (2) may request the revocation of its recognition under the Supervisory Authority’s powers in section 931.”

### Explanatory Note

This Head amends the rules for the recognition of a body of accountants. Under the current rules the Supervisory Authority may recognise an accountancy body as long as the standards the body has put in place are adequate.

It is considered appropriate in keeping with the Supervisory Authority’s role of the single competent authority with responsibility for oversight of statutory audit under Article 32 of the Directive and having ultimate responsibility for the tasks under the same article, that it also be able to consider in the context of this recognition two further relevant matters. Therefore

this Head inserts two new criteria which the Supervisory Authority must be satisfied about in order to grant recognition to a body.

Firstly, a new subsection 930(1)(c) is inserted referring to the capacity of the body to ensure compliance and enforce the standards amongst its members. Secondly a new subsection 905(1)(d) is inserted such that the Supervisory Authority must be satisfied that the body accepts and complies with the delegations that are provided for under the new oversight framework at Head 46.

A new subsection 930(3) is inserted which clarifies that a recognised body must continue to comply with the criteria at subsection (1)(a)-(d) and failure to do so could lead to the revocation or suspension of the recognition under section 931. Such circumstances could include insolvency of the body or failure to accept a delegation under Head 46.

A further new subsection 930(4) is inserted such that a recognised body may voluntarily request de-recognition by the Supervisory Authority.

## **Head 20: Amendment of section 931 of Principal Act**

To provide for –

20. Section 931 of the Principal Act is replaced –

### **Provisions in relation to recognition by the Supervisory Authority under section 930 or delegations under Head 46**

931. (1) The Supervisory Authority may-

- (a) at the time of the grant of a recognition under section 930 or at any time during the currency of a recognition so granted, or
- (b) at the time of a delegation under Head 46 or at any time during the currency of that delegation.”

by notice in writing given to the body of accountants concerned –

- (i) make recommendations with regard to the recognition or delegation for the body to take an action or actions regarding such matters it thinks necessary or expedient, and/or
- (ii) issue a Direction with regard to the recognition or delegation for the body to take an action or actions regarding such matters it thinks necessary or expedient, and/or
- (iii) attach to the recognition or delegation such terms and conditions as it thinks necessary or expedient,

and specified in the notice.”

(2) The Supervisory Authority may, at any time during the currency of a recognition granted under section 930 or a delegation under Head 46, by notice in writing given to the body of accountants concerned, amend the recommendations, directions or terms and conditions referred to in subsection (1) or insert into it, or delete from it, other recommendations, directions or terms and conditions.

(3) The Supervisory Authority may, at any time during its currency, by notice in writing given to the body of accountants concerned, revoke, or suspend for a specified period, a recognition granted under section 930 or a delegation under Head 46.

(4) The Supervisory Authority may publish information on its website regarding a notice given at subsections 1, 2 or 3 which may include the body’s response to each the notice.”

(5) Where a disciplinary committee of a body of accountants recognised under section 930 has reasonable grounds for believing that a category 1 or 2 offence may have been committed by a person while the person was a member of the body, the body shall, as soon as possible, provide a report to the Director giving details of the alleged offence and shall furnish the Director with such further information in relation to the matter as the Director may require.

(6) Where a body referred to in subsection (5) fails to comply with that subsection or a requirement of the Director under that subsection, it, and any officer of the body to whom the failure is attributable, shall be guilty of a category 3 offence.

### **Explanatory Note**

This Head replaces the existing section 931 and extends the powers of the Supervisory Authority in relation to the supervision of recognition under section 930 to that of delegations under Head 46. It also expands the provisions which the Supervisory Authority has to supervise and ensure the compliance of recognised accountancy bodies and permits publication of actions taken as well as the response of the body in question to any notices issued which is not provided for in the current section 931. The Supervisory Authority may exercise these powers including the power to revoke the recognition of a body without the need for an enquiry under section 933.

Subhead 931(1) expands the application of the existing supervisory provisions applying to recognition to delegations under Head 46. It also allows the Supervisory Authority to make recommendations and issue directions in addition to the existing provisions which allow it to attach terms and conditions only.

Subhead 931(2) allows the Supervisory Authority to delete or amend any of the recommendations, directions, terms and conditions given under subsection (1). This is consistent with the current provisions.

Subhead 931(3) allows the Supervisory Authority to revoke, or suspend for a specified period, a recognition granted under section 930 or a delegation under Head 46. This is consistent with the current provisions.

Subhead (4) introduces a new provision which allows the Supervisory Authority to publish information on its website regarding a notice given at subsections 1, 2 or 3 which may include the body's response to each the notice.

Subhead (5) and (6) restates existing provisions in section 931 and provide that disciplinary committees of the recognised accountancy bodies report certain offences to the Director of Corporate enforcement and failure to do so is an offence.

## **Head 21: Amendment of section 932 of Principal Act**

To provide for –

21. Section 932 of the Principal Act is amended by the insertion after of “ Part 27 of this Act and Regulation (EU) 537/2014.” after “for the purposes of” and the deletion of the following subsections:

(a) the 2016 Audits Regulations, or.

and

(b) Section 1441

### **Explanatory Note**

Section 932 allows the Supervisory Authority to consult as required in relation to the granting of recognition under Section 930. This Head deletes the references to the 2016 Audits Regulations which have been revoked and the references to public auditors in section 1441 which is also no longer required.

## **Head 22: Amendment to section 933 of Principal Act**

To provide for –

### **Intervention in disciplinary process of prescribed accountancy bodies and supervision of recognised accountancy bodies**

22. Section 933 is replaced by –

“933. (1) In this section, “approved investigation and disciplinary procedures” means—

(a) in relation to a prescribed accountancy body that is a recognised accountancy body, the investigation and disciplinary procedures approved under—

(i) section 905 (2)(c),

(ii) section 9(2)(c) of the Act of 2003, or

(iii) the Act of 1990, whether before or after the amendments of that Act that were made by section 32 of the Act of 2003,

and

(b) in relation to any other prescribed accountancy body, the investigation and disciplinary procedures approved under—

(i) section 905 (2)(c), or

(ii) section 9(2)(c) of the Act of 2003.

(2) Following a complaint or on its own initiative, the Supervisory Authority may, for the purpose of determining whether a prescribed accountancy body has complied with the approved investigation and disciplinary procedures, enquire into—

(a) a decision by that body not to undertake an investigation into a possible breach of its standards by a member,

(b) the conduct of an investigation by that body into a possible breach of its standards by a member, or

(c) any other decision of that body relating to a possible breach of its standards by a member, unless the matter is or has been the subject of an investigation under section 934 relating to that member.

(2a) Following a complaint or on its own initiative, the Supervisory Authority may, for the purpose of determining whether a recognised accountancy body has complied with a delegation under Head 46, carry out an enquiry under this section into the performance of a task by that body delegated to it under Head 46 including the conduct of an investigation of the conduct of a member by that body.

(3) For the purposes of an enquiry under this section, the Supervisory Authority may—

(a) inspect and make copies of all relevant documents in the possession or control of the prescribed accountancy body or recognised accountancy body, and



(b) require the prescribed accountancy body to explain why it reached a decision referred to in subsection (2)(a) or (c) or to explain how it conducted its investigation.

(4) If at any time before completing an enquiry under this section into a matter relating to a member of a prescribed accountancy body or recognised accountancy body, the Supervisory Authority forms the opinion that it is appropriate or in the public interest that a matter be investigated under section 934, the Authority may apply to the court for permission to investigate the matter under that section.

(5) If not satisfied, after completing the enquiry, that the prescribed accountancy body complied with the approved investigation and disciplinary procedures, or that the recognised accountancy body complied with the delegation under Head 46 including any recommendations, directions or terms and conditions under section 931 the Supervisory Authority may advise or admonish the body or may censure it by doing one or more of the following:

(a) annulling all or part of a decision of that body relating to the matter that was the subject of the enquiry,

(b) directing that body to conduct an investigation or a fresh investigation into the matter,

(ba) directing that body to conduct the task that was the subject of the inquiry again in accordance with any recommendations, directions or terms and conditions the Supervisory Authority considers appropriate,

(bb) directing that body where it conducts the task that was the subject of the inquiry in future it should do so in accordance with any recommendations, directions or terms and conditions the Supervisory Authority considers appropriate,

(c) requiring that body to pay to the Supervisory Authority an amount not exceeding the greater of the following:

(i) €125,000;

(ii) the amount prescribed under section 943 (1)(e);

and section 941 has effect as regards requiring, in certain circumstances, an application to be made to the court for confirmation of the foregoing.

(6) Where, as mentioned in subsection (5), the Supervisory Authority is not satisfied that

(a) the prescribed accountancy body has complied with the approved investigation and disciplinary procedures, or

(b) the recognised accountancy body complied with the delegation under Head 46 including any recommendations, directions or terms and conditions under section 931,

the body is, in addition to any liability or obligation to pay an amount or do a thing by virtue of that subsection, liable to pay the amount specified by the Supervisory Authority towards its costs in conducting the enquiry under this section.

(7) Where the Supervisory Authority applies under this section to the court for permission to investigate, under section 934, any matter relating to a member of a prescribed accountancy body or decides to direct a prescribed accountancy body or to conduct an investigation or a fresh investigation under this section into any matter, the following rules apply:

(a) in the case of an application to the court for permission to investigate a matter, any decision of that body relating to the matter is suspended if and as soon as the body is notified by the Supervisory Authority that permission has been granted under section 941 (3);

(b) in the case of a direction to conduct an investigation, any decision of that body relating to the matter is suspended as soon as the body is notified by the Supervisory Authority of the direction;

(c) in the case of a direction to conduct a fresh investigation, any decision of that body relating to the matter is suspended if and as soon as the body is notified by the Supervisory Authority that the direction has been confirmed under section 941 (5).

(8) The Supervisory Authority may publish each decision made under subsection (5) or each decision made specifying an amount under subsection (6) and the reasons for the decision after giving the prescribed accountancy body and the member concerned or recognised accountancy body as the case may be not less than 3 months' notice in writing of its intention to do so.

(9) The prescribed accountancy body or the member or recognised accountancy body concerned may appeal to the court against a decision made by the Supervisory Authority under subsection (5) or a decision made by it specifying an amount under subsection (6).

(10) An appeal under subsection (9) shall be brought before the expiry of the notice given under subsection (8) to the prescribed accountancy body and the member concerned.

(11) If not satisfied that a prescribed accountancy body has, when undertaking an investigation or a fresh investigation into the matter under subsection (5)(b), complied with the approved investigation and disciplinary procedures, the Supervisory Authority may appeal to the court against any decision of the prescribed accountancy body relating to the matter.

(12) An appeal under subsection (11) shall be brought within 3 months after the date on which the Supervisory Authority was notified by the prescribed accountancy body of its decision.

(13) For the purposes of this section—

(a) any decision made or any investigation conducted by the disciplinary committee of a prescribed accountancy body is considered to have been made or conducted by the prescribed accountancy body,

(b) "member", in addition to the meaning given to that expression by section 900 (1), includes, in relation to a prescribed accountancy body that is a recognised accountancy body, an individual or firm who or which, though not a member of the recognised accountancy body, is an individual or firm in relation to whom that body may exercise powers under this Act or Regulation (EU) 537/2014.

### **Explanatory Note**

Currently section 933 permits an enquiry into the disciplinary process of a prescribed accountancy body. The purpose of this Head is to allow the Supervisory Authority to use its' enquiry powers under section 933 in relation to the supervision of the delegations under Head 46. This new supervision power in relation to the delegations to the recognised

accountancy bodies augments the powers in section 930 and 931 of the Companies Act 2014.

Subhead 933(1) and (2) are the same as the existing provisions in the Companies Act 2014.

Subhead 933(2a) inserts a new power for the Supervisory Authority to carry out an enquiry into the performance of a task to supervise how a recognised accountancy body has complied with a delegation under Head 46.

Subhead 933(3) and (4) are based on the existing provisions in section 933 and add in references to the recognised accountancy body as relevant.

Subhead 933(5) is based on existing provisions with the addition of new sanctions in (ba) and (bb) such that the Supervisory Authority can direct the body to conduct the task again or where it conducts the task in future it should do so in accordance with any recommendations, directions or terms and conditions it might make pursuant to the enquiry.

Subheads 933(6)-(13) are based on the existing provisions in 933 and add in references to the recognised accountancy body as relevant.

## **Head 23: Amendment to section 934 of Principal Act**

To provide for –

23. Section 934 of the Principal Act is replaced by the following:

### **Investigation of possible breaches of standards by prescribed accountancy bodies or relevant contraventions by statutory auditors or audit firms**

934 (1) In this section—

“client” includes an individual, a body corporate, an unincorporated body of persons and a partnership;

“relevant person”, in relation to an investigation of a member of a prescribed accountancy body or a statutory auditor as applicable, means—

(a) a member of the prescribed accountancy body;

(b) a statutory auditor

(c) if the statutory auditor is an individual, a person who is or was an employee or agent of the statutory auditor,

(d) if the statutory auditor is an audit firm, a person who is or was an officer, member, partner, employee or agent of the statutory auditor,

(e) a client or former client of a member of a prescribed accountancy body or statutory auditor;

(f) if the client or former client is a body corporate, a person who is or was an officer, employee or agent of the client or former client;

(g) the prescribed accountancy body or a person who is or was an officer, employee or agent of that body; or

(h) any person whom the Supervisory Authority reasonably believes has information or documents relating to the assessment other than information or documents the disclosure of which is prohibited or restricted by law.

“relevant contravention”, in relation to a statutory auditor, means a contravention by the statutory auditor of a provision of—

(a) Part 27 of this Act,

(b) Regulation (EU) No 537/2014, or

(c) section 336, 337;

“statutory auditor” includes a former statutory auditor.

(2) If, in the Supervisory Authority's opinion, it is appropriate or in the public interest to undertake an investigation into

(a) a possible breach of a prescribed accountancy body's standards by a member, the Authority may do so—

(i) following a complaint, or

(ii) on its own initiative, or

(iii) following the referral of an assessment report under section 934C,

(b) a possible relevant contravention committed by a statutory auditor, the Authority may do so—

(i) following a complaint, or

(ii) on its own initiative,

(iii) following the referral of an assessment report under section 934C,

but no investigation may be undertaken into a matter that is or has been the subject of an enquiry under section 933 relating to a member of a prescribed accountancy body except with the permission of the court granted on application under section 933(4).

(3) For the purposes of an investigation under this section, the Supervisory Authority may require a relevant person to do one or more of the following:

(a) produce to the Supervisory Authority all books or documents relating to the investigation that are in the relevant person's possession or control;

(b) attend before the Supervisory Authority;

(c) give the Supervisory Authority any other assistance in connection with the investigation that the relevant person is reasonably able to give.

(4) For the purposes of an investigation under this section, the Supervisory Authority may—

(a) examine on oath, either by word of mouth or on written interrogatories, a relevant person,

(b) administer oaths for the purposes of the examination, and

(c) record, in writing, the answers of a person so examined and require that person to sign them.

(5) The Supervisory Authority may certify the refusal or failure to the court if a relevant person refuses or fails to do one or more of the following:

(a) produce to the Supervisory Authority any book or document that it is the person's duty under this section to produce;

(b) attend before the Supervisory Authority when required to do so under this section;

(c) answer a question put to the person by the Supervisory Authority with respect to the matter under investigation.

(6) On receiving a certificate of refusal or failure concerning a relevant person, the court may enquire into the case and after hearing any evidence that may be adduced, may do one or more of the following:

(a) direct that the relevant person attend or re-attend before the Supervisory Authority or produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;

(b) direct that the relevant person need not produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;

(c) make any other ancillary or consequential order or give any other direction that the court thinks fit.

(7) If the Supervisory Authority finds that the member committed a breach of the prescribed accountancy body's standards) or that a statutory auditor has committed a relevant contravention, the Supervisory Authority may impose on the member any sanction to which the member is liable under the approved constitution and bye laws of the prescribed accountancy body (including a monetary sanction) or in the case of a statutory auditor a sanction under section 934A -

(a) the fact of a sanction having been imposed on a member of a prescribed accountancy body by the Supervisory Authority shall be disclosed by the Authority to the public and that disclosure shall include—

(i) in a case where the member or statutory auditor is making an appeal to the court against the decision of the Supervisory Authority, an indication that that is so, and

(ii) if the Supervisory Authority considers it appropriate, such further particulars with respect to the matter as it thinks fit,

and

(b) section 941 has effect as regards requiring, in certain circumstances, an application to be made to the court for confirmation of the imposition of the sanction referred to in this subsection.

(8) The manner of a disclosure under subsection (7), and the time at which it is made, shall be such as the Supervisory Authority determines to be appropriate.

(9) The costs incurred by the Supervisory Authority in investigating and determining a matter under this section (other than any costs of or incidental to an enquiry by the court under subsection (6)) shall be defrayed by the prescribed accountancy body whose member is or has been the subject of the investigation or by the statutory auditor; for the purposes of this subsection—

(a) the Supervisory Authority may prescribe by regulations that specified procedures and methods of calculation shall apply in the determination of the amount of costs so incurred by it and prescribe by regulations requirements otherwise as to the liability of the prescribed accountancy body or statutory auditor for, and the manner in which it shall pay, that amount, and

(b) in default of payment of that amount to the Supervisory Authority, the Authority may recover that amount as a simple contract debt in any court of competent jurisdiction.

(10) The member or statutory auditor who is the subject of a decision made by the Supervisory Authority under subsection (7) may appeal to the court against the decision.

(11) An appeal under subsection (10) shall be brought within 3 months after the date on which the member concerned was notified by the Supervisory Authority of its decision.

(12) The production of any books or documents under this section by a person who claims a lien on them does not prejudice the lien.

(13) Any information produced or answer given by a relevant person in compliance with a requirement under this section may be used in evidence against the member of the prescribed accountancy body, statutory auditor in any proceedings whatsoever, save proceedings for an offence (other than perjury in respect of such an answer).

(14) A finding of the Supervisory Authority under this section is not a bar to any civil or criminal proceedings against the member of the prescribed accountancy body or statutory auditor who is the subject of the finding or relevant decision.

### **Explanatory Note**

This Head sets out the investigation procedure to be followed by the Supervisory Authority in relation to possible breaches of a prescribed accountancy body's standards by a member or a relevant contravention as defined in the case of a statutory audit which is —

- (a) Part 27 of this Act,
- (b) Regulation (EU) No 537/2014, or
- (c) section 336, 337;

It is based on section 934 of the Companies Act 2014 and has the objective of streamlining the processes set out currently in section 934 and section 935A. The key objective is to ensure a holistic system where it is possible, inter alia, that matters in relation to an individual who is a member of a prescribed accountancy body and a statutory auditor can be investigated simultaneously if required. Investigations under this Head may be delegated to a committee under existing provisions in section 937 of the Act or to the CEO under proposed amending provisions to section 937.

Subhead 934(1) sets out the definitions for the purposes of the Heads.

Subhead 934(2) provides that the Supervisory Authority can undertake an investigation if it is appropriate or in the public interest or following the referral of an assessment report under section 934C into a possible breach of a prescribed accountancy body's standards by a member or a relevant contravention by a statutory auditor but no investigation may be undertaken into a matter that is or has been the subject of an enquiry under section 933 relating to a member of a prescribed accountancy body except with the permission of the court granted on application under section 933(4).

Subhead 934(3)-(6) as based on existing provisions and provides the Supervisory Authority with the necessary powers to gather information and conduct the investigation.

Subhead 934(7)-(8) as based on existing provisions and provides for the imposition of sanctions, publication in relation to the member of a prescribed accountancy body and the approval of the court in relation to certain sanctions.

Subhead 934(9) as based on existing provisions and provides that the costs shall be defrayed by the prescribed accountancy body or statutory auditor.

Subhead 934(10)-(11) as based on existing provisions and provides for appeals.

Subheads 934(12)-(14) as based on existing provisions and provides for a series of existing provisions in section 934.



## Head 24: Amendment of Principal Act

To provide for –

24. Section 934A is inserted after section 934 of the Principal Act

### Sanctions which the Supervisory Authority may impose

934A. (1) The Supervisory Authority may impose on a statutory auditor, one or more of the following sanctions in relation to a relevant contravention committed by the statutory auditor.

(a) a direction by the Supervisory Authority to the statutory auditor that the auditor cease the conduct giving rise (whether in whole or in part) to the contravention and to abstain from any repetition of that conduct;

(b) a direction by the Supervisory Authority to the statutory auditor to remediate the conduct giving rise (whether in whole or in part) to the contravention;

(c) a reprimand or severe reprimand by the Supervisory Authority to the statutory auditor in relation to the conduct giving rise (whether in whole or in part) to the contravention;

(d) a declaration by the Supervisory Authority that the statutory auditors' report concerned does not meet the requirements of *section 336 or 337* or, where applicable, Article 10 of Regulation (EU) No 537/2014;

(e) a direction by the Supervisory Authority to the statutory auditor (being any one or more of a statutory auditor, audit firm or key audit partner) banning him, her or it, for the period specified in the direction (which may be up to and including an indefinite period), from carrying out statutory audits or signing statutory auditors' reports, or both;

(f) if the statutory auditor is an audit firm, a direction by the Supervisory Authority to an officer, member or partner of the audit firm banning the officer, member or partner, for the period specified in the direction (which may be up to and including an indefinite period) from performing functions in audit firms or public-interest entities;

(g) a direction by the Supervisory Authority to the statutory auditor to pay, as an administrative pecuniary sanction, a sum, as specified in the direction but not exceeding

(i) €100,000 in the case of a statutory auditor who is an individual

(ii) in the case of a statutory auditor that is an audit firm €100,000 per partner,

to the Supervisory Authority;

(h) an order excluding a statutory auditor from membership of one or more recognised accountancy bodies.

(2) Where applicable the Supervisory Authority shall direct the recognised accountancy body of which the statutory auditor is a member to take any necessary action on foot of the application of the sanctions in subsection (1).

(3) Where applicable, and notwithstanding the requirement for court approval for the application of certain sanctions, the Supervisory Authority shall have the power to direct the

immediate suspension of statutory auditor or audit firm where this is warranted by the nature or gravity of the contravention.

(4) The Supervisory Authority shall notify the recognised accountancy body of which the statutory auditor is a member of any sanctions imposed under this section.

### **Explanatory Note**

Article 30.2 of the Directive requires that Member State provide for effective, proportionate and dissuasive sanctions in respect of statutory auditors and audit firms where audit rules are not adhered to. Article 30a.1 sets out a list of administrative sanctions that Member States must at least give competent authorities the power to impose on statutory auditors. These sanctions were included in S.I. 312 of 2016. There is an option for Member States to add to these sanctions at Article 30a.3 and this option is being exercised in this Head.

The additional sanctions provided for in this Head are:

- b) a direction by the Supervisory Authority to the statutory auditor to remediate the conduct giving rise (whether in whole or in part) to the contravention;
- c) a reprimand or severe reprimand by the Supervisory Authority to the statutory auditor in relation to the conduct giving rise (whether in whole or in part) to the contravention;
- e) a direction by the Supervisory Authority to the statutory auditor (being any one or more of a statutory auditor, audit firm or key audit partner) banning him, her or it, for the period specified in the direction (which may be up to and including an indefinite period), from carrying out statutory audits or signing statutory auditors' reports, or both;
- f) if the statutory auditor is an audit firm, a direction by the Supervisory Authority to an officer, member or partner of the audit firm banning the officer, member or partner, for the period specified in the direction (which may be up to and including an indefinite period) from performing functions in audit firms or public-interest entities;
- g) a direction by the Supervisory Authority to the statutory auditor to pay, as an administrative pecuniary sanction, a sum, as specified in the direction but not exceeding €100,000 in the case of a statutory auditor who is an individual or in the case of an audit firm €100,000 per partner, to the Supervisory Authority;
- h) an order excluding a statutory auditor from being a member of a recognised accountancy body.

Sanctions e) and f) provided in S.I. 312 of 2016 had a limit of a three year period only and this is extended to up to an indefinite period in these Heads. A monetary penalty on an audit firm was provided to a maximum of €500,000. The sanction at g) is intended to provide that pecuniary sanctions may be imposed on the basis of the number of partners at the firm and in this case the total pecuniary sanction may be greater than €500,000.

Subhead (2) provides the Supervisory Authority with the power to direct the relevant recognised accountancy body to take appropriate action to implement sanctions imposed by it e.g. remove an auditor from the CRO Register of Auditors, exclude an individual from membership etc.

Subhead (3) provides that the Supervisory shall have the power to immediately suspend a statutory auditor or audit firm where this is warranted by the nature or gravity of the contravention.

Subhead (4) provides that the Supervisory Authority shall notify the recognised accountancy body of which the statutory auditor or audit firm is a member of any sanctions imposed under this section.

Court approval of certain sanctions is required under provisions at section 941 as amended.

## **Head 25: Amendment of Principal Act**

To provide for –

25. Section 934B is inserted after section 934A

### **Relevant circumstances to be considered in imposing sanctions under section 934A or section 935A**

934B(1) In imposing a sanction set out in section 934A or 935A under any of the procedures in this Part the Supervisory Authority or the Director of Corporate Enforcement as applicable should consider the relevant circumstances which include, where appropriate, one or more of the following:

- (a) the gravity and duration of the relevant contravention;
- (b) the degree of responsibility of the statutory auditor;
- (c) the financial strength of the statutory auditor (for example, as indicated by the total turnover of the statutory auditor who is not an individual, or, in the case of a statutory auditor who is an individual);
- (d) the amount of profits gained or losses avoided by the statutory auditor in consequence of the relevant contravention, in so far as they can be determined;
- (e) the level of cooperation of the statutory auditor with the Supervisory Authority;
- (f) previous relevant contraventions committed by the statutory auditor.

### **Explanatory Note**

Article 30b of the Directive prescribes the relevant circumstances that should be taken into account when determining the type and level of the administrative sanctions to be imposed and these circumstances are set out in this Head. These circumstances were provided for in S.I. 312 of 2016 in relation to statutory auditors, audit firms and directors of public interest entities as applicable.

This Head provides that where an administrative sanction is imposed on a statutory auditor or audit firm or a director under any of the procedures in this Part of the Act, the relevant circumstances set out in the Head should be considered. As it is derived from the Directive, the Head does not apply to sanctions on members of a prescribed accountancy body.

## **Head 26: Amendment of Principal Act**

To provide for –

26. Section 934C is inserted after section 934B

### **Power of Supervisory Authority to make an assessment of breaches or contraventions, etc.**

934C(1) If, in the Supervisory Authority's opinion, it is appropriate or in the public interest to undertake an assessment into

(a) a possible breach of a prescribed accountancy body's standards by a member, the Authority may do so—

(i) following a complaint, or

(ii) on its own initiative,

(b) a possible relevant contravention as defined in section 934 committed by a statutory auditor, the Authority may do so—

(i) following a complaint, or

(ii) on its own initiative,

(2) For the purposes of an assessment under this section, the Supervisory Authority may require a relevant person to do one or more of the following:

(a) produce to the Supervisory Authority all books or documents relating to the assessment that are in the relevant person's possession or control;

(b) attend before the Supervisory Authority;

(c) give the Supervisory Authority any other assistance in connection with the assessment that the relevant person is reasonably able to give.

(3) For the purposes of an assessment under this section, the Supervisory Authority may—

(a) examine on oath, either by word of mouth or on written interrogatories, a relevant person,

(b) administer oaths for the purposes of the examination, and

(c) record, in writing, the answers of a person so examined and require that person to sign them.

(4) The Supervisory Authority may certify the refusal or failure to the court if a relevant person refuses or fails to do one or more of the following:

(a) produce to the Supervisory Authority any book or document that it is the person's duty under this section to produce;

(b) attend before the Supervisory Authority when required to do so under this section;

(c) answer a question put to the person by the Supervisory Authority with respect to the matter under investigation.

(5) On receiving a certificate of refusal or failure concerning a relevant person, the court may enquire into the case and after hearing any evidence that may be adduced, may do one or more of the following:

(a) direct that the relevant person attend or re-attend before the Supervisory Authority or produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;

(b) direct that the relevant person need not produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;

(c) make any other ancillary or consequential order or give any other direction that the court thinks fit.

(6) At the conclusion of an assessment, an assessment report will be finalised and where it shows reasonable grounds that a statutory auditor is committing or has committed a relevant contravention or a member of a prescribed accountancy body is breaching the standards of that body the report may be sent for consideration by a committee referred to in section 937 for the purposes an investigation under section 934.

(7) The Supervisory Authority may enter into an agreement under section 934D at any point after the beginning of an assessment under this Head.

### **Explanatory Note**

This Head provides for new powers for the Supervisory Authority to conduct an assessment. The assessment is an investigation procedure but the term assessment is used to avoid confusion with section 934 which uses the term investigation. The assessment will be carried out by officers, employees or other authorised persons under new delegation procedures provided for in section 937.

Subhead 934C(1) provides that the Supervisory Authority can undertake an assessment if it is appropriate or in the public interest into a possible breach of a prescribed accountancy body's standards by a member or a relevant contravention by a statutory auditor.

Subhead 934C(2)-(5) provides the Supervisory Authority with the necessary powers to gather information and conduct the assessment/investigation. These are the based on powers in section 934.

Subhead 934C(6) provides that at the conclusion of an assessment, a report will be finalised and where it shows reasonable grounds that a contravention or breach has occurred the report may be referred to a committee appointed under section 937 for the purposes of section 934.

Subhead 934C(7) provides that the Supervisory Authority may enter into an agreement by settlement or consent under section 934D at any point after the beginning of an assessment under this Head.

## Head 27: Amendment of Principal Act

To provide for –

27. Section 934D is inserted after section 934C

### **Power of Supervisory Authority to resolve suspected breaches or contraventions by consent or settlement, etc.**

934D(1) If, in a case where the Supervisory Authority suspects on reasonable grounds that a statutory auditor is committing or has committed a relevant contravention or a member of a prescribed accountancy body is breaching the standards of that body, and this is acknowledged by the statutory auditor or member of a prescribed accountancy body, the Supervisory Authority may—

(a) with the consent of the statutory auditor or member of a prescribed accountancy body, dispense with an investigation under section 934 and impose on the statutory auditor or member any sanction that it is empowered to impose either under section 934 or 934A, or

(b) hold an investigation under section 934 to determine what sanction (if any) should be imposed on a statutory auditor or a member of a prescribed accountancy body in accordance with that section,

enter into an agreement in writing with the statutory auditor or a member of a prescribed accountancy body to resolve the matter.

(2) If the Supervisory Authority suspects on reasonable grounds that a statutory auditor is committing or has committed a relevant contravention or a member of a prescribed accountancy body is breaching the standards of that body it may enter into an agreement in writing with the statutory auditor or a member of a prescribed accountancy body to resolve the matter.

(3) An agreement in subsection (1) or (2) is to be on such terms as are specified in the agreement and is binding on the Supervisory Authority and the statutory auditor or a member of a prescribed accountancy body concerned. Those terms may include terms under which that statutory auditor or a member of a prescribed accountancy body may accept the imposition of sanctions in section 934 or section 934A as applicable.

(4) The Supervisory Authority may enter into an agreement under this section—

(a) without having held an investigation into the matter under *section 934*, or

(b) after beginning (but not after completing) such an investigation.

(5) Subject to subsection (5), where the statutory auditor, audit firm or a member of a prescribed accountancy body with whom the Supervisory Authority has entered into an agreement under this section fails to comply with any of the terms of the agreement, the Supervisory Authority may apply to the High Court for an order requiring that statutory auditor or a member of a prescribed accountancy body comply with those terms or that term, as the case may be.

(6) The Supervisory Authority may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to the Supervisory Authority the amount of any amount agreed to be paid under an agreement entered into under this section.

### **Explanatory Note**

This Head provides for an agreed settlement process between the Supervisory Authority and the statutory auditor or a member of a prescribed accountancy body without necessarily the need to start or complete an investigation under section 934.

Subhead (1) provides that the Supervisory Authority can enter into arrangements with a statutory auditor or a member of a prescribed accountancy body to resolve suspected relevant contraventions by consent.

Subhead (2) provides that the Supervisory Authority can enter into agreements with a statutory auditor or a member of a prescribed accountancy body to resolve suspected relevant contraventions by settlement.

Subhead (3) provides that the agreement is contains specific binding terms and may include the sanctions referred to in section 934 and section 934A.

Subhead (4) provides that an agreement can be entered into without an investigation under section 934 or after an inquiry has begun but not after it has ended.

Subhead (5) provides that if a statutory auditor or a member of a prescribed accountancy body does not abide by the agreement with the Supervisory Authority, the Supervisory Authority can apply to the High Court for an order requiring that statutory auditor or a member of a prescribed accountancy body comply with the agreement.

Subhead (6) provides that the Supervisory Authority can recover debts due to it under such agreements by proceedings in a court of appropriate jurisdiction.

Sanctions imposed under this Head should be subject to the publication and cost recovery rules as for those imposed under section 934 and section 934A directly. However they would not be subject to the approval of the Court.



## **Head 28: Amendment of Principal Act**

To provide for –

28. Section 934E is inserted after section 934D

### **Publication of relevant sanction imposed, etc.**

934E(1) Subject to subsections (2) and (3), the Supervisory Authority shall, in so far as a decision imposes a sanction on a statutory auditor, or director of a public interest entity under section 934A or 935A, as soon as is practicable after-

- (a) it has made a decision and where applicable that decision has been confirmed by the court under section 941(2)(a), or
- (b) a decision of the court under section 941(2)(b) has been made to impose a different relevant sanction on the statutory auditor or relevant director,

publish on its website particulars of the relevant contravention for which the relevant sanction was imposed, particulars of the relevant sanction imposed and particulars of the statutory auditor or relevant director on whom the relevant sanction was imposed.

(2) Subject to subsection (4), if there is an appeal from the court from a confirmation referred to in subsection (1)(a), or a decision referred to in subsection (1)(b), the Supervisory Authority shall from time to time, as it considers appropriate, publish particulars on its website of the status or outcome of the appeal.

(3) The Supervisory Authority shall publish particulars referred to in subsection (1) on an anonymous basis on its website in any one or more of the following circumstances:

- (a) the Supervisory Authority, following an assessment of the proportionality of the publication of those particulars in accordance with subsection (1) in so far as personal data is concerned, is of the opinion that, in relation to the relevant sanction imposed on a statutory auditor who is an individual or on a relevant director, such publication would be disproportionate;
- (b) the Supervisory Authority is of the opinion that the publication of those particulars in accordance with subsection (1) would jeopardize the stability of financial markets or an ongoing criminal investigation;
- (c) the Supervisory Authority is of the opinion that the publication of those particulars in accordance with subsection (1) would cause disproportionate damage to the statutory auditor or relevant director concerned.

(4) Subsection (2) shall not apply in any case where subsection (3) applies.

(5) The Supervisory Authority shall ensure that particulars published on its website in accordance with subsection (1) or (2) remain on its website for at least 5 years.

### **Explanatory Note**

Article 30c.1 requires that the administrative sanctions listed at section 934A and 935A be published on the Supervisory Authorities website as soon as all rights of appeal have been

exhausted or have expired. This Head provides for the publication of administrative sanctions as provided for by SI 312 of 2016.

The publication of sanctions on members of the prescribed accountancy bodies is set out in section 934 and is unchanged on current arrangements.

## **Head 29: Amendment of Principal Act**

To provide for –

29. Section 934F is inserted after section 934E

### **Limitations on imposing monetary penalties**

934F (1) If the Supervisory Authority decides to impose a monetary penalty on a statutory auditor or member of a prescribed accountancy body under section 934 or section 934A, the Supervisory Authority may not impose an amount—

- (a) that would be likely to cause the statutory auditor or member of a prescribed accountancy body to cease business, or
- (b) that would, if the statutory auditor or member of a prescribed accountancy body is an individual, be likely to cause the statutory auditor to be adjudicated bankrupt.

(2) If the Director of Corporate Enforcement decides to impose a monetary penalty on a relevant director under section 935A, the Director of Corporate Enforcement may not impose an amount that would be likely to cause the relevant director to be adjudicated bankrupt.

(3) If the conduct engaged in by the statutory auditor or member of a prescribed accountancy body has given rise (whether in whole or in part) to 2 or more relevant contraventions or breaches of standards of a prescribed accountancy body, the Supervisory Authority may not impose more than one monetary penalty under section 934 or section 934A on the statutory auditor or member of a prescribed accountancy body in respect of the same conduct.

(4) If the conduct engaged in by the relevant director has given rise (whether in whole or in part) to 2 or more relevant contraventions, the Director of Corporate Enforcement may not impose more than one monetary penalty under section 935A on the relevant director in respect of the same conduct.

### **Explanatory Note**

This Head sets out certain rules in relation to the imposition of monetary sanctions by the Supervisory Authority and the Director of Corporate Enforcement. These are also set out in S.I. 312 of 2016 and are extended here to cover monetary penalties on a member of a prescribed accountancy body as applicable.

Subhead (1) states that the quantum of the monetary penalty imposed by the Supervisory Authority shall not cause the statutory auditor or a member of a prescribed accountancy body to cease business or be adjudicated bankrupt.

Subhead (2) states that the quantum of the monetary penalty imposed by the Director of Corporate Enforcement on the Director of a public interest entity shall not cause the relevant director to be adjudicated bankrupt.

Subhead (3) states that only one monetary penalty can be imposed by the Supervisory Authority even where more than one relevant contravention is found.

Subhead (4) states that only one monetary penalty can be imposed by the Director of Corporate Enforcement even where more than one relevant contravention is found.

## **Head 30: Amendment of Principal Act**

To provide for –

30. Section 934G is inserted after section 934F

### **Statutory auditor etc. not to be liable to be penalised twice for same contravention**

934G(1) If the Supervisory Authority imposes a monetary penalty under section 934 or section 934A on a member of a prescribed accountancy body or a statutory auditor and the conduct engaged in by the statutory auditor or member of a prescribed accountancy body that has given rise (whether in whole or in part) to the relevant contravention or breach of standards of a prescribed accountancy body is an offence under the law of the State, the statutory auditor shall not be liable to be prosecuted or punished for the offence under that law.

(2) If the Director of Corporate Enforcement imposes a monetary penalty under section 935A on a relevant director and the conduct engaged in by the relevant director that has given rise (whether in whole or in part) to the relevant contravention is an offence under the law of the State, the relevant director shall not be liable to be prosecuted or punished for the offence under that law.

(3) The Supervisory Authority may not impose a monetary penalty under section 934 or section 934A on a member of a prescribed accountancy body or a statutory auditor if—

- (a) the statutory auditor or member of a prescribed accountancy body has been charged with having committed an offence under a law of the State and has either been found guilty or not guilty of having committed the offence, and
- (b) the offence involves the conduct engaged in by the statutory auditor or member of a prescribed accountancy body that has given rise (whether in whole or in part) to the relevant contravention or breach of standards of a prescribed accountancy body.

(4) The Director of Corporate Enforcement may not impose a monetary penalty under section 935A on a relevant director if—

- (a) the relevant director has been charged with having committed an offence under a law of the State and has either been found guilty or not guilty of having committed the offence, and
- (b) the offence involves the conduct engaged in by the relevant director that has given rise (whether in whole or in part) to the relevant contravention.

### **Explanatory Note**

This Head provides that a statutory auditor or a director of a public interest entity shall not be prosecuted or punished for the same offence under national law. These requirements are also set out in S.I. 312 of 2016 and are extended here to cover monetary penalties on a member of a prescribed accountancy body.

