Submission to the Department of Jobs, Enterprise and Innovation

On review of the time period provided for at Section 279 of the Companies Act 2014

On behalf of the Coalition for Irish International Companies

This submission, prepared on behalf of the Coalition for Irish International Companies (the Coalition), outlines the rationale for an extension to the time period provided for at Section 279 of the Companies Act 2014.

Proposal

The Coalition believes that there is need for a permanent or long-term extension of the temporary relief provided for at Section 279 of the Companies Act 2014 to allow adequate time for International Financial Reporting Standards (IFRS) to be accepted by the Securities and Exchange Commission (SEC) in the United States (U.S.) for all SEC registrants, or for Generally Accepted Accounting Principles (U.S. GAAP) and IFRS to converge. At the very least, the Coalition believes that there is a justified need to extend the exemption until 2030.

IFRS and U.S. GAAP Convergence

Currently, there are a number of significant Irish-incorporated SEC-registered companies which use modified U.S. GAAP for financial reporting requirements in lieu of IFRS or Irish GAAP in Ireland.

Although the SEC in the U.S. permits foreign registrants to use IFRS, it does not permit domestic registrants, such as the members of this Coalition, to file their financial statements using IFRS. In the absence of the Section 279 exemption, these companies would be required to compile financial statements according to both U.S. GAAP and a financial reporting framework permissible under Irish law (IFRS or Irish GAAP).

The rationale for the exemption originally included in the Companies (Miscellaneous Provisions) Act 2009, and later in the Companies Act 2014, was that the obligation to prepare both U.S. GAAP and IFRS financial statements was unduly onerous. As U.S. GAAP financial statements are internationally recognised as being of a high quality it was considered that those statements alone were a sufficient basis for Irish filings.

In July 2012, the Section 279 exemption was extended until 31st December 2020. Due to the comparator figures required by IFRS guidelines, for certain affected companies, the deadline for readiness for the expiry of the exemption is effectively 1st January 2018. The likelihood that the SEC will permit adoption or acceptance of IFRS by 2018 is very low. Accordingly, relevant companies will suffer the significant burden of creating and maintaining two sets of accounting records under different accounting standards for one organisation. Therefore, it is the view of the Coalition that the rationale for the original exemption still stands.

Clarity and commitment are now urgently needed to provide the affected companies with certainty on the issue, as in the absence of an extension of the Section 279 exemption, preparations will need to be made in the coming months to manage dual accounting standards.

Other instances of U.S. GAAP acceptance

It should be noted that Section 279 is not unique in its recognition of U.S. GAAP as an acceptable standard for financial reporting. Section 1400 of the same Act allows investment companies incorporated in Ireland to prepare statutory financial statements in accordance with U.S. GAAP, and does not stipulate a time limit for this.

Furthermore, Section 116 of the Irish Collective Asset-management Vehicles Act 2015 also allows the use of U.S. GAAP for corporate fund vehicles, as of last year.

Cost Implications of Non-Extension

Preparing and filing the consolidated financial statements of a multinational organisation already represents a major burden in terms of financial and general corporate and accounting resources. These resources can be more usefully invested in the business for job creation and R&D investment, rather than the unnecessary duplication of financial information.

The estimated costs per company of creating and maintaining two sets of accounting records under different accounting standards could be as high as €30 million for the transition to IFRS, followed by annual incremental costs also in the millions.

The Coalition's proposal is tax neutral, and would have no effect on Ireland's GNI figures or EU budget contributions.

Supporting Business and Job Creation in Ireland

The impact and contribution of the affected companies to Ireland is significant. They contribute billions each year to the Exchequer in corporation tax, payroll and VAT. They have also invested hundreds of millions in R&D, facilities and developments in regions across Ireland. Affected Irish-incorporated companies, including those in the Coalition, employ in excess of 8,000 staff nationwide.

A decision to extend the option to use U.S. GAAP for Irish financial reporting would represent a gesture of significant goodwill for multinational companies who collectively employ large numbers in Ireland, and would allow Ireland to support its position as a practical, business-oriented country.

Maintaining International Competitiveness

The action requested by the Coalition is also needed to align Ireland with other European countries, where similar exemptions are in place, and with the SEC in the U.S. which permits foreign registrants to use IFRS.

In the UK, certain companies from outside the European Economic Area (EEA) that are listed on the London Stock Exchange may apply a GAAP that is equivalent to IFRS, such as U.S. GAAP, similar to the current Irish exemption.

For Germany and France, the European Union has granted equivalence in relation to certain country GAAPs under the Prospectus and Transparency Directives, granting issuers using U.S., Japanese, Chinese, Korean, Canadian and Indian GAAP a permanent (U.S., Japan) or temporary (China, Korea, Canada, India) exemption from having to file IFRS financial statements, as long as the overseas parent whose subsidiary is listed on an EU exchange uses and publishes financial statements under one of the GAAPs mentioned above.

In Switzerland, registrants at the main board of the Swiss Stock Exchange are permitted to use either IFRS or U.S. GAAP for their consolidated financial statements. Foreign listed companies may use IFRS, U.S. GAAP or a national GAAP deemed equivalent to those standards.

In the U.S.A., foreign private issuers may use IFRS, while domestic issuers are required to use U.S. GAAP. Accordingly, permitting the use of Modified U.S. GAAP in Ireland could be considered to be a reciprocal arrangement.

Conclusion

In conclusion, the Coalition is calling for a permanent or long-term extension of the temporary relief provided for at Section 279 of the Companies Act 2014 for the following reasons:

> **1. Avoiding Wasted Resources:** Action is needed to avoid incurring significant and unnecessary costs (up to €30 million implementation and ongoing annual costs in the order of millions) for no commercial or exchequer benefit.
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> **2. Supporting Business:** A positive commitment would demonstrate Ireland's practical, business-oriented approach, and would represent a gesture of goodwill to Coalition and affected companies which have invested hundreds of millions in Ireland.
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> **3. Maintaining International Competitiveness:** In other European countries, similar exemptions are also in place. While the terms vary, exemptions exist in Switzerland, the UK, the Czech Republic, Germany and France. In fact, the SEC in the United States accepts IFRS, so this is something of a reciprocal arrangement.

Clarity is now urgently needed to provide the affected companies with certainty on the issue, as due to the comparator figures required by IFRS guidelines, for companies with a December year-end the deadline for readiness for the expiry of the Section 279 exemption is effectively 1st January 2018. In the absence of an extension, preparations will need to be made in the coming months to manage dual accounting standards.

Coalition for Irish International Companies

The Coalition for Irish International Companies was formed to articulate the concerns of a number of significant multinational corporations with substantive operations in Ireland, including Medtronic, Eaton, Alkermes, Endo, Horizon Pharma and Mallinckrodt, with regard to the financial reporting requirements which would arise when the time period provided for at Section 279 (2) of the Companies Act 2014 expires.