IRELAND

Statutory Auditors – The Role of the Watchdog Revisited

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The role of a statutory auditor is critical to good corporate governance, and in particular to ensure corporate transparency. The purpose of this article is to critically examine the formalities relating to the role of a statutory auditor, as well as to review their powers and duties, and the consequential liability that arises where a breach arises.

Introduction

Every Irish company that is not audit[1] exempt[2] is required to appoint a statutory auditor, whose role it is to act as an independent accountant and verify the financial statements of their client company, in order to ascertain whether those accounts truly and fairly represent the financial position of the company. The verification of the accounts arises through the completion of an auditors' report, which is presented to the shareholders at the annual general meeting (AGM) of the company. Although an auditor is not considered an employee of the company, they are still classed as a company officer for the purpose of liability, pursuant to the provisions of the Companies Act 2014. According to Justice Vaughan Williams in *Re Kingston Cotton Mill Company (1896)*:

> *"[An auditor] is not a person who is called in according as he is wanted or not wanted; he is appointed, in each year. He is a person without whose appointment it would be impossible under [the Constitution] for the business of the company to be carried on in any year; that is to say, so far from being an occasional accidental officer appointed to perform duties which might or might not arise, he has to perform duties without the performance of which the company could not in any year … go on or the directors perform their duties. And, moreover, he not only has to make the audit and report … but he has a duty to perform in conjunction with the directors."*[3]

[1] The word audit has its origins in Latin and is derived from the word *audire,* which means to hear.
[2] In order to obtain an audit exemption the Companies Act 2017 requires that the company is classed as a small company or a micro-company. A small company is one that complies with two of the following three requirements, namely: (1) the turnover of the company cannot exceed €12 million, (2) the balance sheet total of the company cannot exceed €6 million, and (3) the average number of employees employed by the company cannot exceed 50. In addition, all statutory filings of the company must also be up to date in the CRO. Furthermore, this exemption will not apply to a holding company of a group if any member of the group is an ineligible entity, or to Public Limited Companies, Public Unlimited Companies and Investment Companies, or a credit institution or insurance undertaking. A dormant private company is also eligible for an audit exemption (Section 365 CA 2014). A micro-company can be defined as a company whose balance sheet total does not exceed €350,000, turnover does not exceed €700,000, and has less than 10 employees. A micro company is also entitled to file abridged financial statements with its annual return.
[3] [1896] 1 Ch. 6 at p. 12.

Qualifications and Eligibility

In order to be eligible for appointment as a statutory auditor of a company the auditor must hold the correct qualifications and be in possession of a valid practising certificate. Section 1441 CA 2014 requires that a statutory public auditor must hold a relevant qualification from one of the six professional accounting bodies in Ireland recognised by the Irish Auditing and Accounting Supervisory Authority (IAASA). These bodies (known as the prescribed accountancy bodies) are: (1) the Association of Chartered Certified Accountants (ACCA), (2) the Institute of Chartered Accountants in Ireland (ICAI), (3) the Institute of Chartered Accountants in England and Wales, (4) the Institute of Chartered Accountants of Scotland, (5) the Institute of Certified Public Accountants in Ireland (CPA), and (6) the Institute of Incorporated Public Accountants (IIPA)[4].

As the statutory auditor is an independent officer of the company, they are certain persons deemed ineligible to accept this appointment. These include:

A. Any current officers or servant of the company, or any past officers or servants of the company for the period to which the audit relates,
B. Any person directly connected to a company officer – such as a parent, spouse, civil partner, sibling or child, business partner or an employee of an officer, and
C. Any person who has been subject to an automatic or discretionary disqualification order by the court[5].

In addition, a corporate body is not entitled to occupy the position of a statutory auditor, although a firm of auditor may be appointed to occupy this position. Furthermore, a person or firm cannot act as an auditor for a company, where they are connected to either the audited entities holding or subsidiary companies.

The EU Audit Regulations 2016 also require that a statutory auditor undertake a documented assessment of whether they are sufficiently independent to undertake or continue the audit.

Appointment of an Auditor

An auditor may be appointed to a company in one of three ways, namely:

A. **First Appointment:** In accordance with Section 382(1) of the Companies Act 2014 the first statutory auditor of a company may be appointed by the directors at any time before the first annual general meeting (AGM) of the company. Should the directors fail to exercise this power of appointment, the company at the general meeting may appoint the first statutory auditor, thereby extinguishing the director's power in this regard. The first statutory auditor of the company will hold office until the conclusion of the first AGM.