## **Head 31: Amendment of Principal Act**

To provide for –

31. Section 934H is inserted after section 934G

### **Communication with the CEAOB**

934H(1) The Supervisory Authority shall immediately communicate to the CEAOB particulars of—

- (a) any direction given by the Authority under section 934A(1)(e) and (f) and
- (b) any direction given by the Director of Corporate Enforcement under Section 935A(4)(a),(b) and (c).

(2) The Supervisory Authority shall, as soon as may be after the end of a year, give to the CEAOB aggregated information in relation to—

- (a) all relevant sanctions imposed by it or the Director of Corporate Enforcement during the year in accordance with this Part of the Act, and
- (b) all publication sanctions imposed by it on statutory auditors and audit firms during the year in accordance with this Part of the Act.

### **Explanatory Note**

This Head transposes Article 30f of Directive which sets out obligations on the Supervisory Authority in relation to the exchange of information with the Committee of European Auditing Oversight Bodies (CEAOB). These requirements were set out in S.I. 312 of 2016.

Subhead (1) requires that the CEAOB communicate any directions given by the Supervisory Authority of the Director of Corporate enforcement in relation to prohibitions referred to in sections 934A and 935A.

Subhead (2) requires that the Supervisory Authority report annually to the CEAOB on all sanctions imposed on statutory auditors and audit firms under these Heads.

For clarity this Head only relates to sanctions in relation to breaches of audit rules.

## **Head 32: Amendment of Principal Act**

To provide for –

32. Section 934I is inserted after section 934H

### **Reporting of breaches**

934I(1) The Supervisory Authority will establish effective mechanisms to encourage reporting to it of breaches by a relevant person of a relevant contravention as defined in section 934.

(2) The mechanisms referred to in paragraph 1 must include at least:

(a) specific procedures for the receipt of reports of breaches and their follow-up;

(b) protection of personal data concerning both the person who reports the suspected or actual breach and the person who is suspected of committing, or who has allegedly committed that breach, in compliance with the principles laid down in Directive 95/46/EC;

(c) appropriate procedures to ensure the right of the accused person to a defence and to be heard before the adoption of a decision concerning him or her, and the right to appeal that decision and seek an effective remedy against any decision or measure concerning him or her.

(3) Statutory audit firms must establish appropriate procedures for their employees to report internally, through a specified channel, potential or actual breaches of a relevant contravention.

### **Explanatory Note**

This Head transposes Article 30e of Directive which sets out requirements in relation to the establishment of mechanisms for the reporting of breaches.

Subhead (1) requires that the Supervisory Authority establish effective mechanisms for reporting of contraventions.

Subhead (2) requires sets out the detail of the specific procedures as required by the Directive.

Subhead (3) places an obligation on statutory audit firms to put in place mechanisms for their employees to report breaches internally.

### **Head 33: Amendment of section 935 of Principal Act**

To provide for –

33. Section 935 of the Principal Act is replaced by the following:

#### **Supplementary provisions in relation to section 934 in relation to Directors of public interest entities**

935. (1) If the Supervisory Authority finds that the statutory auditor has committed a relevant contravention under this Part, and the Director of Corporate Enforcement finds that a director of a public-interest entity engaged in conduct giving rise (whether in whole or in part) to that contravention, the Director of Corporate Enforcement may impose such a sanction set out in section 935A on the director as the Director of Corporate Enforcement considers appropriate in all the relevant circumstances.

(2) Subject to subsection (3), the director who is the subject of a decision made under subsection (1) may appeal to the court against the decision.

(3) An appeal under subsection (2) shall be brought within 3 months after the date on which the director concerned was notified of that decision by the Director of Corporate Enforcement.

(4) A decision, in so far as it relates to the imposition of a relevant sanction on a statutory auditor or relevant director, shall not take effect unless the relevant decision is confirmed by the court under section 941(2)(a).

(5) This section applies if-

(a) the Supervisory Authority finds that the statutory auditor or audit firm has committed a relevant contravention following an assessment or investigation under section 934D or 934, and

(b) that contravention relates, whether directly or indirectly, to the audit of a public-interest entity.

(6) The Supervisory Authority shall, as soon as is practicable, give the Director of Corporate Enforcement—

(i) particulars of the statutory auditor,

(ii) particulars of the relevant contravention, and

(iii) particulars of the public-interest entity.

(6) The Supervisory Authority shall, in addition to complying with subsection (6), give the Director of Corporate Enforcement such information and documents and assistance as the Director may reasonably require for the Director to decide whether or not—

(i) to investigate a relevant director, or

(ii) to impose, under subsection (6)(b), a relevant sanction on a relevant director,

(iii) or both.



(7) The Director of Corporate Enforcement shall send, as soon as is practicable, details of any sanctions imposed by it under this section to the Supervisory Authority.

**Explanatory Note**

Article 30a of the Directive requires that certain sanctions can be imposed on directors of public-interest entities where they have contributed to a relevant contravention by a statutory auditor or audit firm. This Head provides that were a director of a public interest entity has contributed to a relevant contravention by of the by a statutory auditor or audit firm for sanctions to be imposed on directors of public interest entities by the Director of Corporate Enforcement.

Head 45 designates the Director of Corporate Enforcement as the competent authority with the power to take the administrative measures or impose the sanctions referred to in *section 935A* in so far as such administrative measures are taken against, or such sanctions are imposed on, directors of public-interest entities.

## **Head 34: Amendment of Principal Act**

To provide for –

34. Section 935A is inserted after section 935 of the Principal Act

### **Sanctions on directors of public interest entities**

935A(1) The Director of Corporate Enforcement may impose on a director of a public-interest entity, one or more of the following sanctions in relation to a relevant contravention committed by the statutory auditor:

(a) a direction by the Director of Corporate Enforcement to the director that the director cease the conduct giving rise (whether in whole or in part) to the contravention and abstain from any repetition of that conduct;

(b) a direction by the Director of Corporate Enforcement to the director banning the director, for the period specified in the direction (being a period of not more than 3 years' duration), from performing functions in audit firms or public-interest entities;

(c) a direction by the Director of Corporate Enforcement to the director to pay, as an administrative pecuniary sanction, a sum, as specified in the direction but not exceeding €100,000, to the Director of Corporate Enforcement.

(5) in imposing a sanction at subsection (4) the Director of Corporate Enforcement must take into account the relevant circumstances at *section 934D* as appropriate.

### **Explanatory Note**

These sanctions are unchanged from S.I. 312 of 2016 and are required by Article 30a of the Directive. However provision is now made for the payment of the pecuniary sanction to the Director.

**Head 35: Deletion of certain sections of the Principal Act**

To provide for –

35. Sections 934, 935, 935A, 935B, 935C, 935D, 936 and 941A are deleted.

**Explanatory Note**

This provides that certain sections which are replaced by the provisions in sections 934-934I, 935 and 935A in these Heads are deleted. It also deletes section 936 which is no longer required.

## **Head 36: Amendment of section 937 of Principal Act**

To provide for –

36. Section 937 of the Principal Act is amended -

(a) in subsection (1) by the deletion of “to 936” after 933 and the insertion of “and 934”

(b) after subsection (3) but the insertion of -

“(3a) The Supervisory Authority may delegate some or all of the functions under sections 933, 934 and 934A-I to any of its officers or employees or any other person duly authorised by it in that behalf.

(3b) Where functions under a provision referred to in subsection (3a) are delegated to an officer or employee or any other person duly authorised, any references in that provision to the Supervisory Authority shall be read as references to that officer, employee or person.”

### **Explanatory Note**

Section 937 provides that the Supervisory Authority may delegate certain investigation functions to a committee.

The proposed amendments delete references to section 935 as these are no longer applicable to the Supervisory Authority.

A new subsection (3a) is inserted to permit the Supervisory Authority to delegate investigation and assessment functions to officers and employees or other suitably qualified persons. This would allow the Supervisory Authority to delegate the enquiry, investigation and assessment procedures to the Chief Executive Officer.

A new subsection (3b) clarifies that where a function is delegated references to the Supervisory Authority in those provisions should be read as references to the officer, employee or person.

**Head 37: Amendment of section 938 of Principal Act**

To provide for –

37. Section 938 of the Principal Act is amended—

(1).

(a) in subsection (1), by the deletion of “935 or 935B”,

(b) in subsection (3), by the deletion of “,935, 935B or 936”, and

(c) in subsection (4), by the deletion of “,935 and 935B and reviews under section 936”.

(2) The insertion of new subsection -

“(4A) The Regulations made at subsection (4) should be published as soon as possible thereafter on the Supervisory Authority’s website.”

**Explanatory Note**

Section 938 of the Principal Act provides for certain rules in relation to hearings, privileges and procedural rules.

Subhead 938(1) provides that subsections (1), (3) and (4) are amended to delete references to sections 935 and 935B which are no longer applicable to the Supervisory Authority.

Subhead 938(2) inserted a new subsection such that these Regulations shall be published on the website of the Supervisory Authority.

**Head 38: Amendment of section 940 of Principal Act**

To provide for –

38. Section 940 of the Principal Act is amended – by the insertion of a new subsection (5) –

“(5) Nothing in this section shall operate to prevent the Supervisory Authority from complying with its obligations under this Part or Part 27.”

**Explanatory Note**

This Head provides that section 940 of the Act shall not restrict the Supervisory Authority from carrying out its obligations under these Heads. Section 940 of the Act is concerned with confidentiality in relation to the disclosure of information by the Supervisory Authority. It replaces Regulation 76 of S.I. 312 of 2016.

### **Head 39: Amendment of section 941 of Principal Act**

To provide for –

39. Section 941 of the Principal Act is amended –

(a) in subsection (1), by the deletion of “ or 935B(7)”

(b) in subsection (3), by the insertion after member, of the following “or a possible relevant contravention by a member of a recognised accountancy body,”

(c) in subsection (4), by the replacement with the following text

“(4) A decision of the Supervisory Authority annulling all or part of a decision of a prescribed accountancy body or recognised accountancy body under section 933(5)(a), directing a fresh investigation under section 933(5)(b), specifying an amount of costs under section 933 (6), requiring the payment of an amount under section 933(5)(c) or 934(7), or imposing a sanction under section 934A(1)(e), (f), (g) or (h) does not take effect until that decision is confirmed by the court either—

(a) on appeal under section 933 (9) or 934 (10), or

(b) on application by the Supervisory Authority under subsection (5).”

#### **Explanatory Note**

Section 941 of the Principal Act provides for certain rules in relation to the hearing of appeals by the court. This Head amends the references to reflect the new investigation procedures, adds in a requirement to seek confirmation of certain sanctions under amended section 934A being the major sanctions. The Head also amends an incorrect cross reference in the 2014 Act, replacing a reference to 934(5)(b) with 933(5)(b) in this subsection.

**Head 40: Amendment of section 942 of Principal Act**

To provide for –

40. Section 942 of the Principal Act is amended –

(a) in subsection (2), by the deletion of “(e) any review under section 936 of a member of a recognised accountancy body.”

**Explanatory Note**

Section 942 provides for certain protection from certain liabilities for the Supervisory Authority in carrying out its functions. This Head deletes the reference to section 936 reviews in section 942 which are no longer required.



**Head 41: Amendment of section 1097 of Principal Act**

To provide for –

41. Section 1097 of the Principal Act is amended—

- (a) by the substitution of "Head 115" for "Regulation 91", and
- (b) by the deletion of "2016 Audits Regulations".

**Explanatory Note**

This Head replaces the reference to the 2016 Audits Regulations with a reference to the relevant section concerning audit committees of public interest entities which is inserted in the Principal Act by this Bill. This new section is contained at Head 115.

**Head 42: Amendment of section 1305 of Principal Act**

To provide for –

42. Section 1305 of the Principal Act is amended, in subsection (3), in paragraph (b), by the substitution of "the Audit Directive (within the meaning of this Act)" for "the Audit Directive (within the meaning of the 2016 Audits Regulations)".

**Explanatory Note**

This Head replaces the reference to the 2016 Audits Regulations with a reference to the Principal Act.

### **Head 43: Amendment of section 1441 of Principal Act**

To provide for –

43. Section 1441 of the Principal Act is deleted.

#### **Explanatory Note**

The purpose of this Head is to delete section 1441 of the Companies Act 2014 relating to eligibility to act as public auditor for the purposes of the Industrial and Provident Societies Act 1893 and the Friendly Societies Act 1896.

The requirement that only public auditors may audit the accounts of societies under the Industrial and Provident Societies Act 1893 and accounts of friendly societies under the Friendly Societies Act 1896 is unnecessary and outdated.

Heads have been drafted to amend the Industrial and Provident Societies Act 1893 and the Friendly Societies Act 1896 to provide that statutory auditors may audit the accounts of societies and friendly societies. Heads 151 and 160 amend the 1893 and 1896 Acts will provide for the eligibility to act as a statutory auditor in a similar manner to section 1441 of the Companies Act 2014. The deletion of the term public auditor will impact on the Credit Unions and require the commencement of certain elements of the Credit Union Act. The Department has written to the Department of Finance to notify them of this change.

#### **Head 44: Amendment of section 1448 of Principal Act**

To provide for –

44. Section 1448 of the Principal Act is deleted.

#### **Explanatory Note**

Section 1448 of the Companies Act 2014 provides that Ministerial regulations may be made to provide that the systems of investigations and penalties administered by IAASA can be applied to third country auditors/audit entities that carry out audits in countries that the EU Commission has deemed not to be equivalent yet but in transitional period.

Head 145 provides for the Supervisory Authority to put in place a system of investigations for all third country auditors/audit entities, not just those mentioned in section 1448 of the Companies Act 2014. This section is no longer required and is being deleted.

## Part 3

### Designation of Competent Authority and delegation of tasks

#### **Head 45: Designation of competent authority**

To provide for –

45. (1) Subject to subhead (2), the Supervisory Authority is designated as the competent authority for the oversight of statutory auditors and audit firms in accordance with the Audit Directive and Regulation (EU) No 537/2014.

(2) Subject to subhead (4), the Director of Corporate Enforcement is designated as the competent authority with the power to take the administrative measures or impose the sanctions referred to in *section 935A* in so far as such administrative measures are taken against, or such sanctions are imposed on, directors of public-interest entities.

(3) The Supervisory Authority is designated as the competent authority for the purposes of—

- (a) public oversight, quality assurance, investigations and penalties of third-country auditors and audit entities registered under subhead 138(1), and
- (b) public oversight, investigations and penalties of third-country auditors and audit entities referred to in subheads 138(7), (8) and (9).

(4) (a) Subject to subparagraph (b), to the extent that the Director of Corporate Enforcement is a competent authority by virtue of paragraph (2), a reference in these Heads (other than this Head) to the Supervisory Authority shall include a reference to the Director of Corporate Enforcement.

(b) The Supervisory Authority shall perform the functions under these Heads that would, but for this paragraph, otherwise fall to be performed by the Director of Corporate Enforcement by virtue of being the competent authority referred to in subparagraph (a).

(c) The Director of Corporate Enforcement shall cooperate with the Supervisory Authority so as to enable the Supervisory Authority to perform the functions referred to in subparagraph (b).

(5) The Supervisory Authority shall, as soon as is practicable on or after enactment of this Act, publish on its website information on the designation of competent authorities effected by this Head between the Supervisory Authority and the Director of Corporate Enforcement.

#### **Explanatory Note**

This Head provides for the necessary designations under the EU Audit Directive and Regulation. It reflects the existing structures set out in S.I. 312 of 2016.

Subhead (1) provides for Article 32.1 of the Directive which requires that Member States designate a competent authority responsible for public oversight of statutory auditors and audit firms and Article 20.1 of the EU Regulation which requires that a competent authority be designated for the purposes of the carry out the tasks set out in that instrument. The Supervisory Authority is so designated.

Subhead (2) provides that the Director of Corporate Enforcement is designated as the competent authority in relation to the taking or imposing of administrative sanctions on public interest entities set out in Article 30a.1.

Subhead (3) provides that the Supervisory Authority is designated as the competent authority for the oversight of third country auditors and audit entities as required under Article 44 of the Directive.

Subhead (4) provides that in so far as it concerns the designation of the Director of Corporate Enforcement at subhead (2), a reference to the Supervisory Authority is a reference to Director of Corporate Enforcement.

Subhead (5) requires the Supervisory Authority to publish information on the designation arrangements.

## Head 46: Delegation of tasks

To provide for –

46. (1) The Supervisory Authority may delegate tasks specified in section 905(2)(n)(i) to (iv), in whole or in part of in a particular instance, to a body granted recognition under section 930 of the Act, a 'recognised accountancy body'.
- (2) The Supervisory Authority may not delegate tasks related to any of the matters in Article 24(1)(a) to (c) of Regulation (EU) No 537/2014.
- (3) In exercising its power under paragraph (1)(a), the Supervisory Authority—
  - (a) must consult the recognised accountancy body, and
  - (b) may consider the requirements of section 930 (including the way in which recognised accountancy body discharges those requirements).
- (4) The Supervisory Authority must specify the tasks delegated to a recognised accountancy body and the terms and conditions under which the tasks should be carried out.
- (5) The Supervisory Authority may specify exceptions to any delegation.
- (6) The Supervisory Authority may specify how the tasks must be carried out and may make rules and guidelines for the conduct of the tasks.
- (7) The Supervisory Authority may specify the duration of the delegation and provide for a review of the delegation.
- (8) The Supervisory Authority may reclaim a task or tasks it has delegated, in whole or in part of in a particular instance to a recognised accountancy body, and may –
  - (a) carry out the task or tasks itself, or
  - (b) delegate the task or tasks to another recognised accountancy body.

for such a period of time as is appropriate under the circumstances.
- (9) Where the Supervisory Authority reclaims a task from a recognised accountancy body, whether subhead 8(a) or (b) applies -
  - (a) an obligation which a statutory auditor has by virtue of any rules which a recognised accountancy body is required to have under section 930 is an obligation which the statutory auditor owes to the Supervisory Authority or another recognised accountancy body as applicable
  - (b) the Supervisory Authority or another recognised accountancy body shall no longer have an obligation in relation to the statutory auditors of a body where its recognition is revoked under section 931.
- (10) Where the Supervisory Authority reclaims a task or tasks referred to in section 905(2)(n) from a recognised accountancy body in relation to that bodies members -
  - (a) The costs concerned shall be defrayed by that body except where money referred to in section 918(3) of the Companies Act 2014 may be used, in accordance with that

section 918(3), to defray such costs; for the purposes of this paragraph, in default of payment of the amount of such costs.

(b) The Supervisory Authority may recover that amount as a simple contract debt in any court of competent jurisdiction, and

(c) The Supervisory Authority may use the costs at (a) to reimburse another recognised accountancy body who has been delegated a reclaimed task under subhead 8(b).

(11) The Supervisory Authority shall not be liable for acts done by a recognised accountancy body under delegation in this section.

(12) The Supervisory Authority shall, as soon as is practicable on or after the enactment of this Act, publish on its website information on the delegation of tasks effected by this Head between the Supervisory Authority and the recognised accountancy bodies.

(13) Where the Supervisory Authority has delegated a task reference in these Heads to the Supervisory Authority shall be read as a reference to the recognised accountancy body.

### **Explanatory Note**

This Head exercises the Member State option at Article 32.4b of the Directive to delegate any of the oversight tasks set out in section 905(2)n of the Companies Act 2014 to a recognised accountancy body. It also provides for the other conditions in Article 32.4b and sets out the manner in which the tasks shall be so delegated including conditions and exceptions as well as how the tasks may be reclaimed.

This is a change from the structures in S.I. 312 of 2016 which assigns the functions directly to the recognised accountancy bodies themselves. This new structure gives discretion to the Supervisory Authority subject to the principals and policies set out in these Heads and in amended sections of the of the Companies Act 2014, in particular sections 930, 931 and 933 in the execution of its oversight function through the delegation model provided for by the Directive. Where IAASA has delegated a task it will not have a role in relation to the performance of those tasks as they relate to individual auditors.

Subhead (1) provides that the Supervisory Authority may delegate the oversight tasks to a recognised accountancy body, which is a body granted recognition under section 930 of the Companies Act 2014. It anticipated that these arrangements or delegation orders, will be developed and ready to commence on enactment of these Heads.

Subhead (2) provides that the Supervisory Authority may not delegate tasks related to any of the matters in Article 24(1)(a) to (c) of Regulation (EU) No 537/2014 which is a requirement of that Regulation.

Subhead (3) provides that the Supervisory Authority undertake consultation with the recognised accountancy bodies and may consider the requirements of section 930 of the Companies Act 2014 while developing delegation arrangements.

Subhead (4) provides that the Supervisory Authority must specify the tasks delegated to each of the recognised accountancy bodies and the terms or conditions under which the tasks should be carried out. It is intended that the detail of the terms and conditions will be set out in delegation orders developed by the Supervisory Authority. These delegation orders are separate to the procedures for recognition/revocation of recognition of a body of



accountants under section 930 and 931. However similarly to the powers provided in those sections there may be different arrangements with each individual body.

Subhead (5) provides that the Supervisory Authority may specify exceptions to any delegation.

Subhead (6) provides that the Supervisory Authority may specify the tasks delegated and may make rules and guidelines. These rules and guidelines could include directions to the recognised accountancy bodies such as in relation to whether persons are eligible or ineligible for approval as auditors or set out criteria for example in relation to the requirement for practical training and what this might comprise or prescribe procedures including investigation and disciplinary procedures which should be implemented by the recognised accountancy bodies.

Subhead (7) provides that the Supervisory Authority may specify the duration of the delegation and provide for a review of the delegation.

Subhead (8) provides that the Supervisory Authority may reclaim delegated tasks on a case by case basis as required under Article 32.4 of the Directive. It is intended that the Supervisory Authority has discretion to tailor the delegations at subhead 8(b) to suit particular circumstances e.g. duration may be 'for a fixed period of time, indefinitely, until the occurrence of an event,'.

Subhead (9) provides that where the Supervisory Authority reclaims a task from a recognised accountancy body, the obligations that statutory auditors have under the rules of the bodies set out in section 930 will now be to the Supervisory Authority or to another recognised body if the task is re-delegated. It also provides that where the recognition of a body is revoked, that its' members shall not automatically fall within the remit of the Supervisory Authority or any other recognised accountancy body.

Subhead (10) provides that where the Supervisory Authority reclaims a task the costs concerned shall be defrayed by that body except where money referred to in section 918(3) of the Companies Act 2014 may be used. This subhead also allows for a situation where the Supervisory Authority re-delegates the task to another recognised accountancy body. The Supervisory Authority may then reimburse that recognised accountancy body for the costs incurred in relation to those members.

Subhead (11) provides that the Supervisory Authority shall not be liable for acts done by the recognised accountancy body under the delegation framework.

Subhead (12) provides for the publication of information on the delegation of tasks on the Supervisory Authority's website.

Subhead (13) provides that where the Supervisory Authority has delegated a task reference in these Heads to the Supervisory Authority shall be read as a reference to the recognised accountancy body.

Where IAASA has delegated a task it will not have a role in relation to the performance of those tasks as they relate to individual auditors.

## **Head 47: Annual audit programme and activity report**

To provide for –

47. (1) The Supervisory Authority shall, not later than 4 months after the end of each financial year, prepare a report (in these Regulations referred to as the "annual audit programme and activity report") in accordance with this Regulation on, inter alia, its oversight functions referred to in Head 45 performed during that year.

(2) The AAPA report shall contain the following information:

- (a) an activity report on the functions performed by the recognised accountancy bodies during the financial year to which the AAPA report relates;
- (b) a work programme concerning the oversight functions referred to in Head 45 that the Supervisory Authority proposes to perform during the financial year immediately following the financial year to which the AAPA report relates;
- (c) an activity report regarding the functions of the Supervisory Authority under Regulation (EU) No 537/2014 during the financial year to which the AAPA report relates;
- (d) a work programme regarding the functions of the Supervisory Authority under Regulation (EU) No 537/2014 that the Supervisory Authority proposes to perform during the financial year immediately following the financial year to which the AAPA report relates;
- (e) a report for the financial year to which the AAPA report relates on the overall results of the quality assurance system, including-
  - (i) information on recommendations issued, follow-up on the recommendations, supervisory measures taken and relevant sanctions and publication sanctions (within the meaning of section 935A of the Companies Act 2014) imposed, and
  - (ii) quantitative information and other key performance information on financial resources and staffing, and the efficiency and effectiveness of the quality assurance system.

(3) The AAPA report may form part of the annual report required under section 928 of the Companies Act 2014 in respect of the same financial year to which the AAPA report relates.

(4) The Supervisory Authority shall cause the AAPA report to be published on its website not later than 1 July of the year immediately following the financial year to which the report relates.

### **Explanatory Note**

The Directive and the Regulation requires the competent authority to produce yearly reports on audit matters. Article 32.6 of the Directive says that "The competent authority shall be transparent. This shall include the publication of an annual work programme and activity reports." Article 28 of the EU Regulation requires that competent authorities publish at least the following information –

- a) annual activity reports regarding their tasks under this Regulation;
- b) annual work programmes regarding their tasks under this Regulation;
- c) a report on the overall results of the quality assurance system on an annual basis. This report shall include information on recommendations issued, follow-up on the recommendations, supervisory measures taken and sanctions imposed. It shall also include quantitative information and other key performance information on financial resources and staffing, and the efficiency and effectiveness of the quality assurance system;
- d) the aggregated information on the findings and conclusions of inspections referred to in the first subparagraph of Article 26(8). Member States may require the publication of those findings and conclusions on individual inspections.

This Head is proposed to give effect to Article 32.6 of the Directive and to include the requirements of (a) and (b) of Article 28 of the Regulation. An Annual Work Programme and Activity Report is suggested to distinguish this report from the 3 yearly work programme that IAASA prepares under section 910 et seq. The reporting requirements of Article 28 (c) and (d) regarding quality assurance are included in this Head also.

Subhead 47(1) provides for the preparation of an annual audit programme and activity report by IAASA on its oversight functions during the year, completed no later than 4 months after the end of each financial year.

Subhead 47(2)(a) provides for an activity report on the functions of the recognised accountancy bodies.

Subhead 47(2)(b) provides for a work programme re the oversight functions of IAASA for the following year.

Subhead 47(2)(c) provides for an activity report on the functions of IAASA.

Subhead 47(2)(d) provides for a work programme re the functions to be performed by IAASA during the following year.

Subhead 47(2)(e) provides for a report on the overall results of the quality assurance system.

Subhead 47(3) provides that the APPA report may form part of IAASA' annual report.

Subhead 47(4) gives effect to the requirement for publication and transparency.

Section 910 of the Companies Act 2014 obliges the Supervisory Authority to prepare a work programme every 3 years. This includes an annual programme of expenditure which is approved by the Minister with the consent of the Minister for Public Expenditure and Reform. Sections 911 and 912 set out the content of that annual programme of expenditure, while section 913 provides for the review of the work programme provided for in section 910. The new reporting requirements in the Regulation and the Directive are additional to these sections.

## **Head 48 - Conflicts of interest to be avoided**

To provide for –

48. (1) The persons to whom this paragraph applies shall organise themselves in such a manner so that conflicts of interest are avoided in the performance of their respective functions under this Act.

(2) Paragraph (1) applies to—

- (a) the Supervisory Authority,
- (b) the Director of Corporate Enforcement,
- (c) the Registrar of Companies, and
- (d) the recognised accountancy bodies.

### **Explanatory Note**

Head 48 provides that conflicts of interest be avoided between the authorities and bodies performing functions under the Act or delegated under the Act.

Article 34.4a and 32.4b require competent authorities and bodies to whom tasks are delegated to be organized in such a manner that conflicts of interest are avoided.

## Part 4

### Oversight tasks that may be delegated

Approval of Statutory Auditors and Audit Firms, Prohibition on unapproved persons acting as Auditor, etc.

## Chapter 1

### *Approval of statutory auditors and audit firms*

#### **Head 49: Applications for approval, general principle as to good repute, etc.**

To provide for –

49. (1) A statutory audit shall be carried out only by statutory auditors or audit firms approved, on application, by the Supervisory Authority.

(2) The Supervisory Authority may, on foot of an application under subhead (1), grant approval under this Act only to—

- (a) individuals, or
  - (b) firms,
- who or which are of good repute.

(3) The Supervisory Authority may, on application made to it by a third-country auditor and in accordance with Head 137, approve, under this Act, the applicant as a statutory auditor.

(4) Subhead (5) applies in the case of an application under subhead (1)—

- (a) by a firm that is a Member State audit firm in the circumstances where it is not seeking registration in accordance with subhead 50, or

- (b) by a Member State auditor.

(5) For the purposes of this Head, the fact that the applicant is a Member State audit firm or Member State auditor shall constitute conclusive evidence that the applicant is of good repute unless, arising out of the cooperation referred to in subhead (6), a counterpart authority in the Member State where the applicant is approved as a statutory audit firm or auditor has notified the Supervisory Authority that the counterpart authority has reasonable grounds for believing that the good repute of the audit firm or auditor has been seriously compromised.

(6) The cooperation referred to in subhead (5) is the cooperation that the State is required to engage in by virtue of Chapter VIII of the Audit Directive.

(7) On approving a person as a statutory auditor or audit firm, the Supervisory Authority shall ensure that an individual identification number is assigned to the person and a record in writing maintained of all such numbers assigned under this paragraph.

### **Explanatory Note**

This Head transposes Article 4 of the Directive which requires individuals or firms that are approved as statutory auditors to be of good repute.

The Supervisory Authority may delegate the task of approvals as set out in section 905(2)(n)(i) under Head 46.

Subhead 49(1) provides that the Supervisory Authority will approve an individual or a firm, on application, as a statutory auditor or audit firm.

Subhead 49(2) specifies that the approval may only be granted if the individual or firm is of good repute.

Subhead 49(3) provides that the Supervisory Authority may approve, on application, a third-country auditor referred to in Head 137, as a statutory auditor.

Subhead 49(4) clarifies that subhead (5) applies to applications under subhead (1) in the case of Member State auditors and audit firms, where the latter is not seeking registration under Head 50.

Subhead 49(5) provides that where a Member State audit firm which is seeking approval rather than the registration provided for in Head 50, or a Member State auditor is already approved in their home Member State good repute is assumed unless the counterpart authority informs either the Supervisory Authority that this is not the case.

Subhead 49(6) provides for this cooperation virtue of Chapter VIII of the Audit Directive.

Subhead 49(7) provides that the Supervisory Authority will ensure that an individual identification number is assigned to the statutory auditor or audit firm and a record maintained in writing of all such numbers assigned. The recognised accountancy bodies will assign and maintain the individual identification numbers under delegation.

Approval of statutory auditors is one of the four tasks which may be delegated by the Supervisory Authority to the recognised accountancy bodies under Head 46.

## **Head 50: Basis on which audit firms approved in other Member States may carry out audits in State**

To provide for –

50. (1) An audit firm which is approved in another Member State shall be entitled to carry out statutory audits in the State if the key audit partner who carries out those audits on behalf of the audit firm, both at the time of registration (in accordance with subhead (2)) and at all times during the registration of the firm, complies with the requirements of Heads 49 to 56.

(2) (a) An audit firm that wishes to carry out statutory audits in the State where the State is not its home Member State shall, before carrying out any such audit, register with the Supervisory Authority.

(b) The Supervisory Authority shall ensure that an audit firm which complies with subhead (1) is registered in accordance with the requirements of Chapter 1, Part 4 and Schedule 2.

(3) (a) The Supervisory Authority shall register the audit firm if it is satisfied that the audit firm is registered with the counterpart authority in the audit firm's home Member State.

(b) Where the Supervisory Authority intends to rely on a certificate, issued by the counterpart authority in the home Member State, attesting to the registration of the audit firm in the home Member State, the Supervisory Authority may require that such certificate be issued on a date falling within the 3 months immediately preceding that date on which the Supervisory Authority is given that certificate.

(4) On registering the audit firm, the Supervisory Authority shall ensure that an individual identification number is assigned to the firm, when it is registered, and a record in writing maintained of all such numbers assigned under this subhead.

(5) The Supervisory Authority shall inform the counterpart authority in the home Member State of the registration of the audit firm.

(6) Where the Supervisory Authority receives a notification from another Member State that an audit firm whose home Member State is the State has registered with the counterpart authority in the host Member State, the Supervisory Authority shall ensure that the registration is recorded in the public register.

### **Explanatory Note**

The Supervisory Authority may delegate the task of approvals as set out in section 905(2)(n)(i) under Head 46.

This Head transposes new requirements in Article 3a of the Directive concerning the recognition of Member State audit firms. A firm approved in one Member State may be recognised in another Member State for the purposes of carrying out a statutory audit in the latter State where the key audit partner (i.e. the lead on the audit engagement in question) is an approved statutory auditor in that State.

Subhead 50(1) provides that an audit firm approved in another Member State may carry out statutory audits in the State as long as the key audit partner is approved in the State.

Subhead 50(2) provides that an audit firm must register with the Supervisory Authority in the State where it is not its home Member State. Such an audit firm must be registered in accordance with the requirements of Chapter 1, Part 4 and Schedule 2.

Subhead 50(3) provides that the Supervisory Authority must register the audit firm if it is registered with a counterpart authority in its home Member State. The option in Article 3a of the Directive is being taken to require any certificate attesting to registration issued by the latter may not be more than three months old.

Subhead 50(4) provides that the Supervisory Authority must ensure that an individual identification number is assigned to the audit firm and a record kept of such numbers. The recognised accountancy bodies will assign and maintain the individual identification numbers under delegation.

Subhead 50(5) requires that the Supervisory Authority inform the counterpart authority in the home Member State of the registration of the audit firm.

Subhead 50(6) provides that where the Supervisory Authority receives a notification from another Member State regarding an audit firm registered with a counterpart authority in a host Member State, and its home Member State is the State, that the information should be recorded in the public register.

Approval of statutory auditors is one of the four tasks which may be delegated by the Supervisory Authority to the recognised accountancy bodies under Head 46.



## **Head 51: Restriction as to persons who may carry out statutory audits**

To provide for –

51. Statutory audits shall be carried out only by—

- (a) auditors or audit firms that are approved under this Act, or
- (b) audit firms registered in accordance with Head 50.

### **Explanatory Note**

This Head transposes Article 3(1) of the Directive and restricts those who may carry out statutory audits, i.e. auditors/audit firms approved in Ireland under the Act, with the addition of audit firms that are approved in another Member State and recognised in Ireland under new Head 50.

## **Head 52: Restriction on acting as statutory auditor**

To provide for –

52. A person shall not—

- (a) act as a statutory auditor,
- (b) describe himself or herself as a statutory auditor, or
- (c) so hold himself or herself out as to indicate, or be reasonably understood to indicate, that he or she is a statutory auditor,

unless he or she has been approved in accordance with this Act.

### **Explanatory Note**

This Head transposes Article 3(1) of the Directive and restricts any one purporting to be a statutory auditor without the necessary approval.

### **Head 53: Restriction on acting as statutory audit firm**

To provide for –

53. A firm shall not—

- (a) act as a statutory audit firm,
- (b) describe itself as a statutory audit firm, or
- (c) so hold itself out as to indicate, or be reasonably understood to indicate, that it is a statutory audit firm,

unless it has been approved in accordance with this Act or registered in accordance with Head 50.

#### **Explanatory Note**

This Head transposes Article 3(1) of the Directive and restricts any firm purporting to be a statutory audit firm without the necessary approval with the addition of the Member State audit firms that are now recognised under new Head 50.

**Head 54: Offence for contravening Head 51, 52 or 53**

To provide for –

54. A person who contravenes Head 51, 52 or 53 shall be guilty of a category 2 offence.

**Explanatory Note**

This Head provides that breaches of Heads 51, 52 or 53 are an offence. These Heads provide that only approved persons, statutory auditors or audit firms respectively may carry out audits. The offences in the existing Regulation 23 are similar to category 2 and 4 offences under the Companies Act 2014. An equivalent offence existed in S.I. 312 of 2016 and the categories have been updated in line with those contained in the Companies Act 2014.

## **Head 55: Conditions for approval as statutory auditor**

To provide for –

55. A person shall not be eligible for approval as a statutory auditor unless he or she is—

- (a) a member of a recognised accountancy body and holds an appropriate qualification as referred to in Head 56,
- (b) a Member State auditor and complies with Head 60, or
- (c) a third-country auditor and complies with Heads 60 and 137.

### **Explanatory Note**

This Head transposes Article 3.3 of the Directive and relates to the eligibility of persons for approval as a statutory auditor. Such a person must have the appropriate qualifications set out in Head 56 and be a member of a recognised accountancy body or be a Member State auditor subject to certain aptitude conditions set out in Head 60 or a third country auditor subject to certain aptitude conditions and other arrangements set out in Head 60 and Head 137.

## **Head 56: Appropriate qualification for purpose of Head 55(a)**

To provide for –

56. (1) An individual holds an appropriate qualification, as required by Head 55(a), if he or she holds a qualification granted by a recognised accountancy body whose standards relating to training and qualifications for the approval of a person as a statutory auditor are not less than those specified in Schedule 1.

(2) In subhead (1), "qualification" means a qualification to undertake an audit of individual accounts and group accounts in so far as required by European Union law.

(3) A person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in the test of theoretical knowledge in Schedule 1 may be exempt in the subjects covered by that examination or degree. This exemption will be subject to certain criteria that may be set from time to time by the Supervisory Authority.

### **Explanatory Note**

This Head provides for the type of qualification that must be held by a person who wants to be approved as a statutory auditor.

Article 3(3) of 2006/43/EU is concerned with the approval of statutory auditors subject to the conditions set out in Articles 4 and 6 to 10. Article 4, good repute, is dealt with in Head 49. Articles 6 to 8 and 10, as amended, regarding educational qualifications/practical training, are included in Head 42 with specific details set out in Part 27, Schedule 2.

Subhead 56(1) provides for a recognised accountancy body to grant a qualification to an individual to undertake an audit required by Union law.

Subhead 56(2) defines qualification in the context of subhead 31(1).

Subhead 56(3) provides for an option in Article 9 of the Directive which allows a person who has passed certain exams/holds a degree may be exempted from the test of theoretical knowledge in subjects covered by that exam/degree. This was not exercised in SI 312 of 2016.

Criteria that IAASA would wish to specify include for example –

- Time limits for the awarding of exemptions to ensure up to date knowledge
- The level at which an examination that forms the basis for the proposed exemption was passed e.g. final degree examination rather than first year exam
- The level of the RABs' examinations at which an exemption may be awarded
- The location of the entity whose exams form the basis for the proposed exemption
- The assessment process to be undertaken by RABs to ensure the examinations that form the basis for proposed exemption are of an appropriate standard.

Section 930 of the Companies Act 2014 sets out the conditions under which the Supervisory Authority may grant recognition to a body of accountants, known as the recognised accountancy bodies. The conditions specify that standards relating to training, qualifications

referred to in this Head, as well as repute referred to in Head 49 must be not less than those specified in Articles 4, 6 to 8 and 10 of the Directive.

## **Head 57: Conditions for approval as statutory audit firm**

To provide for –

57. (1) In this Head, references to a firm include references to a Member State audit firm if the firm is not seeking registration in accordance with Head 50.

(2) A firm shall not be eligible for approval as a statutory audit firm unless—

(a) the individuals who carry out statutory audits in the State on behalf of the firm are approved as statutory auditors in accordance with this Act,

(b) the majority of the voting rights in the firm are held by-

(i) individuals who are eligible for approval in the State or in any other Member State as statutory auditors,

(ii) audit firms approved as statutory audit firms in the State or in any other Member State, or

(iii) a combination of such individuals and audit firms, and

(c) subject to subhead (3), the majority of the members of the administrative or management body of the firm are-

(i) individuals who are eligible for approval in the State or in any other Member State as statutory auditors,

(ii) audit firms approved as statutory audit firms in the State or in any other Member State, or

(iii) a combination of such individuals and audit firms.

