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Companies (Auditing and Accounting) Act 2003



Number 44 of 2003

COMPANIES (AUDITING AND ACCOUNTING) ACT 2003

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Number 44 of 2003

COMPANIES (AUDITING AND ACCOUNTING) ACT 2003

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY OR, IN THE IRISH LANGUAGE, ÚDARÁS MAOIRSEACHTA INIÚCHTA AGUS CUNTASAÍOCHTA NA hÉIREANN, TO GIVE POWER TO IT TO SUPERVISE THE REGULATORY FUNCTIONS OF THE RECOGNISED ACCOUNTANCY BODIES AND OTHER PRESCRIBED ACCOUNTANCY BODIES, TO AMEND COMPANY LAW TO TRANSFER TO THE SUPERVISORY AUTHORITY EXISTING FUNCTIONS RELATING TO THE RECOGNITION OF ACCOUNTANCY BODIES AND TO OTHERWISE AMEND COMPANY LAW IN RELATION TO AUDITING, ACCOUNTING AND OTHER MATTERS.

[23rd December, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary Matters

Short title,
collective
citation and
construction.

1.—(1) This Act may be cited as the Companies (Auditing and Accounting) Act 2003.

(2) This Act and the Companies Acts 1963 to 2001 may be cited together as the Companies Acts 1963 to 2003 and are to be construed together as one.

Commencement. **2.—**(1) This Act comes into operation on the day that the Minister may, by order, appoint.

(2) Different days may be appointed under this section, by one or more orders, for different purposes or different provisions of this Act.

Interpretation. **3.—**(1) In this Act—

“Act of 1963” means the Companies Act 1963 ;

“Act of 1986” means the Companies (Amendment) Act 1986 ;

“Act of 1990” means the Companies Act 1990 ;

"Companies Acts" means the Companies Act 1963 and every enactment, including this Act, that is to be construed as one with that Act.

(2) In this Act—

- (a) a reference to a section, Part or Schedule is to a section or Part of, or a Schedule to, this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any other enactment is to that enactment as amended by or under any other enactment, including this Act, unless the context otherwise requires.

PART 2

Irish Auditing and Accounting Supervisory Authority

Interpretation
of this Part.

4.—(1) In this Part, except where the context otherwise requires—

"amount of turnover" and "balance sheet total" have the same meanings as in section 8 of the Act of 1986;

"board" means the board of directors of the Supervisory Authority;

"chief executive officer" means the Chief Executive Officer of the Supervisory Authority;

"designated body" means a body that, under section 6 (2), is a designated body at the relevant time;

"disciplinary committee" means any disciplinary committee or tribunal (however called) of a prescribed accountancy body;

"enactment" means a statute or an instrument made under a power conferred by a statute;

"functions" includes duties and responsibilities;

"member", in relation to a prescribed accountancy body, means—

(a) a person, or

(b) a firm,

that is, or was at the relevant time, subject to the investigation and disciplinary procedures approved under section 9 (2)(c) for that body;

“Minister” means the Minister for Enterprise, Trade and Employment;

“parent undertaking” has the same meaning as in the 1992 Regulations;

“prescribed accountancy body” means—

(a) a recognised accountancy body, or

(b) any other body of accountants that is prescribed under section 48 (1)(a) for the purposes of this Act;

“recognised accountancy body” means a body of accountants recognised for the purposes of section 187 of the Act of 1990;

“reserve fund” means the fund established under section 15;

“standards”, in relation to a prescribed accountancy body, means the rules, regulations and standards that body applies to its members and to which, by virtue of their membership, they are obliged to adhere;

“subsidiary undertaking” has the same meaning as in the 1992 Regulations;

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death;

“Supervisory Authority” means the company designated by the Minister under section 5 (1);

“the 1992 Regulations” means the European Communities (Companies Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

“the 1993 Regulations” means the European Communities (Accounts) Regulations 1993 (S.I. No. 396 of 1993).

(2) In this Part “material interest” is to be construed in accordance with section 2 (3) of the Ethics in Public Office Act 1995 .

Establishment of Supervisory Authority. **5.—**(1) The Minister may designate a public company to perform the functions and exercise the powers of the Supervisory Authority under this Act, if the following requirements are satisfied:

(a) the company is formed and registered under the Companies Acts after the commencement of this section;

(b) the company is a company limited by guarantee;

(c) the name of the company is the Irish Auditing and Accounting Supervisory Authority or in the Irish language Údarás Maoirseachta Iniúchta agus Cuntasaíochta na hÉireann;

(d) the memorandum of association and articles of association of the company are consistent with this Act.

(2) Section 6(1)(b) of the Act of 1963 does not apply to a company where the Minister informs the registrar of companies in writing that the Minister proposes to designate the company under *subsection (1)*.

Membership. **6.—**(1) The Supervisory Authority is to consist of the following members:

- (a) each prescribed accountancy body that is a body corporate;
- (b) if a prescribed accountancy body is not a body corporate, an individual or body corporate nominated by that prescribed accountancy body to be a member;
- (c) each designated body that is a body corporate;
- (d) if a designated body is not a body corporate, an individual or body corporate nominated by that designated body to be a member.

(2) Unless a regulation under *section 48 (1)(b)* provides otherwise, each of the following is a designated body for the purposes of this section and *section 11* :

- (a) the Irish Business and Employers Confederation;
- (b) the Irish Congress of Trade Unions;
- (c) the Irish Association of Investment Managers;
- (d) the Irish Stock Exchange;
- (e) the Pensions Board;
- (f) the Irish Financial Services Regulatory Authority;
- (g) the Revenue Commissioners;
- (h) the Director of Corporate Enforcement;
- (i) the Law Society of Ireland;
- (j) any body prescribed under *section 48 (1)(b)* as a designated body.

Alterations in memorandum and articles of association. **7.**—Any alteration that is made in the memorandum of association or articles of association of the Supervisory Authority takes effect only if the alteration is made with the Minister's prior approval.

Objects. **8.**—(1) The principal objects of the Supervisory Authority, which are to be included in its memorandum of association, are—

- (a) to supervise how the prescribed accountancy bodies regulate and monitor their members,
- (b) to promote adherence to high professional standards in the auditing and accountancy profession,
- (c) to monitor whether the accounts of certain classes of companies and other undertakings comply with the Companies Acts, and
- (d) to act as a specialist source of advice to the Minister on auditing and accounting matters.

(2) This section does not prevent or restrict the inclusion in the memorandum of association of all objects and powers, consistent with this Act, that are reasonable, necessary or proper for, or incidental or ancillary to, the due attainment of the principal objects of the Supervisory Authority.

Functions. **9.**—(1) The Supervisory Authority shall do all things necessary and reasonable to further its objects.

(2) Without limiting its responsibilities under *subsection (1)*, the functions of the Supervisory Authority are as follows:

- (a) to grant recognition to bodies of accountants for the purposes of section 187 of the Act of 1990;
- (b) to attach under section 192 of the Act of 1990 terms and conditions to the recognition of bodies of accountants, including terms and conditions—
 - (i) requiring changes to and the approval by the Supervisory Authority of their regulatory plans, and
 - (ii) requiring their annual reports to the Supervisory Authority on their regulatory plans to be prepared in the manner and form directed by the Supervisory Authority;
- (c) to require changes to and to approve—
 - (i) the constitution and bye-laws of each prescribed accountancy body, including its investigation and disciplinary procedures and its standards, and

- (ii) any amendments to the approved constitution or bye-laws of each prescribed accountancy body, including amendments to its investigation and disciplinary procedures and to its standards;
- (d) to conduct under section 23 enquiries into whether a prescribed accountancy body has complied with the investigation and disciplinary procedures approved for that body under *paragraph (c)*;
- (e) to impose under section 23 sanctions on prescribed accountancy bodies;
- (f) to undertake under section 24 investigations into possible breaches of the standards of a prescribed accountancy body;
- (g) to supervise how each recognised accountancy body monitors its members and to undertake under section 25 reviews of those members;
- (h) to co-operate with the recognised accountancy bodies and other interested parties in developing standards relating to the independence of auditors and to monitor the effectiveness of those standards;
- (i) to monitor the effectiveness of provisions of the Companies Acts relating to the independence of auditors;
- (j) to supervise the investigation and disciplinary procedures of each prescribed accountancy body, including by requiring access to its records and by requiring explanations about the performance of its regulatory and monitoring duties;
- (k) to co-operate with the prescribed accountancy bodies and other interested parties in developing auditing and accounting standards and practice notes;
- (l) to review under section 26 whether the accounts of companies and undertakings referred to in that section comply with the Companies Acts and to make applications to the High Court to ensure compliance;
- (m) to arrange for the regulation and supervision of individually authorised auditors by recognised accountancy bodies;
- (n) to perform any other duties or discharge any other responsibilities imposed on it by this Act or the Companies Acts.

General powers. **10.—**(1) The Supervisory Authority has the power to do anything that appears to it to be requisite, advantageous or incidental to, or to facilitate, the performance of its functions and that is not inconsistent with any enactment.

(2) A power conferred by *subsection (1)* is not to be considered to be limited merely by implication from another provision, whether of this or any other Act, that confers a power on the Supervisory Authority.

(3) The Supervisory Authority may adopt rules and issue guidelines concerning any matter that relates to its functions or powers.

(4) The Supervisory Authority may apply to the High Court for an order under section 29 (7) compelling—

- (a) a prescribed accountancy body to comply with a rule adopted or guideline issued under *subsection (3)* of this section, or
- (b) a recognised accountancy body to comply with a term or condition attached under section 192 of the Act of 1990 (before or after the amendment of that Act by section 32 of this Act) to the recognition of that body,

if, in the Authority's opinion, the body concerned may fail or has failed to comply with the rule or guideline or with the term or condition, as the case may be.

Board of
directors.

11.—(1) Subject to a regulation under section 48 (1)(d), the board of directors of the Supervisory Authority is to consist of—

- (a) not more than 14 directors (including the chairperson and the deputy chairperson) appointed by the Minister under *subsection (2)*,
and
- (b) the person holding the office of chief executive officer who, by virtue of that office, is a director.

(2) Subject to a regulation under section 48 (1)(d), the directors appointed by the Minister shall include—

- (a) 3 persons nominated jointly by agreement among the prescribed accountancy bodies,
- (b) 2 persons nominated by the Minister, one of whom—
 - (i) is neither an officer or employee of the Minister nor a member, officer or employee of a prescribed accountancy body, and
 - (ii) is appointed as chairperson by the Minister,and
- (c) for each designated body, one person nominated by that body.

(3) Subject to a regulation under section 48 (1)(d), the board shall not include at any one time more than 4 directors appointed under *subsection (2)* who are members of prescribed accountancy bodies, and of those 4 directors—

- (a) 3 may be nominees of the prescribed accountancy bodies, and
- (b) one may be a nominee of a designated body.

(4) If, at any time, more than one designated body proposes to nominate a member of a prescribed accountancy body for appointment to the board, the designated bodies proposing to do so shall decide among themselves which one of them is to nominate such a member.

(5) The directors may select the deputy chairperson from among those directors who are not members of a prescribed accountancy body.

(6) The term of office of a director appointed under *subsection (2)* shall be specified by the Minister when appointing the director and, subject to *subsection (12)*, may not be less than 3 or more than 5 years.

(7) The members of the Supervisory Authority may not instruct the directors, at any meeting of those members or by any other means, regarding the carrying out of their duties as directors of the Supervisory Authority.

(8) Section 182 of the Act of 1963 does not apply to the Supervisory Authority.

(9) A director may resign by letter addressed to the Minister and copied to the Supervisory Authority, and the resignation takes effect on the date the Minister receives the letter.

(10) At any time, the Minister may remove for stated reasons any director appointed under *subsection (2)*, including a director nominated under *subsection (2)(b)*.

(11) The Minister shall fill any vacancy that arises on the board as a consequence of the resignation or removal of a director by appointing a replacement nominated in the same manner as the replaced director.

(12) A director appointed under *subsection (11)* to replace another holds office for the remainder of the replaced director's term of office, and the same terms and conditions apply to the new appointee.

(13) The directors may act despite one or more vacancies in their numbers.

Chief executive officer.

12.—(1) The directors appointed under *section 11 (2)* shall appoint a chief executive officer to—

(a) carry on, manage and control generally the administration and business of the Supervisory Authority, and

(b) perform any other functions that may be determined by the board.

(2) The chief executive officer holds office on and subject to the terms and conditions (including terms and conditions relating to remuneration and allowances) that the directors appointed under *section 11 (2)* may, with the approval of the Minister given with the consent of the Minister for Finance, determine.

(3) The directors appointed under section 11 (2) may remove the chief executive officer from office at any time.

Work
programme.

13.—(1) The Supervisory Authority shall prepare and submit to the Minister a work programme for—

(a) in the case of the initial work programme, the period specified by the Minister, and

(b) in the case of each subsequent work programme, the period of 3 years beginning on the day after the last day of the period covered by the preceding work programme.

