

Irish Auditing and Accounting Supervisory Authority
Companies (Auditing and Accounting) Act, 2003 ('the Act')
Statutory Enquiries pursuant to Section 23

Established pursuant to the provisions of the Companies (Auditing and Accounting) Act, 2003, the Irish Auditing & Accounting Supervisory Authority ('IAASA') is the statutory body with responsibility for supervising the Prescribed Accountancy Bodies' ('PABs') regulation and monitoring of their members and member firms. Nine PABs come with IAASA's supervisory remit, i.e. the:

- Association of Chartered Certified Accountants (ACCA);
- Association of International Accountants (AIA);
- Chartered Institute of Management Accountants (CIMA);
- Chartered Institute of Public Finance & Accountancy (CIPFA);
- Institute of Certified Public Accountants in Ireland (ICPAI);
- Institute of Chartered Accountants in England & Wales (ICAEW);
- Institute of Chartered Accountants in Ireland (ICAI);
- Institute of Chartered Accountants of Scotland (ICAS); and
- Institute of Incorporated Public Accountants (IIPA).

IAASA's functions *vis-à-vis* the PABs include:

- approval of the PABs' constitutions and bye-laws, including their investigation and disciplinary procedures;
- approval of proposed amendments to the PABs' approved constitutions and bye-laws, including their investigation and disciplinary procedures;
- supervising the PABs' investigation and disciplinary procedures, including by requiring access to their records and requiring explanations about the performance of their regulatory and monitoring duties;
- conducting enquiries into whether a PAB has complied with its approved investigation and disciplinary procedures;
- granting of recognition to bodies of accountants for the purpose of section 187 of the Companies Act, 1990 (i.e. for audit purposes) (such bodies are referred to as 'Recognised Accountancy Bodies'); and
- attaching terms and conditions to the recognition of Recognised Accountancy Bodies.

Section 23 of the Act provides that the Authority may, following a complaint or on its own initiative and for the purpose of determining whether a PAB has complied with its approved investigation and disciplinary procedures, enquire into:

- a decision by a PAB not to undertake an investigation into a possible breach of its standards by a member;
- the conduct of an investigation by a PAB into a possible breach of its standards by a member;
or
- any other decision of a PAB relating to a possible breach of its standards by a member.

Statutory Instrument 667 of 2007: Companies (Auditing and Accounting) Act, 2003 (Procedures Governing the Conduct of Section 23 Enquiries) Regulations, 2007 was published in September 2007.

The Regulations are based on the premise that the exercise of enquiry and enforcement powers must be performed in a manner that accords with applicable principles of procedural fairness, natural and constitutional justice, the requirements of administrative law and applicable human rights legislation.

To that end, the Regulations provide that, once initiated, Enquiries under Section 23 are split into two discrete phases. The first phase is conducted by a Preliminary Enquiry Committee, and where applicable, the second phase is conducted by an Enquiry Committee. The Regulations further provide that such Committees (known generically as Section 23 Committees) shall have among their membership at least two directors of the Authority and, moreover, that no person may serve on both the Preliminary Enquiry Committee and Enquiry Committee in any given matter. The Regulations further provide that members of the PABs may not constitute a majority of any Section 23 Committee. Set out below are some of the key features of the Regulations.

Preliminary Enquiry Committees

The purpose of a Preliminary Enquiry Committee is to determine whether the Authority should initiate a full Enquiry under Section 23. Under the Regulations, a full Enquiry will be initiated where:

- (i) a Preliminary Enquiry Committee determines that there is a *prima facie* case that a PAB has failed to comply with its approved investigation and disciplinary procedures; and
- (ii) the circumstances of the matter are such as to warrant the initiation of a full Enquiry.

Where a Preliminary Enquiry Committee forms the view that the matter under investigation is better, or more appropriately, dealt with by way of supervisory action rather than through the initiation of a full Enquiry, it will report its view to the Authority and the Authority may, if it considers it appropriate to do so, direct that the Preliminary Enquiry Committee report such facts and circumstances to the Chief Executive (who may not, under the Regulations, be a member of a Section 23 Committee) and to the Head of Regulatory & Monitoring Supervision.

Enquiry Committees

As a consequence of the foregoing approach, the second phase of an Enquiry (i.e. that element conducted by an Enquiry Committee) only becomes relevant in circumstances where a Preliminary Enquiry Committee has first determined that there is a *prima facie* case that a PAB has failed to comply with its approved investigation and disciplinary procedures and that the circumstances of the matter are such as to warrant the initiation of a full Enquiry.

The role of an Enquiry Committee is to conduct a full Enquiry into whether a PAB has failed to comply with its approved investigation and disciplinary procedures and, in the event that this is found to be the case, to determine what sanctions, if any, should be imposed on the PAB concerned.

In conducting its Enquiry, an Enquiry Committee may:

- inspect and take copies of all relevant documents in the possession or control of the PAB concerned;
- require the PAB to explain why it reached a decision not to undertake an investigation into a possible breach of its standards by a member, or any decision of that PAB relating to a possible breach of its standards by a member;
- if the PAB conducted an investigation, require it to explain how it conducted its investigation; and
- conduct oral hearings.

In arriving at a determination, the standard of proof on which an Enquiry Committee shall make its findings is on the balance of probabilities.

The Regulations provide that, having completed its Enquiry, an Enquiry Committee shall, in respect of each alleged failure to comply with approved investigation and disciplinary procedures, make a finding as to whether the allegation has been established.

Where an allegation is determined as not having been established, the Regulations provide that the Authority shall provide a statement to that effect to both the PAB and the member(s) of the PAB who

was/were the subject of the original PAB decision. Conversely, where an allegation is determined as having been established, the Regulations provide that the Enquiry Committee shall decide as to which, if any, sanctions shall be imposed on the PAB concerned.

Sanctions

Where an Enquiry Committee makes a determination to the effect that a PAB has failed to comply with its approved investigation and disciplinary procedures, it can impose any of the following sanctions:

- advise the PAB;
- admonish the PAB; or
- censure the PAB by:
 - annulling all or part of a decision of the PAB relating to the matter that was the subject of the Enquiry;
 - directing the PAB to conduct an investigation into the matter;
 - directing the PAB to conduct a fresh investigation into the matter;
 - requiring the PAB to pay to the Authority an amount not exceeding €125,000 or such other amount as prescribed by the Minister from time to time.

The Regulations further provide that, in determining the level of sanctions that should apply, an Enquiry Committee will have regard to all of the circumstances of the matter, which may include, *inter alia*, the following factors:

- whether the failure to comply was deliberate, dishonest, reckless or negligent;
- the duration/frequency of the failure to comply; and
- the extent to which the failure to comply deviated from the required procedure.

Appeal

Where an Enquiry Committee makes a determination to the effect that a PAB has failed to comply with its approved investigation and disciplinary procedures, the PAB or the member concerned has a right of appeal to the High Court. An appeal must be made within 3 months of the date of Notice being given by the Authority.

Further information regarding IAASA and its activities can be accessed at www.iaasa.ie