



STATUTORY INSTRUMENTS.

S.I. No. 16 of 2020

COMPANIES ACT 2014 (PROCEDURES GOVERNING THE CONDUCT
OF SECTION 934 INVESTIGATIONS) REGULATIONS 2020

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The IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY, in exercise of its powers conferred on it by section 937(1) and 938(4) of the Companies Act 2014, as amended, hereby makes the following regulations:

PART 1 PRELIMINARY AND GENERAL

Citation and application

1. (1) These Regulations may be cited as the Companies Act 2014 (Procedures Governing the Conduct of Section 934 Investigations) Regulations 2020.

(2) Section 934(2)(a) of the Act provides that, subject to sections 934(2)(b) and 934(3) of the Act, the Authority may undertake an investigation into a possible relevant contravention committed by a specified person—

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

(3) Section 934(2)(b) of the Act provides that the Authority shall not undertake an investigation into a possible relevant contravention committed by a specified person who falls within paragraph (a) of the definition of ‘specified person’ unless the Authority is of the opinion that it is appropriate or in the public interest to do so.

(4) Section 934(3) of the Act provides that an investigation shall not be undertaken into a matter that is or has been the subject of an enquiry under section 933 of the Act relating to the specified person except with the permission of the Court granted on application under section 933(5) of the Act.

(5) Section 933(5) of the Act provides that if at any time before completing an enquiry under section 933 of the Act into a matter relating to a member, the Authority forms the opinion that it is appropriate or in the public interest that a matter be investigated under section 934 of the Act as regards a possible relevant contravention committed by a specified person, the Authority may apply to the Court for permission to investigate the matter under section 934 of the Act.

Commencement

(6) These Regulations come into operation on the 21 day of January 2020.

Revocation

(7) The Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 24 Investigations) Regulations 2012 (S.I. No. 97 of 2012) are revoked.

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(8) Nothing in these Regulations shall affect any existing investigations instituted or ongoing before the commencement of these Regulations and such investigations shall continue to operate pursuant to the previous Regulations as if these Regulations had not come into operation.

(9) Section 938(4) of the Act provides, inter alia, that the Authority may make Regulations respecting the procedures to be followed in conducting investigations under section 934 of the Act.

(10) These Regulations apply to any matter that appears to the Authority may constitute grounds for the initiation of an investigation under section 934 of the Act.

(11) These Regulations shall be construed in accordance with the Act, as may be amended from time to time.

(12) Headings and sub-headings are for convenience only and shall not affect the interpretation of these Regulations.

Interpretation

2. (1) Except where otherwise stated, words and expressions used in these Regulations that are used in the Companies Act 2014, as amended, shall have the same meaning.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means means the Companies Act 2014, as amended;

“adverse finding” means a finding by an Investigation Committee that a specified person has committed a relevant contravention;

“the Authority” means the Irish Auditing and Accounting Supervisory Authority, and includes any committee established to assist the Authority under section 937(1) of the Act or any officer, employee or person duly authorised pursuant to section 937(3A) or section 937(4) of the Act;

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

“complainant” means a person who has lodged a complaint with the Authority regarding a possible relevant contravention committed by a specified person;

“Court” means the High Court;

“document” includes any books, documents, records, telephone recordings or electronically held information of whatever kind;

“full investigation” means the proceedings to be conducted by an Investigation Committee;

“investigation” means an investigation initiated under section 934 of the Act;

“Investigation Committee” means a committee appointed to conduct a full investigation in accordance with these Regulations;

“member” has the same meaning as provided for by sections 900(1) and 935(5) of the Act and includes a firm unless otherwise indicated in these Regulations;

“preliminary investigation” means an investigation conducted by the Authority in order to determine whether there is a *prima facie* case that a specified person has committed a relevant contravention and, whether it is appropriate or in the public interest to further investigate the matter;

“prescribed accountancy body” means—

- (a) a recognised accountancy body; or
- (b) any other body of accountants that is prescribed;

“recognised accountancy body” means a body of accountants recognised under section 930 of the Act for the purposes of the following provisions:

- (a) Chapter 2 of Part 15 of the Act,
- (b) Part 27 of the Act, and
- (c) Regulation (EU) No 537/2014;