(2) In preparing the work programme, the Supervisory Authority shall have regard to the need to ensure the most beneficial, effective and efficient use of its resources and shall include the following information:

(a) the key strategies and activities the Supervisory Authority will pursue to further its objects and perform its functions;

(b) the outputs the Supervisory Authority aims to achieve and against which its performance will be assessed;

(c) the staff, resources and expenditures (including an annual programme of expenditure) necessary to pursue the strategies and activities mentioned in *paragraph (a)*.

(3) In addition to capital and other expenditures, the annual programme of expenditure must include the amount of revenue to be received under section 14 (1) and (2) that is to be paid into the reserve fund.

(4) With the consent of the Minister for Finance and after considering the views of the prescribed accountancy bodies, the Minister may approve, with or without amendment, the annual programme of expenditure.

(5) If the annual programme of expenditure is amended under *subsection (4)*, the Supervisory Authority—

(a) may revise any other part of the work programme, and

(b) if it does so, shall submit to the Minister the revised work programme, including the annual programme of expenditure as amended under *subsection (4)*.

(6) The Supervisory Authority may—

(a) if it considers it necessary to do so, undertake an interim review of a work programme, and

(b) submit to the Minister, within the period covered by that programme, an amended or supplementary work programme, including an amended or supplementary annual programme of expenditure.

(7) *Subsections (4) and (5)* apply with any necessary changes if an amended or a supplementary annual programme of expenditure is submitted to the Minister.

(8) Subject to *subsection (9)*, the Minister shall ensure that a copy of each work programme (including each revised, amended or supplementary work programme) is laid before each House of the Oireachtas not later than 60 days after the date on which it was submitted to the Minister.

(9) If a revised work programme (including a revised amended or supplementary work programme) is submitted to the Minister before the unrevised work programme is laid before the Houses of the Oireachtas as required by *subsection (8)*, only the revised work programme need be laid before the Houses.

(10) The Minister may not give directions to the Supervisory Authority concerning the discharge of a work programme, including an amended or a supplementary work programme.

Funding. **14.—**(1) For the purposes specified in *subsection (3)*, in each financial year, a grant not exceeding 40 per cent of the programme of expenditure approved for that year under *section 13*, shall, subject to the conditions, if any, that the Minister thinks proper, be paid to the Supervisory Authority out of money provided by the Oireachtas.

(2) For the purposes specified in *subsection (3)*, the Supervisory Authority may impose, with the Minister's consent and subject to *subsections (4) to (6)*, one or more levies in each financial year of the Supervisory Authority on each prescribed accountancy body.

(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 and exercising its powers under—

- (a) *sections 24 and 26*, in the case of money set aside for, or paid into, the reserve fund in accordance with *section 15*, or
- (b) any provision of this Act, other than *sections 24 and 26*, in the case of money not so set aside for, or paid into, that fund.

(4) The total amount levied in any financial year of the Supervisory Authority on all prescribed accountancy bodies—

- (a) may not exceed 60 per cent of the programme of expenditure approved for that year under *section 13*, and
- (b) requires the Minister's approval before consent is given to the imposition of any levy in that year.

(5) The Supervisory Authority shall—

- (a) establish criteria for apportioning a levy among the classes of prescribed accountancy bodies,

(b) submit the criteria to the Minister for approval before imposing the levy, and

(c) specify the date on which the levy is due to be paid by those bodies.

(6) As a consequence of the apportionment of a levy under *subsection (5)*, different classes of prescribed accountancy bodies may be required to pay different amounts of the levy.

(7) Before consenting to the imposition of a levy under this section, the Minister shall consult with the prescribed accountancy bodies and may consult with any other persons who, in the Minister's opinion, are interested in the matter.

(8) The Supervisory Authority may recover, as a simple contract debt in any court of competent jurisdiction, from a prescribed accountancy body from which the levy is due, a levy imposed under this section.

(9) For the purpose of providing for activities specified in its work programme, the Supervisory Authority may, from time to time, borrow money subject to the consent of the Minister and the Minister for Finance and to such conditions as they may specify.

Reserve fund
and levy.

15.—(1) The Supervisory Authority shall—

(a) subject to any limit that the Minister may specify, establish and maintain a reserve fund to be used only for the purposes of performing its functions and exercising its powers under *sections 24* and *26*,

(b) set aside in each financial year for the reserve fund a portion of the revenue received under *section 14 (1)* and *(2)*,

(c) pay into the reserve fund in each financial year—

(i) the amount set aside under *paragraph (b)* for the fund or, if that amount is amended under *section 13 (4)*, the amended amount,

(ii) the proceeds of any levy imposed under *subsection (2)* of this section, and

(iii) any amounts paid to the Supervisory Authority under *section 23 (5)(c)* or *24(7)* and any costs recovered under *section 26 (5)* or *(8)*,

and

(d) promptly inform the Minister if, in any financial year, the total amount in the reserve fund is likely to exceed any limit specified by the Minister for the purposes of this section.

(2) With the Minister's consent and after consulting with any persons who are interested in the matter, the Supervisory Authority may, subject to *subsections (3) to (7)*, impose in each financial year of the Supervisory Authority one or more levies on the following:

(a) each public limited company (whether listed or unlisted);

(b) each private company limited by shares that, in both the most recent financial year and the immediately preceding financial year of the company, meets the following criteria:

(i) its balance sheet total for the year exceeds—

(A) €25,000,000, or

(B) if an amount is prescribed under *section 48 (1)(e)* for the purpose of this provision, the prescribed amount;

(ii) the amount of its turnover for the year exceeds—

(A) €50,000,000, or

(B) if an amount is prescribed under *section 48 (1)(e)* for the purpose of this provision, the prescribed amount;

(c) each private company limited by shares that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the most recent financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in *paragraph (b)*;

(d) each undertaking referred to in Regulation 6 of the 1993 Regulations that, in both the most recent financial year and the immediately preceding financial year of the undertaking, meets the criteria in *paragraph (b)*;

(e) each undertaking referred to in Regulation 6 of the 1993 Regulations that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the most recent financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in *paragraph (b)*.

(3) The total amount levied under *subsection (2)* in any financial year of the Supervisory Authority on all companies and undertakings—

(a) may not exceed the total amount paid into the reserve fund for that year under *subsection (1)(c)(i)*, and

(b) requires the Minister's approval before consent is given to the imposition of any levy in that year.

(4) In determining whether to approve the total amount referred to in *subsection (3)*, the Minister may—

(a) have regard to the Supervisory Authority's work programme, and

(b) give due consideration to the use to which the reserve fund was put in the previous financial year.

(5) The Supervisory Authority shall—

(a) establish criteria for apportioning a levy among the classes of companies and undertakings liable to pay the levy under *subsection (2)*,

(b) submit the criteria to the Minister for approval before imposing the levy, and

(c) specify the date on which the levy is due to be paid by those companies and undertakings.

(6) As a consequence of the apportionment of a levy under *subsection (5)*, different classes of companies or undertakings may be required to pay different amounts of the levy.

(7) *Subsection (2)* does not apply in respect of a company or an undertaking of a class exempted under *section 48 (1)(j)* from this section.

(8) Where both a parent undertaking and one or more of its subsidiary undertakings would otherwise be liable to pay a levy imposed under this section, only the parent undertaking is required to pay the levy.

(9) *Subsection (8)* applies whether the parent undertaking is a public limited company, a private limited company or an undertaking referred to in Regulation 6 of the 1993 Regulations.

(10) The Supervisory Authority may recover, as a simple contract debt in any court of competent jurisdiction, from a company or undertaking from which the levy is due, a levy imposed under this section.

Excess revenue. **16.—**(1) The Supervisory Authority shall apply any excess of its revenue over its expenditure in any year to meet its programme of expenditure approved for the subsequent year under *section 13*, and the amounts payable under *section 14 (1)* and *(2)* for the subsequent year shall be appropriately reduced.

(2) Money in, or set aside for, the reserve fund is not considered to be revenue for the purposes of this section.

Staff. **17.—**(1) Subject to *subsection (2)* and to the limits of the staffing numbers specified under *section 13* in its work programme, the Supervisory Authority may, from time to time, appoint persons to be members of its staff.

(2) The numbers, grades and terms or conditions of its staff shall be determined by the Supervisory Authority with the approval of the Minister given with the consent of the Minister for Finance.

(3) The Supervisory Authority may from time to time engage the services of professional and other advisers.

Disclosure of
interests by
directors.

18.—(1) In this section—

“meeting” means a meeting of the board of the Supervisory Authority or of a committee of its directors;

“specified matter” means—

- (a) an arrangement to which the Supervisory Authority is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the Supervisory Authority or a proposed such contract or other agreement.

(2) Any director of the Supervisory Authority who is present at a meeting where a specified matter arises and who, otherwise than in his or her capacity as such a director, has a material interest in that matter shall—

- (a) at the meeting disclose to the Authority the fact of the interest and its nature,
- (b) absent himself or herself from the meeting or the part of the meeting during which the matter is discussed,
- (c) take no part in any deliberations of the directors relating to the matter, and
- (d) refrain from voting on any decision relating to the matter.

(3) Where a director discloses a material interest under this section—

- (a) the disclosure shall be recorded in the minutes of the meeting concerned, and
- (b) for as long as the matter to which the disclosure relates is being dealt with by the meeting, the director shall not be counted in the quorum for the meeting.

(4) Where at a meeting a question arises as to whether or not a course of conduct, if pursued by a director, would constitute a failure by him or her to comply with *subsection (2)*—

- (a) the chairperson of the meeting may, subject to *subsection (5)*, determine the question,
- (b) the chairperson's determination is final, and
- (c) the particulars of the determination shall be recorded in the minutes of the meeting.

(5) If the chairperson is the director in respect of whom the question arises, the other directors present at the meeting shall choose one of their number to be the chairperson of the meeting for the purposes of *subsection (4)*.

(6) A director of the Supervisory Authority who, otherwise than in his or her capacity as such a director, has a material interest in a specified matter shall neither influence nor seek to influence any decision to be made by the Authority in relation to that matter.

(7) On being satisfied that a director of the Supervisory Authority has contravened *subsection (2)* or *(6)*, the Minister may—

(a) if he or she thinks fit, remove that director from office, or

(b) if the director concerned is the chief executive officer, recommend to the board that he or she be removed from that office.

(8) A director removed from office under this section is disqualified for appointment under *section 11* or *12*.

(9) Section 194 of the Act of 1963 does not apply to a director of the Supervisory Authority.

(10) Nothing in this section prejudices the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

Disclosure of interests by staff. **19.**—(1) A member of the staff of the Supervisory Authority who, otherwise than in his or her capacity as such a member, has a material interest in a specified matter, as defined in *section 18 (1)*, shall—

(a) disclose to the Authority the fact of the interest and its nature,

(b) take no part in the negotiation of the arrangement, contract or other agreement concerned or in any deliberation by the Authority or members of its staff relating to that matter,

(c) refrain from making any recommendation relating to the matter, and

(d) neither influence nor seek to influence a decision to be made in relation to the matter.

(2) *Subsection (1)* does not apply to contracts or proposed contracts of employment of members of the staff of the Supervisory Authority with the Authority.

(3) Where a person contravenes this section, the Supervisory Authority may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment.

Superannuation. **20.**—(1) The Supervisory Authority may, if it considers it appropriate to do so, prepare and submit to the Minister a scheme or schemes for granting superannuation benefits to or in respect of one or more of the following:

(a) the chief executive officer;

(b) any staff of the Authority.

(2) Each superannuation scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) A superannuation scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out in accordance with its terms.

(4) A superannuation scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.

(5) The Supervisory Authority may not grant, or enter any arrangement for the provision of, any superannuation benefit to or in respect of a person referred to in *subsection (1)* except in accordance with a superannuation scheme approved under this section or approved by the Minister with the consent of the Minister for Finance.

(6) If any dispute arises as to the claim of any person to, or the amount of, a superannuation benefit payable in pursuance of a superannuation scheme approved under this section, the dispute shall be submitted to the Minister who shall refer it to the Minister for Finance whose decision shall be final.

(7) The Minister shall ensure that a superannuation scheme approved under this section is laid before each House of the Oireachtas as soon as practicable after it is approved.

(8) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the superannuation scheme is laid before it, annul the scheme.

(9) The annulment of a superannuation scheme under *subsection (8)* takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the scheme before the passing of the resolution.

Accounts and
audit.

21.—(1) The Supervisory Authority shall keep records of, and prepare all proper and usual accounts of—

(a) all income received by it, including the sources,

(b) all expenditure incurred by it, and

(c) its assets and liabilities.

(2) Not later than 3 months after the end of the financial year to which the accounts relate, the Supervisory Authority shall submit the accounts prepared under this section to the Comptroller and Auditor General for audit.