(3) Where the administrative or management body of a firm has no more than 2 members, then, for the purposes of subparagraph (c) of subhead (2), one of those members shall satisfy at least the requirements of that subparagraph.

### **Explanatory Note**

Head 57 is further concerned with the conditions for approval of statutory audit firms.

Article 3(4)(b-d) of the Directive is now included in Head 57.

Subhead 57(1) sets out that an audit firm in this instance is one that does not fall within the ambit of Head 50. Under the new provisions in the Directive, at Article 3a, a Member State audit firm may seek recognition under Head 50 and where such is received it does not require approval in the State. This Head clarifies that an audit firm, including both an Irish audit firm and audit firms from other Member States all require approval in the State, wherever Head 50 does not apply.

Subhead 57(2) sets out the conditions in which a firm can be approved as a statutory audit firm: (a) the natural persons who carry out the audit on behalf of the firm must be approved as a statutory auditor under the Act, (b) the majority of voting rights in the firm are held by (i) natural persons eligible for approval in the State or other Member State as



a statutory auditor or (ii) audit firms approved as statutory audit firms in the State or other Member State, and (c) the majority of the members of the administrative or management body of the firm are as at (b)(i) and (ii) above. The “majority” mentioned in (b) and (c) may be a combination of eligible natural persons or approved firms.

Article 3(4)(b) is replaced in the amended Directive and included in subhead 57(2). The third sentence of Article 3(4)(b), which contains the amendment, is not relevant to Ireland, therefore, no change to the wording of the transposing subhead 57(2) is necessary.

Subhead 57(3) refers to subhead 57(2)(c) above, and where there are only two members, one of the members must meet the conditions of subhead 57(2)(c).

Article 3(4)(d) also allows Member States to impose additional conditions concerning Article 3(4)(c) in relation to natural person’s approval in another Member State but it is not intended to take this option.

## **Head 58: Powers of Director of Corporate Enforcement**

To provide for –

58. (1) The Director of Corporate Enforcement may demand of a person—

- (a) acting as a statutory auditor or audit firm of a company, or
- (b) purporting to have obtained approval under this Act, or registration in accordance with Head 50, to so act,

the production of evidence of the person's approval under this Act or, if applicable, registration in accordance with Head 50 in respect of any period during which the person so acted or purported to have obtained such approval.

(2) If the person concerned refuses or fails to produce the evidence referred to in subhead (1) within 30 days after the date of the demand referred to in that subhead, or such longer period as the Director of Corporate Enforcement may allow, the person shall be guilty of an offence.

(3) In a prosecution for an offence under this Head, it shall be presumed, until the contrary is shown, that the defendant did not, within 30 days, or any longer period allowed, after the day on which the production was demanded, produce evidence in accordance with subhead (1).

### **Explanatory Note**

This Head gives the power to the Director of Corporate Enforcement to demand evidence of the approval of a person as a statutory auditor or audit firm of a company and where such evidence is not produced within 30 days of the request, sanctions may apply.

Subhead 58(1) provides that the Director of Corporate Enforcement may demand evidence of approval of a person during the period of acting as a statutory auditor/audit firm or purporting to have obtained approval.

Subhead 58(2) provides that the person is guilty of an offence for not producing the evidence referred to in subhead (1) within 30 days after the demand is made or other period allowed. It also provides for the liability incurred as a result of the offence. These fines will be decided in consultation with the Office of Parliamentary Counsel.

Subhead 58(3) provides that, in a prosecution of an offence, presumption of guilt is assumed until the contrary is shown.

This is an existing offence under S.I. 312 and the appropriate category for the offence in the Companies Act 2014 will be discussed with the Office of the Parliamentary Counsel during drafting.

## **Head 59: Evidence in prosecutions under Head 58**

To provide for –

59. (1) Subject to subhead (2), in proceedings for an offence under Head 58, the production to the court of a certificate purporting to be signed by a person on behalf of a recognised accountancy body and stating that the defendant is not approved under this Act or, if applicable, is not registered in accordance with Head 50, shall be sufficient evidence, until the contrary is shown by the defendant, that the defendant is not so approved or registered, as the case may be.

(2) Subhead (1) shall not apply unless a copy of the certificate concerned is served by the prosecution on the defendant, by registered post, not later than 28 days before the day the certificate is produced in court in the proceedings concerned.

(3) If the defendant in those proceedings intends to contest the statement contained in such a certificate, he or she shall give notice in writing of that intention to the prosecution within 21 days, or such longer period as the court may allow, after the date of receipt by him or her of a copy of the certificate from the prosecution.

### **Explanatory Note**

This Head provides that certain evidence may be produced in court to demonstrate that a person is not approved to act as a statutory auditor.

Subhead 59(1) allows for a certificate to be produced to a court stating that the defendant (who has committed an offence under Head 58) is not approved under this Act and is sufficient evidence of this fact, until the defendant shows otherwise. This will demonstrate that the individual does not meet the conditions for approval as a statutory auditor under Head 55(a).

Subhead 59(2) provides that the certificate is only valid where a copy of it is served by the prosecution on the defendant at least 28 days previously to a court hearing.

Subhead 59(3) allows for the statement in the certificate to be contested in writing within 21 days of receipt or longer if the court permits.

Chapter 2  
*Aptitude Test*

**Head 60: Aptitude test to be passed**

To provide for –

60. (1) Subject to subhead (2), a Member State auditor or third-country auditor applying for approval as a statutory auditor in the State is required to sit and pass an aptitude test to demonstrate his or her knowledge of the enactments and practice that are relevant to statutory audits in the State.

(2) Subhead (1) shall not apply to a Member State auditor or third-country auditor if he or she has otherwise demonstrated sufficient knowledge of the enactments and practice referred to in that subhead.

(3) The Supervisory Authority shall, at such time as it thinks it appropriate to do so, issue guidelines as to the specific matters that are relevant in reaching a decision that a person has demonstrated, in accordance with subhead (2), the knowledge referred to in subhead (1).

(4) A fee may be charged (of an amount specified from time to time by the Minister sufficient to cover the administrative expenses in respect of the following) on a Member State auditor or third-country auditor in respect of the administration of an aptitude test under this Head in relation to him or her.

(5) A fee imposed under subhead (4) may, in default of payment, be recovered from the Member State auditor or third-country auditor concerned as a simple contract debt in any court of competent jurisdiction.

**Explanatory Note**

Article 14 of the Directive provides that competent authorities must establish procedures for the approval of statutory auditors from another Member State. Such procedures must not go beyond the requirement to pass an aptitude test. Article 44 of the Directive applies the requirements of Article 14 to auditors from a third country seeking approval as statutory auditors. This group of third country auditors, who are approved as statutory auditors operate in the State and are separate from those third country auditors that operate in a third country, outside the EU.

Article 14 is transposed in Heads 60-62 with some changes made to reflect the new oversight structures.

Subhead 60(1) sets out the requirement for a Member State auditor or third-country auditor applying for approval as a statutory auditor to pass an aptitude test.

Subhead 60(2) provides that subhead (1) need not apply if the recognised accountancy body deems that the auditor satisfies the level of knowledge required in that subhead.

Subhead 60(3) provides that the Supervisory Authority shall issue guidance from time to time in relation to the aptitude test. The Supervisory Authority issued guidance in this matter

under the previous statutory instrument. The Supervisory Authority may issue guidelines generally under Head 6.

Subhead 60(4) permits a fee to be charged, specified by the Minister to cover the administrative costs of carrying out the aptitude test. The administration of the aptitude test will be carried out under delegation by a recognised accountancy body.

Subhead 60(5) provides that the fee at subhead (4) may be recovered from the auditor, in default of payment, through the relevant court.

The amended Directive gives Member States a new option in Article 14.2 to allow for either an adaptation period or an aptitude test in the context of a Member State auditor applying for approval as a statutory auditor in a host Member State. The option of relying on the aptitude test is retained as included in subhead 60(1).

The reference in Article 14.1 and 14.2 to the definition of the aptitude test is different in the amending Directive 2014/56/EU to Article 14 of Directive 2006/43/EU. However, the definition of the aptitude test in both places is practically the same.

Head 50 is concerned with the recognition of statutory audit firms in other EU Member States as distinct from the approval of statutory auditors which is being addressed under this Head.

The provisions in Article 14.3 of the Directive relating to achieving a convergence of the requirements of the aptitude test at EU level are set out in section 905(4) of the Act as part of IAASA's functions.

## **Head 61: Scope of aptitude test**

To provide for –

61. (1) The aptitude test shall—

- (a) be conducted in either Irish or English, and
- (b) cover only the applicant's adequate knowledge of the enactments and practice that are relevant to statutory audits in the State.

(2) The various matters that shall constitute the contents of the aptitude test shall subject to the approval of the Supervisory Authority to the contents of the test.

(3) The contents of an aptitude test approved under subhead (2) shall not be altered unless the alteration concerned has been approved by the Supervisory Authority.

### **Explanatory Note**

Head 61 reflects the scope of the aptitude test as set out in Article 14(2).

Subhead 61(1) sets out that the aptitude test is carried out in the official language of the State and includes the auditor's adequate knowledge regarding statutory audits.

Subhead 61(2) provides that the contents of the aptitude test will be approved by the Supervisory Authority.

Subhead 61(3) provides that any alteration to the contents of the aptitude test requires the approval of the Supervisory Authority.

The provisions in Article 14(3) of the Directive relating to achieving a convergence of the requirements of the aptitude test at EU level are set out in section 905(4) of the Act as part of IAASA's functions.

**Head 62: Adequate standards to be applied in administration of aptitude test**

To provide for –

62. (1) Subject to subhead (2), adequate standards shall be applied in the administration of the aptitude test.

(2) No standards shall be used for the purposes of subhead (1) unless those standards have (with respect to that use) first been approved by the Supervisory Authority.

**Explanatory Note**

Head 62 provides for the standards that must apply in administration of the aptitude test.

Subhead 62(1) provides that adequate standards will apply to the aptitude test as administered.

Subhead 62(2) provides that the standards applied will first be approved by the Supervisory Authority.

## Chapter 3

### *Withdrawal of approval*

#### **Head 63: Grounds for mandatory withdrawal of approval in case of statutory auditor and audit firm**

To provide for –

63. (1) The approval of a statutory auditor or an audit firm under this Act shall be withdrawn if the good repute of that person or firm has been seriously compromised.

(2) For the purposes of this Head, the cases that can constitute circumstances of an auditor's good repute being seriously compromised include cases of professional misconduct or want of professional skill on the part of the auditor.

(3) The statutory auditor or audit firm shall be provided with a specified period (which shall not be less than one month) to meet the requirements of good repute if it is has been compromised under subhead (1).

(4) Approval of an audit firm shall be withdrawn if any of the conditions imposed in Head 57(2)(b) and (c) are no longer fulfilled.

(5) The audit firm shall be provided with a specified period (which shall not be less than one month) to fulfil those conditions.

(6) The procedures for withdrawal of approval, including internal appeal procedures or a disciplinary committee, shall be set out in a delegation order of the Supervisory Authority under Head 46.

(7) These procedures shall provide for an appeal by the statutory auditor or audit firm to the High Court.

(8) Where the approval under this Act of a statutory auditor or of an audit firm is withdrawn for any reason, the Supervisory Authority where the approval is withdrawn shall communicate that fact and the reasons for the withdrawal to the relevant competent authorities of host Member States where the statutory auditor or the audit firm is also approved and entered in the public register of those States pursuant to Article 15 to 19 of the Audit Directive.

(9) The notifications under this Head shall be made as soon as possible, but not later than one month after the date of withdrawal of approval.

#### **Explanatory Note**

The Supervisory Authority may delegate the task of withdrawal of approvals as set out in section 905(2)(n)(i) under Head 46.

This Head transposes Article 5 of Directive 2006/43/EU which provides the grounds for the mandatory withdrawal of approval of a statutory auditor or an audit firm. This is where good repute has been seriously compromised and in the case of audit firms where conditions set out in Article 3(4)(points (b) and (c) of the Directive are no longer fulfilled. In both cases Member States must provide for a reasonable time period for fulfilling the conditions.



Subhead 63(1) provides that approval of statutory auditors/audit firms will be withdrawn where good repute has been compromised.

Subhead 63(2) provides that good repute can be seriously compromised in respect of professional misconduct or lack of professional skill.

Subhead 63(3) provides that where good repute is compromised, the statutory auditor/audit firm has a specified period in which to rectify his/her status. This subhead transposes the option at Article 5.1 of the Directive whereby a reasonable period of time may be provided for meeting the requirements of good repute.

Subhead 63(4) provides that approval will be withdrawn where specified conditions are not being fulfilled.

Subhead 63(5) provides for the option available in Article 5.2 of the Directive that a reasonable period of time be permitted to fulfill the conditions referred to at subhead 63(4).

Subhead 63(6) provides that the procedures for withdrawal of approval will be set out in a delegation order of the Supervisory Authority.

Subhead 63(7) provides that the procedures will include appeal to the High Court.

Subhead 63(8) provides that where approval of the statutory auditor/audit firm has been withdrawn, the Supervisory Authority will inform the relevant competent authorities in the host Member States of the fact and the reason for it.

Subhead 63(8) reflects the change in the approval of Member State audit firms in the Directive. Statutory auditors must be approved in each Member State in which they wish to operate. However, an audit firm that is already approved in one Member State can be recognised in the host Member State as long as the key audit partner is approved in the host Member State. Such an audit firm must register on the public register in accordance with Head 65.

Subhead 63(10) provides that notification of withdrawal of approval will be made no later than one month after the date of the withdrawal.

This Head is based on Regulation 52 and 53 of SI 312 of 2016. Regulations 54 and 56 of SI 312 of 2016 are not included as these matters will be addressed in delegation orders under Head 46.

## **Head 64: Certain persons to be notified of withdrawal of approval**

To provide for –

64. Without prejudice to Head 56, where the approval under this Act of a statutory auditor or audit firm is withdrawn for any reason by a recognised accountancy body, that fact and the reasons for the withdrawal shall be communicated by the recognised accountancy body to—

- (a) the Supervisory Authority, and
- (b) the Registrar of Companies,

as soon as possible, but not later than one month after the date of withdrawal of approval.

### **Explanatory Note**

Head 64 provides that where a recognised accountancy body withdraws approval, under delegation, from a statutory auditor or audit firm, IAASA and the Registrar of Companies, as the competent authority with responsibility for maintaining the public register, should be informed within one month. Head 64 contains changes at (a) and (b) to reflect new oversight structures and align terminology with the Companies Act 2014. This Head is based on Regulation 64 of SI 312 of 2016.

## Chapter 4

### *Public Register*

#### **Head 65: Public register**

To provide for –

65. (1) Subject to subhead (2), the Registrar of Companies shall maintain a register (in this Part referred to as the "public register") which shall contain the information set out in Schedule 2 in relation to—

- (a) statutory auditors and audit firms (other than audit firms which fall within subhead (b) of the definition of "statutory audit firm"),
- (b) third-country auditors and audit entities, and
- (c) audit firms approved in another Member State which have been registered in accordance with Head 50.

(2) The public register referred to in Regulation 84 of the 2016 Audits Regulations, as that register was in being immediately before the date of enactment of this Act, shall, on and from that date, be deemed to be the public register referred to in subhead (1), and the other provisions of this Act (including provisions relating to the removal or alteration of entries in the public register) shall apply to that register accordingly.

#### **Explanatory Note**

As required under Article 15 of Directive, a Public Register of auditors has been established since the transposition of the 2006 Directive in S.I. 220 of 2010. It is maintained by the Companies Registration Office (CRO) and contains specified information in relation to statutory auditors and audit firms, third-country auditors and audit entities. The Register continued to be in place under S.I. 312 of 2016.

Article 15.1 requires that statutory auditors and audit firms are entered in a public register.

Article 3a of the 2014 Directive requires that audit firms approved in another Member State who wish to carry out statutory audits in the State must be registered in accordance with Articles 15 and 17 (requirements re the public register and registration of audit firms respectively).

The Supervisory Authority may delegate the task of registration as set out in section 905(2)(n)(i) under Head 46.

Subhead 65(1) provides for the Companies Registration Office to maintain a register to contain information as specified in the Schedule at Head 150 and sets out the statutory auditors and audit firms who should be registered. Any reference to a recognised accountancy body in this Schedule is as a result of delegation of approvals by the Supervisory Authority.

Article 15.1 contains a Member State option to derogate from the requirements laid down in Articles 15 and 16 regarding disclosure of a person's identity on the register to mitigate an imminent and significant threat to the personal security of any person. This option was not taken previously and the current position is being maintained.

Subhead 65(2) provides for transitional arrangements.

Head 65 is based on Regulation 84 of SI No 312 of 2016.

## Head 66: Notification of information to Registrar of Companies

To provide for –

66. (1)(a) An auditor or audit firm (other than a statutory audit firm which falls within subhead (b) of the definition of "statutory audit firm") shall, as soon as may be after he, she or it is approved under this Act as a statutory auditor or audit firm, notify the relevant information to the Supervisory Authority.

(b) A Member State audit firm shall, as soon as may be after it is registered in accordance with Head 50, notify the relevant information to the Supervisory Authority.

(c) A third-country auditor shall, as soon as may be after he or she is approved under this Act as a statutory auditor, notify the relevant information to the Supervisory Authority.

(2) On receipt of a notification under subhead (1) and its having carried out any verification of the information as seems to it to be necessary, the Supervisory Authority shall notify to the Registrar of Companies—

(a) the relevant information contained in the notification, and

(b) (i) subject to clause (ii), the individual identification number assigned by it to the auditor, audit firm or third-country auditor under Head 49(7) or a Member State audit firm under Head 50, and

(ii) where—

(I) under Head 49(7) or 50 such a number exists, and

(II) by reason of the circumstances referred to in subhead (b) of the definition of "relevant information" in subhead (4), the relevant information notified to the Supervisory Authority does not include that number,

the number referred to in subhead 1(c)(ii) or 2(g) of Schedule 2.

(3) The notifications under subhead (1) and (2) shall each be made in such form and manner as the Registrar of Companies specifies.

(4) In this Regulation, "relevant information" means the information set out in subhead 1 or 2, as the case may be, of Schedule 2, other than that set out—

- (a) in subparagraph (b) of that subhead 1 or 2, or
- (b) if, due to the simultaneous registration of a statutory audit firm and the statutory auditors that comprise that firm, the number there referred to is not available at that time, in subparagraph (c)(ii) of that subhead 1 or subparagraph (g) of that subhead 2.

(5) For the avoidance of doubt, in the event that a recognised accountancy body is no longer recognised by the Supervisory Authority for the purposes of this Act or otherwise ceases to exist, the notifications under paragraphs (1) and (2) shall cease to have effect and the Registrar of Companies shall remove all information contained in such notifications from the public register.

### **Explanatory Note**

Article 15.2 and 15.3 of the Directive provides that each statutory auditor and audit firm is identified in the public register by an individual number and that it will contain the name and address of the bodies responsible for approval, quality assurance, investigations/penalties and public oversight of statutory auditors and audit firms.

Head 66 provides that each statutory auditor or audit firm is identified by an individual number on the register and that it should contain a series of information set out in Schedule 2 to these Heads including the name and address of the Supervisory Authority responsible for approval, quality assurance, investigations and penalties on statutory auditors and audit firms and for public oversight in relation to that auditor or firm.

Head 66 is based on Regulation 85 of SI No 312 of 2016. However it now confers the task on the Competent Authority who may delegate this under Head 46.

Subhead 66(1) requires that an auditor, audit firm or a third-country auditor, once approved as a statutory auditor or audit firm, notify the relevant information as required under Schedule 2 to the Supervisory Authority. It also provides, at subhead (1)(b), that the relevant information is supplied by audit firms approved in another EU Member State and recognised in Ireland to the Supervisory Authority.

Subhead 66(2) requires that the Supervisory Authority, having carried out any necessary verification, will notify the Companies Registration Office of the relevant information in subhead (1)(a) and (b) above and the individual identification number assigned to (i) the auditor, audit firm or a third-country auditor in accordance with Head 49 or (ii) the Member State audit firm under Head 50. It also provides for the situation where simultaneous registration has taken place in the context of the statutory audit firm and the statutory auditor of that firm, the number will be that as referred to in Schedule 2.

Subheads 66(3) provides for the Companies Registration Office to specify the format of the notification.

Subhead 66(4) defines “relevant information” as being that set out in paragraph 1 and 2 of Schedule 2 with some exceptions specified. Information in paragraph 1 include name and address of auditor, name and address of audit firm where auditor is employed, name and address of the Supervisory Authority, particulars of registration and, where appropriate, particulars of competent authorities in other Member States responsible for approval, quality assurance, investigations, discipline and penalties, and public oversight. Information in paragraph 2 include name, address, number in register and legal form of the audit firm, name of each statutory auditor employed by it, details of the Supervisory Authority, details of

owners/shareholders, directors of the audit firm, particulars of registration and, where appropriate, particulars of competent authorities in other Member States responsible for approval, quality assurance, investigations, discipline and penalties, and public oversight.

Subhead 66(5) provides that where the recognition of a body is revoked its members are no longer registered as statutory auditors.

## **Head 67: Prohibition on certain acts unless registered**

To provide for –

67. (1) A person shall not—

(a) act as, or

(b) represent himself, herself or itself, or hold himself, herself or itself out, as being,

a person falling within a category of person entered, or entitled to be entered, in the public register unless the person is entitled to be entered, and the name of the person is duly entered, in the public register.

(2) A person who contravenes subhead (1) shall be guilty of category 2 offence.

### **Explanatory Note**

This Head will make it an offence for a person to represent themselves as being approved or otherwise on the register when they are not entitled to do so. Head 67 is based on Regulation 86 of S.I. 312 of 2016.

Subhead 67(1) sets out that a person must only act or represent himself/herself as being entitled to be and in fact on the public register where such is actually the case.

Subhead 67(2) provides for an offence for contravening subhead (1) which will be updated to reflect the new categories of offences in the Companies Act 2014.



## **Head 68: Obligation of statutory auditor or audit firm to notify certain information**

To provide for –

68. (1) Each statutory auditor and audit firm and Member State audit firm shall, as soon as may be but not later than one month after the event, notify the Supervisory Authority of any change in the information contained in the public register relating to him, her or it.

(2) On receipt of a notification under subhead (1) and its having carried out any verification of the information stated to have changed as seems to it to be necessary, the Supervisory Authority shall notify the change in information to the Registrar of Companies without undue delay.

(3) The Registrar of Companies shall, as soon as may be but not later than one month after receipt of the notification referred to in subhead (2), amend the public register to reflect the change of information so notified.

(4) A person who fails, without reasonable excuse, to comply with subhead (1) shall be guilty of a category 4 offence.

### **Explanatory Note**

Article 18 of the Directive requires statutory auditors/audit firms to notify any changes to information pertaining to them to the public register without undue delay. As a result of Article 3a of the Directive, this provision is now extended to include approved Member State audit firms recognised in Ireland.

Head 68 obliges a statutory auditor/audit firm to notify a change in information to the Supervisory Authority.

Head 68 is based on Regulation 87 of SI No 312 of 2016.

Subhead 68(1) obliges each statutory auditor and audit firm and Member State audit firm to notify the recognised accountancy body of which it is a member of any update to the information relating to them on the public register within a month.

Subhead 68(2) requires the Supervisory Authority to notify the Companies Registration Office, having first verified it, of the relevant details without undue delay.

Subhead 68(3) requires the Companies Registration Office to amend the details notified to it, on the public register, within one month of receipt.

Subhead 68(4) provides for an offence to apply to a person who does not comply with the requirements of subhead (1). This will be updated to reflect the categories of offences in the Companies Act 2014.

## **Head 69: Information must be signed**

To provide for –

69. (1) Information notified under subhead 66(1) or 68(1) by a statutory auditor or audit firm (including a Member State audit firm) shall be signed by the statutory auditor or, as the case may be, a person on behalf of the statutory audit firm.

(2) The signature referred to in subhead (1) may be an electronic signature (as defined in point 1 of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures) if the provision of a signature in that form complies with any requirements in that behalf of the Registrar of Companies of the kind referred to in section 13(2)(a) of the Electronic Commerce Act 2000 (No. 27 of 2000).

(3) If information is notified under subhead 66(1) or 68(1) without being signed as required by subhead (1), the statutory auditor or audit firm concerned shall be guilty of a category 4 offence.

### **Explanatory Note**

Article 19 of the Directive requires that the information provided to the relevant bodies is signed by the statutory auditor or audit firm.

Head 69 provides that information submitted for the purposes of the placing it on the register must be signed and that the information provided to a recognised accountancy body must be signed and that an electronic signature may suffice.

Head 69 is based on Regulation 88 of SI No 312 of 2016.

Subhead 69(1) sets out that the information provided to the approving body under Heads 99 and 66 must be signed.

Subhead 69(2) permits the signature to be an electronic signature provided it complies with the requirements of the Companies Registration Office.

Subhead 69(3) provides that it will be an offence if the notified information is not signed. This will be updated to reflect the categories of offences in the Companies Act 2014.

## **Head 70: Removal of third-country auditor or audit entity registered in accordance with Regulation 135 from public register**

To provide for –

70. (1) Subject to subheads (2) and (3), the Supervisory Authority may instruct the Registrar of Companies, in the case of a third-country auditor or audit entity registered pursuant to Head 138, to remove the third-country auditor or audit entity from the public register if—

- (a) the auditor or audit entity does not provide all the information or clarifications necessary for the renewal of his, her or its registration or does not pay the appropriate fee under Head 143, or
- (b) the outcome of a quality assurance inspection or investigation and disciplinary process requires it.

(2) A third-country auditor or audit entity the subject of a quality assurance inspection or investigation shall not be removed from the public register until the completion of that inspection or investigation.

(3) The Supervisory Authority shall not give an instruction under subhead (1) unless it has first given the third-country auditor or audit entity concerned a reasonable opportunity of being heard on the grounds (which the Supervisory Authority shall make known to such auditor or entity) that the Supervisory Authority is minded to give such instruction.

(4) The Supervisory Authority shall, at such times as it thinks it appropriate to do so, issue guidelines with regard to what constitutes a reasonable opportunity referred to in subhead (3).

(5) The Supervisory Authority may publish on its website the name of the third-country auditor or audit entity that has been removed from the public register in accordance with this Head along with the reasons for removal.

### **Explanatory Note**

This Head allows the Supervisory Authority to have the power to remove a third country auditor or audit entity from the Public Register where they do not provide all the information and/or clarifications necessary for the renewal of their registrations and/or do not pay the appropriate assessment/registration fee. A right of appeal is included.

This Head is not a strict requirement of the Directive, however, it is considered prudent to include it in order to ensure that only bona-fide third country auditors or audit entities, which are registered in accordance with Head 138, are maintained on the register.

The policy of deregistering of third country auditors/audit entities is akin to what is already in place for statutory auditors. Deregistering effectively means that a third country auditor or audit entity may not continue to act as an auditor in relation to audits of companies incorporated outside the EU and whose transferable securities are admitted to trading on a regulated market in Ireland.

Head 70 is the same as Regulation 89 of SI No 32 of 2016.

Subhead 70(1) provides for the Supervisory Authority to instruct the Companies Registration Office to remove a third country auditor/audit entity where (i) they do not provide relevant information or pay the fee associated with registration, or (ii) it is necessitated following a quality assurance inspection and/or investigation and disciplinary process.

Subhead 70(2) provides that the third country auditor or audit firm shall not be deregistered until all processes are complete and fees paid.

Subhead 70(3) provides that the Supervisory Authority must give the third country auditor/audit entity the opportunity to be heard where it intends to instruct removal from the Register.

Subhead 70(4) provides that the Supervisory Authority may issue guidelines regarding what constitutes a reasonable opportunity.

Subhead 70(5) provides for the Supervisory Authority to publish the third country auditor/audit firm's name under (ii) above and the reasons for removal.

## **Head 71: Language of information to be entered in public register**

To provide for –

71. The information entered in the public register shall be drawn up in either Irish or English.

### **Explanatory Note**

Article 20 of the Directive requires that the information entered in the public register shall be in one of the language permitted by the language rules applicable in the Member State concerned.

Article 20 also contains a Member State option to allow other official languages of the community beyond Irish and English. This was not taken in transposing the 2006/43/EU Directive and it is not proposed to take this option now.

Head 71 provides that the information on the public register may be in English or Irish.

Head 71 is the same as Regulation 90 of SI No 312 of 2016.

## Chapter 5

### *Standards for Statutory Auditors*

#### **Head 72: Continuing education**

To provide for –

72. A statutory auditor shall be required to take part in appropriate programmes of continuing education in order to maintain his or her theoretical knowledge, professional skills and values, including, in particular, in relation to auditing, at a sufficiently high level.

#### **Explanatory Note**

Article 13 of the Directive requires that Member States ensure that statutory auditors are required to take part in appropriate programmes of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level.

This Head transposes Article 13 and provides a statutory auditor must undertake continuing education. As continuing education is one of the tasks that the Supervisory Authority may delegate to the recognised accountancy body under Head 46, the Supervisory Authority will set out the conditions under which this should be given effect in the delegations under Head 46. Currently the rule is given effect as an attachment to the continued approval of the statutory auditor.

Head 72 is based on Regulation 62 of S.I. 312 of 2016.

## **Head 73: Professional ethics**

To provide for –

73. Statutory auditors and audit firms shall be subject to principles of professional ethics, covering at least their public interest function, their integrity and objectivity and their professional competence and due care.

### **Explanatory Note**

This Head transposes Article 21.1 of the Directive which requires that Member States must ensure that all statutory auditors and audit firms are subject to principles of professional ethics.

Head 73 is based on Regulation 63 of S.I. 312 of 2016.

## **Head 74: Independence, objectivity and professional skepticism**

To provide for –

74. Statutory auditors and audit firms are subject to the independence, objectivity and professional scepticism requirements of Articles 21(2), 22, 22a, 22b, 24, 24a, 24b, 25 and 25a of the Audit Directive as implemented in the State by Heads 100 to 111 and 114.

### **Explanatory Note**

This Head provides that statutory auditors and audit firms are subject to the independence and objectivity requirements set out in Articles 21.2, 22, 22a, 22b, 24, 24a, 24b, 25 and 25a of the Directive and as transposed in 100 to 111 and 114.

Head 74 is based on Regulation 64 of S.I. 312 of 2016.

Regulation 65 and 66 of S.I. 312 of 2016 set out the rules under which the recognised accountancy bodies should institute and enforce the standards. These arrangements did not directly transpose any element of the Directive but were part of the oversight framework which will now be covered in the delegation orders under Head 46. Therefore these Regulations have not been included in these Heads.



## Chapter 6

### *Quality Assurance of Statutory Auditors and Audit Firms*

#### **Head 75: Quality assurance by Supervisory Authority of statutory audit of public-interest entities and third-country auditors, etc.**

To provide for –

75. (1) The Supervisory Authority shall put in place a quality assurance system as set out in Article 26 of Regulation (EU) No 537/2014.

(2) The Supervisory Authority shall ensure that it has in place a quality assurance system of registered third-country auditors and audit entities to whom these Heads or Regulation (EU) No 537/2014 applies.

(3) Heads 76 and 77 shall not apply to the statutory audit of annual and consolidated financial statements of public-interest entities unless specified in Regulation (EU) No 537/2014.

(4) The Supervisory Authority may publish on its website the findings and conclusions of individual inspections undertaken as part of the quality assurance system referred to in subhead (1).

#### **Explanatory Note**

The quality assurance system is essentially an inspection regime whereby the statutory audits carried out by statutory auditors and audit firms are reviewed externally. Article 26 of the Regulation now sets out the quality assurance system for statutory audits of public interest entities. Article 24.1.a of the Regulation states that the quality assurance regime for the statutory audits of public interest entities may not be delegated but must be carried out by the competent authority with ultimate responsibility for public oversight, which is the Supervisory Authority.

This Head gives effect to the requirements of the Regulation in respect of the quality assurance system of public interest entities. It clarifies that the system of quality assurance in Article 29 of the Directive does not apply to public interest entities unless so specified. It also requires that the Supervisory Authority puts a system of quality assurance in place in relation to registered third-country auditors and audit entities as required under Article 45.3 of the Directive.

Article 29 of the Directive requires a quality assurance system for statutory audit of all other entities. Article 29 is transposed by Heads 76 and 77.

Head 75 is based on Regulation 107 of SI No 312 of 2016.

Subhead 75(1) provides that the system the Supervisory Authority should fulfill are the requirements as set out in Article 26 of the Regulation.

Subhead 75(2) provides that the Supervisory Authority shall also set up a quality assurance system for third-country auditors/audit entities as required by Article 45.3 of the Directive.

Subhead 75(3) provides that the quality assurance system set out in Heads 76 and 77 shall not apply to the statutory audit of public interest entities unless specified in the EU Regulation.

Subhead 75(4) provides for the Member State option at Article 28(d) to require publication of information on individual inspections undertaken as part of the quality assurance system. It is intended to take this option and to allow the Supervisory Authority some discretion in its implementation.

## **Head 76: Organisation of quality assurance system**

To provide for –

76. (1) The system of quality assurance for audits shall be organized in such a manner that—

- (a) the system is independent of the reviewed statutory auditors and audit firms,
- (b) the funding for the system is secure and free from any possible undue influence by statutory auditors or audit firms,
- (c) the system has adequate resources,
- (d) the persons who carry out quality assurance reviews have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance reviews,
- (e) the selection of reviewers for specific quality assurance review assignments is effected in accordance with an objective procedure designed to ensure that there are no conflicts of interest between reviewers and the statutory auditor or audit firm under review,
- (f) the scope of quality assurance reviews of audits, supported by adequate testing of selected audit files, includes, except where otherwise agreed with the Supervisory Authority, an assessment of-
  - (i) compliance with applicable auditing standards and independence requirements,
  - (ii) the quantity and quality of resources spent,
  - (iii) the audit fees charged, and
  - (iv) the internal quality control system of the audit firm,
- (g) each quality assurance review is the subject of a report in writing which includes the main conclusions of the review,
- (h) a quality assurance review of each statutory auditor or audit firm takes place on the basis of an analysis of risk, at least, subject to subhead (5) and Head 77, every 6 years,
- (i) statutory auditors and audit firms take all reasonable steps to ensure that recommendations arising from quality assurance reviews of them are implemented within a reasonable period,
- (j) there is published annually by it the overall results of quality assurance reviews carried out by it in the year concerned, and
- (k) quality assurance reviews are appropriate and proportionate in view of the scale and complexity of the activity of the reviewed statutory auditor or audit firm.

(2) For the purpose of subhead (1)(e), at least the following criteria shall apply to the selection of reviewers:

- (a) reviewers have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance reviews;
- (b) a person does not act as a reviewer in a quality assurance review of a statutory auditor or audit firm until at least 3 years have elapsed since that person ceased to be a partner or an employee of, or otherwise associated with, that statutory auditor or audit firm;
- (c) reviewers must declare (if such be the case) that there are no conflicts of interest between them and the statutory auditor and the audit firm to be reviewed.

(3) For the purpose of subhead (1)(k), quality assurance reviews of the statutory audits of annual or consolidated financial statements of medium-sized or small undertakings, shall take account of the fact that auditing standards adopted in accordance with Article 26 of the Audit Directive are designed to be applied in a manner that is proportionate to the scale and complexity of the business of the audited entity.

(4) If a statutory auditor or audit firm fails to take all reasonable steps to ensure that recommendations arising from a quality assurance review of him, her or it are implemented within a reasonable period, appropriate action shall be taken, including, where applicable, subjecting the statutory auditor or audit firm, as the case may be, to the system of investigations and sanctions referred to in these Heads.

(5) The period of at least 6 years referred to in subhead (1)(h) shall be a continuation of the system that was in place under the 2016 Audit Regulations when the first quality assurance reviews were required.

### **Explanatory Note**

The quality assurance system is essentially an inspection regime whereby the statutory audits carried out by statutory auditors and audit firms are reviewed externally.

Article 26 of the Regulation now sets out the quality assurance system for statutory audits of public interest entities. Under the Regulation this aspect of the quality assurance regime in each Member State must now be carried out by the Supervisory Authority and this is set out in Head 75.

In relation to the quality assurance of statutory audits of all other entities, the quality assurance task will be delegated by the Supervisory Authority to the recognised accountancy bodies as permitted under Article 32.4b of the Directive and provided for in Head 46.

The details of the system of quality assurance for statutory audit, excluding public interest entities which are under the scope of the Regulation, is set out in Article 29 of the 2006 Directive and transposed in this Head.

Head 76 provides for the criteria which should be met in relation to the quality assurance systems for statutory audit.

Head 76 is based on Regulation 109 of SI No 312 of 2016.

Subhead 76(1) is amended to reflect the new oversight structure and that the quality assurance system shall be in compliance with the delegations from the Supervisory Authority.

Subhead 76(1)(a) states that the system should be independent of the reviewed statutory auditors and audit firms.

Subhead 76(1)(b) states that the funding for the system should be secure and free from any possible undue influence by statutory auditors or audit firms.

Subhead 76(1)(c) states that the system should be adequately resourced.

Subhead 76(1)(d) provides that the persons who carry out quality assurance reviews should be appropriately qualified, experienced and trained.

Subhead 76(1)(e) provides that the selection of reviewers for specific quality assurance review assignments should ensure that there are no conflicts of interest between reviewers and the statutory auditor or audit firm under review.

Subhead 76(1)(f) provides that quality assurance reviews of audits include assessments of

- (i) compliance with applicable auditing standards and independence requirements;
- (ii) the quantity and quality of resources spent;
- (iii) the audit fees charged; and
- (iv) the internal quality control system of the audit firm;

Subhead 76(1)(g) provides that there should be a written report of each quality assurance review including the main conclusions of the review.

Subhead 76(1)(h) has a new requirement compared to the 2006 Directive that quality assurance reviews of each statutory auditor or audit firm takes place on the basis of an analysis of risk. As in the 2006 Directive it provides that in the case of a statutory auditor or audit firm that carries out audits, reviews should be at least every 6 years;

Subhead 76(1)(i) provides that statutory auditors and audit firms must take all reasonable steps to ensure that recommendations arising from quality assurance reviews of them are implemented within a reasonable period;

Subhead 76(1)(j) provides that the overall results of quality assurance reviews carried out by a recognised accountancy body should be published annually.

Subhead 76(1)(k) is new and provides that the quality assurance reviews must be appropriate and proportionate in view of the scale and complexity of the activity of the reviewed statutory auditor or audit firm.

Subhead 76(2) is a new requirement setting out the criteria for the selection of quality assurance reviewers in regard to their education, experience, training independence and absence of conflicts of interest. It transposes Article 29.2 of the Directive.

Subhead 76(3) provides that for the proportionate application of standards to smaller undertakings. This is not an option in this instance but a reference to the fact that international standards of auditing (ISAs) are designed to be applied proportionally. It transposes Article 29.2 of the Directive

Subhead 76(4) provides for the potential for action, including disciplinary action, where a statutory auditor or audit firm does not implement recommendations on foot of a quality assurance inspection report.