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

“relevant contravention” means—

- (a) a breach of the standards of a prescribed accountancy body by a member of that body, or
- (b) a contravention by a statutory auditor of a provision of—
 - (i) section 336 or 337 of the Act,
 - (ii) Part 27 of the Act, or
 - (iii) Regulation (EU) No 537/2014;

“relevant decision”, in relation to a specified person, means—

- (a) a decision under section 934(8) or (9) of the Act that a specified person has committed a relevant contravention,
- (b) if, in consequence of a decision referred to in paragraph (a), the Authority decides under section 934(8) or (9) of the Act to impose a relevant sanction on the specified person, the decision to impose that sanction, or
- (c) both such decisions;

“relevant person” —

- (a) in relation to an investigation of a member or former member of a prescribed accountancy body, means—
 - (i) that member or any other member or former member of the prescribed accountancy body,
 - (ii) a client or former client of the member,

- (iii) 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,
- (iv) the prescribed accountancy body or a person who is or was an officer, employee or agent of that body,
- (v) if the member is an individual, a person who is or was an employee or agent of the member,
- (vi) if the member is a firm, a person who is or was an officer, member, partner, employee or agent of the firm, or
- (vii) any person whom the 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,

and

- (b) in relation to an investigation of a statutory auditor or former statutory auditor, means—
 - (i) that auditor and any other statutory auditor or former statutory auditor who is or was a member of the same recognised accountancy body as the first-mentioned statutory auditor,
 - (ii) a client or former client of the auditor,
 - (iii) 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,
 - (iv) the recognised accountancy body or a person who is or was an officer, employee or agent of that body,
 - (v) if the auditor is an individual, a person who is or was an employee or agent of the auditor,
 - (vi) if the auditor is or was an audit firm, a person who is or was an officer, member, partner, employee or agent of the auditor, or
 - (vii) any person whom the 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;

“relevant sanction”—

- (a) in relation to a specified person who falls within paragraph (a) of the definition of ‘specified person’, means a sanction referred to in section 934(8) of the Act, and
- (b) in relation to a specified person who falls within paragraph (b) of the definition of ‘specified person’, means a sanction referred to in section 934C(2) of the Act;

“Section 934E Agreement” means the agreement which, subject to the requirements of Regulation 15(2), the Authority and a specified person may, at their absolute discretion, enter into pursuant to section 934E of the Act;

“specified person”, in relation to a relevant contravention, means—

- (a) if the relevant contravention falls within paragraph (a) of the definition of ‘relevant contravention’, the member or former member concerned of the prescribed accountancy body, and
- (b) if the relevant contravention falls within paragraph (b) of the definition of ‘relevant contravention’, the statutory auditor or former statutory auditor concerned;

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

“statutory auditor” means an individual or a firm (within the meaning of Part 27 of the Act) that stands approved as a statutory auditor or statutory audit firm, as the case may be, under Part 27 of the Act, and includes a firm registered in accordance with section 1465 of the Act.

PART 2

PRELIMINARY INVESTIGATION

Decision to initiate a preliminary investigation by the Authority

3. (1)(a) Subject to subparagraph (b) of this paragraph and paragraph (2) of this Regulation, the Authority, acting on foot of a complaint from a third party or on its own initiative, may undertake a preliminary investigation into a possible relevant contravention committed by a specified person to determine whether there should be a full investigation.
 - (b) The Authority shall not undertake a preliminary investigation into a possible relevant contravention committed by a specified person unless the Authority is of the opinion that it is appropriate or in the public interest to do so.

(2) No preliminary investigation shall be undertaken into a matter that is or has been the subject of an enquiry under section 933 relating to the specified person except with the permission of the Court granted on an application under section 933(5) of the Act.

(3) For the avoidance of doubt, the Authority may exercise any of its powers which are set out in section 934(4) of the Act at any stage in relation to an investigation into whether a specified person has committed a relevant contravention and any of its powers which are set out in section 1523(1) and (4) of the Act at any stage in relation to an investigation into whether a specified person who falls within paragraph (b) of the definition of ‘specified person’ has committed a relevant contravention;

(4) For the avoidance of doubt, the Authority is not obliged to initiate a preliminary investigation into every complaint which it receives.