(3) After the audit, the Comptroller and Auditor General shall present to the Minister the audited accounts together with the Comptroller and Auditor General's report.

(4) The Minister shall ensure that, as soon as possible after the audited accounts and the report are presented to the Minister, copies of them are—

- (a) laid before each House of the Oireachtas, and
- (b) supplied to the prescribed accountancy bodies.

(5) The Supervisory Authority shall—

- (a) at the Minister's request, permit any person appointed by the Minister to examine its accounts in respect of any financial year or other period,
- (b) facilitate the examination of the accounts by the appointed person, and
- (c) pay the fee that may be set by the Minister for the examination.

Accountability
mechanisms.

22.—(1) As soon as practicable but not later than 4 months after the end of each financial year, the Supervisory Authority shall make a written report to the Minister of its activities during that year.

(2) The annual report must be prepared in such manner and form as the Minister may direct.

(3) The Minister shall ensure that a copy of the annual report is laid before each House of the Oireachtas not later than 6 months after the end of the financial year to which the report relates.

(4) Whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, the chief executive officer and the chairperson of the board shall give evidence to that Committee on the following:

- (a) the regularity and propriety of the transactions recorded or to be recorded in any account subject to audit by the Comptroller and Auditor General that the Supervisory Authority is required by law to prepare;
- (b) the Supervisory Authority's economy and efficiency in using its resources;

(c) systems, procedures and practices used by the Supervisory Authority for evaluating the effectiveness of its operations;

(d) any matter affecting the Supervisory Authority that is referred to in a special report under section 11 (2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General that is laid before Dáil Éireann, in so far as the other report relates to a matter specified in any of *paragraphs (a) to (c)*;

(5) Whenever requested by any other committee appointed by either House of the Oireachtas or appointed jointly by both Houses, the chief executive officer and the chairperson of the board shall account to the committee for the performance of the functions and the exercise of the powers of the Supervisory Authority.

(6) The Supervisory Authority shall have regard to any recommendations relating to its functions or powers that are made by a committee in response to an account given under *subsection (5)*.

(7) In performing duties under *subsection (4) or (5)*, neither the chief executive officer nor the chairperson of the board shall question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Intervention in
disciplinary
process of
prescribed
accountancy
bodies.

23.—(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 section 9 (2)(c) of this Act or approved under the Act of 1990 before or after the amendment of that Act by section 32 of this Act, and

(b) in relation to any other prescribed accountancy body, the investigation and disciplinary procedures approved under section 9 (2)(c) of this Act.

(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 24 (2) relating to that member.

(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, 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, the Supervisory Authority forms the opinion that it is appropriate or in the public interest that the matter be investigated under section 24, the Authority may apply to the High 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, the Supervisory Authority may advise or admonish the prescribed accountancy 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;
- (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 48 (1)(f).

(6) Where the Supervisory Authority applies under this section to the High Court for permission to investigate under section 24 any matter relating to a member of a prescribed accountancy body or decides to direct a prescribed accountancy body 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 High 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 29 (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 29 (6).

(7) The Supervisory Authority may publish each decision made under *subsection (5)* and the reasons for the decision after giving the prescribed accountancy body and the member concerned not less than 3 months notice in writing of its intention to do so.

(8) The prescribed accountancy body or the member concerned may appeal to the High Court against a decision made by the Supervisory Authority under *subsection (5)*.

(9) An appeal under *subsection (8)* must be brought before the expiry of the notice given under *subsection (7)* to the prescribed accountancy body and the member concerned.

(10) 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 High Court against any decision of the prescribed accountancy body relating to the matter.

(11) An appeal under *subsection (10)* must be brought within 3 months after the Supervisory Authority was notified by the prescribed accountancy body of its decision.

(12) For the purposes of this section, 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.

Investigation of possible breaches of standards of prescribed accountancy bodies.

24.—(1) In this section—

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

“refusal” includes failure and “refuses” includes fails;

“relevant person”, in relation to an investigation of a member of a prescribed accountancy body, means—

- (a) a member of the prescribed accountancy body,
- (b) a client or former client of such 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,
- (d) the prescribed accountancy body or a person who is or was an officer, employee or agent of that body, or
- (e) any person whom the Supervisory Authority reasonably believes has information or documents relating to the investigation other than information or documents the disclosure of which is prohibited or restricted by law.

(2) If, in the Supervisory Authority's opinion, it is appropriate or in the public interest to undertake an investigation into a possible breach of a prescribed accountancy body's standards by a member, the Authority may do so—

- (a) following a complaint, or
- (b) on its own initiative,

but no investigation may be undertaken into a matter that is or has been the subject of an enquiry under section 23 relating to that member except with the permission of the High Court granted on application under section 23 (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 to the High Court if a relevant person refuses 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 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—
 - (a) 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), and

(b) in addition, the member is liable to pay the amount specified by the Supervisory Authority towards its costs in investigating and determining the case, excluding any costs of or incidental to an enquiry by the Court under *subsection (6)*.

(8) The member who is the subject of a decision made by the Supervisory Authority under *subsection (7)* may appeal to the High Court against the decision.

(9) An appeal under *subsection (8)* must be brought within 3 months after the member concerned was notified by the Supervisory Authority of its decision.

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

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

(12) A finding or decision of the Supervisory Authority under this section is not a bar to any civil or criminal proceedings against the member who is the subject of the finding or decision.

Review of
members of
recognised
accountancy
bodies.

25.—(1) The Supervisory Authority may, if in its opinion it is appropriate to do so, undertake a review of a member of a recognised accountancy body to determine whether that body has been or is regulating its members in the manner approved under *section 9 (2)(b)* of this Act or approved under the Act of 1990 before or after the amendment of that Act by *section 32* of this Act.

(2) For the purposes of a review under this section—

(a) the Supervisory Authority may inspect and make copies of all relevant documents in the possession or control of the recognised accountancy body whose practices are under review,

(b) the member of the recognised accountancy body shall co-operate with the Supervisory Authority as if the recognised accountancy body were undertaking the review, and

(c) if the member fails to co-operate in accordance with *paragraph (b)* of this subsection, *section 24 (3) to (7)* applies, with any necessary modifications, in relation to the member as if the review were an investigation under *section 24*.

Review of
whether
accounts comply
with Companies
Acts.

26.—(1) In this section—

“relevant undertaking” means—

- (a) a public limited company (whether unlisted or listed),
- (b) a subsidiary undertaking of a public limited company referred to in *paragraph (a)* (whether the subsidiary undertaking is a company or is an undertaking referred to in Regulation 6 of the 1993 Regulations),
- (c) a private company limited by shares that, in both the relevant financial year and the immediately preceding financial year of the company, meets the following criteria:
 - (i) its balance sheet total for the year exceeds—
 - (A) €25,000,000, or
 - (B) if an amount is prescribed under *section 48 (1)(h)* for the purpose of this provision, the prescribed amount;
 - (ii) the amount of its turnover for the year exceeds—
 - (A) €50,000,000, or
 - (B) if an amount is prescribed under *section 48 (1)(h)* for the purpose of this provision, the prescribed amount,
- (d) a private company limited by shares that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the relevant financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in *paragraph (c)*,
- (e) each subsidiary undertaking of a parent undertaking that comes within *paragraph (d)*,
- (f) an undertaking referred to in Regulation 6 of the 1993 Regulations that, in both the relevant financial year and the immediately preceding financial year of the undertaking, meets the criteria in *paragraph (c)*,

(g) an undertaking referred to in Regulation 6 of the 1993 Regulations that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the relevant financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in *paragraph (c)*, or

(h) each subsidiary undertaking of a parent undertaking that comes within *paragraph (g)*,

but does not include a company or an undertaking of a class exempted under *section 48 (1)(j)* from this section.

(2) A reference in this section to the directors of a relevant undertaking is to be construed in the case of an undertaking that does not have a board of directors as a reference to the corresponding persons appropriate to that undertaking.

(3) Subject to *subsection (12)*, the Supervisory Authority may give notice to the directors of a relevant undertaking concerning its annual accounts where—

(a) a copy of the annual accounts has been sent out under section 159 of the Act of 1963 or laid before the undertaking at its annual general meeting or delivered to the registrar of companies, and

(b) it appears to the Supervisory Authority that there is, or may be, a question whether the annual accounts comply with the Companies Acts.

(4) The notice to the directors of the relevant undertaking must specify—

(a) the matters in respect of which it appears to the Supervisory Authority that the question of compliance with the Companies Acts arises or may arise, and

(b) a period of not less than 30 days within which those directors are required to give the Supervisory Authority an explanation of the annual accounts or to prepare revised annual accounts that comply with the Companies Acts.

(5) If before the end of the specified period, or such longer period as the Supervisory Authority may allow, the directors of the relevant undertaking prepare revised annual accounts, the Supervisory Authority may, taking account of the circumstances of the case and the degree of co-operation by the directors with the Supervisory Authority, require that undertaking to pay some or all of the costs the Supervisory Authority incurred under this section in relation to that undertaking.

(6) If at the end of the specified period, or such longer period as the Supervisory Authority may allow, the directors of the relevant undertaking have, in the Supervisory Authority's opinion, neither given a satisfactory explanation of the annual accounts nor revised them to comply with the Companies Acts, the Supervisory Authority may apply to the High Court for a declaration of non-compliance and an order under *subsection (8)*.

(7) If an application is made to the Court under *subsection (6)*, the Supervisory Authority shall give to the registrar of companies for registration—

- (a) notice of the application, and
- (b) a general statement of the matters at issue in the proceedings.

(8) If satisfied after hearing the application that the relevant undertaking's annual accounts referred to in *subsection (3)* do not comply with the Companies Acts, the Court may make a declaration to that effect and may, by order, do one or more of the following:

- (a) require the directors to revise the annual accounts so that they comply with those Acts;
- (b) give directions respecting one or more of the following:
 - (i) the auditing of the revised annual accounts;
 - (ii) the revision of any directors' report;
 - (iii) the steps to be taken by the directors to bring the court order to the notice of persons likely to rely on the annual accounts that were the subject of the declaration;
 - (iv) such other matters as the Court thinks fit;
- (c) require the directors of the relevant undertaking to pay—
 - (i) the costs incurred by the Supervisory Authority under *subsections (3) and (4)* in relation to that undertaking, and
 - (ii) any reasonable expenses incurred by the relevant undertaking in connection with or in consequence of the preparation of revised annual accounts.

(9) For the purpose of *subsection (8)(c)*, every director of the relevant undertaking at the time the annual accounts were approved is considered to have been a party to their approval unless the director shows that he or she took all reasonable steps to prevent their being approved.

(10) In making an order under *subsection (8)(c)*, the Court—

- (a) shall have regard to whether any or all of the directors who approved the annual accounts that were the subject of the declaration knew, or ought to have known, that they did not comply with the Companies Acts, and
- (b) may exempt one or more directors from the order or may order the payment of different amounts by different directors.

(11) On the conclusion of the proceedings, the Supervisory Authority shall give to the registrar of companies for registration—

- (a) a copy of the court order, or
- (b) notice that the application has failed or been withdrawn.

(12) The Supervisory Authority shall consult with the Irish Financial Services Regulatory Authority before making any decisions under this section with respect to a company regulated by the latter Authority, including a decision to give notice under *subsection (3)*.

(13) This section applies equally to revised annual accounts, in which case references to revised annual accounts are to be construed as references to further revised annual accounts.

(14) For the purpose of applying this section to a partnership that is referred to in Regulation 6 of the 1993 Regulations and that is a relevant undertaking—

- (a) the partnership is to be treated as though it were a company formed and registered under the Companies Acts, and
- (b) the section applies with any modifications necessary for that purpose.

(15) Where revised annual accounts are prepared under this section, then, subject to a direction given under *subsection (8)(b)*, any provision of the Companies Acts respecting the preparation, auditing, circulation and disclosure of annual accounts applies with the necessary changes to the revised annual accounts.

Delegation of
Supervisory
Authority's
functions and
powers.

27.—(1) The Supervisory Authority may delegate some or all of its functions and powers under *section 23 to 26* to a committee established for that purpose and constituted as follows:

(a) in the case of functions and powers under *sections 23 to 25*, a committee consisting of directors of the Authority and such professional and other advisers as the Authority considers necessary;

(b) in the case of functions and powers under *section 26*, a committee constituted in the manner described in *paragraph (a)* of this section or consisting of only such professional and other advisers as the Authority considers necessary.

(2) Where functions or powers under a provision referred to in *subsection (1)* are delegated to a committee, any references in that provision to the Supervisory Authority are to be construed as references to that committee.

(3) Subject to the regulations made under *section 28 (4)*, a committee may regulate its own procedure.

(4) The Supervisory Authority may, if it reasonably considers it appropriate to do so, perform any of its other functions or exercise any of its other powers through or by any of its officers or employees or any other person duly authorised by it in that behalf.