Subhead 76(5) provides for transitional arrangements so that the period of 6 years in subhead 76(1)(h) shall be a continuation of the current cycle of quality assurance reviews. This still allows for the risk based assessment selection process also set out in subhead 76(1)(h). It transposes Article 29.1(h) of the Directive.

**Head 77: Quality assurance review deemed to include individual auditors in certain cases**

To provide for –

77. For the purpose of Head 109(1)(h), a quality assurance review conducted in relation to a statutory audit firm shall be regarded as a quality assurance review of all statutory auditors carrying out audits on behalf of the firm provided that the firm has a common quality assurance policy with which each such statutory auditor is required to comply.

**Explanatory Note**

Head 77 provides that a quality assurance review conducted in relation to a statutory audit firm shall be regarded as a quality assurance review of all statutory auditors carrying out audits on behalf of the firm provided that the firm has a common quality assurance policy with which each such statutory auditor is required to comply. This principal is set out in recital 17 of the Directive.

Head 77 is the same as Regulation 110 of SI No 312 of 2016.

## Chapter 7

### *Investigations and Sanctions*

#### **Head 78: System of investigation and penalties**

To provide for –

78. (1) Where the Supervisory Authority has delegated a task in section 905(2)(n)(iv) under Head 46, each recognised accountancy body shall, in respect of those auditors and audit firms in relation to whom, by virtue of that Head, it may perform functions, institute arrangements to ensure that there are effective systems of investigations and penalties to detect, correct and prevent inadequate execution of a statutory audit by them.

(2) Subhead (1) applies with the exception of sanctions on the auditors or audit firms of public interest entities which may only be applied by the Supervisory Authority.

#### **Explanatory Note**

Article 30 of the Directive requires that effective systems of investigations and sanctions are put in place to prevent inadequate execution of statutory audit.

Subhead 78(1) provides that where the Supervisory Authority has delegated the task of investigative and administrative disciplinary systems under section 905(2)(iv) under its powers in Head 46, the recognised accountancy body shall put in place procedures and systems of investigations and penalties. The rules and guidelines for these systems of investigations and penalties will be part of the delegations under the Supervisory Authorities powers in Head 46. Under its existing functions in section 905, the Supervisory Authority can require changes to and approve the investigation and disciplinary procedures of a prescribed accountancy body.

Subhead 78(2) sets out a single exception which is derived from Article 24(1)(c) which provides that the Supervisory Authority, as the competent authority, may not delegate sanctions and measures related to the quality assurance or investigation of public-interest entities. Therefore, while a recognised accountancy body may investigate the audit of a public interest entity, in so far as this falls outside the definition at Article 24(1)(b) of an investigation arising from a quality assurance review of the audit of a public-interest entity, the Supervisory Authority only may impose the sanction.

The objective is to ensure that IAASA has the power to apply a sanction to a statutory auditor or statutory audit firm where the investigation and decision in relation to the relevant contravention was carried out by a RAB. IAASA should not have to carry out all investigations into PIE audit issues, especially if the RAB has already carried out an investigation.

Head 78 is based on Regulation 112 of SI No 312 of 2016.

Regulations 111 and 113 – 114 of S.I. 312 of 2016 set out in detail the rules in relation to the recognised accountancy bodies undertaking disciplinary action and systems of investigations and sanctions. Investigations and sanctions is one of the tasks that may be delegated under Head 46 by the Supervisory Authority and the contents of those



Regulations will be addressed in the delegation orders provided for in that Head. Therefore these Regulations have not been included in the draft Heads.

Part 5

Standards and Provisions applicable to Statutory Auditors and Audit Firms

Chapter 1

*Appointment of Statutory Auditors or Audit Firms*

**Head 79: Prohibition of contractual clauses restricting choice of auditors**

To provide for –

79. (1) Subject to subhead (2), a contractual clause which has the effect of restricting the choice by the general meeting of shareholders or members of the audited entity pursuant to Part 6 of the Companies Act 2014, or any audited entity to whom this Act apply, to certain categories or lists of statutory auditors or audit firms as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit of that entity shall be prohibited and shall be void.

(2) (a) A contractual clause referred to in subhead (1) which-

- (i) does not fall within Article 16(6) of Regulation (EU) No 537/2014, and
- (ii) exists on 17 June 2016,

is void on and from that date.

(b) Subhead (1) shall not apply to a contractual clause which falls within Article 16(6) of Regulation (EU) No 537/2014 until 17 June 2017.

(c) A contractual clause referred to in subhead (1) which-

- (i) falls within Article 16(6) of Regulation (EU) No 537/2014, and
- (ii) exists on 17 June 2017, is void on and

from that date.

(3) An audited entity that is a public-interest entity shall directly and without delay report to the Supervisory Authority any contractual clause referred to in subhead (1) that purports to affect it and the circumstances which gave rise to that clause.

(4) The Supervisory Authority, on receipt of a report under subhead (3), may, by virtue of its powers under Part 15 of the Companies Act 2014, share the report with authorities in the State.

**Explanatory Note**

This Head sets out new provisions contained in Article 37.3 of the Directive and Article 16.6 of the Regulation.

Article 37.3 of the Directive provides that contractual clauses restricting the choice of auditor shall be prohibited. This is a new subparagraph inserted by the 2014 Directive. Article 16.6 of the Regulation contains the same provision and in addition, public interest entities are required to submit reports of attempts to impose such prohibited clauses or other improper influence to the competent authority referred to in Article 20 of the Regulation which is the Supervisory Authority as designated under Head 46.

Head 79 provides for the new requirements of the Directive and Regulation in relation to the prohibition of contractual clauses restricting the choice of auditors. Head 79 is the same as Regulation 57 of SI 312 of 2016.

Subhead 79(1) provides that any contractual clauses that restrict the choice statutory auditors or audit firms by the general meeting of shareholders shall have no effect.

Subhead 79(2) provides that any contractual clauses at (1) above which exist prior to the enactment of these provisions shall become null and void on their enactment.

Subhead 79(3) provides that public interest entities should make a report on the circumstances of any such contractual clause arising to the Supervisory Authority. Such reports are only required to be made by public interest entities.

Subhead 79(4) provides that on receipt of a report at (3) in relation to public interest entities, the Supervisory Authority shall have the power to share this report with authorities who it considers might have an interest. This is not an express direction in the Regulation but seems appropriate. Currently, a significant proportion of public interest entities are regulated or authorised by the Central Bank. The ODCE may also be a relevant authority. Section 940 of the Companies Act 2014 provides for the confidentiality requirements of the disclosure of information by the Supervisory Authority.

**Head 80: Selection procedures for statutory auditors or audit firms by public-interest entities**

To provide for –

80. (1) Subject to subhead (2), the following selection procedures apply, for financial years commencing on or after 17 June 2016, to the appointment of a statutory auditor or audit firm to a public-interest entity:

- (a) the audit committee shall prepare a recommendation for the directors of the entity by carrying out the selection procedure specified in Article 16(3) of Regulation (EU) No 537/2014;
- (b) the audit committee shall submit a recommendation to the directors of the entity for the appointment of statutory auditors or audit firms;
- (c) the recommendation-
  - (i) shall be justified and contain at least 2 choices for the audit engagement and shall express a duly justified preference for one of them, and
  - (ii) shall state (if such be the case) that the recommendation is free from influence by a third party and that, on and from 17 June 2017, no clause of the kind referred to in Head 79(1) has been imposed upon it;
- (d) the proposal by the directors to the general meeting of shareholders or members of the entity for the appointment of statutory auditors or audit firms-
  - (i) shall include the recommendation referred to in subhead (b) and the preference referred to in subhead (c)(i),
  - (ii) if it departs from the preference of the audit committee, shall justify the reasons for not following the recommendation of the audit committee, and
  - (iii) shall state if the statutory auditor or audit firm recommended by the directors participated in the selection procedure referred to in subhead (2)(a).

(2) Subhead (1) shall not apply if—

- (a) a selection procedure in accordance with Article 16(3) of Regulation (EU) No 537/2014 has been carried out in respect of the appointment of the statutory auditor or audit firm in relation to one or more of the preceding 9 financial years, and
- (b) the statutory auditor or audit firm appointed by the public-interest entity was appointed for the previous financial year.

(3) Where the public-interest entity is exempt from the requirement for an audit committee under Head 118, this Head applies to the directors of the public-interest entity.

(4) Where a public-interest entity relies on the provisions of section 382, 384 or 385 of the Companies Act 2014, the public-interest entity shall, as soon as is practicable, inform the Supervisory Authority of that fact.

(5) The appointment of an auditor is invalid if the appointment contravenes a provision of this Head.

(6) (a) Subject to subparagraph (b), a public-interest entity shall keep records demonstrating that the selection procedures referred to in subhead (1) have been carried out.

(b) The public-interest entity shall keep those records for at least 6 years from the date on which the selection procedures were completed.

(7) A public-interest entity which contravenes subhead (6)(a) or (b) shall be guilty of a category 4 offence.

### **Explanatory Note**

This Head sets out new requirements in the Directive and Regulation in relation to the appointment of auditors by Public Interest Entities. It gives effect to Article 16 of the Regulation that sets out procedures which must be followed by public interest entities. Head 80 is the same as Regulation 58 of SI 312 of 2016.

Subhead 80(1) provides that where the public-interest entity appoints an auditor this must be done in accordance with Article 16(2) to (5) of the Regulation. These paragraphs set out the process that should be followed by a public interest entity in relation to the selection and appointment of statutory auditors or audit firms.

Subhead 80(2) provides that this process shall not apply where a selection process has been carried out in one of the previous nine years and the same auditor was appointed. This means that a public tender is not required until 10 years has elapsed or the public interest entity decides to change auditor whichever is the sooner. This is to ensure that public interest entities must hold a public tender for audit services every ten years.

Subhead 80(3) provides that where the public interest entity is exempt from the requirement for an Audit Committee under Head 115, this Head applies to the Directors of the public interest entity.

Subhead 80(4) provides that where a public interest entity relies on the provisions of Section 382, 384 or 385 of the Companies Act 2014, the public-interest entity must inform the Supervisory Authority. This transposes an option in Article 37.2 of the Directive such that alternative modalities may be used for the appointment of auditors. This is subject to a further provision in Article 16.1 subparagraph 2 of the Regulation that where such alternative modalities are used by public-interest entities the Supervisory Authority should be informed.

Section 382 which deals with first appointments of auditors by Directors, section 384 which deals with filling casual vacancies and section 385 in which the audit entity must request that Director of Corporate Enforcement appoint the auditor of the Companies Act 2014 are alternative modalities which may only be used in circumstances outside the normal run of events.

In the interests of certainty and clarity for public interest entities this new Head provides that where a public interest entity relies on these sections of the Companies Act 2014, the public interest entity must inform the Supervisory Authority.

Subhead 80(5) provides that where an auditor has been appointed contrary to the terms of these Heads or the Regulation, that appointment will not be valid. This is a new provision to ensure compliance with the new rules.

Subhead 80(6) provides that the public-interest entity should keep records demonstrating that the selection procedures has been carried out for at least 6 years from the date on which the selection procedures were completed. Failure to do so is subject to a category 4 offence.

## **Head 81: Appointment of statutory auditors or audit firms by public-interest entities — informing the Supervisory Authority**

To provide for –

81. (1) Subject to subhead (2)—

(a) where a statutory auditor or audit firm is first appointed by a public-interest entity on or after 17 June 2016, he, she or it shall inform the Supervisory Authority within one month after the date of such appointment that the statutory auditor or audit firm has been appointed to hold office, and

(b) where a statutory auditor or audit firm which has complied with subhead (a) is subsequently appointed by the same or a different public-interest entity, he, she or it shall inform the Supervisory Authority within one month after the date of such appointment that the statutory auditor or audit firm has been appointed to hold office only if, immediately before the time of such appointment, the statutory auditor or audit firm held no such office with any public-interest entity.

(2) The information shall be submitted in such form and manner as the Supervisory Authority specifies and may be used by the Supervisory Authority in the performance of its functions.

(3) A statutory auditor or audit firm who or which contravenes subhead (1) shall be guilty of an offence.

### **Explanatory Note**

Under the new oversight structure, the Supervisory Authority will be directly responsible for the quality assurance of statutory audit of public interest entities as well as investigation and disciplinary issues relating to the statutory audit of public-interest entities. While not explicitly set out in the Directive or the Regulation, it is considered central to the performance of these functions by the Supervisory Authority that it has up to date information on the auditors of public interest entities.

Head 81 provides that a statutory auditor or audit firm should inform the Supervisory Authority of his, her or its appointment to a public interest entity. Head 81 is the same as Regulation 59 of SI 312 of 2016.

Subhead 81(1)(a) provides that IAASA should be informed by a statutory auditor or audit firm within 1 month after the date of such appointment.

Subhead 81(1)(b) provides that a statutory auditor or audit firm, subsequent to complying with (a) above, should inform IAASA within 1 month after the date of appointment to a public interest entity, where no such office was held with any public interest entity immediately prior to appointment.

Subhead 81(2) provides that the information should be submitted in a format specified by the Supervisory Authority and that it may be used by the Supervisory Authority in the performance of its functions.

Subhead 81(3) provides that any statutory auditor or audit firm who fails to comply with this paragraph shall be guilty of an offence. This is an existing offence under S.I. 312 and the

appropriate category for the offence in the Companies Act 2014 will be discussed with the Office of the Parliamentary Counsel during drafting.



**Head 82: Removal of statutory auditors or audit firms by public-interest entities  
— supplementary provisions**

To provide for –

82. (1) In the case of a statutory audit of a public-interest entity—

- (a) shareholders representing 5% or more of the voting rights or of the share capital, or
- (b) the Supervisory Authority,

may bring a claim before the court for the removal of the statutory auditor or audit firm subject to there being good and substantial grounds for bringing such a claim before the court.

(2) The grounds for bringing the claim before the court must relate to—

- (a) the conduct of the auditor or audit firm with regard to the performance of his, her or its duties as auditor of the public-interest entity or otherwise, or
- (b) the petitioner's opinion that it is in the best interests of the public-interest entity to do so.

(3) For the purposes of subhead (2)—

- (a) diverging opinions on accounting treatments or audit procedures cannot constitute the basis for the passing of any resolution for the purposes of that subhead, and
- (b) "best interests of the public-interest entity" does not include any illegal or improper motive with regard to avoiding disclosures or detection of any contravention by the entity of this Act.

**Explanatory Note**

This Head provides additional requirements for public interest entities in relation to the removal of statutory auditors. Head 82 is the same as Regulation 59 of SI 312 of 2016.

Article 38.3 of the Directive and Article 19 of the Regulation contain additional provisions for public interest entities in relation to appointment of auditors. Article 38.3 sets out three categories of persons or authorities that shall be able to apply to a Court for the removal or dismissal of a statutory auditor or audit firm.

1. Shareholders representing 5 % or more of the voting rights or of the share capital; or
2. Other bodies of the audited entities when defined by national legislation; or
3. Competent authorities referred to in Article 32 of this Directive or designated in accordance with Article 20.1 of Regulation (EU) No 537/2014 or, when provided for by national law, with Article 20.2 of that Regulation.

Subhead 82(1)(a) provides for the first category. The second category is not considered relevant in an Irish context and has not been included.

Subhead 82(1)(b) provides for the Supervisory Authority as the competent authority referred to in Article 32 and designated in accordance with Article 20.1 of the Regulation under Head 32.

It is considered that as these applications are related to public interest entities only, the High Court is the appropriate court.

Subhead 82(2) provides the detail of the grounds for such an application to the court must be related to the performance of the auditors and in the best interests of the entity.

Subhead 82(3) clarifies in relation to subhead 82(2) that such a claim should not include different opinions on accounting audit or any illegal or improper motive.

The remaining provisions of Article 38 of the Directive and Article 19 set out certain other provisions in relation to the removal or resignation of auditors. Chapter 20 of the Companies Act 2014 is concerned with the removal and resignation of auditors. Section 394 states that a company may, by ordinary resolution at a general meeting, remove a statutory auditor and appoint in his or her place other qualified persons provided notice is given to the members of the company.

Section 395 deal with resolutions removing the statutory auditor from office, resolutions at an annual general meeting appointing somebody other than the retiring statutory auditor as statutory auditor and resolutions providing expressly that the retiring statutory auditor shall not be re-appointed.

Section 396 explains the meaning of extended notice and states that extended notice is required for:

(a) a resolution at an annual general meeting of a company appointing, as statutory auditors, any persons other than the incumbent statutory auditors or providing expressly that the incumbent statutory auditors shall not be re-appointed;

(b) a resolution at a general meeting of a company removing the statutory auditors from office; and

(c) a resolution at a general meeting of a company filling a casual vacancy in the office of statutory auditor.

Section 397 deals with the right of statutory auditors to make representations where their removal or non-reappointment is proposed at a general meeting of the company.

Section 398 deals with the situation where auditors have been removed from office and clarifies their rights to get notice of, attend and be heard at a general meeting of the company considering any such intended resolution.

Section 399 deals with the statement that must be received from statutory auditors who have been removed because the company is availing itself of the audit exemption.

Section 400 sets out the general conditions that apply when a statutory auditor resigns from the office of statutory auditors to a company. It specifies the content of a statement which must be served on the company and also sets out the conditions which must be complied with when an auditor indicates their unwillingness to be re-appointed as statutory auditors of the company.

Section 401 deals with the right of a statutory auditor that has served a notice of resignation under section 400 which contains a statement in accordance with subsection (3)(b) of that section to require the directors of the company to convene a general meeting of the company to receive and consider such information or explanation of the circumstances connected with the statutory auditors resignation from office as they may wish to give the meeting. It also makes provision that where the auditors request the company to circulate a further statement in writing, they shall send it to the Registrar and to every person who is entitled under section 338 to be sent copies of the documents referred to in that section.

Section 402 states that the statutory auditors who have resigned from the office of statutory auditors have a right to get notice of, attend, and be heard at the next annual general meeting of the company after their resignation and any general meeting of the company at which it is proposed to fill the vacancy caused by their resignation.

Chapter 21 of the Companies Act 2014 provides for certain notifications to the Supervisory Authority. Section 403 and Section 404 provide for the duty of auditors and companies to notify the Supervisory Authority regarding cessation of office either through removal or resignation.

Therefore there are no amendments proposed to these sections of the Companies Act 2014 arising from the amendment of Directive or Regulation as they implement the provisions as required.

### **Head 83: Directors' report to include date of last appointment of statutory auditor or audit firm**

To provide for –

83. (1) The directors' report shall contain details of the date of appointment of the public-interest entity's statutory auditor or audit firm.

(2) Where a public-interest entity has sought an extension from the Supervisory Authority under Head 116, pursuant to Article 17(6) of Regulation (EU) No 537/2014, the directors' report shall also contain details of the extension granted.

(3) In this Regulation, "directors' report" means the directors' report required by section 325 of the Companies Act 2014.

#### **Explanatory Note**

This Head provides that the Directors Report shall include the date of appointment of the entity's statutory auditor or audit firm.

Under Article 17 of the Regulation, public interest entities must appoint a new statutory auditor or audit firm at least every ten years.

Subhead 83(1) provides that for the purposes of transparency in relation to this rule, the Directors Report should contain details of the date of appointment of the company's statutory auditor or audit firm. In the interests of transparency for this requirement is extended to all companies.

Subhead 83(2) provides that where a public interest entity has sought an extension under Article 17(6) of the Regulation and Head 95 details of that extension should also be set out in the Directors Report.

Subhead 83(3) provides the definition for the "directors report".

Head 83 is the same as Regulation 61 of SI 312 of 2016.

## Chapter 2

### *Confidentiality and Professional Secrecy*

#### **Head 84: Rules of confidentiality to apply**

To provide for –

84. (1) All information and documents to which a statutory auditor or audit firm has access when carrying out a statutory audit shall be protected by adequate rules on confidentiality and secrecy.

(2) The statutory auditor or audit firm, as the case may be, shall comply with those rules of confidentiality and secrecy.

#### **Explanatory Note**

Head 84 transposes Article 23.1 of the Directive and requires that all information that a statutory auditor or audit firm has access to during the course of an audit is protected by rules of confidentiality and professional secrecy.

Subhead 84(1) requires that information and documents to which a statutory auditor or audit firm has access shall be protected by adequate rules on confidentiality and secrecy.

Subhead 84(2) provides that the statutory auditor or audit firm shall comply with those rules.

Head 84 is based on Regulation 67 of S.I. 312 of 2016 and under the current framework recognised accountancy bodies have rules of confidentiality and secrecy and statutory auditors and audit firms, including audit firms registered in accordance with Head 50, must comply with the rules of the recognised accountancy body of which it, or in the case of the latter category the key audit partner, is a member. The required arrangements under the new oversight structure will be articulated in the delegation orders under Head 50.

## **Head 85: Supplemental provisions in relation to Head 84**

To provide for –

85. (1) Head 84 shall continue to apply with respect to an audit assignment notwithstanding—

- (a) that the statutory auditor or audit firm referred to in that Head has ceased to be engaged in that audit assignment, or
- (b) that the auditor or audit firm referred to in that Head ceases to be—
  - (i) a statutory auditor or audit firm, or
  - (ii) an auditor or audit firm.

(2) Accordingly, in such a case—

- (a) the statutory auditor or, as the case may be, audit firm, or
- (b) the former such auditor or, as the case may be, audit firm,

shall continue to comply with the rules of confidentiality and secrecy concerned.

### **Explanatory Note**

Head 85 provides that the rules of confidentiality continue to apply to the statutory auditor/audit firm when their engagement in the audit has ceased or when they cease to be a statutory auditor/audit firm. This transposes Article 23.4 of the Directive.

Subhead 85(1) provides that confidentiality and secrecy rules shall continue to apply whether the audit engagement has ceased or the auditor or audit firm ceases to be such.

Subhead 85(2) provides that accordingly the auditor or audit firm shall continue to apply the rules.

Head 85 is the same as Regulation 68 of S.I. 312 of 2016.

**Head 86: Saving**

To provide for –

86. (1) Nothing in Head 84 or 85 shall operate to impede the enforcement of the provisions of this Act or, where applicable, Regulation (EU) No 537/2014.

**Explanatory Note**

This Head provides that confidentiality and professional secrecy do not impede enforcement of the Directive and Regulation. It transposes Article 23.2 of the Directive.

Head 86 is based on Regulation 69 of S.I. 312 of 2016.

## **Head 87: Rules of confidentiality in relation to entities in third countries**

To provide for –

87. (1) Where a statutory auditor or audit firm carries out a statutory audit of an undertaking which is part of a group whose parent undertaking is situated in a third country, the confidentiality and professional secrecy rules referred to in Head 84(1) shall not impede the transfer by the statutory auditor or the audit firm of relevant documentation concerning the audit work performed to the group auditor situated in a third country if such documentation is necessary for the performance of the audit of consolidated financial statements of the parent undertaking.

(2) A statutory auditor or an audit firm that carries out the statutory audit of an undertaking which has issued securities in a third country, or which forms part of a group issuing statutory consolidated financial statements in a third country, may only transfer the audit working papers or other documents relating to the audit of that entity that he, she or it holds to the competent authorities in the relevant third countries under the conditions set out in Chapter 3 of Part 10.

(3) The transfer of information to the group auditor situated in a third country shall comply with—

- (a) Chapter IV of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995<sup>8</sup> on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and
- (b) national personal data protection rules.

### **Explanatory Note**

Head 87 transposes Article 23.5 of the Directive and provides for confidentiality and professional secrecy in the case of the transfer of documents relating to audits where the entity is a group whose parent is in a third country or has issued securities in a third country.

Subhead 87(1) provides that the rules on confidentiality shall not interfere with the transfer of audit related documentation to the group auditor in a third country necessary for the audit of consolidated financial statements of the parent undertaking.

Subhead 87(2) provides that the transfer of audit related documentation relating to an audit of an entity (i) with issued securities or (ii) that is part of a group issuing consolidated financial statements, in a third country, to competent authorities in relevant third countries must meet the conditions of Article 47 of the amended Directive. Article 47 sets out the rules for cooperation with competent authorities from third countries. These are transposed in Heads 134-136.

Subhead 87(3) sets out that the transfer of information in (ii) above must comply with Chapter IV of Directive 95/46/EC (transfer of personal data to third countries) and with national personal data protection law.

Head 87 is the same as Regulation 70 of S.I. 312 of 2016.



**Head 88: Incoming statutory auditor or audit firm to be afforded access to information**

To provide for –

88. 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 entity and the most recent audit of that entity to the incoming statutory auditor or audit firm.

**Explanatory Note**

Head 88 provides that where there is a change in statutory auditor, the former auditor must provide all relevant information “and the most recent audit of that entity” to the incoming auditor as set out in Article 23.3 of the Directive.

## **Head 89: Access by recognised accountancy body to audit documents**

To provide for –

89. (1) Where it considers it reasonably necessary to do so for the purpose of performing a particular function delegated under this Act or, where applicable, under Regulation (EU) No 537/2014, a recognised accountancy body may inspect and make copies of all relevant documents in the possession or control of a statutory auditor or audit firm; for that purpose, it may, by notice in writing served on a statutory auditor or audit firm, require the auditor or firm either (as shall be specified) to—

- (a) furnish to it specified documents, or
- (b) permit it to have access, under specified circumstances, to all relevant documents in the possession or control of the auditor or firm,

within a specified period.

(2) Without prejudice to the generality of subhead (1), the powers under that subhead are exercisable in relation to a statutory auditor or audit firm where a complaint is made to the recognised accountancy body that the statutory auditor or audit firm has contravened a requirement of this Act.

(3) Where the powers under subhead (1) are exercisable, the following additional power may be exercised by the recognised accountancy body if it considers that the exercise of it is reasonably necessary to enable it to clarify any matter arising from its inspection of the documents concerned, namely a power to require the statutory auditor or a member of the audit firm to—

- (a) attend before it, and
- (b) explain any entry in the documents concerned and otherwise give assistance to it in clarifying the matter concerned.

(4) In this Head, "specified" means specified in the notice concerned.

(5) Without prejudice to subhead (6), a person who fails, without reasonable excuse, to comply with a requirement under subhead (1) or (3) shall be guilty of an offence.

(6) Where a person fails to comply with a requirement under subhead (1) or (3), the recognised accountancy body concerned may apply to the High Court for an order compelling compliance by the person with the requirement, and, on the hearing of such application, the High Court may make such an order or such other order as it thinks just.

### **Explanatory Note**

This Head provides that recognised accountancy bodies in performing functions delegated to them under these Heads have access, subject to certain procedures, to audit documents in the possession of a statutory auditors or an audit firm. This Head is based on Head 89 of S.I. 312 of 2016.

Subhead 89(1) provides for the recognised accountancy body, to inspect and take copies of relevant documentation in the possession of a relevant person. Such a

request will be made in writing, specifying which documents are required and in what time period.

Subhead 89(2) provides that the power under subhead (1) may be exercisable in the case of a complaint made against a statutory auditor or audit firm.

Subhead 89(3) sets out further powers which may be exercised to require against a statutory auditor or audit firm to attend and explain the contents of the documents received by the recognised accountancy body.

Subhead 89(4) explains the term “specified” as meaning specified in the notice referred to in subhead (1).

Subhead 89(5) provides for an offence for contravening subhead (1). This existing offence will be updated to reflect the appropriate category of the Companies Act 2014 in consultation with the Office of the Parliamentary Counsel.

Subhead 72(6) provides that the recognised accountancy body may seek an order from the High Court compelling compliance by the person with the requirements of subhead (1) or (3) and it may make an appropriate order.

**Head 90: Access by Supervisory Authority to information and documents held by recognised accountancy bodies or relevant persons**

To provide for –

90. (1) Where it considers it reasonably necessary to do so for the purposes of performing a particular function under these Heads or Regulation (EU) No 537/2014, the Supervisory Authority may request information and inspect and make copies of all relevant documents in the possession or control of a recognised accountancy body or a relevant person; for that purpose, it may, by notice in writing served on the recognised accountancy body or relevant person, require the recognised accountancy body or relevant person either (as shall be specified) to—

- (a) furnish to it specified documents or information, or
- (b) permit it to have access, under specified circumstances, to all relevant documents in the possession or control of the recognised accountancy body or relevant person,

within a specified period.

(2) In this Head, "relevant person" means—

- (a) a member of a recognised accountancy body,
- (b) a client or former client of such a member,
- (c) if the client or former client is a body corporate, a person who is or was an officer, employee or agent of the client or former client, or
- (d) any person whom the Supervisory Authority reasonably believes has information or documents in relation to the particular function other than information or documents the disclosure of which is prohibited or restricted by law.

(3) Without prejudice to the generality of subhead (1), the powers under that subhead are exercisable in relation to a recognised accountancy body or relevant person where a complaint is made to the Supervisory Authority that the recognised accountancy body or relevant person has contravened a requirement of these Heads

(4) Where the powers under subhead (1) are exercisable, the following additional power may be exercised by the Supervisory Authority if it considers that the exercise of it is reasonably necessary to enable it to clarify any matter arising from its inspection of the information or documents concerned, namely a power to require an officer of the recognised accountancy body or relevant person to—

- (a) attend before it, and
- (b) explain any entry in the information or documents concerned and otherwise give assistance to it in clarifying the matter concerned.

(5) In this Head, "specified" means specified in the notice concerned.

(6) A person who fails, without reasonable excuse, to comply with a requirement under subhead (1) or (4) shall be guilty of an offence

(7) Nothing in this Head derogates from the powers exercisable by the Supervisory Authority in the circumstances, and under the conditions, specified in section 933 or 934 of the Companies Act 2014.

### **Explanatory Note**

Head 90 provides that the Supervisory Authority may inspect and make copies of relevant documents in the context of carrying out its functions. In this Head documents held by employees, former employees, clients or consultants of the recognised accountancy bodies are also comprehended.

Subhead 90(1) provides for the Supervisory Authority in performing its audit functions, to inspect and take copies of relevant documentation in the possession of a recognised accountancy body or a relevant person. Such a request will be made in writing, specifying which documents are required and in what time period. This subhead defines relevant person at (a) to (d). The definition of relevant person is the same as in section 934 of the Companies Act 2014.

Subhead 90(2) provides for the definition of “relevant person”.

Subhead 90(3) provides that the power under subhead (1) may be exercisable in the case of a complaint made against a recognised accountancy body or a relevant person.

Subhead 90(4) sets out further powers which may be exercised to require an officer of the recognised accountancy body or relevant person to attend and explain the contents of the documents received by the Supervisory Authority.

Subhead 90(5) explains the term “specified” as meaning specified in the notice referred to in subhead (1).

Subhead 90(6) provides that a person who fails to comply with the requirements of subhead (1) or (3) is guilty of an offence. This existing offence will be updated to reflect the appropriate category of the Companies Act 2014 in consultation with the Office of the Parliamentary Counsel.

Subhead 90(7) provides that the Supervisory Authority may exercise its powers in the circumstances and under the conditions specified in relation to inquiries and investigations sections 933 or 934 of the Act of 2014.

Section 933, as amended in these Heads, sets out the conditions for the intervention in the disciplinary process of prescribed accountancy bodies by the Supervisory Authority.

Section 934, as amended in these Heads, provides for the Supervisory Authority to carry out an investigation of possible breaches of standards of prescribed accountancy bodies or a relevant contravention by a statutory auditor or audit firm.

Head 90 is based on Regulation 73 of S.I. 312 of 2016.

## **Head 91: Professional privilege**

To provide for –

91. Nothing in this Chapter compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege.

### **Explanatory Note**

Head 91 protects the exercise of legal professional privilege. Head 91 is based on Regulation 74 of S.I. 312 of 2016

## **Head 92: No liability for acts done in compliance with these Heads**

To provide for –

92. (1) No professional or legal duty to which a statutory auditor or audit firm is subject by virtue of his, her or its appointment as a statutory auditor or audit firm shall be regarded as contravened by reason of compliance with the obligations imposed by these Heads.

(2) No liability to the entity audited or being audited, its shareholders, creditors, or other interested parties shall attach to the statutory auditor or audit firm by reason of such compliance.

(3) For the avoidance of doubt, nothing in this Head affects the liability of a statutory auditor or audit firm for negligence or breach of duty in the conduct of a statutory audit by him, her or it.

### **Explanatory Note**

This Head provides that there shall be no liability for act carried out as part of complying with the provisions of these Heads.

Subhead 92(1) sets out that the professional or legal duties of a statutory auditor/audit firm which has been appointed by an entity is not contravened as a result of compliance with these Heads.

Subhead 92(2) provides that the statutory auditor/audit firm will not be held liable for any professional or legal duty undertaken under these Heads.

Subhead 92(3) provides that liability for negligence or breach of duty will still apply.

## Chapter 3

### *Auditing Standards and Audit Reporting*

#### **Head 93: Auditing standards to be applied**

To provide for –

93. (1) The Supervisory Authority shall adopt the auditing standards to be applied and statutory auditors and audit firms shall carry out statutory audits in accordance with those standards.

(2) On and from the adoption of international auditing standards, statutory auditors and audit firms shall carry out statutory audits in accordance with those standards.

(3) The reference in subhead (2) to the adoption of international auditing standards is a reference to the adoption by the Commission, in accordance with the procedure referred to in Article 26 of the Audit Directive, of international auditing standards.

(4) The Supervisory Authority may impose audit procedures or requirements in addition to the international auditing standards adopted by the Commission under Article 26 of the Directive, only

(a) if those audit procedures or requirements are necessary in order to give effect to national legal requirements relating to the scope of statutory audits; or

(b) to the extent necessary to add to the credibility and quality of financial statements.

(5) The Supervisory Authority shall communicate the audit procedures or requirements referred to in subhead (4) to the Commission at least three months before their entry into force or, in the case of requirements already existing at the time of adoption of an international auditing standard, at the latest within three months of the adoption of the relevant international auditing standard.

(6). In the case of the statutory audit of small undertakings, the Supervisory Authority may provide that application of the auditing standards referred to in paragraph 1 is to be proportionate to the scale and complexity of the activities of such undertakings and may take the measures necessary in order to ensure the proportionate application of the auditing standards to the statutory audits of small undertakings.

(7) For the avoidance of doubt, levies imposed under section 916 of the Companies Act 2014 on that class of prescribed accountancy bodies comprising recognised accountancy bodies may be used for the purpose of meeting expenses properly incurred by the Supervisory Authority in performing its function referred to in section 905(2)(ma) of that Act.

(8) In this Head, "standards" include standards on professional ethics and internal quality control in addition to standards on auditing.



## **Explanatory Note**

The Head transposes Article 26 of the Directive which is concerned with the auditing standards that should be applied. Under the Directive the EU Commission is empowered to adopt international auditing standards in the area of audit practice, independence and internal quality controls of statutory auditors and audit firms. To date the Commission has not adopted such auditing standards.

Member States have an option at Article 26.1 subparagraph 2 to apply national auditing standards, procedures or requirements as long as the Commission has not adopted an international auditing standard covering the same subject-matter. This is given effect here. Article 32.4 and the consequent amendment to Section 905(2)(ma) of Companies Act 2014 in S.I. 312 of 2016 provides that the Supervisory Authority has the power to adopt auditing standards. These will then become the national auditing standards.

There are two further Member State options that are being exercised in this transposition but were not included in S.I. 312 of 2016. Firstly there is an option at Article 26.4 such that where the EU Commission has adopted international auditing standards, Member States may impose audit procedures or requirements in addition to the international auditing standards subject to certain conditions. Secondly there is an option at Article 26.5 which allows Member State to provide for the proportionate application of auditing standards to the statutory audits of small undertakings. It is considered appropriate to exercise this option and it is worth noting that international auditing standards also provide for such a proportionate approach.

Head 93 is the same as Regulation 77 of S.I. 312 of 2016.

Subhead 93(1) provides that the Supervisory Authority shall adopt the auditing standards to be applied and statutory auditors and audit firms shall carry out statutory audits in accordance with those standards.

Subhead 93(2) and 93(3) provides that where the Commission has adopted international auditing standards under its powers in the Directive, statutory auditors and audit firms shall carry out statutory audits in accordance with those standards.

Subhead 93(4) and 93(5) exercises the Member State option at Article 26.4 to add to international auditing standards in the event the EU Commission adopts such standards and sets out the principles and policies relating to the adoption of these standards.

Subhead 93(6) exercises the Member State option at Article 26.5 to allow for the proportionate application of auditing standards to small undertakings.

Subhead 93(7) provides that the levies imposed on recognised accountancy bodies under section 916 of the Companies Act 2014 may be used for the purpose of meeting expenses properly incurred by the Supervisory Authority in performing its function referred to in section 905(2)(ma) of that Act.

Subhead 93(8) clarifies that auditing standards include standards on professional ethics and internal quality control.

‘small undertakings’ means the undertakings referred to in Article 1(1) and Article 3(2) of Directive 2013/34/EU;

## **Head 94: Audit of group accounts — responsibility of group auditor**

To provide for –

94. (1) Where a statutory audit of the group financial statements of a group of undertakings is carried out—

(a) in relation to the group financial statements, the group auditor shall bear the full responsibility for the statutory auditors' report, and

(b) where the holding company is a public interest entity, the group auditor shall bear the full responsibility for ensuring that the requirements of Articles 10 and 11 of Regulation (EU) No 537/2014 are met in relation to the audit carried out on that public interest entity.

(2) The group auditor shall—

(a) evaluate the audit work carried out by any statutory auditors for the purpose of the group audit, and

(b) document the nature, timing and extent of the work carried out by those auditors, including the group auditor's review of the relevant parts of audit documentation.

(3) For the purposes of the group audit, auditors may be one or more of the following:

(a) statutory auditors;

(b) statutory audit firms;

(c) Member State auditors;

(d) Member State audit firms;

(e) third-country auditors;

(f) third-country audit entities.

(4) The group auditor shall carry out a review, and maintain documentation of such review, of the work of whoever referred to in subhead (3) performed audit work for the purposes of the group audit.

(5) The documentation referred to in subheads (2)(b) and (4) to be retained by the group auditor shall be such as enables the Supervisory Authority, or the recognised accountancy body where applicable, to conduct a quality assurance inspection or review, as the case may be, under Chapter 6 of Part 4.

(6) The group auditor shall request the agreement of the auditors concerned referred to in subhead (3)(a) to (f) to transfer relevant documentation during the carrying out of the audit of group financial statements as a condition of the reliance by the group auditor on the work of such auditors.

(7) (a) Where the group auditor is unable to secure an agreement referred to in subhead (6), he, she or it shall take appropriate measures in order to form an audit opinion

and inform the relevant Supervisory Authority or the recognised accountancy body where applicable.

- (b) Such measures shall, as appropriate, include carrying out additional statutory audit work, either directly or by outsourcing the additional statutory audit work, in the relevant subsidiary.
- (8) (a) The group auditor who is subject to a quality assurance inspection or review or an investigation concerning the statutory audit of the group financial statements of a group of undertakings, shall, when requested, make available to the Supervisory Authority or the recognised accountancy body where applicable the relevant documentation he, she or it retains concerning the audit work performed by the auditors concerned referred to in subhead (3)(a) to (f) for the purpose of the group audit, including any working papers relevant to the group audit.
- (b) The Supervisory Authority may request additional documentation on the audit work performed by a statutory auditor or audit firm for the purpose of the group audit from the competent authorities in other Member States where applicable pursuant to Chapter 1 of Part 8.