Preliminary Investigation Process

4. (1) The Authority shall notify the specified person who is the subject of the investigation and the prescribed accountancy body of which the specified person is a member of the initiation of the preliminary investigation.

(2) A full investigation will be initiated if the Authority determines that there is a *prima facie* case that a specified person has committed a relevant contravention and it is of the opinion that it is appropriate or in the public interest that there should be a full investigation into such possible relevant contravention.

(3) In determining whether it is appropriate or in the public interest that there should be a full investigation, the Authority shall take into account such matters as it considers appropriate, including but not limited to the question (i)

of whether the possible breach has already been investigated or is in the course of investigation by a prescribed accountancy body or another supervisory body, and (ii) of whether a possible breach may to be referred to a prescribed accountancy body or another supervisory body for investigation.

(4) The Authority shall notify the specified person who is the subject of the investigation and the prescribed accountancy body of which the specified person is a member of any extension of the subject matter of the investigation if, in the course of considering whether there is a *prima facie* case that a specified person has committed a relevant contravention, the Authority discovers facts or circumstances which appear to warrant examination but which are outside the scope of the investigation, as notified to the appropriate parties pursuant to Regulation 4(1).

(5) The Authority may, if considered appropriate and in accordance with law, inform the complainant, if any, of the initiation of the preliminary investigation and of any extension of the scope of the preliminary investigation made under paragraph (4), if such extension is relevant to such complainant.

(6) For the avoidance of doubt, if the Authority considers it appropriate and in accordance with law, it may notify whoever it thinks fit of the initiation of the preliminary investigation and of the subject matter of that investigation.

(7) The Authority shall, prior to making a determination under paragraph (2), provide the specified person that is the subject of the preliminary investigation and the prescribed accountancy body of which the specified person is a member with:

- (a) a statement of the grounds upon which the preliminary investigation has been initiated;
- (b) any relevant information and copies of all relevant documentation relating to such grounds; and
- (c) an opportunity to comment in writing on such grounds, documentation and information, if any.

(8) The Authority may also consider any written submissions made to it during the preliminary investigation by any person (including a complainant, a prescribed accountancy body or a member) if it determines that such submissions are relevant to the matters at issue. It is not possible, however, to guarantee the anonymity of or the confidentiality of a submission received from any person, including a complainant, who participates in the preliminary investigation.

(9) As part of its preliminary investigation, if the Authority considers it appropriate and in accordance with law, it may provide documentation in relation to the investigation to whomever it thinks fit and allow them the opportunity to comment in writing on that documentation.

(10) Confidential information provided by the Authority to any person, including a specified person or a prescribed accountancy body under these

Regulations, and any confidential information submitted by any person to the Authority under these Regulations, shall remain confidential and be treated as information the disclosure of which to any other party, save as herein provided, is governed by the provisions of section 940 of the Act.

Conclusion of Preliminary Investigation

5. (1) If the Authority determines that there is a *prima facie* case that a specified person has committed a relevant contravention and it is of the opinion that it is appropriate or in the public interest that there should be a full investigation into such possible relevant contravention, it shall refer the matter to an Investigation Committee for a full investigation.

(2) The Authority shall notify the specified person who is the subject of the investigation and the prescribed accountancy body of which the specified person is a member and the complainant, if any, whether or not the matter is referred for a full investigation.

PART 3

FULL INVESTIGATION

Investigation Committee

6. (1) Where the Authority determines that there is a *prima facie* case that a specified person has committed a relevant contravention and it is of the opinion is that it is appropriate or in the public interest that there should be a full investigation into such possible relevant contravention, the Authority shall appoint a committee to conduct a full investigation on behalf of the Authority (an “Investigation Committee”).

(2) Where an application to the Court under section 933(5) of the Act has occurred and where the relevant permission under section 941(3) has been granted by the Court, the Authority shall appoint an Investigation Committee to conduct a full investigation on behalf of the Authority.

(3) In establishing such an Investigation Committee, the Authority shall be deemed to have delegated in accordance with section 937(1) of the Act to that Investigation Committee such of its functions and powers under section 934 of the Act as are required by the Investigation Committee to conduct the full investigation for which these Regulations provide.