Hearings, privileges and procedural rules. **28.**—(1) The Supervisory Authority may for the purposes of exercising its functions under *section 23* or *24* conduct an oral hearing in accordance with regulations made under *subsection (4)* of this section.

(2) A witness before the Supervisory Authority is entitled to the same immunities and privileges as a witness before the High Court.

(3) Nothing in *section 23*, *24* or *25* 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 or authorises the inspection or copying of any document containing such information that is in the person's possession.

(4) The Supervisory Authority shall make regulations respecting the procedures to be followed in conducting enquiries under *section 23*, investigations under *section 24* and reviews under *section 25*.

Appeals to and orders of High Court, including orders confirming decisions of Supervisory Authority.

29.—(1) In an appeal under section 23 (8) or (10) or 24 (8), the High Court may consider any evidence adduced or argument made, whether or not adduced or made to the Supervisory Authority or other body whose decision is under appeal.

(2) On the hearing of the appeal, the Court may make any order or give any direction it thinks fit, including an order—

- (a) confirming the decision under appeal, or
- (b) modifying or annulling that decision.

(3) On application under section 23 (4) for an order granting permission for an investigation under section 24 into a possible breach of a prescribed accountancy body's rules by a member, the Court may—

- (a) grant or refuse to grant permission, and
- (b) make any ancillary or consequential order it thinks fit, including, if permission is granted, an order setting aside any decision of the body relating to the member.

(4) A decision of the Supervisory Authority annulling all or part of a decision of a prescribed accountancy body under section 23 (5)(a), directing a fresh investigation under section 23 (5)(b) or requiring the payment of an amount under section 23 (5)(c) or 24 (7)(a) or (b) does not take effect until that decision is confirmed by the Court either—

- (a) on appeal under section 23 (8) or 24 (8), or
- (b) on application by the Supervisory Authority under *subsection (6)* of this section.

(5) *Subsection (4)(b)* applies also in relation to a decision of the Supervisory Authority requiring payment of costs under section 26 (5).

(6) On application by motion on notice by the Supervisory Authority for an order confirming a decision referred to in *subsection (4)* or (5), the Court may make an order confirming the decision or may refuse to make such an order.

(7) On application under section 10 (4) for an order compelling compliance with a rule adopted or guideline issued by the Supervisory Authority or with a term or condition of recognition, the Court may make any order or give any direction it thinks fit.

Supervisory Authority's seal and instruments. **30.**—(1) Judicial notice shall be taken of the Supervisory Authority's seal.

(2) Every document that appears to be an instrument made by the Supervisory Authority and to be sealed with its seal apparently authenticated in accordance with its articles of association shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

Confidentiality of information. **31.**—(1) No person shall disclose, except in accordance with law, information that—

- (a) is obtained in performing the functions or exercising the powers of the Supervisory Authority, and
- (b) has not otherwise come to the notice of members of the public.

(2) Without limiting *subsection (1)*, the persons to whom that subsection applies include the following:

- (a) a member or director or former member or director of the Supervisory Authority;
- (b) an employee or former employee of the Supervisory Authority;
- (c) a professional or other adviser to the Supervisory Authority, including a former adviser.

(3) *Subsection (1)* does not prohibit the Supervisory Authority from disclosing information referred to in that subsection—

- (a) if the disclosure is, in its opinion, necessary to enable it to state the grounds on which it made a decision under section 23, 24 or 26,
or
- (b) if the information is, in its opinion, connected with the functions of, and if the disclosure is made to, any of the following:
 - (i) the Minister;
 - (ii) the Minister for Finance;
 - (iii) the Garda Síochána;

- (iv) the Director of Public Prosecutions;
- (v) the Director of Corporate Enforcement;
- (vi) the Revenue Commissioners;
- (vii) the Comptroller and Auditor General;
- (viii) the Central Bank and Financial Services Authority of Ireland;
- (ix) the Irish Takeover Panel;
- (x) the Irish Stock Exchange;
- (xi) the Pensions Board;
- (xii) a prescribed accountancy body;
- (xiii) a member of a recognised accountancy body who is qualified for appointment as an auditor;
- (xiv) an inspector appointed under any other enactment;
- (xv) any person prescribed under section 48 (1)(i) for the purposes of this section.

(4) A person who contravenes *subsection (1)* is guilty of an offence.

Transfer of
certain functions
to Supervisory
Authority and
related
transitional
provisions.

32.—(1) The Acts specified in *Schedule 1* are amended as indicated in that Schedule.

(2) Subject to *subsections (3) to (5)*, each body that was a recognised body of accountants immediately before the commencement of this section is a recognised accountancy body immediately after the commencement of this section.

(3) Where, on an application made by the Institute of Incorporated Public Accountants under the Act of 1990 before 15 September 2003 as though it were not a recognised body of accountants, the Minister decides, before the commencement of this section, to grant the Institute recognition (with or without terms and conditions) for the purposes of section 187 of that Act or to refuse to grant it such recognition—

(a) the decision is not invalid or ineffectual by reason only—

(i) that the recognition granted to the Institute before 29 January 2003 had not been withdrawn before the date of application, or

(ii) that the decision to grant or refuse recognition was made before the commencement of this section,

(b) if recognition is granted, the Institute is deemed to have become a recognised body of accountants on the date of the decision, subject to such terms and conditions, if any, as may be specified by the Minister at the time of granting recognition, and

(c) if recognition is refused, the Institute is deemed to have ceased to be a recognised body of accountants on the date of the decision.

(4) If for any reason a decision in relation to the application referred to in *subsection (3)* has not been made before the commencement of this section, the Minister shall, on the commencement of this section, refer the application to the Supervisory Authority for a decision.

(5) If, following the referral of the application, the Supervisory Authority decides to grant the Institute of Incorporated Public Accountants recognition (with or without terms and conditions) for the purposes of section 187 of that Act or to refuse to grant it such recognition, the decision is not invalid or ineffectual by reason only that the recognition granted to the Institute before 29 January 2003 had not been withdrawn before the date of application.

(6) For the removal of doubt and subject to *subsection (3)*, section 192 of the Act of 1990 as amended by this section applies during its currency to any recognition granted to the Institute of Incorporated Public Accountants following the application referred to in *subsection (3)*.

(7) Each person who, on the making of an application referred to in *subsection (3)*, was a member of and held a valid practising certificate from the Institute of Incorporated Public Accountants is considered, for the purposes of section 187 of the Act of 1990, to be a member of a recognised body of accountants until the later of—

(a) the commencement of this section, and

(b) the date on which the Minister or the Supervisory Authority, as the case may be, makes a decision in relation to the application.

(8) If the Minister or the Supervisory Authority, as the case may be, decides to refuse to grant recognition to the Institute of Incorporated Public Accountants—

(a) each person referred to in *subsection (7)* is, from the date on which he or she ceases under that subsection to be considered to be a member of a recognised body of accountants, considered for the time being authorised to be appointed as an auditor of a company or as a public auditor, as though he or she had been granted an authorisation by the Minister under section 187(1)(a)(iv) of the Act of 1990, and

(b) section 187(14) of the Act of 1990 applies in respect of an authorisation under this subsection, except that the 3 year period referred to in that section runs from the date referred to in *paragraph (a)*.

(9) For the removal of doubt, section 192 of the Act of 1990 as amended by this section applies during its currency to an authorisation under *subsection (8)*.

(10) Each person who, immediately before the commencement of this section, was for the time being authorised by the Minister under section 187 of the Act of 1990 to be appointed as an auditor of a company or as a public auditor is immediately after the commencement of this section considered for the time being authorised by the Supervisory Authority to be so appointed.

(11) Any legal proceedings against the Minister that, immediately before the commencement of this section, are pending or underway and that relate to the exercise of the Minister's powers under any provision mentioned in *Schedule 1* may be continued against the Minister after the commencement of this section as if that provision had not been amended by this section.

Liability of
Supervisory
Authority for
acts, omissions,
etc.

33.—(1) Neither the Supervisory Authority nor any person who is or was a member, director or other officer or employee of the Supervisory Authority is liable for damages for anything done, anything purported to be done or anything omitted to be done by the Supervisory Authority or that person in performing their functions or exercising their powers under this Act, unless the act or omission is shown to have been in bad faith.

(2) The matters in respect of which *subsection (1)* applies include, but are not limited to, the following:

(a) any advice given, or admonition or censure administered, to a prescribed accountancy body under *section 23 (5)*;

(b) any statement published under *section 23 (7)* concerning a prescribed accountancy body;

(c) any investigation under *section 24* of a possible breach of the standards of a prescribed accountancy body by a member of that body or any sanction or penalty imposed on such a member;

(d) any certificate of refusal issued by the Supervisory Authority in connection with an investigation under *section 24*;

(e) any review under section 25 of a member of a recognised accountancy body;

(f) any notice given or statement made by the Supervisory Authority under section 26 respecting whether an undertaking's accounts comply with the Companies Acts.

(3) Subject to any enactment or rule of law, the Supervisory Authority may indemnify any person who is or was a member, director, officer or employee of the Supervisory Authority in respect of anything done or omitted to be done by that person in good faith in carrying out duties under this Act.

(4) The power to indemnify under *subsection (3)* includes, but is not limited to, the power to indemnify a person referred to in that subsection for any liability to pay damages or costs because of anything done or omitted to be done by that person in carrying out duties under this Act where the liability—

- (a) has been determined in proceedings before a court or tribunal in another state or arises by virtue of an agreement entered into in settlement of such proceedings, and
- (b) would not have been determined had *subsections (1) and (2)* been applied in those proceedings or would not have been the subject of such an agreement but for that person's reliance in good faith on a legal opinion or advice that those subsections would not be applied by the court or tribunal in those proceedings.

PART 3

Other Measures to Strengthen the Regulation of Auditors

Amendment of
section 182 of
Act of 1990
(interpretation
of Part X).

34.—Section 182 of the Act of 1990 is amended as follows:

(a) in the definition of “public auditor” by substituting “1896 to 1993;” for “1896 to 1993.”;

(b) by inserting the following after the definition of “public auditor”:

“ ‘the *Act of 2003*’ means the *Companies (Auditing and Accounting) Act 2003*;

‘the 1993 Regulations’ means the European Communities (Accounts) Regulations 1993 (S.I. No. 396 of 1993);

‘the 1992 Regulations’ means the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992).”;

(c) by renumbering that section as section 182(1) and inserting the following:

“(2) For the purposes of sections 205B and 205D, each of the following is considered to be an affiliate of an auditor in a financial year:

(a) if the auditor is a firm—

- (i) any other firm where, at any time during the financial year, both firms were under common ownership and control,
- (ii) any body corporate in which the auditor, any firm mentioned in subparagraph (i) or (iv) or any body corporate mentioned in subparagraph (iii) or (iv) was, at any time in the financial year, entitled to exercise or control the exercise of 20 per cent or more of the voting rights at a general meeting,
- (iii) any body corporate that was, at any time in the financial year, in the same group as a body corporate mentioned in subparagraph (ii),
- (iv) any other firm, or body corporate, 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,

(b) if the auditor is an individual—

- (i) any partnership in which the auditor was, at any time in the financial year, a partner,
- (ii) any body corporate in which the auditor, any partnership mentioned in subparagraph (i) or any body corporate mentioned in subparagraph (iii) was, at any time in the financial year, entitled to exercise or control the exercise of 20 per cent or more of the voting rights at a general meeting,
- (iii) any body corporate that was, at any time in the financial year, in the same group as a body corporate mentioned in subparagraph (ii).

(3) A reference in this Part to group accounts is to be construed as follows:

- (a) in accordance with the 1992 Regulations, in the case of an undertaking to which those Regulations apply;
- (b) in accordance with the Principal Act, in the case of any other undertaking.”.

Amendment of
section 187 of
Act of 1990
(qualifications
for appointment
as auditor).

35.—Section 187 of the Act of 1990 is amended as follows:

(a) by inserting the following after subsection (1):

“(1A) A firm shall be qualified for appointment as auditor of a company or as a public auditor if—

(a) at least one member of the firm is entitled to hold a practising certificate from a body referred to in subparagraph (i), (ii) or (iii) of subsection (1)(a) and is otherwise qualified under the applicable subparagraph for appointment as auditor of a company or as a public auditor, and

(b) the particulars required by sections 199 and 200 in respect of such a member have been forwarded to the registrar of companies.

(1B) A body referred to in subsection (1A) may grant a practising certificate to a firm that satisfies the conditions in that subsection, and, if a practising certificate is granted—

(a) each member of the firm who from time to time during the currency of the certificate is qualified for appointment as auditor of a company or as a public auditor is deemed to hold the certificate, and

(b) the name of such a member is deemed to be entered in the register of auditors.”;

(b) in subsection (2), by substituting “corporate,” for “corporate.” in paragraph (g) and by inserting the following after paragraph (g):

“(h) a person in whose name a share in the company is registered, whether or not that person is the beneficial owner of the share,”;

(c) by inserting the following after subsection (13) (inserted by section 72 of the Company Law Enforcement Act 2001):

“(14) An authorisation granted to a person under subsection (1)(a)(iv) ceases to have effect on the expiry of 3 years after the commencement of this subsection unless, within that 3 year period, the person becomes a member of, or becomes subject to the regulations of, a body of accountants recognised for the purposes of section 187.