B. **Annual Appointment:** The auditor holds office from one AGM to the next, and a company at each AGM may appoint statutory auditors to hold office from the conclusion of that meeting until the conclusion of the next AGM[6], through the passing of an ordinary resolution of its shareholders. However, at any AGM a retiring statutory auditor, may be deemed to be re-

[4] As per Section 3 of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010, S.I. No. 220/2010.
[5] Breach of this Order is classed as a category 2 offence and any person convicted of acting while disqualified may have their period of disqualification extended by a further 10 years, beginning after the date of conviction, or for any other such period (longer or shorter) as determined by the court.
[6] Section 383 of the Companies Act 2014.

appointed without any resolution being passed by the shareholders, unless that person (1) is not qualified for reappointment, (2) a resolution has been passed appointing another auditor, or (3) where the auditor does not wish to be reappointed and has given notice in writing to this effect.

C. **Appointments Arising from a Casual Vacancy**: If a statutory auditor retires, resigns, is declared bankrupt, dies, becomes ineligible, disqualified or incapacitated between the AGM's of a company, a casual vacancy is said to arise. Where such a vacancy arises the directors of the company are under a statutory duty to appoint statutory auditors to the company as soon as possible after the vacancy has arisen. Any such person appointed in this manner holds office until the conclusion of the next AGM[7].

Where at an annual general meeting of a company no statutory auditors are appointed by the members, the Director of Corporate Enforcement may appoint one or more persons to fill the position of statutory auditors of the company[8]. The Director must be notified of this fact by the company within one week of the meeting, and failure to comply with this requirement is classed as a category 3 offence[9].

Any contractual clause which has the effect of restricting the choice by the general meeting of shareholders or members of the audited entity, to certain categories or lists of statutory auditors or audit firms, as regards the appointment of a particular statutory auditor or audit firm is prohibited and will be void[10].

Removal of an Auditor

The members of a company can remove a statutory auditor from office, before the expiration of his term of service, provided there are good and substantial grounds for the removal related to the conduct of the auditor with regard to the performance of his duties, or where such removal is deemed to be in the best interests of the company[11]. In this regard the *best interest of the company* precludes a removal for illegal or improper motives, such as in order to prevent the disclosure or detection of any failure by the company to comply with its statutory obligations pursuant to the terms of the Companies Act 2014. In addition, diverging opinions on accounting treatments or audit procedures cannot constitute justification for effecting a removal.

A legitimate removal of the statutory auditor can be effected by the passing of an ordinary resolution at a general meeting, subject to the members being provided with extended notice of 28 days of this meeting[12]. Where such a proposal is raised the auditor is conferred with certain rights, including:

A. The right to receive a copy of the notice of their proposed removal,
B. Upon receipt of this notice, the right to make representations in writing to the company (not exceeding a reasonable length) and request that these representations be sent to members of the company in advance of the meeting,
C. Where a copy of these representations are not distributed to the members in advance of the meeting (as a consequence of either being received too late or because of the company's

[7] Section 384 of the Companies Act 2014.
[8] Section 385 of the Companies Act 2014.
[9] This may result in the imposition of a Class A fine, or a term of imprisonment not exceeding 6 months or both.
[10] Section 57 of S.I. No. 312/2016 - European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016.
[11] Section 395 of the Companies Act 2014.
[12] Section 396(2) of the Companies Act 2014.

default) the statutory auditors can require that the representations be read out at the relevant meeting[13], and

D. The statutory auditor also has the right to make oral representations to the members at this meeting.

Ultimately, the decision as to whether to remove the statutory auditor lies with the voting shareholders of the company, and if the resolution is passed the company must send notification of this fact to the Companies Registration Office (CRO) within 14 days[14].

Following their removal a statutory auditor retains the right to receive notice of, attend and be heard at the next annual general meeting of the company or the next general meeting at which the casual vacancy arising from their removal is being considered[15].

Removal as a Consequence of an Audit Exemption

Where a company effects the removal of their statutory auditor, as a consequence of the fact that they are eligible for an auditor exemption, the auditor is required to prepare a statement to the effect that (1) there are no circumstances connected with the decision of the company to avail of an audit exemption that the statutory auditors concerned consider should be brought to the notice of the members or creditors of the company, or alternatively (2) that there are circumstances that should be brought to the attention of the members or creditors of the company, and a statement of any such circumstances[16]. A copy of this notice must also be sent to the (CRO) within 14 days.