(4) Subject to paragraph (5) and in accordance with section 937(1) of the Act, an Investigation Committee shall consist of persons from one or more of the following categories of persons:

- (a) persons who are, at the time the committee is established, directors of the Authority, and
- (b) other persons that the Authority considers appropriate.

(5) Neither the Chief Executive of the Authority nor any member of the staff of the Authority shall be a member of an Investigation Committee.

(6) Each Investigation Committee shall number at least 3 persons and the majority of each Investigation Committee shall not be members of a prescribed accountancy body.

(7) The Chairperson of each Investigation Committee shall be appointed by the Chairperson of the Authority.

(8) Any decision of an Investigation Committee shall be decided by a majority of votes. In case of an equality of votes, the Chairperson of the Investigation Committee shall have a second or casting vote.

(9) No serving member of the governing body of any prescribed accountancy body, or any officer or employee of any of the prescribed accountancy bodies, may be appointed to an Investigation Committee.

(10) No person who may have (or may appear to have) any interest in the outcome of the investigation or any relationship with any party to the matters which are the subject of the investigation which may create, or appear to create, a conflict of interest may be appointed to an Investigation Committee.

(11) A member of staff of the Authority or another person selected and appointed by the Authority may act as Secretary to an Investigation Committee.

Investigation Committee Procedure

7. (1) The Authority shall issue a notice to the specified person who was the subject of the determination of the Authority under Regulation 5(1), or the decision of the Court under section 941(3) as appropriate, which notice shall:

- (a) set out a statement of the allegations against the specified person;
- (b) provide formal notification of the Authority's decision to establish an Investigation Committee, or the decision of the Court under section 941(3) of the Act as appropriate, and the composition of the Investigation Committee;
- (c) attach all documents and any other material that will be presented to the Investigation Committee, provided that the Investigation Committee will be entitled subsequently to give notice of further documents to the specified person;
- (d) specify the Investigation Committee's powers of investigation to:
 - (i) conduct oral hearings pursuant to section 938(1) of the Act;
 - (ii) require production to the Investigation Committee of all books or documents relating to the investigation that are in the relevant person's possession or control pursuant to section 934(4)(a) of the Act;
 - (iii) require a relevant person to attend before the Investigation Committee pursuant to section 934(4)(b) of the Act;
 - (iv) require a relevant person to give the Investigation Committee any other assistance in connection with the investigation that the relevant person is reasonably able to give pursuant to section 934(4)(c) of the Act; and
 - (v) where the investigation concerns a possible relevant contravention by a specified person who falls within paragraph (b) of the definition of 'specified person', the Investigation Committee's powers pursuant to section 1523 of the Act to request information, to inspect and

make copies of all relevant documents in the possession of a recognised accountancy body or a relevant person within the meaning of section 1532(2), and to require an officer of a recognised accountancy body or a relevant person within the meaning of section 1532(2) of the Act to attend before it and explain any entry in the documents concerned or otherwise give assistance to it in clarifying the matter concerned;

- (e) a statement to the effect that, within a reasonable period of time, as specified by the Authority in the notice, the specified person may make submissions in writing to the Investigation Committee, requesting an oral hearing; and
- (f) a statement that the Investigation Committee shall conduct the investigation, and may conduct an oral hearing, irrespective of whether submissions referred to in subparagraph (e) above are made.

(2) An Investigation Committee shall conduct a full investigation into whether the specified person has committed a relevant contravention and, if the Investigation Committee makes an adverse finding under Regulation 11(1), it shall determine what relevant sanctions, if any, to impose under these Regulations and any costs orders pursuant to section 934(10) of the Act.

(3) The Investigation Committee shall notify the prescribed accountancy body (whose member is the specified person the subject of the full investigation) of its appointment and of the initiation of the full investigation, and may forward such material to the prescribed accountancy body as the Investigation Committee considers necessary to enable it to make observations upon the investigation.

(4) An Investigation Committee may, if considered appropriate and in accordance with law, notify or direct the notification of any other relevant person, including a complainant, if any, of the appointment of the Investigation Committee and of the initiation of the full investigation, and may forward such material to the complainant as is necessary to enable him or her to make observations upon the investigation.