(15) On an authorisation ceasing to have effect under subsection (14), the person to whom it was granted ceases to be qualified for appointment as auditor of a company or as a public auditor.”.

Amendment of Act of 1990 — new section 192A.

36.—The Act of 1990 is amended by inserting the following after section 192:

“Statutory backing for disciplinary procedures of prescribed accountancy bodies.

192A.—(1) In this section—

‘client’ includes an individual, a body corporate, an unincorporated body of persons and a partnership;

‘disciplinary committee’ means any disciplinary committee or tribunal (however called) of a prescribed accountancy body;

‘member’, in relation to a prescribed accountancy body, means—

(a) a person, or

(b) a firm,

that is, or was at the relevant time, subject to the investigation and disciplinary procedures approved by the Supervisory Authority under section 9 (2)(c) of the *Act of 2003* for that body;

‘prescribed accountancy body’ has the meaning given by section 4 of the *Act of 2003*;

‘refusal’ includes failure and ‘refuses’ includes fails;

‘relevant person’, in relation to an investigation of a member of a prescribed accountancy body, means—

(a) a member of the prescribed 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 prescribed accountancy body reasonably believes has information or documents relating to the investigation other than information or documents the disclosure of which is prohibited or restricted by law;

'standards', in relation to a prescribed accountancy body, means the rules, regulations and standards that body applies to its members and to which, by virtue of their membership, they are obliged to adhere.

(2) For the purposes of an investigation of a possible breach of a prescribed accountancy body's standards by a member, a disciplinary committee may require a relevant person to do one or more of the following:

- (a) produce to the committee all books or documents relating to the investigation that are in the relevant person's possession or control;
- (b) attend before the committee;
- (c) give the committee any other assistance in connection with the investigation that the relevant person is reasonably able to give.

(3) For the purposes of an investigation referred to in subsection (2), the disciplinary committee may—

- (a) examine on oath, either by word of mouth or on written interrogatories, a relevant person,
- (b) administer oaths for the purpose of that examination, and
- (c) record, in writing, the answers of a person so examined and require that person to sign them.

(4) The disciplinary committee may certify the refusal to the High Court if a relevant person refuses to do one or more of the following:

- (a) produce to the committee any book or document that it is the person's duty under this section to produce;
- (b) attend before the committee when required to do so under this section;
- (c) answer a question put to the person by the committee with respect to the matter under investigation.

(5) On receiving a certificate of refusal 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 disciplinary committee or produce particular books or documents or answer particular questions put to him or her by that committee;

(b) direct that the relevant person need not produce a particular book or document or answer a particular question put to him or her by that committee;

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

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

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

Amendment of section 194 of Act of 1990 (duty of auditors).

37.—Section 194 of the Act of 1990 is amended as follows:

(a) in paragraph (b) of subsection (3A) (inserted by the Company Law Enforcement Act 2001) by substituting "access to books and documents" for "access to documents";

(b) in subsection (3A) by substituting "being information, books or documents" for "being information or documents";

(c) in subsection (4) by substituting "subsection (1), (3A), (5) or (5A)" for "subsection (1), (3A) or (5)";

(d) in subsection (5) by inserting "(other than an indictable offence under section 125(1) or 127(12) of the Principal Act)" after "an indictable offence under the Companies Acts";

(e) by inserting the following after subsection (5) (inserted by the Company Law Enforcement Act 2001):

"(5A) Where the auditors of a company notify the Director of any matter pursuant to subsection (5), they shall, in addition to performing their obligations under that subsection, if requested by the Director—

- (a) furnish the Director with such further information in their possession or control relating to the matter as the Director may require, including further information relating to the details of the grounds on which they formed the opinion referred to in that subsection,
- (b) give the Director such access to books and documents in their possession or control relating to the matter as the Director may require, and
- (c) give the Director such access to facilities for the taking of copies of or extracts from those books and documents as the Director may require.

(5B) Nothing in this section 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 or authorises the inspection or copying of any document containing such information that is in the person's possession.”.

Amendment of
section 198 of
Act of 1990
(register of
auditors).

38.—The following is substituted for section 198 of the Act of 1990:

“Register of auditors.

198.—(1) The registrar of companies shall maintain a register containing the names of persons or firms that have been notified to him as qualified for appointment as auditor of a company or as public auditor.

(2) A person shall not—

- (a) act as an auditor of a company or as a public auditor,
- (b) describe himself as an auditor of a company or as a public auditor, or
- (c) so hold himself out as to indicate, or be reasonably understood to indicate, that he is, or is registered as, an auditor of a company or a public auditor,

unless—

- (i) his name is entered, or is deemed under subsection (3) to be entered, in the register of auditors and he holds a valid practising certificate, or

- (ii) he is a member of a firm that holds a valid practising certificate under section 187(1B) and he is deemed under that section to hold a practising certificate.
- (3) In the following circumstances, the name of a person is deemed to be entered in the register of auditors:
 - (a) if the person becomes qualified for appointment as an auditor or is granted an authorisation by the Supervisory Authority under section 187(1) and if the time allowed under section 200(1), (2) or (3) for forwarding that person's particulars to the registrar of companies has not yet expired;
 - (b) if the person is entitled to have his name entered in the register of auditors and his particulars have been forwarded to the registrar of companies in accordance with section 200(1), (2) or (3) but his name has not yet been entered in that register.
- (4) This section does not apply to the Comptroller and Auditor-General.
- (5) A person who contravenes subsection (2) is guilty of an offence and is liable—
 - (a) on summary conviction, to a fine not exceeding €2,000 and, for continued contravention, a daily default fine not exceeding €60, and
 - (b) on conviction on indictment, to a fine not exceeding €12,500 and, for continued contravention, a daily default fine not exceeding €300.
- (6) In this section and sections 199 and 200, 'address' in relation to a person means—
 - (a) the person's usual business address, and
 - (b) if the person is a partner or employee of a firm, the name of the firm and the address of its head office.”.

Amendment of
section 199 of
Act of 1990
(provisions
concerning
register of
auditors).

39.—Section 199 of the Act of 1990 is amended as follows:

(a) by substituting the following for subsection (1):

“(1) Subject to subsection (2), a body of accountants which has been recognised by the Supervisory Authority under section 191 shall, within one month after such recognition, deliver to the registrar of companies, the name and address of each of its members who is qualified for appointment under the Companies Acts as auditor of a company or public auditor.”;

(b) in subsection (2) by substituting “whose recognition is continued under section 32 (2) of the *Act of 2003*” for “whose recognition is renewed”;

(c) by inserting the following after subsection (2):

“(2A) A body of accountants referred to in subsection (1) or (2) shall, as soon as possible but not later than 6 months after the event, notify the registrar of companies of any change in the particulars previously provided to him under the applicable subsection.”;

(d) by inserting the following after subsection (3):

“(3A) A person referred to in subsection (3) or in section 32 (6) of the *Act of 2003* shall notify the registrar of companies—

(a) at least once in each year during the currency of the authorisation referred to in that subsection or section, as the case may be, of the fact that the person holds the authorisation,

(b) as soon as possible but not later than one month after the event, of any change in the particulars provided by the person to the registrar, and

(c) as soon as possible but not later than one month after ceasing to hold the authorisation, of the occurrence of that event.”;

(e) by substituting the following for subsection (4):

“(4) If default is made in complying with subsection (1) or (2A), the body of accountants concerned shall be guilty of an offence.”;

(f) by inserting the following after subsection (4):

“(5) Information required to be delivered to the registrar of companies under this section shall be delivered in such form and manner as that registrar may specify.”.

Amendment of section 200 of Act of 1990 (duty to keep registrar informed).

40.—Section 200 of the Act of 1990 is amended as follows:

(a) by inserting the following after subsection (2):

“(2A) A body of accountants referred to in subsection (1) or a recognised body of accountants referred to in subsection (2) shall, as soon as possible but not later than 6 months after the event, notify the registrar of companies of any change in the particulars previously provided to him under the applicable subsection.”;

(b) by inserting the following after subsection (3):

“(3A) A person referred to in subsection (3) shall notify the registrar of companies—

(a) at least once in each year during the currency of the authorisation referred to in that subsection, of the fact that the person holds the authorisation,

(b) as soon as possible but not later than one month after the event, of any change in the particulars provided by the person to the registrar, and

(c) as soon as possible but not later than one month after ceasing to hold the authorisation, of the occurrence of that event.”;

(c) by substituting the following for subsection (4):

“(4) If default is made in complying with subsection (1) or (2A), the body of accountants concerned, or the recognised body of accountants concerned, shall be guilty of an offence.”;

(d) by inserting the following after subsection (4):

“(5) Information required to be delivered to the registrar of companies under this section shall be delivered in such form and manner as that registrar may specify.”.

Amendment of **41.**—The Act of 1990 is amended by inserting the following in Part X after section 205:
Act of 1990 —
new section
205A.

"Accounting standards.

205A.—(1) In this section—

'accounting standards' means—

(a) statements of accounting standards, and

(b) any written interpretation of those standards,

issued by any body or bodies prescribed by regulation;

'relevant undertaking' means—

(a) a company, or

(b) an undertaking referred to in Regulation 6 of the 1993 Regulations,

but does not include a company or an undertaking of a class exempt under section 48 (1)(j) of the *Act of 2003* from this section.

(2) Each relevant undertaking shall ensure—

(a) that its annual accounts and, where relevant, its group accounts include a statement as to whether they have been prepared in accordance with applicable accounting standards, and

(b) that any material departure from applicable accounting standards, the effect of the departure and the reasons for it are noted in the annual accounts and, where relevant, in the group accounts.

(3) Accounting standards are applicable to a relevant undertaking's annual accounts and, where relevant, to its group accounts, if those standards are, in accordance with their terms, relevant to its circumstances and those accounts.

(4) Where a relevant undertaking fails to comply with subsection (2), each company or other entity that forms all or part of that undertaking is guilty of an offence."

Amendment of Act of 1990 —
new section
205B.

42.—The Act of 1990 is amended by inserting the following in Part X:

"Audit committee.

205B.—(1) In this section—

'affiliate' in relation to an auditor, means a firm, body corporate or partnership considered under section 182(2) to be an affiliate of the auditor at the relevant time;

'amount of turnover' and 'balance sheet total' have the same meanings as in section 8 of the Companies (Amendment) Act 1986 ;

'internal audit' means an examination of the internal control system of a public limited company, a large private company or a relevant undertaking that is conducted within the public limited company, large private company or undertaking or otherwise at the request of its audit committee, directors or other officers;

'internal auditor' means a person who conducts an internal audit;

'large private company' means either of the following:

(a) a private company limited by shares that, in both the most recent financial year of the company and the immediately preceding financial year, meets the following criteria:

(i) the balance sheet total of that company exceeds for the year—

(A) €25,000,000, or

(B) if an amount is prescribed under section 48 (1)(l) of the *Act of 2003* for the purpose of this provision, the prescribed amount;

(ii) the amount of turnover of that company exceeds for the year—

(A) €50,000,000, or

(B) if an amount is prescribed under section 48 (1)(l) of the *Act of 2003* for the purpose of this provision, the prescribed amount;

(b) a private company limited by shares if the company and all its subsidiary undertakings together, in both the most recent financial year of that company and the immediately preceding financial year, meet the criteria in paragraph (a);

'parent undertaking' and 'subsidiary undertaking' have the same meaning as in the 1992 Regulations;

'relevant undertaking' means either of the following:

(a) an undertaking referred to in Regulation 6 of the 1993 Regulations that, in both the most recent financial year and the immediately preceding financial year of the undertaking, meets the following criteria:

(i) the balance sheet total of that undertaking exceeds for the year—

(A) €25,000,000, or

(B) if an amount is prescribed under section 48 (1)(l) of the *Act of 2003* for the purpose of this provision, the prescribed amount;

(ii) the amount of turnover of that undertaking exceeds for the year—

(A) €50,000,000, or

(B) if an amount is prescribed under section 48 (1)(l) of the *Act of 2003* for the purpose of this provision, the prescribed amount;

(b) an undertaking referred to in Regulation 6 of the 1993 Regulations if that undertaking and all of its subsidiary undertakings together, in both the most recent financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in paragraph (a).