### **Explanatory Note**

This Head transposes Article 27 of the Directive and is concerned with the statutory audit of consolidated financial accounts of a group of undertakings. It provides that the group auditor must bear full responsibility for the audit report in relation to the consolidated financial accounts of a group. Where one of the undertakings of the group is a public interest entity, the article also provides that the group auditor bears responsibility for the additional requirements in relation to the report required by Article 10 of the Regulation and the additional report to the audit committee as set out in Article 11 of the Regulation. The Head also sets out requirements for holding documents for the purposes of quality assurance reviews.

Subhead 94(1)(a) and (b) provides that the group auditor must bear full responsibility for the audit report in relation to the consolidated financial accounts of a group. The group auditor also bears responsibility for the additional reporting requirements as set out in Article 10 of the Regulation and the additional report to the audit committee as set out in Article 11 of the Regulation where applicable i.e the holding company is a public interest entity.

Subhead 94(2)(a) and (b) provides that the group auditor shall evaluate and document the audit work performed by other parties to the audit of the group. The other audit work may be by one or more of the following

- (i) third-country auditors;
- (ii) statutory auditors;
- (iii) third-country audit entities;
- (iv) statutory audit firms;
- (v) Member State auditors;
- (vi) Member State audit firms.

The group auditor may also review where applicable relevant parts of their audit documentation.

Subhead 94(3) provides that the group auditor shall carry out a review of the audit work by other auditors carried out for the purposes of the group audit.

Subhead 94(4) provides that the group auditor should retain documentation relevant to the evaluation and review to enable the relevant body to conduct a quality assurance inspection of the audit.

Subhead 94(5) provides that the group auditor can request the transfer of relevant documentation from other auditors to the components of the group for the purposes of the evaluation and review at subheads (2) and (3).

Subhead 94(6) provides that where the group auditor is unable to comply with subhead 3 above, he, she or it shall take appropriate measures in order to form an audit opinion and inform the relevant Supervisory Authority or the recognised accountancy body where applicable.

Subhead 94(7) provides that where a group auditor is subject to a quality assurance review or an investigation concerning the statutory audit of the group financial statements it shall make available to the Supervisory Authority or the recognised accountancy body where applicable the relevant documentation retained concerning the audit work performed for the purpose of the group audit.

The Supervisory Authority may request additional documentation on the audit work performed by any statutory auditor(s) or audit firm(s) for the purpose of the group audit from the competent authorities in other EU Member States where applicable pursuant to Heads 116-130.

## **Head 95: Further responsibility of group auditor**

To provide for –

95. (1) Subject to subhead (2), the Supervisory Authority may request additional documentation on the audit work performed by any third-country auditor or third country audit entity on a parent undertaking or on a subsidiary undertaking of a group of undertakings from the relevant competent authorities from third countries through the working arrangements referred to in Regulation 131(1)(c) or 132(c).

(2) Where—

- (a) a statutory audit of the group financial statements of a group of undertakings is carried out, and
- (b) a parent undertaking or subsidiary undertaking of the group of undertakings is audited by one or more third-country auditors or audit entities that have no working arrangement as referred to in Regulation 131(1)(c) or 132(c),

the group auditor is responsible for ensuring proper delivery, when requested, to the Supervisory Authority of the additional documentation of the audit work performed by those auditors or audit entities, including the working papers relevant to the group audit.

(3) To ensure such delivery, the group auditor shall retain a copy of such audit documentation, or alternatively—

- (a) agree with one or more third-country auditors or audit entities concerned arrangements for the group auditor's proper and unrestricted access, upon request, to the documentation, or
- (b) take any other appropriate action.

(4) Where audit working papers cannot, for legal or other reasons, be passed from a third country to the group auditor, the documentation retained by the group auditor shall include—

- (a) evidence that he, she or it has undertaken the appropriate procedures in order to gain access to the audit documentation, and
- (b) in the case of an impediment other than a legal one arising from legislation of the third country or countries concerned, evidence supporting the existence of such an impediment.

### **Explanatory Note**

This Head transposes the final paragraph of Article 27.3 of the Directive in relation to the further responsibility of the group auditor. This Head provides that the Supervisory Authority may request documents on audits by third country auditors from the relevant third country competent authorities under working arrangements set out in Heads 134 and 135. Where no such arrangements exist, the Head provides that the group auditor should ensure delivery of the documents or provide explanations of any legal or other impediments to doing so.

This Head refers solely to the Supervisory Authority as it will be responsible for the quality assurance of third country auditors and the recognised accountancy bodies will not have a role in this regard. Head 95 is the same as Regulation 79 of S.I. 312 of 2016.

Subhead 95(1) provides that IAASA may request additional documentation on the audit work performed by any third-country auditor(s) or third country audit entity(ies) on a parent or a subsidiary undertaking of a group of undertakings from the relevant competent authorities from third countries through the working arrangements referred to in Head 134(1)(c) or 135(c).

Subhead 95(2) provides that where a parent or subsidiary undertaking of the group of undertakings is audited by one or more third-country auditors or audit entities that have no working arrangement as referred to in Head 134(1)(c) or 135(c), the group auditor is also responsible for ensuring delivery to the Supervisory Authority of the additional documentation of the audit work performed by those auditors or audit entities.

Subhead 95(3) provides that to ensure this, the group auditor shall retain a copy of such audit documentation, or agree arrangements with the third-country auditors or audit entities concerned arrangements access, upon request, to the documentation, or take any other appropriate action.

Subhead 95(4) provides that where audit working papers cannot, for legal or other reasons, be passed from a third country to the group auditor, the documentation retained by the group auditor shall include evidence that he or she has undertaken the appropriate procedures in order to gain access to the audit documentation and where applicable evidence supporting the existence of non-legal impediments.

## **Head 96: Additional report to audit committee**

To provide for –

96(1) Where a public-interest entity is exempt from the requirement to have an audit committee, as provided for under these Heads, the additional report to the audit committee shall be submitted to the directors of the public-interest entity.

(2) Subject to subhead (1) the audit committee of a public-interest entity shall submit the additional report to the audit committee to the directors of the public-interest entity.

(3) The Supervisory Authority may set out additional requirements to those listed in Article 11(2)(a) to (p) of Regulation (EU) 537/2014 in relation to the content of the additional report to the audit committee, or directors as applicable, only where this provides further information to the audit committee on the audit work undertaken.

(4) The audit committee may disclose the additional report to -

- (a) The Supervisory Authority (IAASA)
- (b) The Director of Corporate Enforcement
- (c) The Revenue Commissioners
- (d) The Workplace Relations Commission
- (e) Any body responsible for regulation of the public-interest entity

upon request from that body and where this information is required in order for the requesting body to fulfil its functions.

### **Explanatory Note**

Article 11.1 of Regulation (EU) 537/2014 requires statutory auditors or audit firms carrying out statutory audits of public interest entities to submit an additional report to the audit committee not later than the date of submission of the audit report.

There are three options in this Article that it is intended to exercise in this Head that are not in S.I. 312 of 2016. Firstly there is an option to permit the audit committee to require this report is submitted to the Directors of the public interest entity. Secondly, there is an option at Article 11.1 to require the report to be submitted to specified third parties. Finally there is an option at Article 11.2 to allow Member States to lay down additional content for the report.

The objective of the additional report is to give greater detail to the audit committee of the public interest entity on the audit.

Subhead 96(1) clarifies that where the audited entity is exempt from the requirement to have an audit committee the additional report shall be submitted to the Directors of the audited entity. Subhead 96(1) is the same as Regulation 80 of SI No 312 of 2016.

Subhead 96(2) exercises the option at Article 11.1 and provides that the audit committee shall disclose the report to the Directors of the public interest entity.

Subhead 96(3) provides for the option at Article 11.2 to allow IAASA set down additional requirements to those listed in the Article regarding the content of the additional report to the audit committee. As the purpose of the additional report is to enhance the internal communication between auditor and audited entity on the audit work undertaken, additional

content may only be added if it further enhances this internal communication. Taking this option will also facilitate the Supervisory Authority in carrying out its necessary oversight responsibilities.

Subhead 96(4) exercises the option at Article 11.1 which permits the audit committee to disclose the additional report to such third parties as specified in national law. The Central Bank may request analogous reports under its powers at Article 27C of the Central Bank Act 1942. The Revenue Commissioners in the public consultation expressed an interest in receiving these reports. The Department also consulted with the ODCE, IAASA and the Workplace Relations Commission.



**Head 97: Auditors' reporting obligations under Article 12 of Regulation (EU) No 537/2014**

To provide for –

97. (1) Reports by statutory auditors or audit firms referred to in Article 12 of Regulation (EU) No 537/2014 shall be submitted to the Supervisory Authority unless they are already required to be submitted to the Central Bank of Ireland under—

- (a) Regulation 52 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014),
- (b) Regulation 78 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), or
- (c) Regulation 134(1) of, or Schedule 16 to, the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).

(2) Additional information may be required from the statutory auditor or the audit firm provided it is necessary for effective financial market supervision as provided for in national law.

**Explanatory Note**

Reports by statutory auditors/audit firms under Article 12 of the Regulation will first be submitted to the Central Bank of Ireland as required under its legislation and otherwise they will be submitted to the Supervisory Authority. This is the same approach as in S.I. 312 of 2016.

There is an option in Article 12.1 that it is intended to exercise in this Head that is not in S.I. 312 of 2016 such that Member States may lay down additional content for the report provided it is necessary for effective financial market supervision as provided for in national law. This is exercised at subsection (2).

## **Head 98: Record keeping**

To provide for –

98. (1) Statutory auditors and audit firms shall keep the documents and information referred to in Article 15 of Regulation (EU) No 537/2014 for a period of at least 6 years.

(2) Where a transaction, act or operation is the subject of an investigation, inquiry, claim, assessment, appeal or proceeding which has already commenced within that 6 year period, then the relevant documents and information must be retained until such time as the investigation, inquiry, claim, assessment, appeal or proceeding has been concluded or for a period of at least 6 years, whichever is the longer.

### **Explanatory Note**

This Head provides that the documents listed in Article 15 of the Regulation should be held by statutory auditors for six years or longer in the case of ongoing investigations for which the documents are relevant.

It transposes the article and the option in paragraph 2 which allows Member States to go beyond the 5 year period specified in the Regulation.

Subhead 98(1) provides that the documents referred to shall be held for at least six years. The detail of the documents referred to are set out below.

Subhead 98(2) provides that where the documents and information are relevant to an ongoing investigation they should be retained until such time as the investigation etc. is concluded or at least six years whichever is the longer period.

There is precedent for the time period of 6 years in the Companies Act and the Finance Act 2014 introduced to the Taxes Consolidation Act 1997 an obligation to keep documents until an investigation is finished and the time for appeal of any decision has passed.

Head 98 is the same as Regulation 82 of SI 312 of 2016.

## **Head 99: Future viability**

To provide for –

99. Without prejudice to the reporting requirements referred to in sections 336, 337 and 391 of the Companies Act 2014 and, where applicable, Articles 10 and 11 of Regulation (EU) No 537/2014, the scope of the statutory audit shall not include assurance on the future viability of the audited entity or on the efficiency or effectiveness with which the directors of the entity have conducted or will conduct the affairs of the entity.

### **Explanatory Note**

Head 99 provides that without prejudice to the reporting requirements required by the Directive and additionally by the Regulation in relation to public interest entities, the scope of the statutory audit does not include an assurance about the future viability of an audited entity. Head 99 is the same as Regulation 83 of S.I. 312 of 2016.

This Head transposes Article 25a of the Directive. Article 25a refers to Article 28 of the Directive on the audit report and to the additional reporting obligations on public interest entities under Articles 10 and 11 of the Regulation.

The references in the Head to the sections in the Companies Act 2014 are as follows:

Section 336 - 337 set out the requirements for the contents and format of the statutory auditor's report.

Section 391 requires that a statutory auditor's report should be made and laid before the members of an entity.

Audit looks at the historical results of an entity and is not intended to provide predictions as to the future viability of an entity. The 'expectation gap' for users of audit reports, and in the case of public interest entities the users of the additional reports now required, is that gap between those assurances that the user might believe is given by these reports and the actual limitation of the scope of statutory audit.

## Part 6

### Independence

#### **Head 100: Requirement for independence — general**

To provide for –

100. (1) During the period in which a statutory audit is being carried out—

- (a) the statutory auditor or audit firm, as the case may be,
- (b) in the latter case, any statutory auditor of the statutory audit firm, and
- (c) any individual in a position to directly or indirectly influence the outcome of the statutory audit,

shall be independent of, and not involved in the decision-taking of, the audited entity.

(2) During the period in which a statutory audit is being carried out, a statutory auditor or audit firm, as the case may be, shall take all reasonable steps to ensure that his, her or its independence is not affected by—

- (a) any existing or potential conflict of interest, or
- (b) any business or other direct or indirect relationship,

involving the statutory auditor or audit firm carrying out the statutory audit.

(3) Subhead (2) also applies, with any necessary modifications, to—

- (a) the network of the statutory auditor or audit firm,
- (b) the managers, auditors, employees or any other individuals whose services are placed at the disposal or under the control of the statutory auditor or audit firm,
- (c) any person directly or indirectly linked to the statutory auditor or audit firm by control, and
- (d) managers, auditors, employees or any other individuals whose services are placed at the disposal or under the control of a person linked to the statutory auditor or audit firm by control.

(4) The obligations referred to in subheads (1) and (2) shall be required at least during both the period covered by the financial statements to be audited and the period during which the statutory audit is carried out.

#### **Explanatory Note**

This Head transposes Article 22.1 subparagraphs 1 to 3 and provides for certain independence requirements between statutory auditor and audited entity.

Head 100 provides for certain independence requirements between statutory auditor and audited entity and is the same as Regulation 91 of SI 312 of 2016.

Subhead 100(1) provides that anyone involved in a statutory audit shall be independent of the audited entity and not involved in decision making of the entity.

Subhead 100(2) and (3) provides that a statutory auditor or audit firm should ensure that this independence is not affected by any existing or potential conflict of interest, business relationship or other direct or indirect relationship between the statutory auditor, or audit firm or its network, managers, auditors, employees, other natural persons whose services are placed at its disposal or under his hers or its control or any person directly linked to it by control.

Subhead 100(4) provides that the effective period for the independence requirements in this Head should be at least during the periods covered by the financial statements to be audited and when the statutory audit is carried out.

## **Head 101: Professional scepticism**

To provide for –

101. (1) When carrying out a statutory audit, the statutory auditor or the audit firm shall—

- (a) maintain professional scepticism throughout the audit,
- (b) maintain professional scepticism when reviewing management estimates relating to fair values, the impairment of assets, provisions, and future cash flow relevant to the audited entity's ability to continue as a going concern, and
- (c) recognise the possibility of a material misstatement due to facts or behaviour indicating irregularities, including fraud or error, notwithstanding the statutory auditor's or the audit firm's past experience of the honesty and integrity of the audited entity's management and of the persons charged with its governance.

(2) For the purposes of these Heads, "professional scepticism" means an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence.

### **Explanatory Note**

This Head contains provisions in relation to the need for statutory auditors and audit firms to maintain professional scepticism while carrying out audits. It transposes Article 21.2 of the Directive.

Head 101 is the same as Regulation 92 of SI 312 of 2016.

Subhead 101(1)(a) provides that this attitude should be maintained notwithstanding the statutory auditor's or the audit firm's past experience of the honesty and integrity of the audited entity's management.

Subhead 101(1)(b) provides that that this attitude should be maintained when reviewing management estimates relating to fair values, the impairment of assets, provisions etc.

Subhead 101(2) provides a definition of "professional scepticism" which is set out in the Directive.

## **Head 102: Prohibited relationships — specific provisions to secure independence**

To provide for —

102. (1) A statutory auditor or audit firm shall not carry out a statutory audit if there is any threat of self-review, self-interest, advocacy, familiarity, or intimidation, created by any direct or indirect financial, personal, business, employment or other relationship between—

- (a) the statutory auditor or audit firm or network to which he, she or it belongs or any individual in a position to influence the outcome of the statutory audit, and
- (b) the audited entity,

as a result of which an objective, reasonable and informed third party, taking into account the safeguards applied, would conclude that the statutory auditor's or audit firm's independence is compromised.

(2) Without prejudice to the generality of subhead (1), a person shall not act as a statutory auditor of an entity if he or she is—

- (a) an officer or servant of the entity,
- (b) a person who has been an officer or servant of the entity within a period in respect of which accounts would fall to be audited by the person if he or she were appointed auditor of the entity,
- (c) a parent, spouse, brother, sister or child of an officer of the entity,
- (d) a person who is a partner of or in the employment of an officer of the entity,
- (e) a person who is disqualified under this paragraph for appointment as auditor of a body corporate that is a subsidiary or holding company of the entity or a subsidiary of the entity's holding entity, or would be so disqualified if the body corporate were a company, or
- (f) a person in whose name a share in the entity is registered, whether or not that person is the beneficial owner of the share.

(3) Without prejudice to the generality of subheads (1) and (2), a statutory audit firm, regardless of its legal structure, shall not carry out a statutory audit of an entity if—

- (a) any principal of the audit firm is an officer or servant of the entity,
- (b) any principal of the audit firm has been an officer or servant of the entity within a period in respect of which accounts would fall to be audited by the firm if the firm was appointed auditor of the entity, or
- (c) the firm is disqualified under this paragraph for appointment as auditor of any other body corporate that is a subsidiary or holding company of the entity or a subsidiary of the entity's holding company, or would be so disqualified if the body corporate were a company.

(4) Without prejudice to the generality of subheads (1) to (3), a person shall not carry out a statutory audit of an entity on behalf of a statutory audit firm if he, or she or it is—

- (a) a person in whose name a share in the entity is registered, whether or not that person is the beneficial owner of the share, or
- (b) a parent, spouse, brother, sister or child of an officer of the entity.

### **Explanatory Note**

Head 102 sets out certain prohibited relationships between statutory auditors and their audited entities. This transposes Article 22.1 subparagraph 4 and 5 of the Directive.

Head 102 is the same as Regulation 93 of SI 312 of 2016.

Subhead 102(1) provides that a statutory auditor or the audit firm shall not carry out a statutory audit if there is any threat of self-review, self-interest, advocacy, familiarity, or intimidation created by any direct or indirect financial, personal, business, employment or other relationships between he, she or it or network to which he, she or it belongs or any natural person in a position to influence the outcome of the statutory audit and the audited entity.

Subhead 102(2) provides for list of persons who may not act as a statutory auditor of an entity.

Subhead 102(3) provides for a list of persons, where they are members of an audit firm, that audit firm shall not carry out a statutory audit of an entity.

Subhead 102(4) provides for prohibited family relationships between persons who may carry out statutory audits and companies.



## Head 103: Prohibited relationships — financial or beneficial interest

To provide for –

103. (1) A statutory auditor, an audit firm, the key audit partner of an audit firm, the employees of the statutory auditor or audit firm, and any other individual whose services are placed at the disposal or under the control of the statutory auditor or audit firm and who is directly involved in statutory audit activities, and persons closely associated with them within the meaning of Article 1(2) of Commission Directive 2004/72/EC of 29 April 2004<sup>10</sup> implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions shall not—

- (a) hold or have a material and direct beneficial interest in, or
- (b) engage in any transaction in any financial instrument issued, guaranteed, or otherwise supported by,

any audited entity within their area of statutory audit activities, other than interests owned indirectly through diversified collective investment schemes, including managed funds such as pension funds or life assurance.

(2) A statutory auditor, an audit firm, the key audit partner of the audit firm, the employees of the statutory auditor or audit firm, and any other individual referred to in subhead (1), shall not participate in or otherwise influence the outcome of a statutory audit of any particular audited entity if he, she or it—

- (a) owns financial instruments of the audited entity, other than interests owned indirectly through diversified collective investment schemes,
- (b) owns financial instruments of any entity related to the audited entity, the ownership of which may cause, or may be generally perceived as causing, a conflict of interest, other than interests owned indirectly through diversified collective investment schemes, or
- (c) has had an employment, or a business or other relationship with the audited entity within the period covered by the financial statements to be audited and the period during which the statutory audit is carried out that may cause, or may be generally perceived as causing, a conflict of interest.

(3) A statutory auditor, an audit firm, the key audit partner of the audit firm, the employees of the statutory auditor or audit firm, and any other individual referred to in subhead (1), shall not solicit or accept pecuniary or non-pecuniary gifts or favours from the audited entity or any entity related to an audited entity unless an objective, reasonable and informed third party would consider the value thereof as trivial or inconsequential.

### Explanatory Note

Head 103 transposes new provisions in Article 22.2, 22.4 and 22.5 of the Directive in relation to certain independence requirements for a statutory auditor or audit firm carrying out a statutory audit.

Head 103 is the same as Regulation 94 of SI 312 of 2016.

Subhead 103(1)(a) and (b) prohibits a statutory auditor, an audit firm, their key audit partners, their employees, other natural persons who are working for the statutory auditor or audit firm auditor, spouses, children or other relatives or dependents from having a material and direct beneficial interest in or engaging in transactions of the financial instruments of any entity that they audit. It excludes interests owned indirectly through collective investment schemes, including managed funds such as pension funds or life assurance.

Subhead 103(2)(a) and (b) prohibits a statutory auditor, an audit firm, their key audit partners, their employees, other natural persons who are working for the statutory auditor or audit firm auditor, spouses, children or other relatives or dependents from owning financial instruments of the audited entity or any related entity where this might cause a conflict of interest. It excludes interests owned in collective investment schemes.

Subhead 103(2)(c) prohibits these same categories of persons from having another relationship with the audited entity including business or employment that might cause or be perceived to cause a conflict of interest.

Subhead 103(3) prohibits a statutory auditor, an audit firm, their key audit partners, their employees, other natural persons who are working for the statutory auditor or audit firm auditor, spouses, children or other relatives or dependents from soliciting and accepting pecuniary or non-pecuniary gifts except if their value is trivial.

Note: Commission Directive 2004/72/EC defines the criteria to be taken into account when evaluating market practices for the purpose of implementing Article 6(10) of Directive 2003/6/EC (Market Abuse). The practices of market participants must comply with the principles of fairness and efficiency in order to protect the integrity of the market. These practices must not compromise the integrity of other European Union markets that are linked to it.

A person 'closely associated' within the meaning of Article 1.2 of Commission Directive 2004/72/EC is defined as follows:

'Person closely associated with a person discharging managerial responsibilities within an issuer of financial instruments' shall mean:

- (a) the spouse of the person discharging managerial responsibilities, or any partner of that person considered by national law as equivalent to the spouse;
- (b) according to national law, dependent children of the person discharging managerial responsibilities;
- (c) other relatives of the person discharging managerial responsibilities, who have shared the same household as that person for at least one year on the date of the transaction concerned;
- (d) any legal person, trust or partnership, whose managerial responsibilities are discharged by a person referred to in point 1 of this Article or in letters (a), (b) and (c) of this point, or which is directly or indirectly controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such person.

## **Head 104: Prohibited relationships — mergers and acquisitions**

To provide for –

104. (1) If, during the period covered by the financial statements, an audited entity is acquired by, merges with, or acquires, another entity, the statutory auditor or audit firm shall identify and evaluate any current or recent interests or relationships, including any non-audit services provided to that entity, which, taking into account available safeguards, could compromise the statutory auditor's or audit firm's independence and ability to continue with the statutory audit after the effective date of the merger or acquisition.

(2) As soon as possible, and in any event within 3 months of the merger or acquisition referred to in subhead (1), the statutory auditor or audit firm shall take all such steps as may be necessary to terminate any current interests or relationships that would compromise his, her or its independence and shall, where possible, adopt safeguards to minimise any threat to his, her or its independence arising from prior and current interests and relationships.

### **Explanatory Note**

This Head transposes provisions in Article 22.6 of the Directive in relation to the independence requirements for a statutory auditor or audit firm carrying out a statutory audit in the context of the merger or acquisition of the audited entity.

Head 104 is the same as Regulation 95 of SI 312 of 2016.

Subhead 104(1) provides that if an audited entity merges with, is acquired by or acquires an audit entity during the period covered by the financial statements the statutory auditor or the audit firm must shall identify and evaluate any current or recent interests or relationships, including any non-audit services provided to that entity, which, taking into account available safeguards, could compromise the auditor's independence and ability to continue with the statutory audit after the effective date of the merger or acquisition.

Subhead 104(2) provides that within not more than three months of the merger or acquisition the statutory auditor or the audit firm must terminate any interests or relationships that would compromise its independence and adopt safeguards to minimise any threat to its independence arising from prior and current interests and relationships.

## **Head 105: Threats to independence and other information to be recorded**

To provide for –

105. A statutory auditor or audit firm shall document in the audit working papers all significant threats to his, her or its independence as well as the safeguards applied to mitigate those threats.

### **Explanatory Note**

Head 105 provides for documentation in the audit working papers of all significant threats to the independence of the statutory auditor or audit firm including the safeguards to mitigate those threats. This transposes Article 22.3 of the Directive.

Head 105 is the same as Regulation 96 of SI 312 of 2016.

## **Head 106: Preparation for statutory audit and assessment of threats to independence**

To provide for –

106. A statutory auditor or audit firm shall, before accepting or continuing an engagement for a statutory audit, assess and document the following:

- (a) whether he, she or it complies with the requirements set out in Heads 100 and 102 to 105;
- (b) whether there are threats to his, her or its independence and the safeguards applied to mitigate those threats;
- (c) whether he, she or it has the competent employees, time and resources needed in order to carry out the statutory audit in an appropriate manner;
- (d) whether, in the case of an audit firm, the key audit partner is approved as statutory auditor in the Member State requiring the statutory audit.

### **Explanatory Note**

Head 106 provides for a statutory auditor or audit firm to assess and document certain requirements before accepting or continuing an engagement for a statutory audit. It transposes the requirements of Article 22b of the Directive.

Head 106 is the same as Regulation 96 of SI 312 of 2016.

Subhead 106(1)(a) to (d) provides that the assessment should be of compliance with the requirements of Article 22 of the Directive as set out in Heads 100, 102-105; threats to independence and mitigating safeguards applied; whether there are the competent employees, time and resources needed in order to carry out the statutory audit in an appropriate manner and in the case of an audit firm, whether the key audit partner is approved as statutory auditor in the Member State requiring the statutory audit.

There is an option at Article 22b that allows Member States to provide simplified requirements than those in the Article in relation to the audits of small undertakings. It is not proposed to take this option.

## **Head 107: Non-intervention by certain persons in execution of audit**

To provide for –

107. Neither—

- (a) the owners or shareholders of a statutory audit firm or the owners or shareholders of an affiliated firm; nor
- (b) the members of the administrative, management or supervisory body of such a firm or of an affiliated firm,

shall intervene in the execution of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the statutory audit firm.

### **Explanatory Note**

This Head sets out the rules on the non-intervention of owners and shareholders in the execution of a statutory audit. This Head transposes Article 24 of the Directive. It was omitted in SI 312 of 2016.

## Head 108: Internal organisation of statutory auditors and audit firms

To provide for –

108. (1) A statutory auditor or audit firm shall comply with the following organisational requirements:

- (a) the audit firm shall establish appropriate policies and procedures to ensure that no person, including any partner, director, member or shareholder of the audit firm or of a firm in its network, intervenes in the carrying out of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm;
- (b) the statutory auditor or audit firm shall have sound administrative and accounting procedures, internal quality control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems;
- (c) the statutory auditor or audit firm shall establish appropriate policies and procedures to ensure that his, her or its employees and any other individuals whose services are placed at his, her or its disposal or under his, her or its control, and who are directly involved in the statutory audit activities, have appropriate knowledge and experience for the duties assigned;
- (d) (i) the statutory auditor or audit firm shall establish appropriate policies and procedures to ensure that outsourcing of important audit functions is not undertaken in such a way as to impair the quality of the statutory auditor's or audit firm's internal quality control and the ability of the competent authorities to supervise the statutory auditor's or audit firm's compliance with the obligations laid down in this Act and, where applicable, in Regulation (EU) No 537/2014;  
  
(ii) the statutory auditor or audit firm shall ensure that any such outsourcing of audit functions does not affect his, her or its responsibility towards the audited entity;
- (e) the statutory auditor or audit firm shall establish appropriate and effective organisational and administrative arrangements to prevent, identify, eliminate or manage and disclose any threats to his, her or its independence as referred to in Heads 100, 102 to 106 and 114 and Regulation (EU) No 537/2014;
- (f) the statutory auditor or audit firm shall establish appropriate policies and procedures for carrying out statutory audits, coaching, supervising and reviewing employees' activities and organising the structure of the audit file as referred to in Head 110;
- (g) the statutory auditor or audit firm shall establish an internal quality control system to ensure the quality of the statutory audit so that-
  - (i) such system covers, at least, the policies and procedures referred to in subhead (f), and
  - (ii) responsibility for such system lies with a person who is qualified as a statutory auditor;

- (h) the statutory auditor or audit firm shall use appropriate systems, resources and procedures to ensure continuity and regularity in the carrying out of his, her or its statutory audit activities;
- (i) the statutory auditor or audit firm shall also establish appropriate and effective organisational and administrative arrangements for dealing with and recording incidents which have, or may have, serious consequences for the integrity of his, her or its statutory audit activities;
- (j) the statutory auditor or audit firm shall have in place adequate remuneration policies, including profit-sharing policies, providing sufficient performance incentives to secure audit quality but the amount of revenue that the statutory auditor or audit firm derives from providing non-audit services to the audited entity shall not form part of the performance evaluation and remuneration of any person involved in, or able to influence the carrying out of, the audit;
- (k) the statutory auditor or audit firm shall monitor and evaluate the adequacy and effectiveness of his, her or its systems, internal quality control mechanisms and arrangements established in accordance with this Act and, where applicable, Regulation (EU) No 537/2014 and take appropriate measures to address any deficiencies;
- (l) the statutory auditor or audit firm shall-
  - (i) carry out an annual evaluation of the internal quality control system referred to in subhead (g), and
  - (ii) keep records of the findings of that evaluation and any proposed measure to modify the internal quality control system.

(2) A statutory auditor or audit firm shall communicate, in writing, his, her or its policies and procedures referred to in subhead (1) to the employees of the statutory auditor or audit firm.

(3) A statutory auditor or the audit firm shall take into consideration the scale and complexity of his, her or its activities when complying with the requirements set out in subhead (1).

(4) A statutory auditor or audit firm shall be able to demonstrate to the recognised accountancy body or Supervisory Authority that the policies and procedures designed to achieve compliance with this Regulation are appropriate given the scale and complexity of activities of the statutory auditor or audit firm.

### **Explanatory Note**

This Head sets out the internal organisation of statutory auditors and audit firms in order to reinforce the objective of independence that has been enhanced by the EU Directive. This Head transposes Article 24a of the Directive.

Head 108 is the same as Regulation 98 of SI 312 of 2016.

Subhead 108(1) states that a statutory auditor or an audit firm as appropriate shall comply with a series of organisational requirements:



- (a) an audit firm shall establish appropriate policies and procedures to ensure that its partners, directors or shareholders, as well as those of an affiliate firm, do not intervene in the carrying-out of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm.
- (b) a statutory auditor or an audit firm shall have sound administrative and accounting procedures, internal quality control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing system.
- (c) a statutory auditor or an audit firm shall establish appropriate policies and procedures to ensure that those it assigns to an audit have appropriate knowledge and experience for the duties assigned.
- (d) a statutory auditor or an audit firm shall establish appropriate policies and procedures in relation to outsourcing important audit functions.
- (e) a statutory auditor or an audit firm shall establish arrangements to manage threats to their independence as referred to in Heads 100, 102-106 and 114. These Heads are concerned with assessing various aspects of independence between statutory auditor or audit firm and the audited entity and correspond to Articles 22, 22a and 22b.
- (f) a statutory auditor or an audit firm shall establish appropriate policies and procedures for carrying out statutory audits, coaching, supervising and reviewing employees activities and organising the structure of the audit file as referred to in Head 110. (This Head is concerned with the appointment by audit firms of a key audit partner for each statutory audit it carries out.)
- (g) a statutory auditor or an audit firm shall establish an internal quality control system to ensure the quality of the statutory audit at least covering the policies and procedures described in point (f).
- (h) a statutory auditor or an audit firm shall use appropriate systems, resources and procedures to ensure continuity and regularity in the carrying out statutory audit activities.
- (i) a statutory auditor or an audit firm shall also establish appropriate and effective organisational and administrative arrangements for dealing with and recording incidents which have, or may have, serious consequences for the integrity of his, her or its statutory audit activities.
- (j) a statutory auditor or an audit firm shall have in place adequate remuneration policies, including profit-sharing policies, providing sufficient performance incentives to secure audit quality.
- (k) a statutory auditor or an audit firm shall monitor and evaluate the adequacy and effectiveness of his, her or its systems, internal quality control mechanisms and arrangements and take appropriate measures to address any deficiencies.

Subhead 108(2) provides that the policies and procedures referred to in subhead 108(1)(a) to (k) shall be documented and communicated to the employees of the statutory auditor or the audit firm.

Subhead 108(3) provides that the statutory auditor or the audit firm shall take into consideration the scale and complexity of his, her or its activities when complying with the requirements set out in subhead 108(1)(a) to (k).

Subhead 108(4) provides that the statutory auditor or the audit firm shall be able to demonstrate to the Supervisory Authority or where the matter is under delegation the recognised accountancy body that the policies and procedures designed to achieve such compliance are appropriate given the scale and complexity of activities of the statutory auditor or the audit firm.

There is an option at Article 24a that allows Member States to lay down simplified requirements for the audits of small undertakings in relation to the obligations in this Head. It is not proposed to take this option.

## **Head 109: Organisation of work of statutory auditors and audit firms**

To provide for –

109. (1) An audit firm, when carrying out a statutory audit of an entity, shall designate at least one key audit partner who shall be actively involved in the carrying out of the statutory audit.

(2) An audit firm shall—

- (a) provide the key audit partner with sufficient resources and with personnel that have the necessary competence and capabilities to discharge his or her duties appropriately, and
- (b) ensure that the main criteria in selecting the key audit partner are securing audit quality, independence and competence.

(3) A statutory auditor, when carrying out a statutory audit of an entity, shall devote sufficient time to the engagement and shall assign sufficient resources to enable him or her to carry out his or her duties appropriately.

(4) A statutory auditor or audit firm shall keep records of any contraventions by him, her or it of the provisions of these Heads and, where applicable, Regulation (EU) No 537/2014.

(5) A statutory auditor or audit firm shall keep records of any consequences of any contravention referred to in subhead (4), including the measures taken to address such contravention and to modify his, her or its internal quality control system.

(6) A statutory auditor or audit firm shall prepare an annual report containing an overview of any measures taken pursuant to subhead (5) and, in the case of an audit firm, shall communicate that report internally to the partners or directors, as may be appropriate, of the audit firm.

(7) A statutory auditor or audit firm shall document each request made and advices received where he, she or it asks external experts for advice.

### **Explanatory Note**

This Head transposes new Article 24b paragraphs 1 to 3 of the Directive. It is concerned with the organisation of an audit by an audit firm. It sets out the rules in relation to the adequate resourcing of each audit and in relation to keeping adequate records including of breaches of the provisions of the Directive or the Regulation or request for external advice.

Head 109 is the same as Regulation 99 of SI 312 of 2016.

Subhead 109(1) provides an audit firm shall appoint at least one key audit partner for each audit it conducts.

Subhead 109(2) provides that person should be adequately resourced and sets out the main criteria for selection of that person.

Subhead 109(3) provides that in the case of a statutory auditor they must devote sufficient time and resources to the audit.

Subhead 109(4) sets out the requirement for a statutory auditor or audit firm to keep records of breaches of the rules relating to statutory audit which are set out in these Heads as well and where the audited entity is a public interest entity, breaches of the Regulation.

Subhead 109(5) sets out the requirement for a statutory auditor or audit firm to keep records of the consequences of the breaches referred to at subhead 109(4).

Subhead 109(6) provides that statutory auditors and audit firms shall prepare an annual report containing an overview of any measures taken as referred to in subhead 109(5) and this report shall be communicated internally to the management of the audit firm.

Subhead 109(6) provides that a statutory auditor or an audit firm shall document each request made of external experts and advices received.

Article 24b contains two Member State options. Firstly, Member States can exempt statutory auditors and audit firms from the obligations at subhead 109(3) in relation to keeping records of minor breaches. It is not proposed to take this option.

A second option in Article 24b allows Member States to exempt statutory auditors and audit firms to lay down simplified requirements for the audits of small undertakings in relation to the obligations in Head 109(3) to (6) and Head 110. It is not proposed to take this option.

## **Head 110: Organisation of work of statutory auditors and audit firms — audit files**

To provide for –

110. (1) A statutory auditor or audit firm shall maintain a client account record that includes the following data for each audit client:

- (a) the name, address and place of business;
- (b) in the case of an audit firm, the names of the key audit partner;
- (c) the fees charged for the statutory audit and the fees charged for other services in any financial year.

(2) A statutory auditor or audit firm shall create an audit file for each statutory audit which shall be closed not later than 60 days after the date of signature of the statutory auditors' report concerned and, where applicable, the reports referred to in Articles 10 and 11 of Regulation (EU) No 537/2014.

(3) A statutory auditor or audit firm shall document and retain at least the data recorded pursuant to Head 105, and, where applicable, Articles 6 to 8 of Regulation (EU) No 537/2014 for a period of at least 6 years.

(4) A statutory auditor or audit firm shall retain any other data and documents that are of importance in support of the statutory auditors' report and, where applicable, the reports referred to in Articles 10 and 11 of Regulation (EU) No 537/2014 and for monitoring compliance with these Regulations and other applicable legal requirements.

(5) A statutory auditor or audit firm shall keep records of any complaints made in writing about the performance of the statutory audits carried out by him, her or it.

### **Explanatory Note**

This Head provides for further detailed record keeping in relation to client accounts and audit files by statutory auditors and audit firms as set out in new Article 24b paragraphs 4-6 of the Directive.

Head 110 is the same as Regulation 100 of SI 312 of 2016.

Subhead 110(1) provides that a statutory auditor or an audit firm shall maintain a client account record and sets out the data which should be included in this record.

Subhead 110(2) provides that a statutory auditor or an audit firm shall create an audit file for each statutory audit and it should be closed no later than 60 days after the date of the signature of the audit report and in the case of public interest entities, the signature of the additional reporting requirements in Articles 10 and 11 of the Regulation.

Subhead 110(3) provides that the statutory auditor or the audit firm shall document and keep at least the data recorded pursuant to Head 96, and, where applicable, Articles 6 to 8 of the Regulation. Head 105 provides for a statutory auditor or audit firm to assess and document certain requirements before accepting or continuing an engagement for a statutory audit. Article 6 of the Regulation sets out additional provisions for such an assessment in relation

to the audits of public interest entities. Article 7 of the Regulation sets out the procedures to be followed by statutory auditors or an audit firm where they suspect irregularities including fraud while carrying out an audit of a public interest entity. Article 8 sets out the procedures in relation to quality control reviews of statutory audits which should be carried out by a statutory auditor who is not involved in the audit.

Subhead 110(4) provides that the statutory auditor or the audit firm shall retain any other data and documents that are of importance in support of the audit report provided for in Head 9 and, where applicable, the reports referred to in Article 10 and Article 11 of the Regulation and for monitoring compliance with these Heads and other applicable legal requirements.

Subhead 110(5) provides that the statutory auditor or the audit firm shall keep records of any complaints made in writing about the performance of the statutory audits carried out.

## **Head 111: Restrictions with regard to fees**

To provide for –

111. The Supervisory Authority shall require that standards referred to in section 930(1)(b) in relation to the recognised accountancy bodies include provisions that fees for statutory audits-

- (a) are not to be influenced by, or determined by, the provision of additional services to the audited entity, and
- (b) are not to be based on any form of contingency.

