

2021

Feedback Paper

Sanctions Guidance

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Mission

To contribute to Ireland having a strong regulatory environment in which to do business by supervising and promoting high quality financial reporting, auditing and effective regulation of the accounting profession in the public interest.

Summary

The purpose of the Sanctions guidance is to assist Committees of Investigation/Enquiry when considering the imposition of sanctions on respondents, under section 933(6) or section 934C of the Companies Act 2014 (as amended) ('the Act'). The procedures governing these investigations and enquiries are set out in S.I. 567 of 2019 - Companies Act 2014 (Procedures Governing the Conduct of Section 933 Enquiries) Regulations 2019 and S.I. 16 of 2020 - Companies Act 2014 (Procedures Governing the Conduct of Section 934 Investigations) Regulations 2020.

This guidance will inform and assist the parties of the approach that committees will take when imposing sanctions. Such guidance will also assist in the approach that will be taken if a settlement agreement is to be reached having regard to the appropriate and proportionate outcome.

This guidance is intended to promote clarity, consistency and transparency in any decision-making. Furthermore, the document is advisory in nature and is not intended to be binding. It is for the committee to decide what, if any, sanction to impose given the findings it makes in the case that it has considered. Whilst a Committee should always give reasons for its decisions, where it decides to depart from the guidance, it should explain its reasons for doing so

Responses received

IAASA's consultation closed on 11 December 2021. IAASA received two responses, as listed below.

1. ACCA
2. Deloitte LLP

Matters on which IAASA consulted, summary of responses and IAASA response

A summary of the responses received to the specific questions asked in the consultation, and IAASA's response, are set out below.

No.	Matters on which IAASA consulted
1.	Do you think the structure of the document is clear and accessible? If you think it is unclear, please let us know areas that can be improved.
Summary of Responses	One of the respondents believed the structure of the document was clear and accessible and welcomed the principles-based approach to sanction. The other respondent referred to the Act requiring the publication of sanctions and that there are exceptions to such publication grounds which may avoid identity disclosure, or anonymity. The respondent raised the need for guidance on when such exceptions would be invoked. Further, specific reference to the relevant legislation was requested.

IAASA response The requirements for publication are set out clearly in the Act. The Authority considers that publication is a separate matter to sanction and the focus of this document is on sanctioning powers. The relevant statutory instruments are now set out in the document.

2. Do you think the guidance is useful in helping you to understand:
- a. the sanctions available?
 - b. how a committee decides upon a sanction?
-

Summary of Responses One respondent welcomed the transparency and consistency that the sanctions guidance will bring to the process. The other respondent wished for the document to set out the entire process from when a complaint is considered to its ultimate outcome.

IAASA Response The document is solely for the purpose of assisting with implementing appropriate and proportionate sanctions.

3. Do you think the content represents a fair summation of the matters a committee or decision maker should consider in assessing the appropriate sanction?
-

Summary of Responses The bottom-up approach adopted by IAASA in determining sanctions to deliver an appropriate and proportionate outcome was welcomed.

IAASA Response The positive feedback indicates that the approach of the Authority is appropriate in the context of it being a supervisory authority.

4. Do you have any comments on how the draft guidance could be improved?
-

Summary of Responses The guidance is predicated on the presumption that any sanction to be imposed is sufficient and no more than is necessary to achieve the purpose of the sanction, which suggests that sanctions are not intended to be punitive. The guidance would benefit from a discussion in that regard.

IAASA Response Reference to the purpose of sanction is not to be punitive, although it may have a punitive effect is now added to the document.

Conclusion

Following the consultation and having regard to the responses received, IAASA will issue the Sanctions Guidance and the effective date being 8 March 2021.

Appendix – responses received

1. Association of Chartered Certified Accountants (ACCA)
2. Deloitte LLP



IAASA

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Response to Consultation Paper issued by IAASA on Sanctions Guidance

Dear Sirs

Thank you for making available to us your recently published draft of the proposed Sanctions Guidance, and for giving us the opportunity to respond to your consultation paper by 11 December.

We attach in the Appendix our responses to the questions asked, and provide further explanation of our comments in the following paragraphs. While we note that the guidance is drafted for use by investigation committees, we have drafted these comments on the understanding that the Guidance will be accessible to all on your website, and therefore certain matters could perhaps be added to the Guidance or outlined more fully. Our response has a particular focus on 'specified persons', under Section 934 of the Companies Act 2014.

1. Operating Procedures

Statutory Instrument 16 2020 was brought into law earlier this year to primarily explain the operating procedures in relation to IAASA's investigative powers and related matters. We consider that reference to the SI, and its provisions, could be made in the opening paragraphs of the Guidance to provide more context to the reader of the guidance and more explicitly link to the underlying legislation.

This could include summary commentary in relation to such matters as:

- a) Preliminary Investigation
- b) Full Investigation
 - Appointment of Investigation Committee;
 - Investigation Procedures and Conduct; and
 - Oral Hearings and Decision Process
- c) Legal Process and Court Appeals



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2. Publication

The Companies Act 2014 requires the publication of sanctions. The amendments brought in under the 2018 Act set out certain possible grounds which may avoid identity disclosure, or anonymity. These include:

- Proportionality of the publication of particulars to the sanction imposed;
- Circumstances may jeopardise the stability of financial markets, or criminal proceedings; and
- May cause disproportionate damage to the specified person.

Inclusion of comment on this could assist with both the decision making process in relation to the sanctions made and in the context of providing more complete information.

CAI disciplinary processes include 'unpublished caution' as a possible sanction. It is not clear whether this is available to IAASA under legislation, but it could possibly be considered further. Such a sanction would appear to have equivalence with UK sanctions where there is the concept of 'private' and 'public' reprimands.

3. Additional Support

The CAI Disciplinary Guidelines, which were updated in January 2020, offer some principles and guidance which perhaps could be more fully considered for the IAASA Guidance. These would include:

- Concept of high, medium and low – in relation to the nature and level of contravention and sanction – and how that is outlined in Table A: Severity of Disciplinary Matters, and Table B: Indicative Sanctions;
- Illustrative schedules of Mitigating and Aggravating Factors – this appears more extensive than any such factors referred to in the IAASA Draft Guidance.

There may also be other aspects of the CAI Guidelines which could be considered in the IAASA Draft Guidance.

We would be happy to discuss our comments with you if you wish to contact us.

Yours faithfully



Glenn Gillard

Risk & Reputation Lead
For and on behalf of
Deloitte Ireland LLP

APPENDIX 1

Matters on which IAASA is consulting

- 1. Do you think the structure of the document is clear and accessible?
If you think it is unclear, please let us know areas that can be improved.**

If intended to be accessible by a wider audience, guidance could include additional comment in such areas as operating procedures and publication.

- 2. Do you think the guidance is useful in helping you to understand:**
- a. the sanctions available?**
 - b. how a committee decides upon a sanction?**

See response to 1.

Additionally, consideration should be given to the detailed guidance in CAI Disciplinary Guidance which could be enhance the detail in the IAASA guidance.

- 3. Do you think the content represents a fair summation of the matters a committee or decision maker should consider in assessing the appropriate sanction?**

See responses above.

Committee or decision-maker could benefit from including the publication consequences in the process.

- 4. Do you have any comments on how the draft guidance could be improved?**

All of above, and outlined in the main body of our letter.