(5) Subject to paragraph (6), information provided in confidence by an Investigation Committee to any person, including a prescribed accountancy body or a specified person under these Regulations, and any confidential information submitted by any person to the Investigation Committee under these Regulations shall remain confidential and shall be treated as information the disclosure of which to any other party save as herein provided is governed by the provisions of section 940 of the Act.

(6) For the avoidance of doubt, it is not possible to guarantee the anonymity or the confidentiality of observations received from any person, including a complainant, in relation to a complaint.

Conduct of the full Investigation

8 (1) An Investigation Committee established under these Regulations may conduct such investigations as the Investigation Committee considers appropriate and shall provide the specified person who is the subject of the investigation with an opportunity to make submissions to the Investigation Committee before issuing its decision. Such investigations shall be conducted in accordance with rules of fair procedure and natural and constitutional justice.

(2) An Investigation Committee may also consider any submissions made to it during the full investigation by any other person (including a complainant and a prescribed accountancy body) if it determines that such submissions are relevant to the matters at issue. It is not possible, however, to guarantee the anonymity of, or the confidentiality of submissions received from, any person who participates in the full investigation.

(3) A specified person may submit any statement or information in answer to the allegation(s) within the time provided by the Investigation Committee, which shall be reasonable under the circumstances.

(4) An Investigation Committee may for the purposes of exercising its functions under these Regulations conduct an oral hearing.

(5) An Investigation Committee may, for the purposes of an investigation and whether in the context of an oral hearing or otherwise, require any relevant person to do one or more of the following:—

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

(6) An Investigation Committee may, for the purposes of an investigation into a possible relevant contravention by a specified person who falls within paragraph (b) of the definition of 'specified person', and whether in the context of an oral hearing or otherwise:

- (a) request information from a recognised accountancy body or a relevant person within the meaning of section 1523(2) of the Act;
- (b) engage in an inspection of documentation in the possession or control of a recognised accountancy body or a relevant person within the meaning of section 1523(2) of the Act pursuant to section 1523 of the Act; and

- (c) require an officer of a recognised accountancy body or a relevant person within the meaning of section 1523(2) of the Act to attend before it and explain any entry in the information or documents obtained pursuant to section 1523(1) and otherwise give assistance to it in clarifying the matter concerned.

(7) An Investigation Committee may, for the purposes of an investigation, and whether in the context of an oral hearing or otherwise:

- (a) examine on oath, either by word of mouth or on written interrogatories, a relevant person pursuant to section 934(5)(a) of the Act;
- (b) administer oaths for the purposes of the examination pursuant to section 934(5)(b) of the Act; and
- (c) record in writing, the answers of a person so examined and require that person to sign them pursuant to section 934(5)(c) of the Act.

(8) An Investigation Committee may take into account any relevant information, whether or not such information would be admissible in a Court. The strict rules of evidence do not apply to the full investigation, although the Investigation Committee will employ fair procedures.

(9) Any information produced or answer given by a person in compliance with a requirement under these Regulations may be used in evidence against the person in any proceedings whatsoever, save proceedings for an offence (other than perjury in respect of such an answer).

(10) Nothing in these Regulations:

- (a) 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
- (b) authorises the inspection or copying of any document containing such information that is in the person's possession.

(11) The production of any books or documents under these Regulations by a person who claims a lien on the books or documents does not prejudice the lien.

Oral Hearings

9. (1) As provided for by section 938(1) of the Act, the Investigation Committee may conduct an oral hearing on its own initiative or upon the

reasonable request of the specified person that is the subject of the investigation if it considers that an oral hearing is necessary and appropriate in order to conduct the investigation in accordance with fair procedures.

(2) Oral hearings shall take place in public but an Investigation Committee may, at its sole discretion, exclude the public from all or part of a hearing to the extent it considers it necessary, for stated reasons and in the interests of justice.

(3) Any member of an Investigation Committee who is absent during an oral hearing shall not take part in the deliberations on, and the making of, the decision of the Investigation Committee.