### **Explanatory Note**

This Head transposes Article 25 of the Directive which requires that the Member States ensure adequate rules are in place such that audit fees shall not be influenced or contingent in any way.

Head 111 is based on Regulation 101 of SI 312 of 2016.

It provides that the Supervisory Authority through the mechanism under section 930 of the Companies Act 2014 by which it recognises a body of accountants for the purposes of statutory audit shall require that the standards referred to in section 930(1)(b) include provisions that fees for statutory audits are not influenced or determined by the provision of other services, such as consultancy services, to the audited entity or are contingent in any other way.

## **Head 112: Restrictions with regard to fees exemption on exceptional basis**

To provide for –

112. (1) A public-interest entity may, pursuant to Article 4(2) of Regulation (EU) No 537/2014, request the Supervisory Authority for an exemption from the limits in that article on total fees for services provided by a statutory auditor or audit firm to a public interest entity for a for a period of up to 2 years on an exceptional basis.

(2) The grounds for the exceptional basis may be events in the nature of mergers, acquisitions and special investigations but, in any case, it will be a matter for the Supervisory Authority to determine such grounds.

(3) A request shall be made in such form and manner as the Supervisory Authority specifies.

(4) On receipt of a request in the form specified in subhead (3), the Supervisory Authority shall—

- (a) grant the exemption as requested,
- (b) grant a shorter exemption than that requested, or
- (c) refuse to grant the exemption.

(5) Where the Supervisory Authority, on receipt of a request for an exemption, considers that it requires additional information before making a decision under subhead (4), it shall give notice of that to the public-interest entity that made the request.

(6) The notice referred to in subhead (5) shall set out the additional information required by the Supervisory Authority.

(7) On receipt of a response to the notice from the public-interest entity containing the additional information referred to in subhead (5), the Supervisory Authority shall-

- (a) grant the exemption as requested,
- (b) grant a shorter exemption than that requested, or
- (c) refuse to grant the exemption.

(8) Where the Supervisory Authority grants an exemption under subhead (4) or (5), it shall—

- (a) do so on an exceptional and case by case basis only, and
- (b) publish its decision on its website.

(9) Where the Supervisory Authority refuses to grant an exemption under subhead (4)(c) or (7)(c), it shall provide reasons for its decision to the public-interest entity.



### **Explanatory Note**

Article 4 of Regulation 537/2014 deals with specific new rules regarding audit fees in the case of PIE audits. Article 4.2 places a financial limit on the income a statutory auditor or audit firm may earn from providing permitted non-audit services to an audit client. That limit is capped at 70% of average audit fees for the previous 3 financial years. The nature of the wording 'limited to no more than 70%' allows Member States to impose a cap of a lesser order of magnitude than 70%. It is not intended to set a lower limit than the 70% and there are therefore no proposals included here to that effect.

Article 4.2, sub paragraph 3 allows an exemption on an exceptional basis from the 70% threshold for non-audit services income for a period of up to 2 years.

This Head provides for this exceptional exemption and gives the power to the Supervisory Authority to grant requests. The first year a cap on non-audit services will apply is the first accounting year beginning on or after 17 June 2019. While the EU Regulation has direct effect it is considered appropriate to transpose this section into primary legislation in order to clarify how it will be implemented.

Subhead 112(1) provides that public interest entities may only seek an extension under exceptional circumstances and that such an extension will not exceed 2 years but may be less.

Subhead 112(2) provides for the exceptional grounds. It is intended that these would be exceptional and therefore the volume of requests should be also relatively small. There are over 1000 entities that qualify as public interest entities in Ireland. The Supervisory Authority will have discretion in any case as provided for by Article 17.6.

Subhead 112(3) provides that the requests shall be made in such form and manner as the Supervisory Authority specifies.

Subhead 112(4) provides that the Supervisory Authority shall make a decision on foot of the request to grant or refuse the request.

Subhead 112(5) – (7) provides the Supervisory Authority may request additional information if required before making a decision on the request.

Subhead 112(8) provides for the publication of decisions to grant the extension.

Subhead 112(9) provides that the Supervisory Authority shall provide reasons for refusals to grant extensions under subhead (4)(c) or (7)(c).

This option was not exercised in S.I. 312 of 2016.

## **Head 113: Rotation of key audit partner in cases of public-interest entities**

To provide for –

113. The key audit partner responsible for carrying out a statutory audit of a public interest entity shall cease his or her participation in the statutory audit of the entity not later than 5 years from the date of his or her first appointment to carry out such audit.

### **Explanatory Note**

The provisions of Regulation (EU) 537/2016 are specific to the statutory audit of public interest entities. The Regulation is directly applicable except where there are Member State options.

Article 17 of the Regulation is concerned with the duration of an audit engagement.

Article 17.6 of the Regulation provides that key audit partner may participate in the statutory audit of an entity for a maximum period of seven years. Member States have an option to provide for a lesser period.

This Head provides for a 5 years limit for the involvement of the key audit partner in the statutory audit of a public interest entity. This facilitates two key audit partner rotations of equal duration during the maximum 10 year period of an audit engagement which is provided for in Article 17.1 of the Regulation.

Head 113 is the same as Regulation 102 of SI 312 of 2016.

## **Head 114: Moratorium on taking up certain positions in audited entities**

To provide for –

114. (1) There shall not be taken up by—

- (a) a statutory auditor who carries out a statutory audit of an entity, or
- (b) the key audit partner who carries out, on behalf of an audit firm, a statutory audit of an entity,

any of the positions in that entity, specified in subhead (2), before a period of at least one year has elapsed since the day following the end of his or her direct involvement as a statutory auditor or key audit partner from the audit engagement.

(2) The specified positions are—

- (a) a key management position in the audited entity,
- (b) a position on the audit committee, or where such committee does not exist, such body as performs the equivalent functions to the audit committee, of the audited entity, or
- (c) a non-executive member position of the audited entity or a member's position of that entity.

(3) There shall not be taken up by—

- (a) a statutory auditor who carries out a statutory audit of a public interest entity, or
- (b) the key audit partner who carries out, on behalf of an audit firm, a statutory audit of a public-interest entity,

any of the positions in that entity, specified in subhead (4), before a period of at least 2 years has elapsed since the day following the end of his or her direct involvement as a statutory auditor or key audit partner from the audit engagement.

(4) The specified positions are—

- (a) a key management position in the audited entity,
- (b) a position on the audit committee, or where such committee does not exist, such body as performs the equivalent functions to the audit committee, of the audited entity, or
- (c) a non-executive member position of the audited entity or a member's position of that entity.

(5) Where an employee or partner, other than the key audit partner, of a statutory auditor or audit firm, or any other individual whose services are placed at the disposal or under the control of the statutory auditor or audit firm, and when such employees, partners or other individuals are personally approved as statutory auditors, there shall not be taken up by those employees, partners or other individuals any of the positions referred to in subheads

(2) and (4), before a period of at least one year has elapsed since the day following (should such occur) his or her involvement in the statutory audit engagement of that audited entity.

### **Explanatory Note**

This Head sets out the persons involved in a statutory audit for whom moratorium periods apply in relation to taking up positions in audited entities. It sets out the specific positions in the audited entity where these moratoriums apply and the relevant time periods of the moratorium. It transposes Article 22a of the Directive.

Head 114 is the same as Regulation 103 of SI 312 of 2016.

Subhead 114(1) provides that a statutory auditor or the key audit partner who carries out a statutory audit of an entity shall not take up any of the following positions before at least one year is past from the end of their direct involvement as a statutory auditor or key audit partner from the audit engagement:

Subhead 114(2)(a) to (c) sets out the relevant positions being

- (a) a key management position in the audited entity;
- (b) a position on the audit committee, or where such committee does not exist, such body as performs the equivalent functions to the audit committee, of that entity; or
- (c) a non-executive member position of the audited entity or a members position of that entity.

Subhead 114(3) provides that a statutory auditor or the key audit partner who carries out a statutory audit of a public interest entity shall not take up any of the following positions before at least two years is past from the end of their direct involvement as a statutory auditor or key audit partner from the audit engagement: The relevant positions are as at subhead 114(4)(a) to (c) and mirror those at subhead 114(2)(a) to (c).

Subhead 114(5) provides that persons who are personally approved as statutory auditors other than those in subhead 114(1) and (2) who are an employee or partner, or any other natural person whose services are placed at the disposal or under the control of the statutory auditor or audit firm shall not take up positions referred to in paragraphs (a) (b) or (c) of subheads (2) and (4) above until at least one year has elapsed after his or her involvement in the statutory audit engagement of that audited entity.

## **Head 115: Rotation of statutory auditor and audit firms in case of public-interest entities — extension**

To provide for –

115. (1) A public-interest entity may, pursuant to Article 17(6) of Regulation (EU) No 537/2014, under exceptional circumstances request the Supervisory Authority for an extension to reappoint a statutory auditor or audit firm for a period of up to 2 years on an exceptional basis.

(2) The grounds for the exceptional basis may be events in the nature of mergers, acquisitions and special investigations but, in any case, it will be a matter for the Supervisory Authority to determine such grounds.

(3) A request shall be made in such form and manner as the Supervisory Authority specifies.

(4) On receipt of a request in the form specified in subhead (3), the Supervisory Authority shall—

- (a) grant the extension as requested,
- (b) grant a shorter extension than that requested, or
- (c) refuse to grant the extension.

(5) Where the Supervisory Authority, on receipt of a request for an extension, considers that it requires additional information before making a decision under subhead (4), it shall give notice of that to the public-interest entity that made the request.

(6) The notice referred to in subhead (5) shall set out the additional information required by the Supervisory Authority.

(7) On receipt of a response to the notice from the public-interest entity containing the additional information referred to in subhead (5), the Supervisory Authority shall-

- (a) grant the extension as requested,
- (b) grant a shorter extension than that requested, or
- (c) refuse to grant the extension.

(8) Where the Supervisory Authority grants an extension under subhead (4) or (5), it shall—

- (a) do so on an exceptional and case by case basis only, and
- (b) publish its decision on its website.

(9) Where the Supervisory Authority refuses to grant an extension under subhead (4)(c) or (7)(c), it shall provide reasons for its decision to the public-interest entity.

### **Explanatory Note**

Article 17.6 of the Regulation includes provisions for the further extension of an audit engagement by up to 2 years beyond the maximum periods at regulation 17.1 (second paragraph) or 17.2b or 17.4, as appropriate, on an exceptional basis and on application to the competent authority and where the conditions in 17.4 are met. The provisions above are intended to give the competent authority in question the powers to lay down the format in which they wish such applications to be made and the power to make decisions on receipt of such requests.

This Head provides that applications for the further extension of the audit engagement may be made to the Supervisory Authority on an exceptional basis. It gives practical effect to Article 17.6.

Head 115 is the same as Regulation 104 of SI 312 of 2016.

Subhead 115(1) provides that public interest entities may only seek an extension under exceptional circumstances and that such an extension will not exceed 2 years but may be less.

Subhead 115(2) provides for the exceptional grounds. It is intended that these would be exceptional and therefore the volume of requests should be also relatively small. There are over 1000 entities that qualify as public interest entities in Ireland. The Supervisory Authority will have discretion in any case as provided for by Article 17.6.

Subhead 115(3) provides that the requests shall be made in such form and manner as the Supervisory Authority specifies.

Subhead 115(4) provides that the Supervisory Authority shall make a decision on foot of the request to grant or refuse the request.

Subhead 115(5) – (7) provides the Supervisory Authority may request additional information if required before making a decision on the request.

Subhead 115(8) provides for the publication of decisions to grant the extension.

Subhead 115(9) provides that the Supervisory Authority shall provide reasons for refusals to grant extensions under subhead (4)(c) or (7)(c).

## **Head 116: Rotation — reports by statutory auditor and audit firm in case of public-interest entities**

To provide for –

116. (1) If there is uncertainty as to the date on which a statutory auditor or audit firm began carrying out consecutive statutory audits for a public-interest entity (for example, due to firm mergers, acquisitions, or changes in ownership structure), the statutory auditor or audit firm shall immediately report such uncertainty to the Supervisory Authority.

(2) The report to the Supervisory Authority referred to at Article 17(8) of Regulation (EU) No 537/2014 shall be made in such form and manner as the Supervisory Authority specifies.

(3) On receipt of a report in the form specified in subhead (2), the Supervisory Authority shall have the power to—

- (a) determine the relevant date for the purposes of subhead (1), or
- (b) request additional information from the statutory auditor or audit firm before making a decision referred to in subparagraph (a).

(4) Where the Supervisory Authority, on receipt of a report, considers that it requires additional information from the statutory auditor or audit firm or public-interest entity before making a decision under subhead (3)(a), it shall—

- (a) give notice of that to the statutory auditor or audit firm or public-interest entity within 2 weeks after the receipt of the report, and
- (b) set out, in the notice, the additional information required by the Supervisory Authority.

(5) On receipt of a response to the notice from the statutory auditor or audit firm or public-interest entity containing the additional information referred to in subhead (4), the Supervisory Authority shall—

- (a) determine the relevant date for the purposes of subhead (1), and
- (b) provide reasons for its decision to the statutory auditor or audit firm and public-interest entity.

### **Explanatory Note**

Article 17.8 of the Regulation includes provisions for the statutory auditor or audit firm to report uncertainties regarding the date on which the statutory auditor or the audit firm began carrying out consecutive statutory audits for a public interest entity to the Supervisory Authority. The Supervisory Authority shall ultimately determine the relevant date.

The provisions above are intended to give the Supervisory Authority in question the powers to lay down the format in which they wish such reports to be made and the power to make determinations on receipt of such reports. The inclusion of the requirement to give reasons for the decisions is in the interests of transparency and fairness to the applicants.

This Head provides that the reports by statutory auditors and audit firms should be made to the Supervisory Authority and that the Supervisory Authority may request additional

information including from the public interest entity in question before making a final decision. It gives practical effect to Article 17.8 of the Regulation.

Head 116 is the same as Regulation 105 of SI 312 of 2016.

Subhead 116(1) provides that a statutory auditor or audit firm must report uncertainties regarding the relevant date of an audit engagement to the Supervisory Authority.

Subhead 116(2) provides that such reports shall be made in the form and manner specified by the Supervisory Authority.

Subheads 116(3)-(4) set out the procedures for the decision making process on the relevant date which can include requests for additional information including from the audited entity.

Subhead 116(5) provides that the Supervisory Authority shall make a decision and shall provide reasons for its decision.



## **Head 117: Provision of certain prohibited non-audit services by auditors of public-interest entities**

To provide for –

117. (1) Subject to subhead (2), a statutory auditor or audit firm carrying out the statutory audit of a public-interest entity, or any member of the network to which the statutory auditor or the audit firm belongs, may provide the following non-audit services to the audited entity, to its parent undertaking or to its controlled undertakings within the European Union:

- (a) tax services relating to-
  - (i) preparation of tax forms,
  - (ii) identification of public subsidies and tax incentives unless support from the statutory auditor or audit firm in respect of such services is required by law,
  - (iii) support regarding tax inspections by tax authorities unless support from the statutory auditor or audit firm in respect of such inspections is required by law,
  - (iv) calculation of direct and indirect tax and deferred tax, or
  - (v) provision of tax advice;
- (b) valuation services, including valuations performed in connection with actuarial services or litigation support services.

(2) The non-audit services referred to in subhead (1) may only be provided as specified in that subhead if—

- (a) they have no direct or have immaterial effect, separately or in the aggregate, on the audited financial statements,
- (b) the estimation of the effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee, and
- (c) the principles of independence set out in these Regulations are complied with by the statutory auditor or audit firm.

(3) The audit committee shall, at such times as it thinks it appropriate to do so, issue guidelines with regard to the non-audit services referred to in subhead (1).

### **Explanatory Note**

Article 5 of the Regulation sets out new rules for the auditors of public-interest entities in relation to the provision of non-audit services. In particular it sets out a list of non-audit services that may not be supplied by a statutory auditor to a public interest entity it is auditing.

Member States have an option at Article 5.3 to allow the provision of certain tax and valuation services subject to certain rules also set out in that Article. This Head transposes this option and is the same as Regulation 117 of S.I. 312 of 2016.

Subhead 117(1) provides that an audit firm may supply specified non-audit services to a PIE audit client. It sets out the list of prohibited non-audit services listed in Article 5.1 that may be supplied pursuant to Article 5.3.

Subhead 117(2) provides that the specified non-audit services may be supplied only if they meet certain conditions as set out in that Article.

Subhead 117(3) provides that the audit committee shall issue guidelines regarding the specified non-audit services as set out in Article 5.4.

Article 5.2 provides that Member States may add to the list of prohibited non-audit services.

Article 5.4 provides that Member States may apply stricter rules setting out conditions under which the audit firm may provide allowable non-audit services to the audit client. It is not intended to take either of these options.

## Part 7

### Audit Committees

#### **Head 118: Audit committees for public-interest entities**

To provide for –

118. (1) The directors of each public-interest entity shall establish an audit committee for the entity.

(2) The majority of the members of the audit committee shall be non-executive directors of the public-interest entity, that is to say, directors—

- (a) the terms of appointment of whom indicate or state that they are being appointed in a non-executive capacity, and
- (b) who otherwise possess the requisite degree of independence (particularly with regard to each of them satisfying the condition in subhead (3)) so as to be able to contribute effectively to the committee's functions.

(3) The condition referred to in subhead (2)(b) is that the director does not have, and at no time during the period of 3 years preceding his or her appointment to the committee did have—

- (a) a material business relationship with the public-interest entity, either directly, or as a partner, shareholder, director (other than as a non-executive director) or senior employee of a body that has such a relationship with the entity, or
- (b) a position of employment in the public-interest entity.

(4) At least one of the directors referred to in subhead (2) shall be a person who has competence in accounting or auditing.

(5) For the purposes of subheads (2) and (3)(a), a non-executive director is a director who is not engaged in the daily management of the public-interest entity or body concerned, as the case may be.

(6) The members of the audit committee as a whole shall have competence relevant to the sector in which the audited entity is operating.

(7) The chairman of the audit committee shall be appointed by its members and shall be independent of the audited entity.

(8) Any proposal of the directors of a public-interest entity with respect to the appointment of a statutory auditor or audit firm to the entity shall be based on a recommendation made to the directors by the audit committee.

(9) The statutory auditor or audit firm shall report to the audit committee of the public-interest entity 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.

(10) Without prejudice to subhead (1), this subhead shall not apply to public interest entities which meet the criteria set out in points (f) and (t) of Article 2(1) of Directive 2003/71/EC provided that the functions assigned to an audit committee are performed by the Board of Directors as a whole. The chairman of the Board, being an executive member, shall not act as chairman while the Board is performing the functions of the audit committee.

(11) Without prejudice to subhead (1), this subhead shall not apply to a public-interest entity if it is—

- (a) a public-interest entity which is a subsidiary undertaking within the meaning of point 10 of Article 2 of Directive 2013/34/EU if that entity fulfils the requirements set out in subheads (1) and (2) and Articles 11(1) and (2) and 16(5) of Regulation (EU) No 537/2014 at group level,
- (b) any public-interest entity which is an UCITS as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009<sup>11</sup> on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or an alternative investment fund (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011<sup>12</sup> on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010,
- (c) subject to subhead (11), any public-interest entity the sole business of which is to act as an issuer of asset backed securities as defined in point 5 of Article 2 of Commission Regulation (EC) No 809/2004 of 29 April 2004<sup>13</sup> implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, or
- (d) any credit institution within the meaning of point 1 of Article 3(1) of Directive 2013/36/EU whose shares are not 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 and which has, in a continuous or repeated manner, issued only debt securities admitted to trading in a regulated market, provided that the total nominal amount of all such debt securities remains below €100,000,000 and that it has not published a prospectus under Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003<sup>14</sup> on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

(12) An entity that avails itself of the exemption under subhead (11)(c) shall, by means of a statement to that effect included in a published document, such as —

- (a) in any annual report published by it, or
- (b) in an annual return or other periodic statement delivered by it to the Registrar of Companies or Central Bank of Ireland,

set forth the reasons for why it considers the establishment of an audit committee by it is not appropriate and, accordingly, why it has availed itself of that exemption.

(13) Without prejudice to subhead (1), this subhead shall not apply to a captive insurance undertaking or captive re-insurance undertaking (in each case within the meaning of Article 13 of Directive 2009/138/EC) provided that it has a body or bodies performing equivalent functions to an audit committee, established and functioning in accordance with provisions in

place in the State in which the entity to be audited is registered. In such a case the entity shall disclose on its website which body carries out those functions and how that body is composed. A qualifying captive insurance undertaking or captive re-insurance undertaking must satisfy the following conditions -

(i) it is not owned by a credit institution within the meaning of Article 1(1) of Directive 2000/12/EC or by a group of such institutions, and

(ii) it has not issued transferable securities admitted to trading on a regulated market within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC.

(14) Without prejudice to the responsibility of the directors of the public-interest entity, the responsibilities of the audit committee shall include—

- (a) to inform directors of the entity of the outcome of the statutory audit and explain how the statutory audit contributed to the integrity of financial reporting and what the role of the audit committee was in that process,
- (b) to monitor the financial reporting process and submit recommendations or proposals to the directors of the entity to ensure its integrity,
- (c) to monitor the effectiveness of the entity's internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial reporting of the entity, without breaching its independence,
- (d) to monitor the statutory audit of the annual and consolidated financial statements, in particular, its performance, taking into account any findings and conclusions by the Supervisory Authority pursuant to Article 26(6) of Regulation (EU) No 537/2014,
- (e) to review and monitor the independence of the statutory auditors or the audit firms in accordance with Heads 102 to 108 and Article 6 of Regulation (EU) No 537/2014, and, in particular, the appropriateness of the provision of non-audit services to the audited entity in accordance with Article 5 of that Regulation, and
- (f) to be responsible for the procedure for the selection of a statutory auditor or audit firm and recommend the statutory auditor or audit firm to be appointed in accordance with Article 16 of Regulation (EU) No 537/2014 except when Article 16(8) of that Regulation is applied.

(15) Subhead (8) applies to a proposal of the directors (with respect to the appointment of a statutory auditor or audit firm to a public-interest entity) made at any time after the establishment of the audit committee in respect of the entity.

(16) The other provisions of this Act with regard to the performance of a function by the audit committee apply with respect to accounts of the public-interest entity for financial years beginning on or after the establishment of the audit committee in respect of the entity.

(17) A public-interest entity which, without reasonable excuse, contravenes paragraph (11) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €12,500.

## **Explanatory Note**

The requirements for the audit committee were set out in Article 41 of the 2006 Directive. The amended Directive replaces Article 41 with Article 39.

Article 39 of the Directive set out the requirements for public interest entities to have an audit committee and its functions, along with the instances where an exception to having an audit committee is permitted. It is transposed in Head 118.

Article 39.1 requires at least one member of the committee to have competence in accounting and/or auditing. It is not proposed to take the Member State option to increase this requirement. A second Member State option in Article 39.1 is not being taken regarding the chairman of the audit committee being elected annually by the general meeting of shareholders of the audited entity.

Head 118 is the same as Regulation 115 of SI No 312 of 2016.

Subhead 118(1) provides that the audit committee for each public interest entity is established by the directors of the audited entity.

Subhead 118(2) to (7) sets out the constitution of the audit committee, in that it must be stand alone, it must be made up of non-executive members, it must have competence in the sector of the audited entity, the majority of members must be independent of the audited entity, including the chairman, as listed in Article 39(1). It also provides a definition for non-executive director. No such definition already exists in the Companies Act 2014. The same obligations apply to both Directors and non-executive directors under the Companies Act 2014.

Subhead 118(8) provides that the appointment of a statutory auditor or audit firm will be proposed only on the recommendation of the audit committee to the directors.

Subhead 118(9) provides for the report by the statutory auditor or audit committee to the audit committee of key matters arising from the audit.

Subhead 118(10) provides for a Member State option in Article 39.2 which permits the Board of Directors to act as the audit committee where the criteria set out in points (f) (SMEs) and (t) (small capitalization companies) of Article 2(1) of Directive 2003/71/EC (Prospectus Directive) is met. Where the chairman of the Board is an executive member, he will not act as Chair while the Board is carrying out the functions of the audit committee. The Central Bank of Ireland's Corporate Governance Code for Credit Institutions and Insurance Undertakings both permit the main Board to take on the responsibilities of committees in certain circumstances. The Code requires that the Chair of the audit committee shall be an independent non-executive director.

Subhead 118(11) and (12) - there is a Member State option in Article 39.3, which permits Member States to not require public interest entities that meet certain criteria to have an audit committee and this option is being taken. This subhead lists the public interest entities that are not required to have an audit committee, e.g. certain subsidiary undertakings, UCITS, AIF, issuers of asset backed securities as defined and certain credit institutions. The Directive requires issuers of asset backed securities as defined to provide an explanation to the public as to why they consider that it is not appropriate for them to have an audit committee.

Subhead 118(13) provides for a Member State option in Article 39.4 which exempts a captive insurance undertaking or captive reinsurance undertaking from the requirement to

have an audit committee provided it has a body or bodies performing equivalent functions to the audit committee. This body(ies) must be established and functioning in accordance with the provisions in place in the Member State in which the entity to be audited is registered. The name of the body(ies) and how it is composed is required to be disclosed and it is proposed to do this by means of the entity's website.

Subhead 118(14) sets out the functions of the audit committee as listed in Article 39(6).

Subhead 118(15) clarifies the timeframe for the application of subhead 118(8).

Subhead 118(16) specifies that the powers/duties of the audit committee apply to accounts of the public interest entity for financial years beginning on or after the audit committee is established.

Subhead 118(17) provides that the director will be guilty of an offence where the requirements of subhead 118(11) are not met, i.e. reporting on the reasons for availing of the exemption from having an audit committee.

There is a Member State option in Article 39.5 which is not being taken.

Section 167 of the Companies Act 2014 sets out the requirements for large companies to have an audit committee, within the terms of "comply or explain". This section defines what a large company is, the requirement to establish an audit committee or to explain why it is not being established if such is the case, the composition of that committee and its responsibilities.

The requirement to establish an audit committee under section 167 is strictly in relation to large companies and is distinct from the requirements for public interest entities to have audit committees under Article 39 of the Directive.

Part 8

Regulatory Arrangements between Member States

Chapter 1

*Cooperation with other Member States*

**Head 119: Specific requirements with regard to cooperation**

To provide for –

119. (1) In this Head, "counterpart authorities in other Member States" means competent authorities or bodies in other Member States with functions corresponding to those of the Supervisory Authority, the recognised accountancy bodies and the Registrar of Companies with regard to approval, registration, quality assurance, inspection and discipline under or delegated under these Heads or Regulation (EU) No 537/2014.

(2) The Supervisory Authority, the recognised accountancy bodies and the Registrar of Companies with functions relating to approval, registration, quality assurance, inspection and discipline under these Heads or Regulation (EU) No 537/2014, shall cooperate with the counterpart authorities in other Member States and the relevant European Supervisory Authorities whenever necessary for the purpose of those authorities or bodies (or, as the case may be, the counterpart authorities) carrying out their respective under or delegated under these Heads or Regulation (EU) No 537/2014 or, as the case may be, the laws of the other Member State concerned that implement the Audit Directive.

(3) The Supervisory Authority, the recognised accountancy bodies and the Registrar of Companies with the foregoing functions under or delegated under these Heads or Regulation (EU) No 537/2014 shall render assistance to the counterpart authorities in other Member States and to the relevant European Supervisory Authorities and, in particular, shall exchange information and cooperate with them in investigations relating to the carrying out of statutory audits.

**Explanatory Note**

One of the objectives of the Directive is to enhance co-operation between oversight structures/bodies across the EU.

This Head provides for co-operation between the Supervisory Authority and bodies to whom tasks have been delegated or who have duties under these Heads and other EU Member State counterparts. Co-operation applies to providing information, grounds for refusing a request for information, requests for investigations to be carried out and grounds for refusing it.

It transposes Article 36.1 of the Directive which provides for cooperation between competent authorities of Member States that are responsible for approval, registration, quality assurance, inspection and discipline.



Head 119 is based on Regulation 116 of SI 312 of 2016 with the inclusion of new references to functions delegated under these Heads. The Supervisory Authority will delegate tasks to the recognised accountancy bodies under Head 46.

Subhead 119(1) clarifies that a counterpart authority in other Member States corresponds to the Supervisory Authority, the recognised accountancy bodies and the Registrar of Companies under these Heads with similar responsibilities/duties in the area of approval, registration, quality assurance, inspection and discipline.

Subhead 119(2) requires the Supervisory Authority, the recognised accountancy bodies and the Registrar of Companies under these Heads or Regulation to cooperate with counterpart authorities in other Member States and the relevant European Supervisory Authorities in order to assist with carrying out their respective responsibilities/ duties under the national legislation of the Member State concerned.

Subhead 119(3) requires the Supervisory Authority, the recognised accountancy bodies and the Registrar of Companies under these Heads or the Regulation to assist counterpart authorities in other Member States and the relevant European Supervisory Authorities, particularly regarding investigations on the carrying out of statutory audits.

### *European Supervisory Authorities*

The European System of Financial Supervision (ESFS) is the framework for financial supervision in the EU in operation since 2011. The system consists of three European Supervisory Authorities (ESAs) and these are –

- The European Banking Authority (EBA)
- The European Securities and Markets Authority (ESMA)
- The European Insurance and Occupational Pensions Authority (EIOPA)

## **Head 120: Confidentiality of information**

To provide for –

120. (1) No person shall disclose, except in accordance with law, information that—

- (a) is obtained in performing functions under any provision of these Heads or of Regulation (EU) No 537/2014, and
- (b) has not otherwise come to the notice of members of the public.

(2) A person who contravenes subhead (1) shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €12,500 or imprisonment for a term not exceeding 12 months or both.

### **Explanatory Note**

The Head transposes elements of Article 32.3. Article 32.3 provides that the rules for confidentiality shall not prevent the exchange of information.

Head 120 is based on Regulation 117 of SI No 312 of 2016.

Head 120 sets out the conditions under which information may be disclosed and that it is an offence if the confidentiality requirement is breached.

Subhead 120(1) provides that information obtained by the recognised accountancy bodies or the Registrar of Companies under these Heads or the Regulation in performing its functions, if not in the public domain, must not be disclosed, except as a requirement of law. The Supervisory Authority is now dealt with in the amendment to section 940 of the Companies Act.

Subhead 120(2) imposes an offence for non-compliance with subhead (1), this will be updated to take account of the new categories of offences in the Companies Act 2014. Section 940 contains a category 2 offence.

## **Head 121: Supplemental provisions in relation to Regulation 117**

To provide for –

121. Without limiting Head 120, the persons to whom that Head applies include the following:

- (a) a member or director or former member or director of any board or committee, howsoever called, of the Supervisory Authority, the recognised accountancy bodies or the Registrar of Companies;
- (b) an employee or former employee of the Supervisory Authority, the recognised accountancy bodies or the Registrar of Companies;
- (c) a professional or other advisor to the Supervisory Authority, the recognised accountancy bodies or the Registrar of Companies, including a former advisor.

### **Explanatory Note**

Article 36.2 provides that the obligation to professional secrecy shall apply to employees of competent authorities (past or present) and that information obtained under professional secrecy may not be disclosed except where permitted by law etc.

Article 36.3 contains a new obligation of professional secrecy to apply to persons to whom the Supervisory Authority has delegated tasks under the Directive. The Supervisory Authority will delegate tasks to the recognised accountancy bodies under Head 46.

These elements of the Directive are transposed in part by Head 118. Head 121 specifies to whom the rules under Head 120 apply.

Head 121 is the same as Regulation 118 of SI No 312 of 2016.

## **Head 122: Obligation to supply information required for certain purposes and saving concerning confidential information**

To provide for –

122. (1) The Supervisory Authority or a recognised accountancy body shall, on request and without undue delay, supply any information required for the purpose referred to in Head 116.

(2) Head 122 shall not prevent the Supervisory Authority or a recognised accountancy body from complying with any such request or exchanging confidential information.

### **Explanatory Note**

Article 36.4 provides that a request for information will be dealt with promptly.

Head 122 transposes Article 36.4 paragraph 1 of the Directive. It provides for the obligation to supply information under the co-operation rules.

Head 122 is the same as Regulation 119 of SI No 312 of 2016.

Subhead 122(1) determines that the Supervisory Authority or a recognised accountancy body must supply the required information without undue delay for the purposes of co-operation among competent authorities in other Member States. The Registrar of Companies is not listed in this Head as the information maintained by it is on a register available to the public.

Subhead 122(2) specifies that the application of Head 120 must not restrict the requirements of subhead 122(1), i.e. confidentiality of information must not restrict co-operation between counterpart competent authorities in other Member States.

## **Head 123: Obligation of Supervisory Authority or recognised accountancy body to gather information**

To provide for –

123. (1) Where necessary, the Supervisory Authority or a recognised accountancy body, on receiving a request referred to in subhead 122(1), shall, without undue delay, take the necessary measures to gather the required information.

(2) If the Supervisory Authority or a recognised accountancy body of whom a request under subhead 123(1) is made is not able to supply, without undue delay, the required information, it shall notify the counterpart authority in the other Member State that made the request of—

- (a) the fact of the delay, and
- (b) the reasons therefor.

### **Explanatory Note**

Article 36.4 paragraph 1 and 2 of the Directive provides that the necessary steps will be taken to gather the information requested without undue delay by the competent authorities. If it is not possible to supply the information the counterpart authority shall be notified. The Registrar of Companies is not listed in this Head as it not responsible for gathering information.

Head 123 sets out the obligation to gather information required for the purposes of dealing with a request at Head 122.

Head 123 is the same as Regulation 119 of SI 312 of 2016.

Subhead 123(1) sets out that the Supervisory Authority or a recognised accountancy body must, on request, gather the required information.

Subhead 123(2) elaborates that if the information cannot be supplied in a timely manner, this fact and the reason for it, is to be communicated to the relevant competent authority in the other Member State.

## **Head 124: Application of Head 120 to certain information**

To provide for –

124. Head 120 shall apply to information received by the Supervisory Authority, a recognised accountancy body or the Registrar of Companies pursuant to the cooperation or exchange of information that is required of counterpart authorities of Member States by this Chapter.

### **Explanatory Note**

Article 36.2 of the Directive is being extended in this Head to any information received by competent authorities and not just to persons listed in Head 121.

Head 124 is the same as Regulation 121 of SI 312 of 2016.

Head 124 provides that, for the absence of doubt, the confidentiality requirements under Head 120 apply to information received by the Supervisory Authority, a recognised accountancy body or the Registrar of Companies.

## **Head 125: Requesting authority to be notified if its request not complied with**

To provide for –

125. (1) If—

- (a) the Supervisory Authority or a recognised accountancy body of whom a request referred to in subhead 122(1) is made does not comply with the request, and
- (b) the case is neither-
  - (i) just one of a delay in complying with the request to which subhead 123(2) relates, nor
  - (ii) one of a refusal to comply with the request on any of the grounds referred to in Head 126,

the Supervisory Authority or recognised accountancy body, as appropriate, shall notify the counterpart authority in the other Member State that made the request of the reasons for that failure to comply.

(2) If it is a recognised accountancy body as referred to in subhead (1)(a), it shall also notify the Supervisory Authority of the reasons for the failure referred to in that subhead.

### **Explanatory Note**

Article 36.4 paragraph 2 of the Directive requires the competent authority to inform the requesting competent authority if there will be a delay in supplying the necessary information. It is transposed in Head 125.

Head 125 is the same as Regulation 122 of SI No 312 of 2016.

Head 125 provides that where requested information is not supplied without undue delay the requesting counterpart authority will be notified of the reasons for this.

Subhead 125(1)(a) and (b) requires the Supervisory Authority or a recognised accountancy body to explain why it has not complied with a request where it is not a case of a delay in complying or a refusal to comply. This Head makes references to Heads 122, 123 and 126. Subhead 122(1) refers to information required for the purposes of co-operation between competent authorities in other Member States. Subhead 123(2) requires notification of the delay and the reasons for it to the competent authority in the other Member State. Head 126 sets out the grounds for refusing a request for information.

Subhead 125(2) requires that where it is a recognised accountancy body, then it must inform the Supervisory Authority of the failure to comply.

## **Head 126: Grounds for refusing request for information**

To provide for –

126. (1) The Supervisory Authority or a recognised accountancy body may refuse to comply with a request referred to in subhead 122(1) if, in its opinion—

- (a) there are reasonable grounds for believing that supplying the information concerned might adversely affect-
  - (i) public order,
  - (ii) the security of the State,
  - (iii) the defence of the State, or
  - (iv) the international relations of the State,
- (b) proceedings in any court in the State have already been initiated in respect of the same actions and against the same statutory auditor or audit firm, the subject of the request, or
- (c) a final determination has already been made by the Supervisory Authority or recognised accountancy body in respect of the same actions and the same statutory auditor or audit firm, the subject of the request.

(2) A recognised accountancy body shall not exercise the power under subhead (1) to refuse to comply with a request save after consultation with the Supervisory Authority.

(3) The Supervisory Authority or a recognised accountancy body that refuses, under subhead (1), to comply with a request shall notify the counterpart authority in the other Member State that made the request of the reasons for the refusal.

(4) A recognised accountancy body, referred to in subhead (3), shall also notify the Supervisory Authority of the reasons for the refusal referred to in that subhead.

### **Explanatory Note**

Article 36.4 paragraph 3 of the Directive provides that competent authorities may refuse a request for information in certain circumstances, such as where it might adversely affect sovereignty, security or public order or breach national security rules, where judicial proceedings have commenced or final judgement has been passed on the same actions and on the same statutory auditors/audit firms by the authorities of the requested Member State.

Head 126 transposes it by providing for certain circumstances where a request for information may be refused.

Head 126 is the same as Regulation 123 of SI No 312 of 2016.

Subhead 126(1) provides that the Supervisory Authority or a recognised accountancy body may refuse to comply with a request for information if it is believed that doing so it might have an adverse effect on the State, if court proceedings on the matter have been initiated or if a final determination on the same matter has already been made by the Supervisory Authority or a recognised accountancy body.



Subhead 126(2) requires a recognised accountancy body to consult with the Supervisory Authority before it refuses a request for information.

Subhead 126(3) requires the Supervisory Authority or a recognised accountancy body to notify the competent authority in another Member State that made the request of its reasons for refusing to comply with the request.

Subhead 126(4) requires a recognised accountancy body to notify the Supervisory Authority of these reasons also.

## **Head 127: Use to which information may be put**

To provide for –

127. (1) In this Regulation, "relevant information" means information that the Supervisory Authority or a recognised accountancy body receives pursuant to the cooperation or exchange of information that is required of counterpart authorities of Member States in this Chapter.

(2) The Supervisory Authority or a recognised accountancy body may use relevant information only for the performance by it of its functions under these Heads or Regulation (EU) No 537/2014 and then only in the context of steps it takes in—

(a) investigating and detecting failures to comply with these Heads or Regulation (EU) No 537/2014, and

(b) initiating and employing disciplinary procedures, or maintaining proceedings in any court, in respect of any such failures.

(3) Subhead (2) is without prejudice to any obligations, by virtue of any proceedings being maintained in any court, to which the Supervisory Authority or a recognised accountancy body or European Supervisory Authority is subject as regards the use to which it may put information referred to in that subhead and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

(4) (a) The Supervisory Authority or a recognised accountancy body may transmit to the counterpart authorities in other Member States responsible for supervising public-interest entities, to central banks, to the European System of Central Banks and to the European Central Bank, in their capacity as monetary authorities, and to the European Systemic Risk Board, confidential information intended for the performance of their respective functions.