(2) Subject to subsection (16), the board of directors of a public limited company (whether listed or unlisted) shall establish and adequately resource a committee of directors, to be known as the audit committee, with the following responsibilities:

(a) reviewing, before they are presented to the board of directors for approval—

(i) the company's annual accounts, and

(ii) if the company is a parent undertaking, the group accounts of the group of undertakings of which the company is the parent undertaking;

(b) determining whether the annual accounts so reviewed comply with section 205A(2) and whether, in the committee's opinion, they give at the end of the financial year a true and fair view of—

- (i) the state of affairs of the company, and
 - (ii) the profit or loss of the company, even if, by virtue of section 3 (2) of the Companies (Amendment) Act 1986 , section 3(1) of that Act does not apply to the company's profit and loss account;
- (c) determining whether the group accounts so reviewed comply with section 205A(2) and whether, in the committee's opinion, they give at the end of the financial year a true and fair view of—
- (i) the state of affairs of the group of undertakings of which the company is the parent undertaking, and
 - (ii) the profit or loss of that group;
- (d) recommending to the board of directors whether or not to approve the annual accounts and group accounts so reviewed;
- (e) determining, at least annually, whether in the committee's opinion, the company has kept proper books of account in accordance with section 202;
- (f) reviewing, before its approval by the board of directors, the statement required to be made under section 205E(5) and (6);
- (g) determining whether, in the committee's opinion, the statement so reviewed—
- (i) complies with section 205E(5) and (6), and
 - (ii) is fair and reasonable and is based on due and careful enquiry;
- (h) recommending to the board of directors whether or not to approve a statement reviewed under paragraph (f);
- (i) advising the board of directors as to the recommendation to be made by the board to the shareholders concerning the appointment of the company's auditor;
- (j) monitoring the performance and quality of the auditor's work and the auditor's independence from the company;

- (k) obtaining from the auditor up to date information to enable the committee to monitor the company's relationship with the auditor, including, but not limited to, information relating to the auditor's affiliates;
 - (l) recommending whether or not to award contracts to the auditor or an affiliate of the auditor for non-audit work;
 - (m) satisfying itself that the arrangements made and the resources available for internal audits are in the committee's opinion suitable;
 - (n) reporting, as part of the report under section 158 of the Principal Act, on the committee's activities for the year, including, but not limited to, the discharge of its responsibilities under paragraph (j);
 - (o) performing any additional functions prescribed by regulation under section 48 (1)(m) of the *Act of 2003*;
 - (p) performing any other functions relating to the company's audit and financial management that are delegated to it by the board of directors.
- (3) Subject to subsection (16), the board of directors of each large private company and of each relevant undertaking shall either—
- (a) establish an audit committee that—
 - (i) has all or some of the responsibilities specified in subsection (2), and
 - (ii) subject to subsection (8), otherwise meets the requirements of this section,or
 - (b) decide not to establish an audit committee.
- (4) The board of directors of each large private company and of each relevant undertaking to which subsection (3) applies shall state in their report under section 158 of the Principal Act—
- (a) whether the company or undertaking, as the case may be, has established an audit committee or decided not to do so,

(b) if the company or undertaking, as the case may be, has established an audit committee, whether it has only some of the responsibilities specified in subsection (2), and

(c) if the company or undertaking, as the case may be, has decided not to establish an audit committee, the reasons for that decision.

(5) For the purpose of applying subsection (2) to a large private company or relevant undertaking that decides under subsection (3)(a) to establish an audit committee with some or all of the responsibilities specified in subsection (2)—

(a) a reference in any applicable paragraph of subsection (2) to a public limited company or the company is to be construed as a reference to the large private company or relevant undertaking, as the case may be, and

(b) subsection (2) applies to the extent specified by the large private company or the relevant undertaking with any other modifications necessary for that purpose.

(6) The audit committee is to consist of such directors as the board of directors concerned thinks fit, provided, subject to subsection (8), both of the following requirements are met:

(a) the committee consists of not fewer than 2 members;

(b) all those appointed to the committee qualify under subsection (7).

(7) A director qualifies for appointment to the audit committee unless he or she—

(a) is, or was at any time during the 3 years preceding appointment to the committee—

(i) an employee of the company or undertaking concerned, or

(ii) an employee of any subsidiary of the company concerned or of a subsidiary undertaking of the undertaking concerned,

or

(b) is the chairperson of the board of directors.

(8) The requirements specified in paragraphs (a) and (b) of subsection (6) do not apply if—

(a) only one director on the board of directors of the company or undertaking concerned qualifies under subsection (7),

(b) that director—

(i) is appointed as the sole member of the audit committee, or

(ii) is appointed as the chairperson of an audit committee consisting of not more than 2 members (including the chairperson) and has, in the case of an equal division of votes, a second or casting vote,

(c) any conditions prescribed under section 48 (1)(m) of the *Act of 2003* are met, and

(d) the directors of the company or undertaking concerned state in their report under section 158 of the Principal Act the reasons for the company's or undertaking's exemption from those requirements.

(9) Written terms of reference concerning the audit committee's role in the audit and financial management of the company or relevant undertaking concerned shall—

(a) be prepared and approved by the board of directors,

(b) be submitted for the information of the shareholders of the company or undertaking concerned at its annual general meeting, and

(c) be reviewed each year by the board of directors.

(10) Without limiting the matters that may be included under subsection (9), the terms of reference must—

(a) specify how the audit committee will discharge its responsibilities, and

(b) provide for a programme of separate and joint meetings with the management, auditor and internal auditor of the company or undertaking concerned.

(11) Subsection (9) applies also in relation to any amendments of the audit committee's terms of reference.

(12) Where the board of directors of a public limited company to which subsection (2) applies fails to establish an audit committee that is constituted in accordance with this section, each director to whom the failure is attributable is guilty of an offence.

(13) Where a director of a large private company or relevant undertaking to which subsection (3) applies fails to take all reasonable steps to comply with the requirements of subsection (4), the director is guilty of an offence.

(14) A reference in this section to the directors of a relevant undertaking is to be construed in the case of an undertaking that does not have a board of directors as a reference to the corresponding persons appropriate to that undertaking.

(15) For the purpose of applying this section to a partnership that is referred to in Regulation 6 of the 1993 Regulations and that is a relevant undertaking—

(a) the partnership is to be treated as though it were a company formed and registered under the Companies Acts,

(b) a reference in this section to a report under section 158 of the Principal Act is to be construed as a reference to a report under Regulation 14 of the 1993 Regulations, and

(c) this section applies with any other modifications necessary for that purpose.

(16) This section does not apply to—

(a) a public limited company that is a wholly owned subsidiary undertaking of another public limited company, or

(b) any company or undertaking of a class exempted under section 48 (1)(j) of the *Act of 2003* from the application of this section.”.

Amendment of Act of 1990 —
new section
205C.

43.—The Act of 1990 is amended by inserting the following in Part X:

"Disclosure of accounting policies.

205C.—(1) In this section 'relevant undertaking' means—

(a) a company, or

(b) an undertaking referred to in Regulation 6 of the 1993 Regulations,

but does not include a company or an undertaking of a class exempted under section 48 (1)(j) of the *Act of 2003* from this section;

(2) A relevant undertaking shall disclose in the notes to its annual accounts the accounting policies adopted by the undertaking in determining—

(a) the items and amounts to be included in its balance sheet, and

(b) the amounts in its profit and loss account.

(3) The accounting policies that a relevant undertaking is required to disclose under this section include, but are not limited to, those relating to the depreciation and diminution in the value of its assets.

(4) Where a relevant undertaking fails to comply with subsection (2), each company or other entity that forms all or part of that undertaking is guilty of an offence."

Amendment of
Act of 1990 —
new section
205D.

44.—The Act of 1990 is amended by inserting the following in Part X:

"Disclosure of remuneration for audit, audit-related and non-audit work.

205D.—(1) In this section—

'affiliate' in relation to an auditor, means a firm, body corporate or partnership considered under section 182(2) to be an affiliate of the auditor;

'audit committee' means the committee established under section 205B;

'audit-related work' means work required by any relevant undertaking, body or person to be done by an auditor of the relevant undertaking by virtue of his or her position as auditor of that undertaking, but does not include audit work;

'audit work' means—

- (a) in relation to a relevant undertaking other than a partnership referred to in Regulation 6 of the 1993 Regulations, work required to fulfil the duties imposed under section 193 of this Act on an auditor of a company, and
- (b) in relation to a partnership referred to in Regulation 6 of the 1993 Regulations, work required to fulfil the duties imposed under Regulation 22 of those Regulations on an auditor appointed by the partners;

'connected undertaking', in relation to a relevant undertaking, means an undertaking that under the 1992 Regulations, or under those Regulations as applied by Regulation 9 of the 1993 Regulations, is—

- (a) a subsidiary undertaking of the relevant undertaking,
- (b) a joint venture of the relevant undertaking proportionally consolidated in accordance with Regulation 32 of the 1992 Regulations, or
- (c) an associated undertaking of the relevant undertaking;

'firm' means a firm that qualifies for appointment as auditor of a company or as a public auditor under section 187(1A);

'non-audit work' means work other than audit work or audit-related work;

'relevant undertaking' means—

- (a) a company, or
- (b) an undertaking referred to in Regulation 6 of the 1993 Regulations,

but does not include a company or an undertaking of a class exempted under section 48 (1)(j) of the *Act of 2003* from this section;

'remuneration' includes benefits in kind and payments in cash.

(2) Subject to subsection (5), a relevant undertaking shall disclose in the notes to its annual accounts relating to each financial year beginning on or after the commencement of this section the following information:

- (a) the remuneration for all work in each category specified in subsection (3) that was carried out for the relevant undertaking or a connected undertaking of the relevant undertaking, during that financial year—
 - (i) by an auditor of the relevant undertaking, and
 - (ii) by any firm or individual that, at any time during the financial year, was an affiliate of the auditor;
- (b) the remuneration for all work in each category specified in subsection (3) that was carried out for the relevant undertaking or a connected undertaking of the relevant undertaking, during the preceding financial year—
 - (i) by an auditor of the relevant undertaking, and
 - (ii) by any firm or individual that, at any time during the financial year, was an affiliate of the auditor;
- (c) where the remuneration referred to in paragraph (a) or (b) is for non-audit work, the nature of the work;
- (d) where all or part of the remuneration referred to in paragraph (a) or (b) is in the form of a benefit in kind, the nature and estimated monetary value of the benefit.

(3) Remuneration must be disclosed under subsection (2) for each of the following categories of work carried out as described in that subsection:

- (a) audit work;
- (b) audit-related work;
- (c) non-audit work.

(4) Where the auditor of a relevant undertaking is a firm, any work carried out by a partner in the firm is considered for the purposes of this section to have been carried out by the auditor.

(5) The disclosure requirements of this section apply in relation to a financial year of the relevant undertaking only if—

- (a) the aggregate of the remuneration for all work in each specified category that was carried out as described in subsection (2)(a) in that financial year exceeds €1,000, and
- (b) the aggregate of the remuneration for all work in each specified category that was carried out as described in subsection (2)(b) in the preceding financial year exceeds €1,000.

(6) Where the remuneration required to be disclosed by a relevant undertaking in respect of a financial year for non-audit work exceeds the aggregate of the remuneration required to be disclosed in respect of that year for audit work and audit-related work, the audit committee shall state in its report for that year under section 205B(2)(m)—

- (a) whether it has satisfied itself that the carrying out of the non-audit work by the auditor or an affiliate of the auditor has not affected the auditor's independence from the relevant undertaking, and
- (b) if it has satisfied itself to that effect, the reasons for the decision to have the non-audit work carried out by the auditor or an affiliate of the auditor.

(7) Subsection (6) applies also where the relevant undertaking has no audit committee, but in that case the required statement shall be made by the directors in their report under section 158 of the Principal Act.

(8) Where more than one firm or individual has been appointed as the auditor of a relevant undertaking in a single financial year, separate disclosure in respect of the remuneration of each of them and of their affiliates must be provided in the notes to the company's annual accounts.

(9) The auditor of a relevant undertaking shall provide the directors of that undertaking with the information necessary to enable the auditor's affiliates to be identified for the purposes of this section.

(10) Where a relevant undertaking fails to comply with subsection (2), (3) or (8), each company or other entity that forms all or part of that undertaking is guilty of an offence.

(11) Where the audit committee of a relevant undertaking fails to comply with subsection (6) or the directors of a relevant undertaking fail to comply with that subsection as applied by subsection (7), each member of the committee or each director of the undertaking, as the case may be, to whom the failure is attributable is guilty of an offence.

(12) Where an auditor fails to comply with subsection (9), the auditor is guilty of an offence.

(13) Section 205B(14) applies in relation to any reference in this section to the directors of a relevant undertaking and section 205B(15) applies for the purpose of applying this section to a partnership.”.

Amendment of Act of 1990 — new sections 205E and 205F.

45.—The Act of 1990 is amended by inserting the following in Part X:

Directors' compliance statement and related statement.