(4) Oral hearings shall be conducted in accordance with rules of fair procedure and natural and constitutional justice. Without prejudice to the generality of that provision, where an oral hearing is taking place, the Investigation Committee will permit the specified person concerned:

- (a) to be legally represented;
- (b) to call and to give evidence;
- (c) to present information and submissions on their behalf; and
- (d) to cross-examine witnesses;

during the oral hearing.

(5) Subject to Section 940 of the Act, an Investigation Committee may, at its sole discretion, permit any other person with an interest in the proceedings (including a complainant and a prescribed accountancy body) to participate in an oral hearing and to present relevant information and submissions on their behalf.

Standard of Proof

10. The standard of proof on which an Investigation Committee shall make its findings is on the balance of probabilities.

Decision of the Authority

11. (1) An Investigation Committee shall, in respect of each alleged relevant contravention, make a finding either that the allegation is established or that the allegation is not established.

(2) Where an Investigation Committee makes a finding that an allegation is established, if appropriate, and, having considered the circumstances identified in Section 934D(2) of the Act it shall make a decision as to:

- (a) which, if any, relevant sanctions shall apply; and
- (b) the amount (if any) that the specified person or the prescribed accountancy body of which the specified person is a member, as appropriate, is liable to pay to the Authority towards its costs in investigating and determining the case.

(3) Prior to making a decision in relation to sanctions or costs, the Investigation Committee shall give the prescribed accountancy body or the specified person, as appropriate, a reasonable opportunity to make submissions to it in respect of those issues.

(4) An Investigation Committee's decision must provide reasons for its decisions, including any decision that there has not been a relevant contravention, and shall also provide reasons for its decisions in relation to sanctions and costs.

(5) An Investigation Committee shall issue its decision to the Authority when its decision is made, which shall occur as soon as is reasonably practicable from the date of the initiation of the full investigation, taking into account the circumstances of the case.

(6) The decision of the Investigation Committee issued to the Authority under paragraph (2) shall be the decision of the Authority.

(7) Where an Investigation Committee notifies the Authority of a finding that an allegation has been established, the Authority shall—

- (a) issue the specified person and the prescribed accountancy body of which the specified person is a member and any other person as the Authority considers appropriate with a copy of the findings of the Investigation Committee, including the decision of the Investigation Committee as to relevant sanction (if any) and the amount (if any) that the prescribed accountancy body or the specified person, as appropriate, is liable to pay to the Authority under section 934(10) of the Act;
- (b) advise the specified person and the prescribed accountancy body of which the specified person is a member of the Authority's obligation to seek and obtain High Court approval for decisions in relation to sanction and costs pursuant to section 941(4), (4A) and (5) of the Act;
- (c) advise the specified person and the prescribed accountancy body, if applicable, of the rights of appeal in respect of decisions concerning sanction and costs to the High Court under section 934(11) and (13) of the Act and the time limits for making an appeal under either or both of those subsections; and
- (d) advise the specified person and the prescribed accountancy body of which the specified person is a member that the Authority

shall, in accordance with the provisions of section 934F of the Act, publish details of its decision to sanction a relevant person.

(8) Where the Investigation Committee notifies the Authority of a finding that an allegation has not been established, the Authority:

- (a) shall issue the specified person and the prescribed accountancy body of which the specified person is a member with a reasoned statement to that effect;
- (b) may notify whomsoever else it considers appropriate; and
- (c) may provide whomsoever it considers appropriate with a reasoned statement to that effect.

Sanctions

12. (1) In the case of a finding that an allegation that a specified person has committed a relevant contravention has been established, the Investigation Committee may impose a relevant sanction on that specified person.

(2) The Investigation Committee shall not impose a relevant sanction on a specified person who falls within paragraph (a) of the definition of ‘specified person’ unless the relevant prescribed accountancy body could, if finding the specified person guilty of the breach in question, have imposed that sanction upon him.

(3) For the avoidance of doubt, the Investigation Committee shall be permitted, where it considers it appropriate to do so, to withdraw the approval of the specified person as a statutory auditor or audit firm in accordance with section 935 of the Act.

(4) The Investigation Committee shall set out in its decision issued to the Authority under Regulation 11(2) the reasons underlying the imposition or non-imposition of sanctions and the level and type of any sanctions imposed.

