

Consultation Paper by the Department of Jobs, Enterprise & Innovation

On the exemption at Section 279 of the Companies Act 2014 allowing certain companies to prepare and file financial statements according to US Generally Accepted Accounting Principles

Introduction

The Department of Jobs, Enterprise and Innovation is consulting on whether or not to extend the time period that is set out in section 279 of the Companies Act 2014.

Section 279 provides that certain companies in specific circumstances may prepare and file financial statements using the US Generally Accepted Accounting Principles (US GAAP), provided that the financial statements also comply with Part 6 of the Companies Act 2014, 'Financial Statements, Annual Return and Audit'.

Section 279 will cease to apply for financial years that end after December 2020.

Accordingly, the Department is seeking submissions as to whether that deadline should be extended and, if so, for how long.

More information on the requirements of Section 279 and the companies that are covered by it is set out below:

Companies covered by Section 279

Section 279 of the Companies Act 2014 applies to certain holding companies incorporated in Ireland that have securities listed on US stock exchanges. In order to qualify, a company must meet at least the following criteria:

- It is a holding company incorporated in Ireland subject to reporting to the Securities and Exchange Commission in the US;
- It was not required to file financial statements with the Registrar of Companies before 4 July 2012, or; it filed financial statements using US GAAP in compliance with the Companies Acts between 23 December 2009 and 4th July 2012;
- It does not have securities admitted to trading on an EEA-regulated market.

Requirements of Section 279

If a company qualifies under Section 279, it may prepare and file its financial statements using US GAAP provided it also meets the requirements of Part 6, which includes the requirement to give a true and fair view.

This facility is available to qualifying companies for financial years that end not later than 31 December 2020.

Companies that do not qualify for Section 279 are ordinarily required by Irish law to prepare and file financial statements using one of two financial reporting frameworks:

- Companies Act financial statements in line with the provisions of Part 6 of the Companies Act 2014 and using the applicable accounting standards (Irish Generally Accepted Accounting Practice, Irish GAAP);
- International Financial Reporting Standards (IFRS) as adopted by the European Community.

Why is Section 279 limited in time?

The main features of Section 279 were introduced into Irish law by the Companies (Miscellaneous Provisions) Act 2009. At that time, international accounting bodies were engaged in efforts to converge IFRS and US GAAP. There was also an expectation that the Securities and Exchange Commission would authorise the use of IFRS in the US.

The process of convergence has not progressed materially since 2009. There is no clear timeframe for a future convergence of IFRS and US GAAP.

Questions for consultation

- Should the time period provided for at Section 279 of the Companies Act be extended beyond December 2020?
- If extended, should this be for a specified period of time or on an open-ended basis (i.e. with no specific end date)?

Please address these questions in your reply and give reasons for your views.

Please also refer to any other issues that you consider as relevant to this matter.

Outcome of this consultation

The outcome of this consultation will inform the Government. Any change to the deadline will require the enactment of primary legislation, which will be a matter for the Oireachtas.

Address and deadline for submissions

The deadline for submissions is Friday 16th September 2016.

Submissions should be sent, preferably by email, to Mr. Ciarán McLoughlin at –

E-mail: ciaran.mcloughlin@djei.ie

Post: Company Law
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Publication of Responses to Consultation Paper

It is proposed to make the responses to this consultation paper available on the website of the Department of Jobs, Enterprise & Innovation. Any material contained in submissions made in response to this consultation that respondents do not wish to be made public in this way should be clearly identified as confidential in the submission. The Department will consult with respondents regarding such information before making a decision to disclose it either on its website or following a request under the Freedom of Information Act 2014.