205E.—(1) In this section—

‘amount of turnover’ and ‘balance sheet total’ have the same meanings as in section 8 of the Companies (Amendment) Act 1986 ;

‘relevant obligations’, in relation to a company, means the company's obligations under—

(a) the Companies Acts,

(b) tax law, and

(c) any other enactments that provide a legal framework within which the company operates and that may materially affect the company's financial statements;

‘tax law’ means—

(a) the Customs Acts,

(b) the statutes relating to the duties of excise and to the management of those duties,

(c) the Tax Acts,

(d) the Capital Gains Tax Acts,

- (e) the Value-Added Tax Act 1972 and the enactments amending or extending that Act,
- (f) the Capital Acquisitions Tax Act 1976 and the enactments amending or extending that Act,
- (g) the statutes relating to stamp duty and to the management of that duty, and
- (h) any instruments made under an enactment referred to in any of paragraphs (a) to (g) or made under any other enactment and relating to tax.

(2) This section applies to—

- (a) a public limited company (whether listed or unlisted), and
- (b) a private company limited by shares,

but it does not apply to a company referred to in paragraph (a) or (b) that is of a class exempted under section 48 (1)(j) of the *Act of 2003* from this section or to a company referred to in paragraph (b) while that company qualifies for an exemption under subsection (9).

(3) The directors of a company to which this section applies shall, as soon as possible after the commencement of this section or after this section becomes applicable to the company, prepare or cause to be prepared a directors' compliance statement containing the following information concerning the company:

- (a) its policies respecting compliance with its relevant obligations;
- (b) its internal financial and other procedures for securing compliance with its relevant obligations;
- (c) its arrangements for implementing and reviewing the effectiveness of the policies and procedures referred to in paragraphs (a) and (b).

(4) The directors' compliance statement (including any revisions) must—

- (a) be in writing,
- (b) be submitted for approval by the board of directors,
- (c) at least once in every 3 year period following its approval by the board, be reviewed and, if necessary, revised by the directors, and
- (d) be included in the directors' report under section 158 of the Principal Act.

(5) The directors of a company to which this section applies shall also include in their report under section 158 of the Principal Act a statement—

- (a) acknowledging that they are responsible for securing the company's compliance with its relevant obligations,
- (b) confirming that the company has internal financial and other procedures in place that are designed to secure compliance with its relevant obligations, and, if this is not the case, specifying the reasons, and
- (c) confirming that the directors have reviewed the effectiveness of the procedures referred to in paragraph (b) during the financial year to which the report relates, and, if this is not the case, specifying the reasons.

(6) In addition, the directors of a company to which this section applies shall in the statement required under subsection (5)—

- (a) specify whether, based on the procedures referred to in that subsection and their review of those procedures, they are of the opinion that they used all reasonable endeavours to secure the company's compliance with its relevant obligations in the financial year to which the annual report relates, and
- (b) if they are not of that opinion, specify the reasons.

(7) For the purposes of this section, a company's internal financial and other procedures are considered to be designed to secure compliance with its relevant obligations and to be effective for that purpose if they provide a reasonable assurance of compliance in all material respects with those obligations.

(8) Where the directors of a company to which this section applies fail—

- (a) to prepare, or to cause to be prepared, a directors' compliance statement as required by subsections (3) and (4)(a) to (c),
- (b) to include a directors' compliance statement in the directors' report as required by subsection (4)(d),
or

(c) to comply with subsections (5) and (6),

each director to whom the failure is attributable is guilty of an offence.

(9) A private company limited by shares qualifies for an exemption from this section in respect of any financial year of the company if—

(a) its balance sheet total for the year does not exceed—

(i) €7,618,428, or

(ii) if an amount is prescribed under section 48 (1)(l) of the *Act of 2003* for the purpose of this provision, the prescribed amount,

and

(b) the amount of its turnover for the year does not exceed—

(i) €15,236,856, or

(ii) if an amount is prescribed under section 48 (1)(l) of the *Act of 2003* for the purpose of this provision, the prescribed amount.

Auditor's review of compliance statement and related statements.

205F.—(1) The auditor of a company to which section 205E applies shall undertake an annual review of—

(a) the directors' compliance statement under subsections (3) and (4) of that section, and

(b) the directors' statement under subsections (5) and (6) of that section,

to determine whether, in the auditor's opinion, each statement is fair and reasonable having regard to information obtained by the auditor, or by an affiliate of the auditor within the meaning of section 205D, in the course of and by virtue of having carried out audit work, audit-related work or non-audit work for the company.

(2) The auditor shall—

(a) include in the auditor's report appended to the company's annual accounts a report on, and the conclusions of, the review undertaken under subsection (1), and

(b) where any statement reviewed under subsection (1) is not, in the auditor's opinion, fair and reasonable—

(i) make a report to that effect to the directors, and

(ii) include that report in the auditor's report appended to the annual accounts.

(3) Where, in the auditor's opinion, the directors have failed—

(a) to prepare, or to cause to be prepared, a directors' compliance statement as required by section 205E(3) and (4)(a) to (c),

(b) to include a directors' compliance statement in the directors' report as required by section 205E(4)(d), or

(c) to comply with section 205E(5) and (6), the auditor shall report that opinion and the reasons for forming that opinion to the Director of Corporate Enforcement.

(4) Section 194(6) applies, with the necessary modifications, in relation to an auditor's compliance with an obligation imposed on him by or under this section as it applies in relation to an obligation imposed by or under section 194.

(5) A person who contravenes this section is guilty of an offence.”.

Amendment of
section 127 of
Act of 1963
(annual return
date).

46.—Section 127 of the Act of 1963 (inserted by section 60 of the Company Law Enforcement Act 2001) is amended as follows:

(a) by substituting the following for subsection (1):

“(1) The annual return of a company shall be made up to a date that is not later than its annual return date, except that the first annual return of a company incorporated after the commencement of section 46 of the *Companies (Auditing and Accounting) Act 2003* shall be made up to the date that is its first annual return date.”;

(b) in subsection (5) by inserting “, subject to subsection (8),” after “, the annual return date is”;

(c) by substituting the following for subsection (8):

“(8) Where the annual return of a company is made up to a date earlier than its annual return date, the annual return date shall thereafter be each anniversary of the date to which that annual return is made up, unless the company elects in the annual return to retain its existing annual return date or establishes a new annual return date pursuant to subsection (9).”.

Amendment of
section 128 of
Act of 1963
(documents to
be annexed to
annual return).

47.—Section 128 of the Act of 1963 is amended by substituting the following for subsection (6):

“(6) Nothing in this section requires the balance sheet of a private company or any document or report relating to the balance sheet, other than the report prepared in accordance with subsection (6B), to be annexed to the annual return.

(6A) Nothing in subsection (4) or in section 2 (1) of the Companies (Amendment) Act 1986 exempts any of the following companies from the requirement to annex to its annual return the report prepared in accordance with subsection (6B):

(a) a private company not trading for the acquisition of gain by the members;

(b) a company to which subsection (4)(c) applies;

(c) a company in respect of which an order under subsection (5) is in force.

(6B) The auditors of a company referred to in subsection (6) or (6A) shall prepare a separate report to the directors which—

(a) confirms that they audited the accounts for the relevant year, and

(b) includes within it the report made to the members of the company pursuant to section 193.

(6C) A copy of the report prepared in accordance with subsection (6B) shall be certified by a director and by the secretary of the company to be a true copy of that report and shall be attached to the company's annual return.”.

PART 4

Regulations and Miscellaneous Matters

Minister's
power to make
regulations.

48.—(1) Subject to section 49, the Minister may make regulations respecting any matter that is referred to in this Act as prescribed or that is necessary or advisable for giving effect to this Act, including regulations—

- (a) prescribing bodies of accountants for the purposes of this Act,
- (b) prescribing designated bodies for the purposes of *sections 6* and *11*,
- (c) providing that, effective on a specified date, a body referred to in section 6 (2) ceases to be a designated body,
- (d) varying, as a consequence of a regulation under *paragraph (b)* or *(c)*, the numbers specified in section 11 (1), (2) and (3) as the Minister considers necessary or expedient,
- (e) prescribing for the purposes of the criteria referred to in section 15 (2)(b) amounts that are higher or lower than the euro amounts specified in that section and that apply instead of the euro amounts,
- (f) prescribing the amount of a penalty under section 23 (5)(c),
- (g) prescribing for the purpose of section 23 (7) the manner in which notice is to be given,
- (h) prescribing, for the purposes of the criteria referred to in *paragraph (c)* of the definition of “relevant undertaking” in section 26, amounts that are higher or lower than the euro amounts specified in that definition and that apply instead of the euro amounts,
- (i) prescribing for the purposes of section 31 (3) persons to whom the Supervisory Authority may disclose information,
- (j) exempting from all or any of *sections 15* and *26* of this Act and sections 205A, 205B, 205C, 205D and 205E of the Act of 1990—
 - (i) qualifying companies within the meaning of section 110 of the Taxes Consolidation Act 1997 (as inserted by section 48 of the Finance Act 2003), and
 - (ii) classes of other companies and other undertakings, if the extent to which or the manner in which they are or may be regulated under any enactment makes it, in the Minister's opinion, unnecessary or inappropriate to apply those provisions to them,

- (k) prescribing for the purposes of the definition of “accounting standards” in section 205A of the Act of 1990 one or more bodies that issue statements of accounting standards,
- (l) prescribing, for the purposes of the definitions of “large private company” and “relevant undertaking” in section 205B of the Act of 1990 or for the purposes of section 205E(9) of that Act, amounts that are higher or lower than the euro amounts specified in those definitions or in section 205E(9), as the case may be, and that apply instead of the euro amounts,
- (m) prescribing for the purposes of section 205B of the Act of 1990—
 - (i) additional functions to be performed by audit committees,
 - (ii) conditions to be met under subsection (8)(c) of that section, and
 - (iii) supplementary rules governing the operation of those committees,and
- (n) prescribing the format in which information must be disclosed under section 205D of the Act of 1990 for audit work, audit-related work and non-audit work.

(2) On a body ceasing—

- (a) to be a prescribed accountancy body because of the revocation of a regulation made under *subsection (1)(a)*, or
- (b) to be a designated body because of a regulation under *subsection (1)(c)*,

any director who was nominated by that body under *section 11* immediately ceases to hold office.

(3) Before preparing for the purposes of *section 49* a draft regulation under *subsection (1)(a)*, (e), (h) or (l) of this section, the Minister shall consider any recommendations that the Supervisory Authority may make.

(4) Subject to *subsection (3)*, before making a regulation under this section the Minister may consult with any persons that the Minister considers should be consulted.

(5) Regulations under this section may contain any transitional and other supplementary and incidental provisions that appear to the Minister to be appropriate.

Prior approval by **49.**—A regulation may not be made under section 48 (1)(a), (e), (h), (j) or (l) unless—

Oireachtas
required for
certain
regulations.

(a) a draft of the proposed regulation has been laid before the Houses of the Oireachtas, and

(b) a resolution approving the draft has been passed by each House.

Laying of other regulations before Oireachtas. **50.**—(1) The Minister shall ensure that a regulation made under this Act, other than one to which section 49 applies, is laid before each House of the Oireachtas as soon as practicable after it is made.

(2) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the regulation is laid before it, annul the regulation.

(3) The annulment of a regulation under *subsection (2)* takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the regulation before the passing of the resolution.

Amendment of **51.**— Section 12 (1) of the Company Law Enforcement Act 2001 is amended as follows:

Company Law
Enforcement Act
2001.

(a) in paragraph (f) by deleting “and” where it occurs at the end of that paragraph;

(b) in paragraph (g) by substituting “any other Act, and” for “any other Act.”;

(c) by inserting the following after paragraph (g):

“(h) to act, under the *Companies (Auditing and Accounting) Act 2003*, as a member of the Irish Auditing and Accounting Supervisory Authority and, if appointed under section 11 of that Act, as a director of the Authority.”.

Amendment of
Company Law
Enforcement Act
2001 (certificate
evidence).

52.—The Company Law Enforcement Act 2001 is amended by inserting the following after section 110:

“Certificate evidence and other 110A.—(1) In this section—
matters.

‘appropriate officer’ means—

- (a) in respect of functions that, under the Companies Acts, are to be performed by the Minister, the Minister or an officer of the Minister,
- (b) in respect of functions that, under the Companies Acts, are to be performed by the Director, the Director or an officer of the Director,
- (c) in respect of functions that, under the Companies Acts, are to be performed by the inspector or inspectors appointed pursuant to Part II of the Companies Act 1990, an inspector or, where more than one inspector is appointed, any inspector, and
- (d) in respect of functions that, under the Companies Acts, are to be performed by the registrar of companies, a registrar, an assistant registrar or any other person authorised in that behalf by the Minister under section 52 (2) of the Companies (Amendment) (No. 2) Act 1999 ;

‘item’ includes a document and any other thing;

‘notice’ includes—

- (a) any request, notice, letter, demand, pleading or other document, and
- (b) any form of obligation that an individual may have under the Companies Acts by reason of a demand or request made by an appropriate officer, whether communicated in writing, orally or by other means.