When Decision takes effect

13. A decision of the Authority in relation to sanction or costs takes effect when such decision is confirmed by the Court either on appeal by the specified person or prescribed accountancy body, as appropriate, under section 941(4) and (4A)(a) of the Act or on application by the Authority under section 941(4), (4A)(b) and (5) of the Act.

Appeal

14. (1) A specified person may appeal a relevant decision of the Investigation Committee to the Court within three months after the specified

person was notified by the Authority of the Investigation Committee's decision pursuant to Regulation 11(7).

(2) A prescribed accountancy body or a specified person may appeal a decision of the Investigation Committee in relation to costs within three months after the prescribed accountancy body or the specified person, as appropriate, was notified by the Authority of the Investigation Committee's decision pursuant to Regulation 11(7).

PART 4

MISCELLANEOUS

Settlement

15. (1) The Authority may engage in negotiations with a specified person, whether on a without prejudice basis or otherwise, for the purposes of seeking to reach a Section 934E Agreement on behalf of the Authority and, subject to paragraph (2), shall enjoy a discretion to conclude such an agreement in principle.

(2) Any proposed Section 934E Agreement concluded after a full investigation has been initiated must be approved by the Investigation Committee in order to take effect.

(3) If the Investigation Committee decides not to approve a Section 934E Agreement, the Investigation Committee shall resume its investigation.

Notices

16. (1) Where any document is required or authorised by or under these Regulations to be furnished to any person, unless otherwise expressly provided under a Regulation, such document shall be furnished by delivering it to that person or by sending it by registered post in an envelope addressed to that person at their last known place of business or residence in the State or, if the person is a member, by delivering it to that person or by sending it by registered post in an envelope addressed to that person or by email addressed to that person at the last address last notified by them to the prescribed accountancy body to which they belong. For the avoidance of doubt, the last address last notified by them to the prescribed accountancy body to which they belong may include or consist of an email address.

(2) In the case of a firm, and subject to paragraphs (3) and (4) below, all notices and other communications required by these Regulations to be given or made to a firm shall be delivered to the senior member or partner or equivalent in the case of a partnership, or to the managing director or equivalent in the case of a body corporate, at its present or last known principal place of business. If a firm so requests in writing, all notices and communications

directed to that firm may thereafter be addressed to a partner designated by such firm to receive them on behalf of the firm.

(3) If a firm ceases to be a member, discontinues its business or otherwise ceases to exist, the Authority or the Investigation Committee may designate a former partner or equivalent in the case of a partnership, or the former managing director or equivalent in the case of a body corporate, to receive all notices or documents to be given to such firm by the Authority (subject to prior notice to all members who were partners at the material time in such firm as far as is practical).

(4) If a specified person so requests in writing, all notices and communications directed to that specified person may thereafter be:

- (a) served on that specified person by email rather than in person or by registered post;
- (b) addressed to their legal adviser; and
- (c) served on that legal adviser by email rather than in person or by registered post.

(5) Where a person to whom a document is required or authorised by these Regulations to be furnished is absent from the State, or their whereabouts are unknown and cannot be ascertained by reasonable enquiries, or where the document, having been sent by registered post in the manner specified in paragraphs (1) to (2) has been returned undelivered, the Authority or other applicant may make application to the Court for an order for substituted service of notice of the content of the document, by advertisement or otherwise, as may seem just.

Designation of an “authorised person” by a relevant person

17. (1) Where a relevant person is a firm, body corporate or prescribed accountancy body and the relevant person has an obligation to:

- (a) produce books or documents relating to the investigation that are in the relevant person’s possession or control;
- (b) comply with a request for information made pursuant to section 1523(1) of the Act;
- (c) attend before the Authority or Investigation Committee;
- (d) give the Authority any other assistance in connection with the investigation that the relevant person is reasonably able to give;
- (e) attend any oral hearing; or
- (f) be examined under oath under Regulation 8(7);

that obligation shall be performed by an “authorised person”, being a competent person designated by such firm, body corporate or prescribed accountancy body.

(2) A designation of an “authorised person” does not limit the Authority’s power to require any relevant person (including any person who is, or was, an officer, employee or agent of any firm, body corporate or prescribed accountancy body) to comply with any of the obligations listed above pursuant to any other provision of the Act.