(b) Such authorities or bodies shall not be prevented from communicating, to the Supervisory Authority or a recognised accountancy body, information that the Supervisory Authority or recognised accountancy body may need in order to perform its functions under Regulation (EU) No 537/2014.

### **Explanatory Note**

Article 36.4, final paragraph of the Directive requires competent authorities or European Supervisory Authorities to use information received only for the exercise of their functions under the Directive or Regulation and in the context of proceedings related to such exercise.

It is transposed by Head 127 which provides for the uses to which the information received can be put, i.e. competent authorities may only use it for the exercise of their functions within the Directive and any related administrative or judicial proceedings.

Head 127 is the same as Regulation 124 of SI No 312 of 2016.

Subhead 127(1) defines "relevant information" as that which the Supervisory Authority or a recognised accountancy body under these Heads receives in the context of the exchange of information required of competent authorities under Heads 119-133.

Subhead 127(2) requires that the Supervisory Authority or a recognised accountancy body may use the relevant information as determined by its functions under these Heads or the Regulation with regard to investigations/disciplinary procedures relating to failures to comply with these Heads or the Regulation.

Subhead 127(3) provides that subhead 127(2) will not prevent the Supervisory Authority or a recognised accountancy body or European Supervisory Authority to use the relevant information in the context of court proceedings or administrative or judicial proceedings related to its functions.

Subhead 127(4) provides for the Member State option in Article 36.4a to allow the Supervisory Authority or a recognised accountancy body to transmit confidential information intended for the performance of their tasks to supervisory and monetary authorities and to the European Systemic Risk Board and vice-versa.

Article 36.4a is new and this is transposed in subhead 127(4). This subhead contains a new Member State option to transmit confidential information to the competent authorities responsible for supervising public interest entities and other central banks and regulators for the performance of their tasks.

**Head 128: Counterpart authority to be notified of non-compliance with Audit Directive and Regulation (EU) No 537/2014**

To provide for –

128. Where the Supervisory Authority or a recognised accountancy body forms, on reasonable grounds, the opinion that activities contrary to the provisions of the Audit Directive or of Regulation (EU) No 537/2014 are being, or have been, carried out on the territory of another Member State, it shall, as soon as possible—

- (a) notify the counterpart authority in the other Member State of that opinion, and
- (b) include in that notification specific details of the matter and the grounds for its opinion.

**Explanatory Note**

Article 36.5 of the Directive requires competent authorities to inform each other where activities contrary to the Directive are taking place and what action has arisen to address them.

Head 128 provides for the Supervisory Authority to notify a counterpart authority of any activity of non-compliance with the Directive and that the latter must take appropriate action and inform the notifying competent authority of the outcome of this action. It transposes

It seems appropriate to cite the Directive here rather than these Heads to allow for situations where another Member State has transposed options that are not the same as the Irish transposition.

Head 128 is the same as Regulation 125 of SI No 32 of 2016.

## **Head 129: Counterpart authority may be requested to carry out investigation**

To provide for –

129. (1) In relation to activities that it suspects have been, or are being, carried on contrary to the provisions of the Audit Directive or Regulation (EU) No 537/2014, the Supervisory Authority or a recognised accountancy body may request a counterpart authority in another Member State to carry out an investigation in the territory of that Member State.

(2) A request under subhead (1) of a counterpart authority may be accompanied by a further request that one or more of the officers, or members of staff, of the Supervisory Authority or a recognised accountancy body be allowed to accompany officers, or members of staff, of the counterpart authority in the course of the investigation.

(3) A recognised accountancy body shall notify the Supervisory Authority of the making of a request by it under subhead (1) and, if such be the case, the making of the further request by it under subhead (2).

### **Explanatory Note**

Article 36.6 of the Directive requires that requests for investigation be carried out by a competent authority of another Member State on the latter's territory. It is transposed by Head 129.

Head 129 is the same as Regulation 126 of SI No 312 of 2016.

Subhead 129(1) specifies that where the Supervisory Authority or a recognised accountancy body suspects that activities carried out are contrary to the provisions of the Directive, the counterpart authority in another Member State may be requested to carry out an investigation in its Member State.

Subhead 129(2) permits a further request for an officer(s) or member(s) of staff from the requesting authority to accompany those of the counterpart authority during the investigation.

Subhead 129(3) requires the Supervisory Authority to be informed of the request in subhead 129(1) and (2) in the case of it being a recognised accountancy body making the request.

## **Head 130: Duty of Supervisory Authority or recognised accountancy body to take certain action**

To provide for –

130. (1) Where the Supervisory Authority or a recognised accountancy body receives a notification from—

- (a) the entity specifically responsible, pursuant to the laws of another Member State that implement Article 36 of the Audit Directive, for ensuring the cooperation referred to in that Article, or
- (b) the counterpart authority in another Member State,

that activities contrary to the provisions of the Audit Directive or Regulation (EU) No 537/2014 are being, or have been, carried on in the State, it shall take appropriate action under these Heads, Regulation (EU) No 537/2014 or the Companies Act 2014, as appropriate.

(2) The Supervisory Authority or a recognised accountancy body shall inform the notifying entity or authority of the outcome of that action, and to the extent possible, of significant developments in the period pending that outcome.

(3) A recognised accountancy body shall—

- (a) notify the Supervisory Authority of the taking by it of the action referred to in subhead (1), and
- (b) in addition to so informing, under subhead (2), the notifying entity or authority of those matters, inform the Supervisory Authority of the outcome of that action, and to the extent possible, of significant developments in the period pending that outcome.

### **Explanatory Note**

Article 36.5 of the Directive provides that where a competent authority is informed of activities taking place which are contrary to the Directive, it must take appropriate action.

Article 36.5 sets the rules for a competent authority to take action regarding activities contrary to the provisions of the Directive in the context of co-operation with other Member States. It is transposed in Head 130.

Head 130 is the same as Regulation 127 of SI No 312 of 2016.

Subhead 130(1) sets out that where the Supervisory Authority or a recognised accountancy body receives notification from an entity responsible for ensuring cooperation under Article 36 or a counterpart authority, that activities contrary to the Directive are being/have been carried out, it shall take appropriate action. Article 36 is transposed in Heads 119-133.

Subhead 130(2) requires the Supervisory Authority or recognised accountancy body to provide information on the outcome of the action and any significant developments prior to the outcome to the notifying entity or authority.

Subhead 130(3) requires a recognised accountancy body to notify the Supervisory Authority of the action taken by it and the outcome of it or any significant developments prior to the outcome of the action.

## **Head 131: Due consideration to be given to counterparty's request for investigation**

To provide for –

131. (1) The Supervisory Authority or a recognised accountancy body shall give due consideration to a request made of it, pursuant to the laws of another Member State that implement Article 36 of the Audit Directive, to carry out an investigation in the State.

(2) If a request under subhead (1) is acceded to by the Supervisory Authority or a recognised accountancy body, the investigation shall be subject to the overall control of the Supervisory Authority or recognised accountancy body that receives the request.

(3) For the purpose of this Regulation—

(a) the reference in subhead (1) to a request that is made pursuant to the laws of another Member State that implement Article 36 of the Audit Directive is a reference to such a request, whether or not it is accompanied by a further request (made pursuant to those laws) that one or more of the officers, or members of staff, of the requesting authority be allowed to accompany officers, or members of staff, of the Supervisory Authority or a recognised accountancy body in the course of the investigation, and

(b) the investigation is subject to the control as referred to in subhead (2) even if that further request is acceded to by the Supervisory Authority or a recognised accountancy body.

(4) A recognised accountancy body shall notify the Supervisory Authority—

(a) of the making of a request of it referred to in subhead (1), and

(b) if the request is acceded to by it, of the fact of the request being so acceded to.

### **Explanatory Note**

Article 36.6 sets the rules for due consideration to be given to a counterparty's request for an investigation to be carried out in the context of co-operation with other Member States.

Head 131 provides that due consideration should be given to a request for an investigation by a counterpart authority. It transposes which also provides that the investigation will be under the control of the Member State in which it is being conducted.

Head 131 is the same as Regulation 128 of SI No 312 of 2016.

Subhead 131(1) requires Supervisory Authority or a recognised accountancy body under these Heads to give due consideration to a request received to carry out an investigation in the State from a counterpart authority in another Member State.

Subhead 131(2) provides that where a request is agreed to, the investigation will be subject to the overall control of the Authority/body that receives the request. The recognised accountancy bodies will have this power by virtue of delegation.



Subhead 131(3) sets out the meaning given to a request, i.e. one that is “made pursuant to the laws of another Member State that implement Article 36 of the Directive” and that is not predicated on a further request being made or not. The request seeks officer(s) or member(s) of staff of the requesting authority to accompany their counterparts in the Supervisory Authority or a recognised accountancy body. Also, the request is subject to the controls referred to at subhead (2) even where a further request is acceded to.

Subhead 131(4) requires a recognised accountancy body to notify the Supervisory Authority if it has received a request and if it has acceded to the request.

## **Head 132: Grounds for refusing request for investigation**

To provide for –

132. (1) The Supervisory Authority or a recognised accountancy body may refuse to accede to a request referred to in subhead 131(1) made of it or a further request of the kind referred to in subhead 131(3)(a) made of it if, in its opinion—

- (a) there are reasonable grounds for believing that acceding to the request might adversely affect-
  - (i) public order,
  - (ii) the security of the State,
  - (iii) the defence of the State, or
  - (iv) the international relations of the State,
- (b) proceedings in any court in the State have already been initiated in respect of the same actions and against the same statutory auditor or audit firm, the subject of the request, or
- (c) a final determination has already been made by the Supervisory Authority or a recognised accountancy body in respect of the same actions and the same statutory auditor or audit firm, the subject of the request.

(2) A recognised accountancy body referred to in subhead (1) shall not exercise the power thereunder to refuse to accede to a request save after consultation with the Supervisory Authority.

(3) The Supervisory Authority or a recognised accountancy body that refuses, under subhead (1), to accede to a request shall notify the counterpart authority in the other Member State that made the request of the reasons for the refusal.

(4) A recognised accountancy body referred to in subhead (3) shall also notify the Supervisory Authority of the reasons for the refusal referred to in that subhead.

### **Explanatory Note**

Article 36.6 of the Directive sets the rules for the refusal of a request for an investigation to be carried out in the context of co-operation with other Member States.

Head 132 provides for refusals to act on a request for an investigation to be carried out or for personnel to be accompanied by personnel of a competent authority from another Member State where the sovereignty, security or public order of the State may be adversely affected or judicial proceedings have been initiated or a final judgement has passed in respect of the same actions or persons by the competent authority of the requested Member State.

Head 132 is the same as Regulation 129 of SI No 312 of 2016.

Subhead 132(1) permits the Supervisory Authority or a recognised accountancy body to refuse to accede to the initial request to carry out an investigation or a further request if it is believed that doing so it might have an adverse effect on the State, if court proceedings on the matter have been initiated or if a final determination on the same matter has already been made by the Supervisory Authority or a recognised accountancy body.

Article 36(6)(a) has been amended to include “or breach national security rules”. It would appear that this addition is already covered in the text of subhead 132(1)(a) and no further amendments are required to be made to it.

Subhead 132(2) requires a recognised accountancy body to consult with the Supervisory Authority before it refuses to accede to a request.

Subhead 132(3) requires the Supervisory Authority or a recognised accountancy body to notify the competent authority that made the request of its reasons for refusing to accede to the request.

Subhead 132(4) requires a recognised accountancy body to notify the Supervisory Authority of these reasons also.

Article 36.7 is an issue for the Commission to adopt implementing measures and therefore not transposed.

## Chapter 2

### *Mutual Recognition of Regulatory Arrangements between Member States*

#### **Head 133: Mutual recognition of regulatory arrangements between Member States**

To provide for –

133. To the extent that the preceding provisions of these Heads, or, where applicable, Regulation (EU) No 537/2014 do not operate to achieve the following effects in the law of the State, these Heads or Regulation (EU) No 537/2014 and those preceding provisions (notwithstanding anything in them to the contrary) shall be construed as operating, in a manner so that—

- (a) (i) the principle of home-country regulation and oversight by the Member State in which the statutory auditor or audit firm is approved and the audited entity has its registered office is respected, and
    - (ii) without prejudice to subparagraph (i), audit firms approved in one Member State that perform audit services in another Member State in accordance with Head 50 shall be subject to quality assurance review in the home Member State and oversight in the host Member State of any audit carried out there,
  - (b) the imposition of additional requirements on a statutory auditor or audit firm in relation to the statutory audit concerning registration, quality assurance review, auditing standards, professional ethics and independence is prohibited in the case of-
    - (i) a statutory audit of consolidated financial statements, required by a Member State, of a subsidiary established in another Member State, and
      - (ii) a company the securities of which are traded on a regulated market in another Member State to that in which it has its registered office, by that Member State, regarding the statutory audit of the annual or consolidated financial statement of that company,
- and
- (c) a statutory auditor or audit firm, approved under Head 49 or 137, which is registered in any Member State and provides audit reports concerning annual or consolidated financial statements in accordance with Head 138, the systems of oversight, quality assurance, investigation and sanctions of the Member State where registration took place will apply.

#### **Explanatory Note**

Article 34 of the Directive provides that the regulatory arrangements of Member States will respect the principle of home-country regulation and oversight by the Member State in which the statutory auditor/audit firm is approved and the audited entity has its registered office. It

clarifies auditor's roles that operate in more than one Member State. The Member State that approved an auditor/audit firm, comes to be the home Member State.

Article 34 is transposed in Head 130. Head 133 is the same as Regulation 130 of SI No 312 of 2016.

Subhead 133(a) clarifies that the principle of home country regulation and oversight by the Member State in which the statutory auditor or audit firm is approved and the audited entity has its registered office must be respected. In other words, the home Member State will approve the auditor/audit firm as a statutory auditor/audit firm while registration of the audited entity can take place in a number of Member States under the conditions of Article 3a (Head 50). Oversight in such instances will be in the Member State where registration took place, i.e. if an investigation needs to take place, it will take place in the Member State that the audit firm is registered in.

In addition, it clarifies that for Member State audit firms under Head 50, the home Member State will carry out quality assurance on the audit firm in question while it will be subject to the oversight of the host Member State in which it is carrying out the audit. For example, an auditor/audit firm approved in Ireland (home Member State) as a statutory auditor/audit firm but registered in England, France and Germany under Head 50, oversight will take place in the latter three Member States regarding any audit activities in these host Member States. Secondly, quality assurance will take place in Ireland, the home Member State.

Subhead 133(a)(i) transposes Article 34(1).

Subhead 133(a)(ii) is included to transpose the new subparagraph being added to subhead (a)(i). This subparagraph provides for recognised Member State audit firms, under Head 50, being subject to quality assurance review in the home Member State and oversight, in aspects other than the quality assurance reviews, in the host Member State of audits carried out there. These aspects include investigations and sanctions which can be applied both to the audit firm registered in the host Member State and the key audit partner approved in the host Member State.

Subhead 133(b) sets out that additional requirements may not be imposed on a statutory auditor/audit firm in relation to the statutory audit concerning registration, quality assurance review, auditing standards, professional ethics and independence in circumstances such as (i) a statutory audit of consolidated financial statements, required by a Member State, of a subsidiary established in another Member State, and (ii) a company whose securities are traded on a regulated market in another Member State to that in which it has its registered office, by that Member State, regarding the statutory audit of the annual or consolidated financial statements of that company. For example, (i) a parent company in Ireland with a subsidiary in Latvia – Ireland may not impose additional requirements regarding the statutory audit of the consolidated financial statements on the subsidiary in Latvia, and (ii) a company approved and with a registered office in Ireland, traded on the London stock exchange – the UK may not impose additional requirements regarding the statutory audit of the annual or consolidated financial statements of the company.

Paragraphs 2 and 3 of Article 34 have been replaced, to accommodate the change in wording in these paragraphs from “consolidated accounts” to “consolidated financial statements”.

Subhead 133(c) transposes the additional paragraph 4 of Article 34 of the Directive. It provides for the application of the systems of oversight, quality assurance and investigations and sanctions to a statutory auditor or audit firm by the Member State in which it is registered following approval under Article 3 (approval of statutory auditors/audit firms) or

Article 44 (approval of auditors from third countries as statutory auditors where certain conditions are met) and where such statutory auditors/audit firms provide audit reports concerning financial statements of an undertaking incorporated outside the EU whose securities are admitted to trading on a regulated market of the Member State in which it is registered. For example, (i) a US company trading on the Irish market having its financial statements audited by a statutory auditor/audit firm, such a statutory auditor/audit firm is subject to the oversight etc. of the Supervisory Authority in Ireland, and (ii) a US company trading on the UK market having its financial statements audited by an auditor/audit entity approved in Ireland but registered in the UK, such auditor/audit entity is subject to the oversight etc. of the Supervisory Authority in the UK.

## Chapter 3

### *Transfer of Working Papers to Third-country Competent Authorities*

#### **Head 134: Transfer of audit documentation to third-country competent authority**

To provide for –

134. (1) Subject to Head 135, audit working papers or other documents held by a statutory auditor or audit firm and inspection or investigation reports relating to the audits concerned may be transferred to a third-country competent authority only if the Supervisory Authority, on a request being made of it in that behalf by the first-mentioned authority, determines that the following conditions are complied with (and authorises such transfer accordingly), namely—

- (a) those audit working papers or other documents relate to the audit of a company which-
  - (i) has issued securities in the third country concerned, or
  - (ii) forms part of a group of companies that issue statutory group financial statements in the third country concerned,
- (b) the third-country competent authority meets requirements which have been declared adequate in accordance with Article 47(3) of the Audit Directive,
- (c) there are working arrangements on the basis of reciprocity agreed between the Supervisory Authority and the third-country competent authority, and
- (d) the transfer of personal data to the third country concerned is in accordance with Chapter IV of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995<sup>15</sup> on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(2) The working arrangements referred to in subhead (1)(c) shall ensure that—

- (a) justification as to the purpose of the request for audit working papers and other documents is provided by the third-country competent authority concerned,
- (b) the audit working papers and other documents are only transferred if-
  - (i) an obligation similar to that provided by Head 120 is provided under the laws of the third country concerned in relation to persons whilst in, and in any period subsequent to their ceasing to be in, the employment of the third-country competent authority,
  - (ii) the relevant persons in the employment of the third-country competent authority that will deal with the matter provide an undertaking in writing to the Supervisory Authority that they—

- (I) will comply with their obligation referred to in clause (i), and
- (II) deliver up possession of the audit working papers and other documents to the third-country competent authority, and do everything within their power to secure the return of them by that authority to the Supervisory Authority, once the performance of the functions referred to in subhead (c) in relation to them is completed,

and

- (iii) the protection of the commercial interests of the audited entity, including its industrial and intellectual property, is not undermined,

- (c) the third-country competent authority uses audit working papers and other documents only for the performance of its functions of public oversight, quality assurance and investigations that meet requirements equivalent to those of Articles 29, 30 and 32 of the Audit Directive,

and

- (d) the request from a third-country competent authority for audit working papers or other documents held by a statutory auditor or audit firm can be refused by the Supervisory Authority-

- (i) where the provision of those working papers or documents would adversely affect the sovereignty of the European Union or any of the following:

- (I) public order (whether in the State or elsewhere in the European Union);

- (II) the security of the State or the European Union;

- (III) the defence of the State or the European Union;

- (IV) the international relations of the State or the European Union,

- (ii) where proceedings in any court in the State have already been initiated in respect of the same actions and against the same statutory auditor or audit firm, or

- (iii) where final judgment in any court in the State has already been passed in respect of the same actions and on the same statutory auditor or audit firm, the subject of the request.

(3) The Supervisory Authority has, for the purposes of the performance of its functions under the preceding paragraphs (including the taking of any steps that necessitate the perusal by it of the papers and other documents concerned so as to determine whether the transfer should be refused on any of the grounds referred to in subhead (2)(d)), the following power.

(4) That power is to require the statutory auditor or audit firm concerned to produce to it the audit working papers and other documents; the statutory auditor or audit firm shall comply with such a requirement made of him, her or it by the Supervisory Authority.

(5) As soon as may be after—



- (a) if such a determination is made, the making by the Supervisory Authority of a determination that the transfer of the papers and other documents be refused on any of the grounds referred to in subhead (2)(d), or
- (b) the papers and other documents are returned by the third-country competent authority to it,

the Supervisory Authority shall secure the return to the statutory auditor or audit firm concerned of the audit working papers and other documents.

### **Explanatory Note**

Article 47 of the Directive provides that Member States may allow the transfer to the competent authorities of a third country of audit working papers or other documents held by statutory auditors/audit firms approved by them subject to certain conditions.

Article 47 is transposed in Heads 134-136 which sets out the requirements for the transfer of audit working papers and other documents to third-country competent authorities.

Head 134 is the same as Regulation 131 of SI No 312 of 2016.

Subhead 134(1) provides that audit working papers or other documents may be transferred to a third-country competent authority only if certain conditions are complied with, as determined by the Supervisory Authority.

There is a Member State option in Article 47.1 which was taken in the transposition of the 2006 Directive. The option allows for Member State to transfer audit working papers/inspection or investigation reports to the competent authority of a third country held by approved statutory auditors/audit firms provided they meet certain conditions as at (a) to (e) of Article 47.1. This is provided for in subhead 134(1).

Subhead 134(2) sets out the working arrangements that must apply between the third-country competent authority and the Supervisory Authority. It provides that the Supervisory Authority may refuse a request for the transfer of working papers where certain criteria are met.

Subhead 134(3) provides the competent authority in Ireland with certain powers in the context of the working arrangements that apply.

Subhead 134(4) sets out that the power is to require the statutory auditor or audit firm concerned to produce the audit working papers and other documents to the competent authority.

Subhead 134(5) sets out that the competent authority must secure the return of the audit working papers and other documents to the statutory auditor or audit firm.

There is no requirement to transpose Article 47.3 as it relates to powers being given to the Commission.

## **Head 135: Derogation from Regulation 132 in exceptional cases**

To provide for –

135. By way of derogation from Head 134, the Supervisory Authority may, in exceptional cases, allow a statutory auditor or audit firm to transfer audit working papers and other documents directly to a third-country competent authority, provided that—

- (a) an investigation has been initiated by that competent authority in the third country concerned,
- (b) the transfer does not conflict with the obligations with which statutory auditors and audit firms are required to comply in relation to the transfer of audit working papers and other documents to the Supervisory Authority,
- (c) there are working arrangements with the third-country competent authority of a reciprocal nature that allow the Supervisory Authority direct access to audit working papers and other documents of audit entities in the third country concerned,
- (d) the third-country competent authority informs in advance the Supervisory Authority of each direct request for information, indicating the reasons therefor, and
- (e) conditions similar to those specified in subhead 134(2)(a) to (d) are satisfied.

### **Explanatory Note**

The option at Article 47.4 was taken under the 2006 Directive and continues to be taken now. The option permits Member States to allow approved statutory auditors/audit firms to transfer audit working papers/other documents directly to the competent authorities of a third country provided they meet certain conditions as at (a) to (e) of Article 47.4.

Head 135 sets out that in exceptional cases a statutory auditor or audit firm may transfer the relevant documents directly to a third-country competent authority provided certain conditions are met at (a)-(e), without having to go through the medium of the Supervisory Authority.

Head 135 is the same as Regulation 132 of SI No 312 of 2016.

## **Head 136: Particulars of working arrangements to be notified**

To provide for –

136. (1) Where the Supervisory Authority enters into working arrangements with a third-country competent authority in accordance with subhead 134(1)(c), particulars of those working arrangements shall be published by the Supervisory Authority on its website without delay and those particulars shall include—

- (a) the name of the third-country competent authority, and
- (b) the jurisdiction in which it is established.

(2) Particulars of those working arrangements shall also be notified by the Supervisory Authority to the Commission.

### **Explanatory Note**

Article 47.6 provides for Member States to communicate to the Commission the working arrangements referred to in paragraphs 1 and 4.

Head 136 is the same as Regulation 133 of SI No 312 of 2016.

Subhead 136(1) provides that the working arrangements entered into between the competent authorities must be published, to include the name of the third-country competent authority and its jurisdiction.

Subhead 136(2) adds that the working arrangements will be notified to the Commission by the Supervisory Authority.

Part 9  
Third-Country Auditors  
Chapter 1  
*International Aspects*

**Head 137: Approval of third-country auditor**

To provide for –

137. (1) Without prejudice to Chapter 2 of Part 4 and subject to subhead (2), the Supervisory Authority may approve a third-country auditor as a statutory auditor if that person has furnished proof that he or she complies with requirements equivalent to those specified in Heads 49 and 56.

(2) A third-country auditor shall not be approved under subhead (1) unless reciprocal arrangements with the third country concerned are in place, that is to say arrangements that enable—

- (a) by virtue of the law of that third country, and
- (b) on fulfilment by the statutory auditor concerned of requirements no more onerous than those specified by this Head and Chapter 2 of Part 4 for the third-country auditor's approval under subhead (1),

a statutory auditor to carry out audits in that third country.

**Explanatory Note**

Article 44 of the Directive provides that a competent authority of a Member State may approve a third-country auditor as a statutory auditor if that person furnishes proof of complying with certain educational requirements and meet the requirements of the aptitude test. All of this is subject to reciprocity.

Head 137 transposes Article 44 of the 2006 Directive and this article was not amended by Directive 2014/56/EU.

The current practice is that there is an arrangement between Chartered Accountants Ireland (CAI) and the other recognised accountancy bodies, as approved by IAASA, that CAI administer the aptitude test required in Head 60. Once the aptitude test is passed by a third country auditor it may then apply to a recognised accountancy body, of his/her choosing, for approval. It is intended to maintain this practice.

Head 137 is based on Regulation 134 of SI No 312 of 2016. The Supervisory Authority will delegate the task of approvals under Head 35 and this will include the approval of third-country auditors transposed in this Head.

Subhead 137(1) provides that a third-country auditor may be approved as a statutory auditor in Ireland subject to supplying proof of meeting certain criteria including good repute,

meeting certain educational qualifications, engaging in practical training and continuing education and meeting the requirements of subhead (2).

Subhead 137(2) adds a further condition that a third-country auditor must only be approved under subhead (1) if reciprocal arrangements are in place with the particular third country that allows a statutory auditor to carry out audits there. These reciprocal arrangements are drawn up between the relevant competent authorities in the countries concerned, e.g. if one existed between Ireland and a third country it would be between IAASA and the competent authority in that third country. No such reciprocal arrangements are in place between Ireland and any third country as yet under the Directive.

A third country auditor may apply for approval as a statutory auditor and will then be treated the same as an Irish auditor.

The third country auditors approved under this Head are completely separate to third country auditors who provide audit services in third countries. The latter are dealt with in Heads 132-144.

## Chapter 2

### *Registration of Oversight of Third-country Auditors and Audit Entities*

#### **Head 138: Registration of third-country auditors and audit entities**

To provide for –

138. (1) Subject to subheads (6), (7), (8) and (9) and Head 144, the Supervisory Authority shall, in accordance with the relevant provisions of Chapter 4, Part 4 and Schedule 2, cause to be registered in each year in the public register every third-country auditor and audit entity that indicates, in writing to it, his, her or its intention to provide an audit report concerning the annual or group financial statements of an undertaking falling within subhead (3).

(2) Registration in the public register pursuant to subhead (1) shall have effect for a period of 12 months from the date on which the registration is effected.

(3) The undertaking referred to in subhead (1) is one—

- (a) incorporated outside the European Union, not being a collective investment undertaking, and
- (b) whose transferable securities are admitted to trading on a regulated market (within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC) in the State.

(4) There shall accompany the indication in writing by a third-country auditor or audit entity referred to in subhead (1) a notification, in such form and manner as the Supervisory Authority specifies, of the following information (in relation to the auditor or audit entity) to it.

(5) That information is the information referred to in paragraph 3 of Schedule 2 but does not include the information referred to in subparagraph 1(b) or 2(b) (as applied by that paragraph 3) of that Schedule.

(6) Subhead (1) shall not apply if the undertaking referred to in that subhead is an issuer exclusively of outstanding debt securities for which one of the following applies:

- (a) prior to 31 December 2010, the undertaking was admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(c) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004<sup>16</sup> on the harmonisation of transparency requirements in relation to information about issues whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, and the denomination per unit of which is at the date of issue at least €50,000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least €50,000;
- (b) from 31 December 2010, the undertaking was admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(c) of Directive 2004/109/EC, and the denomination per unit of which is at the date of issue at least €100,000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least €100,000.

(7) Subhead (1) shall not apply in respect of an audit report for a financial year referred to in Regulation 4(a) of the European Communities (Transitional Period Measures in Respect of Third Country Auditors) Regulations 2009 (S.I. No. 229 of 2009) if the audit report is provided by a third-country auditor or audit entity that complies with Regulation 4 of those Regulations.

(8) Subhead (1) shall not apply in respect of an audit report referred to in that subhead for a financial year starting during the period from 2 July 2010 to 31 July 2012 if—

- (a) that audit report is provided by a third-country auditor or audit entity,
- (b) that audit report concerns a company referred to in subhead (3) that is incorporated in a third-country specified in Annex I to Commission Decision 2011/30/EU of 19 January 2011<sup>17</sup> on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union as amended by Commission Implementing Decision 2013/288/EU of 13 June 2013<sup>18</sup> amending Decision 2011/30/EU on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third-country auditors and audit entities in the European Union, and
- (c) the third-country auditor or audit entity concerned complies with Regulations 4(2) and 7 of the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period Measures and Fees) Regulations 2012 (S.I. No. 312 of 2012).

(9) Subhead (1) shall not apply in respect of an audit report referred to in that subhead for a financial year starting during the period from 2 July 2010 to 31 July 2015 if—

- (a) that audit report is provided by a third-country auditor or audit entity,
- (b) that audit report concerns the annual or consolidated accounts of companies referred to in subhead (3) that are incorporated in a third country or territory specified in Annex II to Commission Decision 2011/30/EU of 19 January 2011 as amended by Commission Implementing Decision 2013/288/EU of 13 June 2013, and
- (c) the third-country auditor or audit entity concerned complies with Regulations 4A(2) and 7 of the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period and Fees) Regulations 2012.

(10) Head 68 shall apply to third-country auditors and audit entities so registered with the substitution of references to the recognised accountancy body for references to the Supervisory Authority and any other necessary modifications.

(11) Head 69 shall apply, with any necessary modifications, to a notification of information by a third-country auditor or audit entity under-

- (a) subhead (4) to the Supervisory Authority; and
- (b) Head 68, as applied by subhead (10), to that Authority.

(12) In subhead (3), "collective investment undertaking" does not include such an undertaking of the closed-ended type.

## **Explanatory Note**

Article 45 of the Directive sets out the registration and oversight and investigation requirement for third-country auditors and audit entities. The term “audit entity” is used in the context of third country audit entities while “audit firm” is used in relation to audit firms in the EU.

Under Article 45 there are two groups who may be registered on the public register – (i) third country auditors and audit entities who carry out audits in certain third countries that the Commission deems has an equivalent system of public oversight, quality assurance, investigation and penalty systems to that of Member States within the EU and (ii) third country auditors and audit entities who carry out audits in third countries where the Commission has not made any decision regarding equivalence.

Under a number of Commission Decisions issued since Directive 2006/43/EC there is a third group which are the third country auditors and audit entities that carry out audits in certain third countries where the Commission has deemed that their system cannot be considered fully equivalent yet but may be in the future and these are called “in transitional period”. This group is exempt from registration on the public register.

Article 45 of the Directive is transposed in Heads 138-143.

All these provisions relate to third country auditors/audit entities carrying out audits on companies incorporated outside the EU but whose transferable securities are admitted to trading on a regulated market in Ireland. These third country auditors/audit entities are not seeking approval in Ireland to act as auditors.

Head 138 is the same as Regulation 135 of SI No 312 of 2016.

Subhead 138(1) sets out the requirement for the relevant third-country auditor and audit entity to be registered by the Supervisory Authority in the public register where they have indicated their intention in writing to provide an audit report concerning the annual or group accounts of particular undertakings.

Subhead 138(2) provides clarity on the period of time for which registration is effective.

Subhead 138(3) sets out the particular undertakings to which subhead (1) applies, i.e. those incorporated outside the EU (except for collective investment undertakings of the closed ended type) but who are trading on a regulated market within the EU.

Subhead 138(4) sets out that certain information, as specified by the Supervisory Authority, will be provided by the third-country auditor or audit entity along with the written indication at 138(1).

Subhead 138(5) specifies that the information is that referred to in Schedule 2, paragraph 3 of this Bill with limited exceptions. The information regarding a third country auditor will include - name and address of auditor, name and address of audit firm where auditor is employed, name and address of recognised accountancy body regulating the auditor, particulars of registration, particulars of competent authorities in other Member States responsible for approval, quality assurance, investigations, discipline and penalties, and public oversight. Information regarding a third country audit entity will include - name, address, name of each statutory auditor employed by it, details of recognised accountancy body regulating the audit firm, details of owners/shareholders, directors of the audit firm, particulars of registration, particulars of competent authorities in other Member States



responsible for approval, quality assurance, investigations, discipline and penalties, and public oversight.

Subhead 138(6) provides for an exemption to 138(1) in certain circumstances.

Subhead 138(7) provides for an exemption to subhead 138(1) in the case of an audit report for financial years starting on 29 June 2008 and ending on 1 July 2010 provided by a third-country auditor/audit entity for an undertaking incorporated in a specified third country, i.e. those countries that are deemed by the Commission to be in transitional period and listed in the Annex to the Decision.

Subhead 138(8) provides for an exemption to subhead 138(1) in the case of an audit report for financial years starting during the period from 2 July 2010 to 31 July 2012 provided by a third-country auditor/audit entity for an undertaking incorporated in a specified third country, i.e. those countries that are deemed by the Commission to be in transitional period and listed in Annex I to the Decision. It makes reference to the requirement for a third country auditor/audit entity to provide the information and pay the fee as set out in Regulations 4(2) and 7 of SI 312 of 2012.

Subhead 138(9) provides for an exemption to subhead 138(1) in the case of an audit report for financial years starting during the period from 2 July 2010 to 31 July 2015 provided by a third-country auditor or audit entity for an undertaking incorporated in a specified third country, i.e. those countries that are deemed by the Commission to be in transitional period and listed in Annex II to the Decision. It specifies the relevant Commission Decision from which the exemption arises. It also makes reference to the requirement for a third country auditor/audit entity to provide the information and pay the fee as set out in Regulations 4A(2) and 7 of SI 312 of 2012. SI 555 of 2014 amended SI 312 of 2012.

Due to amendments brought about by SI 312 of 2012 and SI 555 of 2014 respectively, paragraphs (8) and (9) were added to Regulation 138(7). It is intended to maintain the balance of SI 321 of 2012 and SI 555 of 2014 on the statute book as the provisions contained therein are stand-alone provisions.

Subhead 138(10) sets out that the obligations of Head 68 to notify certain information to the competent authority shall apply to third-country auditors and audit entities.

Subhead 138(11) set out that the obligations of Head 69 that the information must be signed shall apply to third-country auditors and audit entities.

Subhead 138(12) defines that a collective investment undertaking referred to in subhead 2 does not include a closed-ended type.

## **Head 139: Exemption from quality assurance**

To provide for –

139. (1) A third-country auditor or audit entity registered under Chapter 4, Part 4 in pursuance of Head 138 may apply to the Supervisory Authority for an exemption from Chapter 6 of Part 4 if a quality assurance review has, under another Member State's or third country's system of quality assurance, been carried out in relation to the auditor or audit entity during the 3 years preceding the making of the application.

(2) On the making of that application, if—

- (a) the Supervisory Authority is satisfied that the quality assurance review referred to in subhead (1) has been carried out as referred to in that paragraph, and
- (b) the system of quality assurance referred to in that paragraph has been assessed as equivalent in accordance with Head 144,

the Supervisory Authority shall grant the exemption and the third-country auditor or audit entity shall be exempted from Chapter 6 of Part 4 accordingly.

### **Explanatory Note**

Article 45.3 of the Directive provides that third country auditors/audit entities will be subjected to Member States' systems of oversight, quality assurance and investigations and penalties. They may be exempt from the quality assurance requirement where a quality assurance review has been carried out in the previous three years by another Member State or a third country whose system has been deemed equivalent.

Heads 75-77 provides for quality assurance and Head 138(13) provides for investigations and penalties systems to apply to third country auditors also.

Head 139 is the same as Regulation 136 of SI No 312 of 2016.

Subhead 139(1) provides for an exemption from quality assurance to apply where such a review has been carried out under another Member State's or third country's systems in relation to the auditor or audit entity during the previous 3 years prior to it making the application.

Subhead 139(2) provides for the Supervisory Authority to grant the exemption to the third-country auditor or audit entity where it is satisfied that the quality assurance review is carried out in accordance with subhead 2 and assessed as equivalent in accordance with Head 144.

## **Head 140: Audit by non-registered auditor or audit entity — consequence**

To provide for –

140. Without prejudice to Head 144 and unless Head 138(6), (7), (8) or (9) applies to it, an audit report provided by a third-country auditor or audit entity concerning the annual or group financial statements of a company falling within Head 138(3) shall have no legal effect in the State if the third-country auditor or audit entity that provides it is not registered under Part 4.

### **Explanatory Note**

Article 45.4 of the Directive provides that audit reports have no validity in the Member State if they are issued by third country auditors/audit entities who are not registered in the Member State.

Head 140 is the same as Regulation 137 of SI No 312 of 2016.

Head 140 provides that an audit report provided by a third-country auditor or audit entity, if no other conditions apply, will have no legal effect in the State if the auditor/audit entity is not registered with the Supervisory Authority.

## **Head 141: Conditions for registration of third-country auditor or audit entity**

To provide for –

141. (1) The Supervisory Authority may cause to be registered a third-country auditor or audit entity pursuant to Head 138 only if—

- (a) where the applicant for registration is an audit entity (referred to in this Head as the "potential registrant"), the applicant satisfies so much of the conditions specified in subhead (2) as are applicable to an entity, and
- (b) where the applicant for registration is an auditor (also referred to in this Head as the "potential registrant"), the applicant satisfies so much of the conditions specified in subhead (2) as are applicable to an individual.

(2) The conditions are-

- (a) the majority of the members of the administrative or management body of the potential registrant meet requirements equivalent to those of Head 49 and 56,
- (b) the third-country auditor carrying out the audit on behalf of the potential registrant meets requirements equivalent to those of Head 49 and 56,
- (c) the audits of the annual or group financial statements referred to in Head 138(1) are carried out in accordance with international auditing standards as referred to in Head 93, as well as the requirements referred to in Head 74, or with equivalent standards and requirements, and
- (d) the potential registrant publishes annually on a website, being a web-site maintained by or on behalf of the potential registrant, a report which includes the information referred to in Article 13 of Regulation (EU) No 537/2014 in relation to the year concerned or the potential registrant complies with equivalent disclosure requirements.

### **Explanatory Note**

Article 45.5 sets out the conditions for registration of a third-country auditor or audit entity and is transposed by Head 141.

Head 141 is the same as Regulation 138 of SI No 312 of 2016.

Subhead 141(1)(a) and (b) specifies that the applicant for registration may be either an audit entity or an auditor and must satisfy the conditions that apply in either case.

