



Companies (Auditing and Accounting) Act 2003 General Guidance Note

When certain key provisions of the Companies (Auditing and Accounting) Act 2003 (the "Act") are brought into force, they will introduce significant additional regulatory requirements for Irish companies. The Act requires the Boards of certain companies to prepare a compliance statement, it requires certain companies to establish Audit Committees and it makes certain miscellaneous amendments to the Companies Acts in relation to accounting, auditing and other related matters. The Act also establishes a new regulatory body, the Irish Audit and Accounting Supervisory Authority ("IAASA").

Compliance Statements

Under one of the most controversial provisions of the Act, the directors of certain companies will be required to prepare, approve and review (at least once every three years) a written compliance statement (referred to in this note as the Compliance Policy Statement) setting out the company's policies regarding compliance with its "Relevant Obligations", i.e. its obligations under:-

- the Companies Acts;
- tax law, and
- any other enactments that provide a legal framework within which the company operates and that may materially affect the company's financial statements.

The Compliance Policy Statement must also detail the company's internal financial and other procedures for securing such compliance and its arrangements for implementing and reviewing the effectiveness of such policies and procedures.

The requirement to prepare a Compliance Policy Statement will, when brought into force, apply to all plcs (listed and unlisted) and to private companies limited by shares having a balance sheet total greater than €7,618,428 or turnover greater than €15,236,856.

As well as including the Compliance Policy Statement in their annual Directors' Report, the directors of such companies must also make an additional statement in their Report (referred to in this note as the Annual Compliance Statement) to include:-

- an acknowledgement of their responsibility for securing compliance;
- a confirmation that the company has internal procedures in place designed to secure compliance (or if not, an explanation for this);
- a confirmation that the directors have reviewed the effectiveness of these procedures during the financial year (or if not, an explanation for this);
- their opinion as to whether they used all reasonable endeavours to secure compliance during the financial year (or if not, an explanation for this). The Act states that the company's procedures will be considered to be designed to secure compliance and to be effective for

that purpose if they provide "a reasonable assurance of compliance in all material respects".

The company's auditor must review the Compliance Policy Statement and the Annual Compliance Statement and determine whether they are fair and reasonable having regard to the information obtained by the auditor or its affiliates in the course of and by virtue of having carried out audit work, audit-related work and non-audit work. This determination must be included in the annual Auditor's Report. If the auditor considers the directors to be in breach of their obligations with regard to the compliance statements, it must report this to the Office of the Director of Corporate Enforcement (the "ODCE").

The provisions of the Act dealing with the compliance statements are expected to be brought into force in 2005. 1 July 2005 has been suggested as a possible date.

Audit Committees

This section of the Act, when brought into force, will apply to all plcs (other than a wholly owned subsidiary of another plc) and "Large Private Companies", i.e. private companies with a balance sheet total exceeding €25 million and turnover exceeding €50 million. The Boards of plcs must establish an Audit Committee. The Boards of Large Private Companies may choose whether or not to do so. The choice must be stated in the Directors' Report and, if the directors decide not to set up an Audit Committee, the reasons for this must be stated.

Written terms of reference for the Audit Committee must be prepared and approved by the Board, reviewed annually and presented to the shareholders at AGM. A description of the Audit Committee's activities in the past year must be included in the annual Directors' Report.

The Audit Committee of a plc must carry out certain functions set out in the Act. The Audit Committee of a Large Private Company can elect to carry out some or all of these. The responsibilities include:-

- reviewing the draft accounts, determining whether they give a true and fair view of the profits and losses of the company and its state of affairs, determining whether they comply with applicable accounting standards and recommending to the Board whether or not to approve them;
- determining at least annually whether the company has kept proper books of account;
- reviewing the draft Annual Compliance Statement, determining whether it complies with the Act, whether it is fair and reasonable and based on due and careful enquiry and recommending to the Board whether or not to approve it;
- monitoring the auditor's work and independence and recommending whether or not to award non-audit work to the auditor or an "affiliate" (a firm under common ownership or control, or a body corporate in which the auditor controls 20% of the voting rights or an entity that because of the use of a common name or corporate identity or the sharing of common professional services could reasonably be considered to be associated with the auditor).