(3) If a firm, body corporate or prescribed accountancy body fails to designate a competent person as an “authorised person”, the Authority or the Investigation Committee, as appropriate, may do so.

(4) Where a firm, body corporate or prescribed accountancy body has a right to submit any statement or information or to make oral and written submissions and any other right as provided in the Regulations, that right may be exercised by an “authorised person”.

(5) The competent person designated as an “authorised person” under paragraph (1) shall be authorised and competent to exercise the functions of the competent person and to have the power to bind the firm, body corporate or prescribed accountancy body with respect to the rights exercised and obligations performed on behalf of the firm, body corporate or prescribed accountancy body, as relevant.

(6) For the avoidance of doubt, anything said, done or omitted by:

- (a) an employee of a firm within the scope of their employment, actual or ostensible; or
- (b) an agent of the firm within the scope of their employment, actual or ostensible,

shall be taken as having been said, done or omitted by that firm.

Deferral of Investigation

18. The investigation of the matter may, if the Authority or the Investigation Committee so decides, be deferred, or where the investigations of the Authority or the Investigation Committee, as appropriate, have been commenced, may be suspended, on an exceptional basis.

Appointment of Legal Advisers

19. (1) The Authority may appoint a legal adviser or advisers to provide assistance to the Authority or the Investigation Committee, to bring evidence against the specified person and, if necessary, to represent the Authority before the Investigation Committee or to act on behalf of the Authority or the

Investigation Committee, as appropriate, before the High Court and to act otherwise as considered appropriate.

(2) A legal adviser may also examine witnesses, participate in any oral hearing and perform any other functions necessary or as required for the conduct of the investigation.

Transcripts and copies of evidence

20. (1) If so requested by any witness who has given oral evidence to it, the Investigation Committee may in its discretion provide that witness, at a charge, if any, to be determined by the Investigation Committee, with a transcript of their evidence.

(2) The Investigation Committee shall, at a charge, if any, to be determined by the Investigation Committee, provide a transcript of the proceedings and copies of any documentary evidence given before it, if so requested, to a specified person who is a party to the proceedings under these Regulations or their legal adviser.

Confidentiality of Information

21. (1) All information that has not otherwise come to the notice of members of the public and which was obtained in performing the functions or exercising the powers of the Authority is subject to the confidentiality provisions imposed by section 940 of the Act.

(2) All persons who are involved in the investigatory process under the provisions of these Regulations are persons to whom section 940 of the Act applies. A person who contravenes section 940(1) of the Act shall be guilty of a category 2 offence.

(3) Confidential information provided to the specified person under these Regulations shall be treated as information the disclosure to any other party of which may be prohibited under section 940 of the Act.

(4) Notwithstanding paragraphs (1) to (3), nothing in these Regulations prohibits the disclosure of information by any person during the course of the investigation under these Regulations:

- (a) at a public hearing;
- (b) to their legal advisers for the purposes of obtaining advice in relation to the Investigation;
- (c) if they are a partner in or director of, or employed by, a firm, to the partners in or directors of that firm;
- (d) to any person to whom disclosure is necessary for the purpose of ensuring fair procedures, or for the purpose of obtaining evidence, information or assistance in connection with the investigation; or

- (e) as otherwise required by these Regulations, the Act or by the law generally.

Payments

22. (1) Any decision that a sum be paid must be complied with within 30 days from the date the decision becomes effective (unless the Authority otherwise agrees).

(2) Where the subject of the decision to pay a sum is a firm, such monies—

- (a) shall be due from the firm concerned; and/or
- (b) shall be jointly and severally due from, and shall be paid by, those members who were partners in, members of, directors of or the proprietors of such firm during any part of the time relevant to the adverse finding or thereafter, whether or not they were members or it was a firm during any part of that time.

GIVEN under my Official Seal,
21 January 2020

KEVIN PRENDERGAST,
Chief Executive

FERGAL Ó BRIAIN
Secretary

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations set out the procedures governing the conduct of investigations by the Irish Auditing and Accounting Supervisory Authority pursuant to section 934 of the Companies Act 2014, as amended, and revoke the Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 24 Investigations) Regulations 2012 (S.I. No. 97 of 2012)

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