(2) In any legal proceedings (including proceedings relating to an offence) a certificate signed by an appropriate officer in the course of performing his or her functions is, in the absence of evidence to the contrary, proof of the following:

- (a) if it certifies that the officer has examined the relevant records and that it appears from them that during a stated period an item was not received from a stated person, proof that the person did not during that period furnish that item and that the item was not received;
- (b) if it certifies that the officer has examined the relevant records and that it appears from them that a stated notice was not issued to a stated person, proof that the person did not receive the notice;
- (c) if it certifies that the officer has examined the relevant records and that it appears from them that a stated notice was duly given to a stated person on a stated date, proof that the person received the notice on that date;
- (d) if it certifies that the officer has examined the relevant records and that it appears from them that a stated notice was posted to a stated person at a stated address on a stated date, proof that the notice was received by that person at that address on a date 3 days after the date on which the document was posted;
- (e) if it certifies that the officer has examined the relevant records and that it appears from them that a document was filed or registered with or delivered at a stated place, on a stated date or at a stated time is, proof that the document was filed or registered with or delivered at that place, on that date or at that time.

(3) A certificate referred to in subsection (2) that purports to be signed by an appropriate officer is admissible in evidence in any legal proceedings without proof of the officer's signature or that the officer was the proper person to sign the certificate.

(4) A document prepared pursuant to any provision of the Companies Acts and purporting to be signed by any person is deemed, in the absence of evidence to the contrary, to have been signed by that person.

(5) A document submitted under the Companies Acts on behalf of a person is deemed to have been submitted by the person unless that person proves that it was submitted without that person's consent or knowledge.

(6) A document that purports to be a copy of, or extract from, any document kept by or on behalf of the Director and that purports to be certified by—

- (a) the Director,
- (b) an officer of the Director, or
- (c) any person authorised by the Director,

to be a true copy of or extract from the document so kept is, without proof of the official position of the person purporting to so certify, admissible in evidence in all legal proceedings as of equal validity with the original document.

(7) A document that purports to be a copy of, or extract from, any document kept by the Minister and that purports to be certified by—

- (a) the Minister,
- (b) an officer of the Minister, or
- (c) any person authorised by the Minister, to be a true copy of, or extract from, the document so kept is, without proof of the official position of the person purporting to so certify, admissible in evidence in all legal proceedings as of equal validity with the original document.

(8) A document that purports to be a copy of, or extract from, any document kept by an inspector and that is certified by—

- (a) the inspector, or
- (b) any person authorised by the inspector,

to be a true copy of, or extract from, the document so kept is, without proof of the official position of the person purporting to so certify, admissible in evidence in all legal proceedings as of equal validity with the original document.

(9) A document that purports to have been created by a person is presumed, in the absence of evidence to the contrary, to have been created by that person, and any statement contained in the document is presumed to have been made by the person unless the document expressly attributes its making to some other person.”.

Amendment of
Companies
(Amendment)
(No. 2) Act 1999
(exemption from
requirement to
have accounts
audited).

53.—The Companies (Amendment) (No. 2) Act 1999 is amended as follows:

(a) in section 32(1) by substituting “Subject to sections 32A and 33(1)” for “Subject to section 33(1)”;

(b) in section 32(3)(a)(ii) by substituting “€1,500,000” for “£250,000”;

(c) in section 32(3)(a)(v)(IV) by substituting “(other than paragraph 18 thereof).” for “(other than paragraph 18 thereof),”;

(d) in section 32(3) by deleting “and” where it occurs after paragraph (a)(v)(IV) and by repealing paragraph (b);

(e) by adding the following section after section 32:

“Exemption conditional on 32A.—Notwithstanding that the conditions specified in section 32(3) are satisfied, a company is not entitled to the exemption in a financial year unless—

(a) the company's annual return to which the accounts for that financial year are annexed is delivered to the registrar of companies in compliance with section 127 of the Principal Act, and

(b) if the annual return referred to in paragraph (a) is not the company's first annual return, its annual return to which the accounts for its preceding financial year were annexed was also delivered to the registrar of companies in compliance with section 127 of the Principal Act.”.

Amendment of
section 43 of
Companies
(Amendment)
(No. 2) Act 1999
(Company to
have director
resident in
State).

54.— Section 43 of the Companies (Amendment) (No. 2) Act 1999 is amended by inserting the following after subsection (15):

“(16) In this section ‘director’ does not include an alternate director.”.

Amendment of
section 13 of
Companies
(Amendment)
Act 1982.

55.— Section 13 of the Companies (Amendment) Act 1982 is amended by substituting the following for subsection (2):

“(2) The Minister may by an order made under this section declare that the provisions of section 376 of the Principal Act shall not apply to a partnership that is of a description, and that has been or is formed for a purpose, specified in the order.”.

Amendment of
section 200 of
Act of 1963
(avoidance of
provisions
exempting
officers and
auditors from
liability).

56.—Section 200 of the Act of 1963 is amended by renumbering that section as section 200(1) and by adding the following:

“(2) Notwithstanding subsection (1), a company may purchase and maintain for any of its officers or auditors insurance in respect of any liability referred to in that subsection.

(3) Notwithstanding any provision contained in an enactment, the articles of a company or otherwise, a director may be counted in the quorum and may vote on any resolution to purchase or maintain any insurance under which the director might benefit.

(4) Any directors' and officers' insurance purchased or maintained by a company before the date on which the amendments made to this section by the *Companies (Auditing and Accounting) Act 2003* came into operation is as valid and effective as it would have been if those amendments had been in operation when that insurance was purchased or maintained.

(5) In this section a reference to an officer or auditor includes any former or current officer or auditor of the company, as the case may be.”.

Amendment of
Companies Acts
(default
provisions).

57.—The Companies Acts specified in *Schedule 2* are amended as indicated in that Schedule.

Amendment of
Defamation Act
1961.

58.—Paragraph II of the Second Schedule to the Defamation Act 1961 (which specifies statements that carry qualified privilege subject to explanation or contradiction) is amended by inserting the following after paragraph 6:

“7. (1) A copy or fair and accurate report or summary of any decision, direction, report, investigation, statement or notice made, given, prepared, published or served by the Irish Auditing and Accounting Supervisory Authority.

(2) In this paragraph, ‘statement’ includes the following:

- (a) any advice, admonition or censure given or administered by the Irish Auditing and Accounting Supervisory Authority under section 23 of the *Companies (Auditing and Accounting) Act 2003*;
- (b) any certificate of refusal issued by that Authority in connection with an investigation under section 24 of the *Companies (Auditing and Accounting) Act 2003*;
- (c) any notice given or statement made by that Authority under section 26 of the *Companies (Auditing and Accounting) Act 2003* respecting whether a company's accounts comply with the Companies Acts.

(3) Nothing in this paragraph or any other provision of this Act limits section 33 of the *Companies (Auditing and Accounting) Act 2003*."

Revocation of
regulations.

59.—The Companies Act 1990 (Auditors) Regulations 1992 (S.I. No. 259 of 1992) are revoked.

SCHEDULE 1

Transfer of Functions to Supervisory Authority

Section 32 .

PART 1

Amendment of Companies Act 1990

Item No.	Section affected	Amendment
1.	Section 187	<p>(a) In subsection (1)(a)(i), (ii) and (vi), substitute "Supervisory Authority" for "Minister" wherever it appears.</p> <p>(b) In subsection (1)(a), substitute the following for subparagraph (iv):</p> <p>"(iv) he was authorised by the Minister before the 3rd day of February, 1983, and is for the time being authorised by the Supervisory Authority to be so appointed, or".</p>
2.	Section 189	In subsections (1), (2) and (4), substitute "Supervisory Authority" for "Minister" wherever it appears.
3.	Section 190	In subsections (1), and (2), substitute "Supervisory Authority" for "Minister" wherever it appears.
4.	Section 191	<p>Substitute the following for section 191:</p> <p>"Recognition of bodies of accountants. 191.—The Supervisory Authority may grant recognition to a body of accountants but only if satisfied—</p>

(a) that the standards relating to training, qualifications and repute required by that body for the awarding of a practising certificate to a person are not less than those specified in Articles 3 to 6, 8 and 19 of the Council Directive, and

(b) as to the standards that body applies to its members in the areas of ethics, codes of conduct and practice, independence, professional integrity, auditing and accounting standards and investigation and disciplinary procedures.”.

5. Section 192

(a) In subsections (1) and (2) substitute “Supervisory Authority” for “Minister” and substitute “under or for the purposes of section 187” for “under section 187”.

(b) In subsection (3) substitute “Supervisory Authority” for “Minister” and substitute “under or for the purposes of section 187” for “under the said section 187”.

(c) In subsection (4)(a) to (d) substitute “Supervisory Authority” for “Minister” wherever it appears.

(d) In subsection (4), repeal paragraphs (e), (f) and (g).

PART 2

Amendment of the Institute of Chartered Accountants in Ireland (Charter Amendment) Act 1966

Item No.	Section affected	Amendment
1.	Section 6	Substitute “Supervisory Authority” for “Government”.

SCHEDULE 2

Section 57.

Item No.	Acts and Provisions affected	Amendment
1.	<u>Companies Act 1963</u> , sections 10(10), 12(3), 44(8), 46(2), 47(4), 57(3), 58(3), 59(5), 69(2), 70(3), 78(5), 84(2), 86(2), 91(5), 92(4), 100(3), 101(2), 107(3), 110(2), 113(5), 114(3), 114(4), 115(6), 116(9), 117(4), 128(4), 136(3), 136(5), 143(5), 143(6), 145(4), 156(3), 157(2), 179(4), 180(5), 188(2), 193(4), 194(5)(b), 194(6), 195(12), 197(3), 201(6), 202(4), 202(6), 203(3), 205(5), 224(5), 227(2), 249(3), 252(2), 256(7), 261(7), 262(2), 263(3), 263(6), 263(7), 272(2), 273(3), 273(6), 273(7), 276A(3), 278(2), 280(4), 300, 301, 301A(5), 303(2), 305(2), 306(2), 310(2), 314, 317(2), 321(2), 322C(3), 358, 377(7) and 378(2)	Substitute, in each of the provisions specified in column 2, “shall be guilty of an offence and liable to a fine” for “shall be liable to a fine”.
2.	<u>Companies Act 1963</u> , section 60(5)	Substitute, in the provision specified in column 2, “shall be guilty of an offence and liable to imprisonment for a period not exceeding 6 months or to a fine not exceeding €1,904.61 or to both” for “shall be liable to imprisonment for a period not exceeding 6 months or to a fine not exceeding €500 or to both”.
3.	<u>Companies Act 1963</u> , section 102(2)	Substitute for the provision specified in column 2 the following: “(2) If a judgment creditor makes default in complying with subsection (1) he shall be guilty of an offence and liable to a fine not exceeding €1,904.61, and if a company makes default in complying with that subsection, the company and every officer who is in default shall be guilty of an offence and liable to a fine not exceeding €1,904.61.”.

4. Companies Act 1963 , sections 114(2), 131(6), 159(5), 190(9), 221(2), 234(5) and 398(3) Substitute, in each of the provisions specified in column 2, “shall be guilty of an offence and liable to a fine” for the words “shall be liable to a fine” in both instances in which those words occur within that provision.

5. Companies Act 1963 , section 266(6) Substitute for the provision specified in column 2 the following:

“(6) If default is made—

(a) by the company in complying with subsections (1) and (2),

(b) by the directors of the company in complying with subsection (3), or

(c) by any director of the company in complying with subsection (4),

the company, directors or director, as the case may be, shall be guilty of an offence and liable to a fine not exceeding €1,904.61, and in case of default by the company, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding €1,904.61.”.

6. Companies (Amendment) Act 1990 , section 11(7) Substitute, in the provision specified in column 2, “shall be guilty of an offence and liable to a fine” for “shall be liable to a fine”.

7. Companies Act 1990 , section 50(7) Substitute for the provision specified in column 2 the following:

“(7) If default is made in complying with subsection (1) or (5) or if an inspection required under subsection (6) is refused, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine not exceeding €1,904.61 and, for continued contravention, to a daily default fine not exceeding €63.49 and, if default is made for 14 days in complying with subsection (4), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding €1,904.61 and, for continued contravention, to a daily default fine not exceeding €63.49.”.

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| 8. | <u>Companies Act 1990</u> , section 60(10) | Substitute, in the provision specified in column 2, “shall be guilty of an offence and liable to a fine” for “shall be liable to a fine” in both instances in which those words occur within that provision. |
| 9. | <u>Companies Act 1990</u> , sections 80(10) and 161(6) | Substitute, in each provision specified in column 2, “shall be guilty of an offence and liable to a fine” for the words “shall be liable to a fine” in both instances in which those words occur within that provision. |