Subhead 141(2)(a) specifies that most of the members of the administrative or management body of the potential registrant must be of good repute and have sufficient educational qualifications/practical training as set out in Heads 49 and 56.

Subhead 141(2)(b) requires the third country auditor carrying out the audit on behalf of the potential registrant must meet the requirements of good repute and have sufficient educational qualifications/practical training as set out in Heads 49 and 56.

Subhead 141(2)(c) provides that the audits of the annual or group financial statements referred to in Head 138(1) must be carried out in accordance with the necessary standards in Head 93 and required independence in Head 74.

Subhead 141(2)(d) sets out that the potential registrant will publish on a website an annual report regarding Transparency to include the information required under Article 13 of the Regulation.

The transposition of Article 45(5a) is included in the construction of Head 141.

## **Head 142: Supervisory Authority may assess matter of equivalence for purposes of Regulation 138(2) (c)**

To provide for –

142. (1) For so long as the Commission has not taken, in accordance with the procedure referred to in Article 48(2) of the Audit Directive, the decision under Article 45(6) of that Directive in relation to the matter of equivalence of standards and requirements referred to in Head 141(2)(c), the Supervisory Authority may, for the purposes of that provision, make an assessment of that equivalence.

(2) When assessing this equivalence, the Supervisory Authority shall use the general equivalence criteria established by the Commission in assessing whether the audits of the financial statements referred to in Head 138(1) are carried out in accordance with the standards and requirements referred to in Head 141(2)(c).

(3) The general equivalence criteria referred to in subhead (2) shall apply to all third countries.

### **Explanatory Note**

Article 45.6 requires the Commission to assess the equivalence as referred to in Article 45.5(d) along with the Member States and to decide on it in accordance with Article 48.2. Member States may assess equivalence where such a decision is not made

Head 142 is the same as Regulation 139 of SI No 312 of 2016.

Subhead 142(1) contains a Member State option such that the Supervisory Authority may assess the matter of equivalence of standards and requirements as cited in Head 141(2)(c) in circumstances where the Commission has not done so. A similar option was taken in the transposition of the 2006 Directive.

Subhead 142(2) transposes the balance of the new paragraph 6 and relates to the general equivalence criteria established by the Commission to be used by Member States when assessing equivalence of the audits of financial statements mentioned in Head 138(1) and meeting the criteria in Head 141(2)(c). The general equivalence criteria are applicable to all third countries.

## Head 143: Certain fees chargeable by Supervisory Authority

To provide for –

143. (1) (a) For the purposes specified in subhead (b), the Supervisory Authority may charge and impose an annual fee (of an amount specified from time to time by the Minister sufficient to cover the Authority's administrative expenses) on a third-country auditor or audit entity referred to in Head 138(1), and subject to subhead (c), in respect of registration, effected or provided in relation to the auditor or audit entity under and in accordance with this Act.

(b) Money received by the Supervisory Authority under this subhead may be used only for the purposes of covering the Authority's reasonable administrative expenses in performing its functions and exercising its powers under Head 138 and under any other Head of this Act that contain consequential or incidental provisions on, or in relation to, Head 138.

(c) The Supervisory Authority-

(i) shall submit the rationale for the level of fee to the Minister for approval before imposing a fee—

(I) initially when the fee is proposed, and

(II) at any time thereafter that the fee is proposed to be amended, and

(ii) may charge fees on an annual basis to cover the reasonable administrative costs associated with the following tasks:

(I) the annual registration of such auditor or audit entity that is a statutory auditor or audit firm registered in a public register of a Member State pursuant to Articles 15 to 19 of the Audit Directive;

(II) the annual registration assessment and the annual registration of such auditor or audit entity that is not registered in a public register of a Member State pursuant to Articles 15 to 19 of the Audit Directive as a statutory auditor or audit firm.

(2) (a) For the purposes specified in subhead (b), the Supervisory Authority may charge and impose fees, where necessary on an interim basis, having obtained the Minister's consent and subject to subhead (c), on a third-country auditor or audit entity referred to in Head 138(1) in respect of the oversight, quality assurance and the related matters of investigation, discipline and penalties, effected or provided in relation to the auditor or audit entity under and in accordance with these Regulations.

(b) Money received by the Supervisory Authority under this subhead may be used only for the purposes of covering the Authority's reasonable administrative expenses in performing its functions and exercising its powers under Head 43 and Chapters 6 and 7 of Part 4 and under any other Head of this Act that contain consequential or incidental provisions on, or in relation to, Head 43 or Chapters 6 and 7 of Part 4.

(c) The Supervisory Authority-

- (i) shall establish criteria, as set out in subhead (3), for charging and imposing fees on a third-country auditor or audit entity referred to in Head 138(1),
- (ii) shall submit the criteria to the Minister for approval before imposing fees –
  - (I) initially when the criteria are established, and
  - (II) at any time thereafter that the criteria are amended,
- (iii) may charge fees on an interim basis to cover the reasonable administrative costs associated with the functions of oversight, quality assurance and the related matters of investigation, discipline and penalties—
  - (I) before the function is performed,
  - (II) more than once, if necessary, during the performance of the function, and
  - (III) when the performance of the function is completed.

(3) Established criteria for charging and imposing fees on an interim basis on a third-country auditor or audit entity referred to in Head 138(1) shall be based on costs incurred to cover the Supervisory Authority's reasonable administrative expenses in relation to—

- (a) location (for example flights, accommodation and subsistence),
- (b) the testing of the internal quality control system undertaken (for example, the time taken to review audit firms),
- (c) the number and nature of the Irish relevant audit clients,
- (d) how many third-country auditors are within the firm,
- (e) staffing resources, being how many staff are required, at what level and for what period,
- (f) expertise required (for example, the use of local consultants to undertake on-site inspections),
- (g) the nature and significance of the findings (for example, the time allocated to inspection, drafting the report and follow-up to the recommendations),
- (h) associated miscellaneous costs (for example, the translation of audit papers), and
- (i) legal and other costs (for example, other third party advices).

(4) Notwithstanding that the particular audit of a public-interest entity has been carried out by a statutory auditor, no fee under this Head shall be imposed on the statutory auditor if he or she was designated by a statutory audit firm to carry out the audit, and the fees under this Head shall, in those circumstances, be imposed on the statutory audit firm instead.



(5) A fee imposed under subhead (1) or (2) may, in default of payment, be recovered from the third-country auditor or audit entity concerned as a simple contract debt in any court of competent jurisdiction.

(6) In the case of hardship on behalf of a third-country auditor or audit firm, or where the performance of a function involves particularly complicated work, the Supervisory Authority may agree to charge a lesser fee, compatible with the circumstances of the function.

### **Explanatory Note**

Article 45 sets out the requirements for registration and oversight of third country auditors and audit entities.

Head 143 includes provision for fees to be charged by the Supervisory Authority to third country auditors/audit entities in respect of registration, public oversight, quality assurance and investigations, sufficient to cover the Authority's administrative expenses associated with these tasks. Article 32.7 of the Directive sets out clearly that "the system of public oversight shall be adequately funded", thereby providing the legal basis for these fees to be charged.

Head 143 is the same as Regulation 140 of SI No 312 of 2016.

Subhead 143(1)(a) provides for the Supervisory Authority to charge and impose an annual fee on a third-country auditor or audit firm as referred to in Head 138(1) to cover reasonable administrative costs, specified from time to time by the Minister and subject to 143(1)(c), in respect of registration.

Subhead 143(1)(b) sets out that the money received by the Supervisory Authority may only be used to cover the administrative expenses incurred in carrying out its functions under Head 138 or related Heads.

Subhead 143(1)(c) requires the Supervisory Authority to submit the rationale for the level of fee to the Minister for approval when the fee is first being set and at any time that it is being amended. The fee relates to (i) annual registration of such auditor or audit entity that is a statutory auditor or audit firm in the public register and (ii) annual registration assessment and registration of such auditor or audit entity that is not registered in the public register as a statutory auditor or audit firm. The fee will be specified in a letter from the Minister to the Supervisory Authority prior to being charged.

Due to the nature of the work carried out under subhead 143(2), it is necessary to provide for fees being charged on an interim basis, mostly after the event, resulting in them not being able to be specified in advance. However, the criteria surrounding the fees will be established and agreed by the Minister before any fees are charged. Fees can be charged, on the basis of established criteria, at various times during the course of carrying out quality assurance.

Subhead 143(2)(a) provides for the Supervisory Authority to charge and impose a fee on an interim basis on a third-country auditor or audit entity referred to in Head 138(1) to cover reasonable administrative costs in respect of the oversight, quality assurance and the related matters of investigation, discipline and penalties.

Subhead 143(2)(b) sets out that the money received by the Supervisory Authority may only be used to cover the administrative expenses incurred in carrying out its functions under Head 43, Chapters 6 and 7 of Part 4 or related Heads.

Subhead 143(2)(c) requires the Supervisory Authority to establish criteria for charging a fee, submit it to the Minister for approval when the fee is first being set and at any time that it is being amended. It allows for the fee to be charged on an interim basis before a task commences, during the task and when it is completed. This is particularly relevant when a quality assurance review is being carried out.

Subhead 143(3) specifies that the established criteria will be based on costs incurred to cover administrative expenses in relation to the items listed at (a) to (i) there.

Subhead 143(4) sets out that the fee will be charged to the statutory audit firm in the case of a statutory auditor being designated by the statutory audit firm to carry out the audit.

Subhead 143(5) permits the fee to be imposed by court in case of default of payment.

Subhead 143(6) permits a lesser fee to be charged than normally stipulated in particular cases of hardship.

## **Head 144: Exemptions in case of equivalence**

To provide for –

144. (1) A third-country auditor or audit entity may apply to the Supervisory Authority for an exemption from all or any of the provisions of Head 138 and 139 on the basis that the third-country auditor or audit entity is subject to systems of public oversight, quality assurance and investigations and penalties in the third country concerned that meet requirements equivalent to those of Head 45 and Chapters 6 and 7 of Part 4.

(2) On the making of that application, if—

- (a) the Commission has, in accordance with Article 46(2) of the Audit Directive, assessed the systems referred to in subhead (1) as meeting requirements equivalent to those in the corresponding provisions of the Audit Directive, and
- (b) the Supervisory Authority is satisfied that the law of the third country concerned affords reciprocal rights to a statutory auditor or audit firm with regard to being granted corresponding exemptions under that law,

the Supervisory Authority may rely on the equivalence decided by the Commission, partially or entirely, and thus to disapply or modify the requirements in Heads 138 and 139 partially or entirely and the third-country auditor or audit entity shall be partially or entirely exempted accordingly.

(3) The Supervisory Authority shall notify the Commission of the main elements of its cooperative arrangements with systems of public oversight, quality assurance and investigations and penalties of the third country concerned, arising out of arrangements it has entered into with that third country for the purposes of the reciprocity referred to in subhead (2)(b).

### **Explanatory Note**

Article 46 permits Member States to disapply or modify the requirements of Article 45(1) and (3) on the basis of reciprocity in cases where equivalence applies.

Head 144 is the same as Regulation 141 of SI No 312 of 2016.

Subhead 144(1) contains a Member State option, at Article 46.1 of the Directive, such that a third-country auditor or audit entity may seek an exemption from all or any of the provisions of Heads 138 and 139 provided they are subject of equivalent systems of public oversight, quality assurance and investigations/penalties in the third country concerned. The same option was taken in the transposition of the 2006 Directive.

Subhead 144(2), provides that the Supervisory Authority may grant the exemption if the appropriate conditions are met, i.e. where the Commission has assessed the systems as equivalent and that reciprocal rights apply to the statutory auditor/audit firm.

Subhead 144(2) final paragraph, contains a Member State option, at Article 46.2 of the Directive, which allows the Supervisory Authority to rely on the equivalence decided by the Commission either partially or entirely and thus disapply the requirements of Article 45(1) and (3). It also provides for the competent authority to rely on the general equivalence criteria established by the Commission.

Subhead 144(3) provides that the Supervisory Authority will notify the Commission of the main elements of its co-operative arrangements with a particular third country regarding public oversight etc. for the purposes of reciprocity as referred to in Head 144(2).

## **Head 145: Investigations and Sanctions**

To provide for –

145. The Supervisory Authority may apply sections 934, 934A-934I to third country auditors and third country audit entities.

### **Explanatory Note**

This Head provides that the Supervisory Authority may apply the relevant provisions on investigations and sanctions in Part 15 of the Companies Act 2014 to third country auditors and third country audit entities. It replaces the provisions of section 1448 which are deleted.

Part 10  
Miscellaneous

**Head 146: Summary proceedings**

To provide for –

146. Summary proceeding in relation to an offence under this Act may be brought and prosecuted by—

- (a) the Director of Public Prosecutions, or
- (b) the Director of Corporate Enforcement

**Explanatory Note**

This Head sets out the bodies which may bring and prosecute summary proceeding for an offence under the Bill.

## **Head 147: Savings for disciplinary proceedings in being**

To provide for –

147. (1) None of the provisions of this Act (and, in particular, those amending the Companies Act 2014) affect disciplinary proceedings in being before 17 June 2016 by a recognised accountancy body against any of its members and, accordingly, those proceedings may be continued on and after that date by that body against the member or members concerned.

(2) If, as a result of proceedings referred to in subhead (1) in relation to a person referred to in that subhead, the person's membership of the recognised accountancy body is terminated by the body or the body's approval (howsoever expressed) of the person to act as an auditor is withdrawn, then any deemed approval of the person as a statutory auditor or audit firm by virtue of Head 2 ceases to have effect.

(3) Where the result of proceedings referred to in subhead (1) is not either of those referred to in subhead (2), the powers of the Supervisory Authority under sections 934 and 935 of the Companies Act 2014 (as those sections stand amended by this Act) are available to the Authority, and may be exercised by the Authority, in relation to the matters the subject of those proceedings.

### **Explanatory Note**

This Head provides for savings for disciplinary proceedings underway at the time of enactment of these Heads.

Head 147 is the same as Regulation 143 of S.I. 312 of 2016.

## **Head 148: Amendment of Irish Collective Asset-management Vehicles Act 2015**

To provide for –

148. (1) In this Head, "Principal Act" means the Irish Collective Asset-management Vehicles Act 2015 (No. 2 of 2015).

(2) Section 2 of the Principal Act is amended by the deletion of the definition of "Audits Regulations".

(3) Section 123 of the Principal Act is amended by the substitution of the following subsection (1):

"(1) No person other than—

- (a) a statutory auditor or audit firm approved in accordance with the Companies Act 2014, or
- (b) an audit firm registered in accordance with Head 38 of the Companies Act 2014,

shall be eligible for appointment as an auditor of an ICAV."

(4) Section 131 of the Principal Act is amended by the substitution of "Head 111" for "Regulation 101".

### **Explanatory Note**

This Head makes consequential amendments to the ICAV Act 2015. Head 148 is based on Regulation 144 of S.I. 312 of 2016.



**Head 149: Standards relating to training and qualifications for approval of individual as statutory auditor**

To provide for –

**SCHEDULE 1**

1. An individual shall have attained university entrance or equivalent level and then—

- (a) completed a course of theoretical instruction,
- (b) undergone practical training, and
- (c) passed an examination of professional competence which is of at least the standard required in the State for university final or equivalent examination level.

2. (1) The examination of professional competence referred to in paragraph 1 shall be such as guarantees the necessary level of theoretical knowledge of subjects relevant to statutory audit and the ability to apply such knowledge in practice. Part at least of that examination shall be in writing.

(2) The test of theoretical knowledge included in the examination shall cover the following subjects in particular:

- (a) general accounting theory and principles;
- (b) legal requirements and standards relating to the preparation of annual and consolidated accounts;
- (c) international accounting standards;
- (d) financial analysis;
- (e) cost and management accounting;
- (f) risk management and internal control;
- (g) auditing and professional skills;
- (h) legal requirements and professional standards relating to statutory audit and statutory auditors;
- (i) international auditing standards as referred to in Head 77;
- (j) professional ethics and independence.

3. The examination shall also cover at least the following subjects in so far as they are relevant to auditing:

- (a) company law and corporate governance;

- (b) the law of insolvency and similar procedures;
- (c) tax law;
- (d) civil and commercial law;
- (e) social security law and employment law;
- (f) information technology and computer systems;
- (g) business, general and financial economics;
- (h) mathematics and statistics;
- (i) basic principles of the financial management of undertakings.

4. (1) In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee shall complete a minimum of 3 years' practical training in, inter alia, the auditing of annual financial statements, consolidated financial statements or similar financial statements. A substantial part of such practical training must be in statutory audit work and at least two thirds of such practical training shall be completed with a statutory auditor or an audit firm approved in any Member State.

(2) All such training shall be carried out with persons who a recognised accountancy body is satisfied possess, to an adequate standard, the ability to provide practical training.

### **Explanatory Note**

Schedule 1 sets out the standards that pertain to training and qualifications for approving a person as a statutory auditor. It details the university or equivalent qualifications that are required followed by theoretical instruction, practical training and a professional competence examination. It sets out the knowledge of subjects that are required for the theoretical test. At least three years practical training is also required, the majority of which must be completed with a statutory auditor/audit firm approved within the EU. A recognised accountancy body must be satisfied that the statutory auditor/audit firm concerned can carry out the required training to an adequate standard.

Article 8 of the Directive is amended at paragraph 1, point (i) and this is reflected in subparagraph 2(2)(i).

Article 10 of the Directive is amended by a replacement paragraph 1 and this is transposed in subparagraph 3(1).

**Head 150: Information required, by Part 4, to be Supplied and Entered in Public Register**

To provide for -

**SCHEDULE 2**

**Statutory auditors**

1. In relation to a statutory auditor, the public register shall contain at least the following information:

- (a) the name and address of the auditor;
  - (b) the number under which the auditor is entered in that register;
  - (c) if applicable-
    - (i) the name and address and the website address (if any) of the statutory audit firm by which the auditor is employed, or with whom he or she is associated as a partner or otherwise, and
    - (ii) the number under which that statutory audit firm is entered in that register;
  - (d) the name and address of the recognised accountancy body responsible for the regulation of the auditor;
  - (e) if he or she is so registered with one or more recognised accountancy bodies-
    - (i) particulars of his or her registration—
      - (I) as a statutory auditor, with each counterpart authority and the name of the authority, and
      - (II) as auditor, with one or more third-country competent authorities and the name or names of it or them,
- and
- (ii) the number under which he or she is registered with each such authority;
- (f) without prejudice to subparagraph (e), with regard to the auditor's status (if such be the case) as a Member State statutory auditor, the name and address of each counterpart authority responsible, in relation to him or her, for-
  - (i) approval as referred to in Article 3 of the Audit Directive,
  - (ii) quality assurance as referred to in Article 29 of the Audit Directive and Article 26 of Regulation (EU) No 537/2014,

- (iii) investigations and sanctions as referred to in Chapter VII of the Audit Directive and Articles 23 and 24 of Regulation (EU) No 537/2014,
- (iv) public oversight as referred to in Article 32 of the Audit Directive, and
- (v) performing the functions provided for in Regulation (EU) No 537/2014 and for ensuring the provisions of that Regulation are applied as referred to in Article 20 of that Regulation.

**Statutory audit firms and audit firms approved in another Member State**

2. In relation to a statutory audit firm, the public register shall contain at least the following information:

- (a) the name and address of the audit firm;
- (b) the number under which the audit firm is entered in that register;
- (c) the legal form of the audit firm;
- (d) the primary contact person in the audit firm and contact details;
- (e) the address of each office in the State of the audit firm and the website address (if any) of the audit firm;
- (f) the name of every individual employed by or associated as partner or otherwise with the audit firm who is approved as statutory auditor under Part 4;
- (g) the number under which that individual is entered in the register;
- (h) the name and address of the recognised accountancy body responsible for the regulation of the audit firm in the State;
- (i) the names and addresses of the owners of, or as appropriate, shareholders in, the audit firm;
- (j) the names and addresses of the directors, or other members of, as appropriate-
  - (i) the board of directors,
  - (ii) board of management, or
  - (iii) other administrative or management body,
 of the audit firm (but where the audit firm comprises a partnership with no management structure, the provision of the address of each individual named, under subparagraph (f), as partner suffices);
- (k) if applicable, the fact of the audit firm's membership of a network and either-
  - (i) a list of the names and addresses of member firms and affiliates of the network, or
  - (ii) an indication of where such information is publicly available;

- (l) if the audit firm is so registered with one or more counterpart authorities or third-country competent authorities-
  - (i) particulars of the firm's registration—
    - (I) as a statutory audit firm, with each counterpart authority of another Member State and the name of the authority,
    - (II) as an audit firm, with one or more third-country competent authorities and the name or names of it or them, and
    - (III) as an audit firm approved in another Member State, who has registered with the relevant recognised accountancy body in accordance with Article 3a of the Audit Directive,
  - and
  - (ii) the number under which the firm is registered with each such authority;
- (m) without prejudice to subparagraph (1), with regard to the audit firm's status (if such be the case) as a Member State statutory audit firm, the name and address of each counterpart authority responsible, in relation to it, for-
  - (i) approval as referred to in Article 3 of the Audit Directive,
  - (ii) where the audit firm is registered in the public register of another Member State pursuant to Article 3a of the Audit Directive and Ireland is its home Member State—
    - (I) the fact that the firm is so registered, and
    - (II) the name of the host Member State and the counterpart authority in the host Member State,
  - (iii) quality assurance as referred to in Article 29 of the Audit Directive and Article 26 of Regulation (EU) No 537/2014,
  - (iv) investigations and sanctions as referred to in Chapter VII of the Audit Directive and Articles 23 and 24 of Regulation (EU) No 537/2014,
  - (v) public oversight as referred to in Article 32 of the Audit Directive, and
  - (vi) performing the functions provided for in Regulation (EU) No 537/2014 and for ensuring the provisions of that Regulation are applied as referred to in Article 20 of that Regulation;
- (n) where the audit firm is registered in the public register pursuant to Article 3a(3) of the Audit Directive with Ireland as its host Member State-
  - (i) the fact that the firm is so registered, and
  - (ii) the name of the home Member State and the counterpart authority in the home Member State.

### **Third-country auditors and audit entities**

3. (1) In relation to the case provided by Head 135 of the registration of a third-country auditor or audit entity, the public register shall contain at least the information specified in the provisions of paragraph 1 or, as the case may be, 2 (as, in either case, those provisions are applied by subparagraph (2)).

(2) The provisions of paragraph 1 or 2, as the case may be, apply for the purposes of this paragraph save so much of them as are inapplicable in the case of a third-country auditor or audit entity, as appropriate.

(3) Third-country auditors or audit entities so registered shall be clearly indicated in the register as such and not as statutory auditors or audit firms.

### **Individual identification number and storage of information in electronic form**

4. (1) There shall be assigned an individual identification number to each individual, firm and entity that is being entered in the public register, being—

(a) in a case where the information entered in respect of the individual or firm is that provided under Head 85, the number notified under subhead (2)(b)(i) of that Head to the Registrar of Companies,

(b) in any other case, such individual identification number as, subject to subparagraph (2), is determined and allocated by the Registrar of Companies,

and references in paragraphs 1 and 2 to the number under which any of the foregoing persons is entered in the register shall be read as references to that identification number.

(2) Instead of its allocating a number for the purposes of subparagraph (1)(b) that has been determined by it, the Registrar of Companies may –

(a) in specifying under any provision of this Act the form in which information is to be notified to it for registration (and the provision concerned of this Act does not itself provide for the notification of such a number), include in that specification a requirement that the form, as completed, includes an identification number allocated to the subject of the notification by the notifier of the information, and

(b) if the number so provided in that form is satisfactory for the purpose of distinguishing the subject from other registrants, allocate, for the purposes of subparagraph (1)(b), that number so provided.

(3) The information contained in that register shall be stored in electronic form and be capable of being accessed by members of the public by electronic means.

### **Definition of "address"**

5. In this Schedule, "address", in relation to an individual, firm or entity, means the individual's, firm's or entity's usual business address.

### **Explanatory Note**

Articles 15, 16, 17 and 18 of the Directive relate to the public register, registration of statutory auditors/audit firms and updating registration information respectively. The information referred to in these Articles is set out in detail in Schedule 2.

Schedule 2 is the same as Schedule 2 in SI No 32 of 2016.

Schedule 2, paragraphs (1) and (2) set out the relevant information that is referred to in subhead 85(4).

Information in paragraph 1 include (a) name and address of auditor, (b) the number under which the auditor is entered in the register, (c) name and address of audit firm where auditor is employed and number of the former in the register, (d) name and address of recognised accountancy body regulating the auditor, (e) particulars of registration when registered with different competent authorities, (f) particulars of competent authorities responsible for approval, quality assurance, investigations, discipline and penalties, and public oversight.

Information in paragraph 2 include (a) name, address of audit firm, (b) the number in register, (c) legal form of the audit firm, (d) primary contact person in audit firm and details, (e) address of each office of the audit firm in the State, name of every individual auditor employed by it, (g) individual's number in the register, (h) name and address of recognised accountancy body regulating the audit firm, (i) name and address of owners/shareholders, (j) name and address of directors/other members of the board/other management body of the audit firm, (k) details of the audit firm's membership of a network, (l) particulars of registration when registered with different competent authorities, (m) particulars of competent authorities responsible for approval, quality assurance, investigations, discipline and penalties, and public oversight. Included in (l) and (m) are details of registration requirements concerning Member State audit firms referenced in Article 3a of the Directive. Article 17(1)(j) is transposed in subparagraph (n). This additional subparagraph seeks to capture any audit firm registered in accordance with Article 3a(3), i.e. an audit firm from another Member State country registered there as its home Member State and registered in Ireland as its host Member State and all audit firms registered in both the UK/Ireland with both jurisdictions acting as the home Member State.

Information required in paragraph 3 regarding a third country auditor is similar to that set out in paragraphs 1 and 2. In accordance with Head 135 (which transposes Article 45 of the Directive), the Supervisory Authority will cause to be registered in the public register every third country auditor/audit entity who indicated the intention of providing an audit report in respect of an undertaking incorporated outside the EU and listed on the Irish Stock Exchange. It must be clearly indicated on the register that they are third country auditors/audit entities.

Paragraph 4 transposes Article 15.2. It sets out that an individual identification number must be assigned to each individual, firm and entity entered in the public register. This number is provided by the recognised accountancy body on approval of a statutory auditor/audit firm or the registration of a Member State audit firm and notified to the Registrar of Companies. In all other cases the number is determined and allocated by the Registrar of Companies. The Registrar of Companies may specify a different form for the registration to be notified to it but it must include the requirement of an identification number on the information notified which can distinguish the registrants from others. The information must be stored in electronic form and be available to the public.

Paragraph 5 defines that the address of an individual, firm or entity is their usual business address.

Part 11

Amendments to Industrial and Provident Societies Act 1893 and Friendly Societies Act 1896

Chapter 1

*Industrial and Provident Societies Act 1893*

**Head 151: To amend Section 13 of the Industrial and Provident Societies Act 1893**

To provide for –

151. The amendment of section 13 of the Industrial and Provident Societies Act 1893 by inserting the following -

“(3) None of the following persons shall be qualified to act as a statutory auditor of a society registered under the Industrial and Provident Societies Acts 1893 to 2014—

- (a) an officer or servant of the society,
- (b) a person who has been an officer or servant of the society within a period in respect of which accounts would fall to be audited by the person if he or she were appointed auditor of the society,
- (c) a parent, spouse, civil partner, brother, sister or child of an officer of the society,
- (d) a person who is a partner of or in the employment of an officer of the society,
- (e) a person who is disqualified under this subsection for appointment as a statutory auditor of any other society that is a subsidiary or holding company of the society or a subsidiary of the society's holding company,
- (f) a person who is disqualified under Head 102 for appointment as statutory auditor of a company that is a subsidiary or holding company of the society.

(4) A person shall not act as a statutory auditor at a time when he is or she is disqualified under subsection (3).

(5) If, during the person's term of office as statutory auditor, a person becomes disqualified under this section to act as statutory auditor, the person shall thereupon vacate his or her office and give notice in writing to the society that he or she has vacated his or her office by reason of such disqualification.

(6) A person who contravenes *subsection (4) or (5)* shall be guilty of an offence.

(7) References in this section to an officer or servant do not include references to a statutory auditor.”

**Explanatory Note**

The purpose of this Head is to set out the eligibility criteria to act as a statutory auditor for the purposes of the Industrial and Provident Societies Acts 1893 to 2014 and to provide for certain offences. This Head is based on section 1441 of the Companies Act 2014 which is now deleted. Head 155 provides for the definition of statutory auditor.



**Head 152: To amend Section 14 of the Industrial and Provident Societies Act 1893**

To provide for –

152. The amendment of section 14 of the Industrial and Provident Societies Act 1893 by substituting the following for subsection 2(d) -

“(d) shall state whether the audit has been conducted by a statutory auditor and by whom.”

**Explanatory Note**

The purpose of this Head is to replace the reference to public auditor with statutory auditor.

### **Head 153: To amend Section 68 of the Industrial and Provident Societies Act 1893**

To provide for –

153. The amendment of section 68 of the Industrial and Provident Societies Act 1893 by substitute the following for section 68 -

“68. (1) Every society, officer or member of a society, or other person, guilty of an offence under this Act for which no penalty is expressly provided herein, shall be liable to a fine not exceeding € [OPC to advise on appropriate level of fine]

(2) A person guilty of an offence under section 13 shall be liable-

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.”

#### **Explanatory Note**

Subsection (1) updates the level of fines for general offences under the Act and subsection (2) sets out the level of fines for an offence under section 13.

Subsection (2) of this Head is based on section 871 of the Companies Act 2014.

**Head 154: To repeal Section 72 of the Industrial and Provident Societies Act 1893**

To provide for –

154. Section 72 of the Industrial and Provident Societies Act 1893 is repealed.

**Explanatory Note**

The purpose of this Head is to repeal section 72 which provides that the Minister may appoint public auditors for the purpose of the Industrial and Provident Societies Act 1893.

The term public auditor is being replaced by the term statutory auditor as defined in section 2 of the Companies Act 2014. The definition of statutory auditor is at Head 155.

**Head 155: To amend Section 79 of the Industrial and Provident Societies Act 1893**

To provide for –

155. The amendment of section 79 of the Industrial and Provident Societies Act 1893 with the insertion of -

““*Statutory auditor*” shall have the same meaning as defined in section 2 of the Companies Act 2014”

**Explanatory Note**

The purpose of this Head is to provide a definition for statutory auditor as provided for in section 2 of the Companies Act 2014.

**Head 156: To amend Schedule II (8) of the Industrial and Provident Societies Act 1893**

To provide for –

156. The amendment of SCHEDULE II (8) of the Industrial and Provident Societies Act 1893 by substituting the following for paragraph 8 -

“8. Provision for the audit of accounts and for the appointment of a statutory auditor.”

**Explanatory Note**

The purpose of this Head is to remove the reference to public auditor from Schedule II paragraph (8) of the Industrial and Provident Societies Act 1893 and replace it with statutory auditor.

## **Head 157: To amend Section 2 of the Industrial and Provident Societies Act 1913**

To provide for –

157. The amendment of section 2 of the Industrial and Provident Societies Act 1913 by substituting the following for section 2 -

“2. (1) Every registered society shall once a year submit its accounts for audit to a statutory auditor.

(2) A registered society that contravenes subsection (1) shall be guilty of an offence.”

### **Explanatory Note**

The purpose of this Head is to provide that every registered society shall every year submit its accounts to be audited by a statutory auditor and to provide for an offence for contravention of the section.

The existing subsection (2) is no longer necessary as certain restrictions on acting as a statutory auditor are covered in Head 151.

## **Head 158: Repeals and revocations**

To provide for –

158. (1) Repeal the following sections of the following Acts -

- (a) section 72 of the Industrial and Provident Societies Act 1893
- (b) section 30 of the Friendly Societies Act 1896
- (c) section 3 (1) (c) of the Friendly Societies (Amendment) Act 1977
- (d) section 1441 of the Companies Act 2014

(2) Revoke the following paragraph of the following Statutory Instrument -

Paragraph 6 of S.I. 74 of 1988

### **Explanatory Note**

The purpose of this Head is to set out the relevant sections of the Acts that are repealed and parts of statutory instruments that are revoked.

## Chapter 2

### *Friendly Societies Act 1896*

#### **Head 159: To amend Section 26 of the Friendly Societies Act 1896**

To provide for –

159. The amendment of section 26 of the Friendly Societies Act 1896 by substituting the following for section 26 (1) and insert subsection 26 (4) -

“26 (1) Every registered society and branch shall once in every year submit its accounts for audit to a statutory auditor.”

“26 (4) A registered society that contravenes subsection (1) shall be guilty of an offence.”

#### **Explanatory Note**

The purpose of this Head is to provide that every friendly society shall once a year submit its accounts to be audited by a statutory auditor and to provide for an offence for contravening subsection (1). The definition of statutory auditor is provided for at Head 166.



## Head 160: To amend Section 26 of the Friendly Societies Act 1896

To provide for –

160. The amendment of section 26 of the Friendly Societies Act 1896 by inserting the following -

“(3) None of the following persons shall be qualified to act as a statutory auditor of a society registered under the Friendly Societies Acts 1896 to 2014—

- (g) an officer or servant of the society,
- (h) a person who has been an officer or servant of the society within a period in respect of which accounts would fall to be audited by the person if he or she were appointed auditor of the society,
- (i) a parent, spouse, civil partner, brother, sister or child of an officer of the society,
- (j) a person who is a partner of or in the employment of an officer of the society,
- (k) a person who is disqualified under this subsection for appointment as a statutory auditor of any other society that is a subsidiary or holding company of the society or a subsidiary of the society's holding company,
- (f) a person who is disqualified under Head 102 for appointment as statutory auditor of a company that is a subsidiary or holding company of the society,

(4) A person shall not act as a statutory auditor at a time when he is or she is disqualified under *subsection (3)*.

(5) If, during the person's term of office as statutory auditor, a person becomes disqualified under this section to act as statutory, the person shall thereupon vacate his or her office and give notice in writing to the society that he or she has vacated his or her office by reason of such disqualification.

(6) A person who contravenes *subsection (4)* or *(5)* shall be guilty of an offence.

(7) References in this section to an officer or servant do not include references to a statutory auditor.”

### Explanatory Note

The purpose of this Head is to set out the eligibility criteria to act as a statutory auditor for the purposes of the Friendly Societies Acts 1896 to 2014 and to provide for certain offences. The Head is based on part of section 1441 of the Companies Act 2014. Head 166 provides for a definition of statutory auditor.

**Head 161: To amend Section 27 of the Friendly Societies Act 1896**

To provide for –

161. The amendment of section 27 of the Friendly Societies Act 1896 by substituting the following for subsection (2) (c) -

“(c) state that the audit has been conducted by a statutory auditor and by whom.”

**Explanatory Note**

The purpose of this Head is to provide that the society must state that the annual return has been conducted by a statutory auditor and the name of the statutory auditor.

**Head 162: To amend Section 30 of the Friendly Societies Act 1896**

To provide for –

162. Section 30 of the Friendly Societies Act 1896 is repealed.

**Explanatory Note**

The purpose of this Head is to repeal section 30 which provides that the Minister may appoint public auditors and valuers for the purpose of the Friendly Societies Act 1896.

The term public auditor is being replaced by statutory auditor as defined in section 2 of the Companies Act 2014. The definition of statutory auditor is at Head 166.

**Head 163: To amend Section 80 of the Friendly Societies Act 1896**

To provide for –

163. The amendment of section 80 of the Friendly Societies Act 1896 by substituting, in section 80(1)(c), “any person” for “public auditor”.

**Explanatory Note**

The purpose of this Head is to replace the words “public auditor” with the words “any person”.

## **Head 164: To amend Section 89 of the Friendly Societies Act 1896**

To provide for –

164. The amendment of section 89 of the Friendly Societies Act 1896 by substituting the following 89 (1) and (2) for section 89 -

“89. – (1) A society or branch, and an officer or member of a society or branch, or other person guilty of an offence under this Act for which a fine is not expressly provided shall be liable to a fine of € [OPC to advise on appropriate level of fines]

(2) A person guilty of an offence under section 26 shall be liable-

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.”

### **Explanatory Note**

The purpose of this Head is to provide for the level of fines for offences under section 89 and under section 26. Subsection (1) updates the levels of fines for general offences under the Act. Subsection (2) of this Head is based on section 871 of the Companies Act 2014.

**Head 165: To amend Section 100 of the Friendly Societies Act 1896**

To provide for –

165. The amendment of section 100 of the Friendly Societies Act 1896 by substituting “statutory auditor” for “public auditor”.

**Explanatory Note**

The purpose of this Head is to replace the words “public auditor” with the words “statutory auditor”.

## **Head 166: To amend Section 106 of the Friendly Societies Act 1896**

To provide for –

166. The amendment of section 106 of the Friendly Societies Act 1896 by inserting the following -

“106. The expression “*statutory auditor*” shall have the same meaning as defined in section 2 of the Companies Act 2014.”

### **Explanatory Note**

The purpose of this Head is to provide a definition for statutory auditor as defined in section 2 of the Companies Act 2014.

## **Head 167**

To provide for –

Amendment to section 343(5) of the Principal Act

167. Delete (5) and replace with -

“The court, on application made (on notice to the Registrar) by a company, may, if it is satisfied that there are exceptional circumstances for it to do so, make an order extending the time for the purposes of subsection (2) or (3) in which the annual return of the company in relation to a particular period may be delivered to the Registrar.

- (i) Only one such order may be made in respects the particular period to which the return concerned of the company relates; and
- (ii) The granting of such an order will result in an automatic loss of audit exemption. “

### **Explanatory Note**

The Head deletes the current requirements of subsection (5) as the provision is undermining advancements made in relation to the timely filing are being undermined. The wording clarifies the provision by providing that where an extension to the time period for filing of accounts is permitted by the court, the audit exemption shall be lost. Note: Article 30 of the new Accounting Directive requires that Member States shall ensure limited companies publish financial statements within one year. This is provided for in the Companies Act 2014.



## **Head 168**

To provide for –

168. Miscellaneous Amendments to Principal Act

Section 412 (6)(a) – delete current 412(6)(a) and replace with:

“a) the Registrar shall not be under a duty to enter in the register under [section 414](#) particulars of the extraneous material pursuant to that section; “

### **Explanatory Note**

This Head amends section 412 of the Act to clarify that the Registrar is not responsible for any extraneous material that may inadvertently be entered onto the Register.

**Head 169**

To provide for –

Miscellaneous Amendments to Principal Act

169. Section 1291(1)(a)(iv)

Replace reference to “section 1293.”

**Explanatory Note**

The existing provision contains an incorrect cross-reference.

## **Head 170**

To provide for –

Miscellaneous Amendments to Principal Act

170. Section 279 subsection (2)

Replace reference to “31 December 2020” with “31 December 2030”.

Restrict application of extension to companies that already qualified for and availed of the exemption in section 279(2).

Close the facility for any companies that establish from the date of commencement of this Head.

### **Explanatory Note**

Section 279 of the Companies Act 2014 allows certain parent undertakings incorporated in Ireland to prepare and file financial statements using US Generally Accepted Accounting Standards (US GAAP), rather than International Financial Reporting Standards. This facility is subject to specified conditions and is due to expire on 31 December 2020.

This Head extends the deadline in section 279 of the Companies Act 2014 for a further 10 years after that deadline.

The extension will apply to parent undertakings already incorporated in Ireland and will cease to be available for new incorporations from the date of commencement of this Head.