The Audit Committee must be made up of at least two members who meet the qualifying criteria set out in the Act (unless only one director of the company meets the criteria and is appointed sole member of the Audit Committee or chairs a two-person Audit Committee and possess a casting vote – the Act is silent on what to do if no director meets the criteria). A director qualifies for appointment unless he is or was in the prior three years an employee of the company (or a subsidiary). The Chairman of the Board is disqualified from appointment to the Audit Committee.

Disclosure Items

The Act specifies that all companies must disclose the following information in the notes to their accounts:

- the accounting policies adopted in presenting their balance sheet and profit and loss account (e.g. depreciation policies) – making compliance with FRS 18 “Accounting Policies” a legal requirement;
- whether the financial statements have been prepared in accordance with “applicable accounting standards” and in the case of any material departure, the effect of this and the reasons for it must be noted in the accounts;
- the remuneration for all work carried out by the auditor (or an affiliate) in the current and previous financial year in respect of audit work, audit-related work and non-audit work (subject to a de minimis of €1,000);

Where the amount of non-audit work exceeds the amount of audit and audit-related work, the Audit Committee (or if none, the Board) must justify the reason for this and satisfy itself that the auditor’s independence has not been affected.

These requirements have not yet been brought into force.

IAASA

The main purpose of IAASA will be to supervise how the accountancy bodies regulate and monitor their members and to promote adherence to high professional standards.

IAASA will be comprised of nominees from various interested parties in the State, such as the accountancy bodies, the Minister for Enterprise, Trade and Employment, IFSRA and others.

Up to 60% of the funding for IAASA will come from the accountancy bodies, with the remaining 40% funded by the Oireachtas. In addition to this, a reserve fund will be established by levying the entities that meet the criteria for Relevant Undertakings, as described below.

IAASA must supervise the investigative and disciplinary procedures of the accountancy bodies and investigate whether these procedures are being followed (either on its own initiative or following a complaint). IAASA will have the power to annul a decision, order a fresh investigation by the accounting body and/or fine the body up to €125,000. IAASA will also advise the Minister on auditing and accounting matters and co-operate in developing auditing and accounting standards and practice notes.

A further function of IAASA will be to review whether or not the accounts of “Relevant Undertakings” comply with the Companies Acts. The definition of “Relevant Undertaking” includes:-

- all plcs (listed and unlisted) and their subsidiaries;

- private limited companies that meet the following criteria (either on their own or taken together with all of their subsidiaries) in both the relevant financial year and the immediately preceding financial year:
 - balance sheet total exceeds €25 million AND
 - turnover exceeds €50 million;
- undertakings referred to in Regulation 6 of the European Communities (Accounts) Regulations 1993 (in general terms, unlimited companies and partnerships where the only shareholders / partners with unlimited liability are themselves limited companies) and which meet the above financial criteria.

If the Relevant Undertaking is regulated by IFSRA, IAASA must consult with IFSRA before making any decisions under this section of the Act. Where it appears to IAASA that there is a question over compliance with the Companies Acts, IAASA will notify the directors of the Relevant Undertaking, specifying its concern. Following this, there is a minimum period of thirty days for the directors to provide a satisfactory explanation or submit revised accounts. Failing this, application can be made by IAASA to the High Court (and filed in the Companies Registration Office) for a declaration of non-compliance, an order requiring the production of revised accounts and requiring the *directors* to pay the costs of IAASA and the reasonable expenses of the Relevant Undertaking. For the purposes of costs, every director at the time the accounts were approved will be considered to have been a party to their approval unless he can show he took all reasonable steps to prevent such approval.

Miscellaneous Provisions

In addition to the above, there are a number of further amendments to existing company law introduced by the Act. Included amongst these are:-

- the removal of the offence of failure to file an Annual Return from the class of offences reportable by auditors to the ODCE under the Company Law Enforcement Act 2001 (not yet in force);
- amended criteria for companies to claim exemption from the requirement to have their accounts audited (turnover threshold raised from £250,000 to €1,500,000; balance sheet threshold remains at €1,904,607) – however this is conditional on the company filing its annual return and accounts on time (and having done so in the previous year) as well as complying with the other exemption criteria set out in the Companies (Amendment) Act 1999. This provision of the Act has already been brought into force;
- clarification that the requirement under company law for every company to have at least one Irish resident director is not satisfied by having a resident alternate director. This provision of the Act has already been brought into force; and
- clarification that Directors’ and Officer’s insurance against negligence, default, breach of duty or breach of trust is not automatically rendered void by Section 200(1) of the Companies Act 1963. This provision of the Act has already been brought into force.

Further Information

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