Resignation of a Statutory Auditor

A statutory auditor of a company may resign by depositing a notice in writing to the companies registered office. A copy of this notice must also be sent to the CRO within 14 days, as well as to the company's members, debenture holders, and any other entitled persons. In addition, the Irish Auditing and Accounting Supervisory Authority (IAASA) must also be notified within 30 days by both the auditor and the company[17].

Any such notification should include a statement of circumstances impacting the resignation. In particular the auditor must submit a statement of circumstances that should state either (1) that there are no circumstances that the auditor is aware of that should be brought to the member's or creditor's attention, or (2) that there are circumstances that the auditor believes that should be brought to the member's or creditor's attention, and an explanation of these circumstances[18].

These obligations also arise where a statutory auditor of a company does not wish to be re-appointed at the AGM.

Breach of these requirements is classed as a category 3 offence.

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[13] This request is generally adhered to, unless the court is satisfied that this right is being abused to secure needless publicity for defamatory matter and consequently it makes an order prohibiting the exercise of this right.

[14] Section 385(2)(b) of the Companies Act 2014.

[15] Section 398 of the Companies Act 2014.

[16] Section 399 of the Companies Act 2014.

[17] Section 403 and 404 of the Companies Act 2014. Notice to IAASA must always be given where a person ceases to be an auditor of a company.

[18] Section 400(3) of the Companies Act 2014.

Furthermore, the statutory auditor may also request that the directors convene a general meeting of the company (which must then take place within 28 days) in order to convey any such further information and explanation of the circumstances connected with their resignation from office as they may wish to give to the meeting[19].

Rights of a Statutory Auditor

The auditor must audit the company accounts and provide a report on the company's annual accounts. In preparing the report the auditor possesses the following rights:

A. The right of access at all reasonable times to the company's accounting records[20].
B. The right to ask questions of relevant persons (company officers and employees - as well as third parties such as banks or creditors) in the company and to receive explanations and information which the auditor believes to be necessary for the performance of their duties[21].
C. The right to information and explanations concerning subsidiary companies[22].
D. The right to attend any general meetings of the company and to receive all notices and communications regarding the general meetings.
E. The right to speak at the general meetings on matters concerning the audit.

If a company officer knowingly or recklessly makes a statement in a written or oral form to the auditor which is misleading or false in a material manner, then that officer is guilty of a category 2 offence[23].

Duties of an Auditor

The principal duty of an auditor is to investigate the financial affairs of the company, in order to verify the accuracy of the accounts being presented to the shareholders at a general meeting of the company, and enable the auditor to pledge that these accounts truly and fairly represent the financial position of the company. Therefore, the role of the auditor is essentially antagonistic to the directors, in the sense that an auditor is appointed by the shareholders to be a check on them[24]. In undertaking this investigation of the accounts signed off by the directors, the role of the auditor was summarised by Justice Lopes in *Re Kingston Cotton Mill Company (No.2) (1896)*[25] as follows:

> *"[a]n auditor is not bound to be a detective, or … to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest, and to rely upon their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful."*[26]

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[19] A statutory auditor who resigns is empowered with the same rights as a removed auditor to receive notice of, attend and be heard at the next annual general meeting of the company, in relation to any matter that concerns them as former statutory auditors of the company (Section 402).
[20] Section 386 of the Companies Act 2014.
[21] Section 387 of the Companies Act 2014 – this information must be provided with two days of the request, unless the officer can prove that it was not reasonably possible to comply with the request within that timeframe.
[22] Section 388 of the Companies Act 2014.
[23] Section 389 of the Companies Act 2014.
[24] As per Justice Vaughan Williams in Re Kingston Cotton Mill Company [1896] 1 Ch. 6.
[25] [1896] 2 Ch. 279.
[26] Ibid at p.289-290.

In reviewing the accounts, the role of the auditor is not just the verification of their numerical accuracy, but rather to ascertain their authenticity. According to Lord Denning in *Formento (Sterling Area) Ltd v Selsdon Fountain Pen Co Ltd (1958)*[27]:

> *"[a]n auditor is not to be confined to the mechanics of checking vouchers and making arithmetical computations. He is not to be written off as a professional "adder-upper and subtractor". His vital task is to take care to see that errors are not made, be they errors of computation, or errors of omission or commission, or downright untruths. To perform his task properly, he must come to it with an inquiring mind – not suspicious of dishonesty, I agree – but suspecting that someone may have made a mistake somewhere and that a check must be made to ensure that there has been none."*[28]

The same view was expressed in *Re Thomas Gerrard & Son Ltd (1968)*[29] as follows:

> *"… we say that the auditors are bound to inquire. We do not say that in the absence of anything to put them on inquiry the auditors are to probe with a suspicious mind, but they are there to verify and not to proceed blindly."*[30]

Therefore, the auditor should be alert as to any wrongdoings within the company in order to protect the interests of those who appoint him. In this regard, he is also empowered to seek specialist advice, if necessary for the performance of his duties. However an auditor is not in breach of their duty where they fail to uncover a fraud or misfeasance that is so carefully concealed that no reasonably qualified auditor would investigate it or uncover it. According to Justice Lopes:

> *"[a]uditors must not be made liable for not tracking out ingenious and carefully laid schemes of fraud when there is nothing to arouse their suspicion, and when those frauds are perpetrated by tried servants of the company and are undetected for years by the directors. So to hold would make the position of an auditor intolerable."*[31]

The main duties of an auditor can be summarised as follows:

A. Duty to Report

The principal duty of an auditor is to prepare an auditor's report and present this to the members of the company at a general meeting. According to Lord Justice Linley the auditor's duty is to report to the shareholders, not the directors, of the company being audited[32].

In preparing this report the auditor must review all of the statutory financial statements before the members in a general meeting, during their tenure of office. In accordance with the provisions of the Companies Act 2014 the auditor report should identify the entity's financial statements, and where appropriate, the group financial statements, that are the subject of the audit and the financial reporting framework that has been applied in their preparation. There must also be a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted[33]. The report should also identify the place of establishment of the statutory auditors

[27] [1958] 1 WLR 45.
[28] Ibid at 61.
[29] [1968] Ch. 455.
[30] Ibid at p. 471.
[31] Re Kingston Cotton Mill Company (No. 2) [1896] 2 Ch. 279 at p.290.
[32] Re London and General Bank (No.2)(1985) 2 Ch. 673.
[33] Section 336(2) of the Companies Act 2014.

who made the report, as well as the risks encountered during the audit, and must evidence the steps taken to resolve any issues that arose in the process of the audit. The reporting role of the auditor was summarised by Justice Langley in *The Equitable Life Assurance Society v Ernst & Young (2003)* as follows:

> *"[the] duty includes a duty … to report on any issues arising in the course of an audit as and when they arise, but essentially it is to take care in reporting on the client's historic accounts for the relevant year whether or not they have been prepared in accordance with statutory requirements and give a true and fair view of the client's affairs at the date of the balance sheet and of the profit and loss for the period ending on that date."*[34]

The prescribed content of this report, pursuant to Section 336 includes:

(1) Whether the auditor has received from the company all information and explanations, which to the best of their knowledge and belief, is necessary for the purpose of the audit.
(2) Whether, in their opinion, the accounting records of the company were sufficient to permit the financial statements to be readily and properly audited.
(3) Whether, in their opinion, information and returns adequate for their audit have been received from branches of the company not visited by them.
(4) In the case of entity financial statements, whether the company's balance sheet and profit and loss account are in agreement with the accounting records and returns.
(5) Whether the information given in the directors' report for the financial year is consistent with the statutory financial statements[35].
(6) Whether in their opinion the annual financial statements give a true and fair view of the financial position of the company in relation to assets and liabilities, profits and losses.
(7) Whether the accounts are in compliance with the relevant financial reporting framework, the requirements of the Companies Act, as well as the relevant International Accounting Standards (IAS).

The report must state the name of the auditor or the auditing firm. The report should be signed by the auditor and should be unqualified (although it may be qualified where there is disagreement or a limitation in the scope of their work). The report may also include a reference to any matters which the statutory auditors wish to bring to the attention of the shareholders by way of emphasis, without qualifying the report. A copy of this report must be sent to CRO[36].

Furthermore, where the directors of the company have not disclosed the requisite details regarding their remuneration or prescribed transactions (as required by Section 305-312) the statutory auditors of the company should include in their report a statement outlining the requisite details.

The statutory auditors' report must also provide a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the entity's ability to continue as a going concern[37].

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[34] [2003] EWHC 112 (Comm), 2003 WL 117044.
[35] This should encompass a review of whether the information given in the directors' report for the financial year is consistent with the company's statutory financial statements, and include a confirmation that the directors' report was prepared in accordance with applicable legal requirements. It should also state whether, based on their knowledge and understanding of the company and its environment obtained in the course of the audit, they have identified material misstatements in the directors' report and, if so, an indication of the nature of each of such misstatements.
[36] Breach of this obligation is classed as a category 3 offence.
[37] Section 9 of S.I. No. 312/2016 - European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016.

B. Duty to Act with Professional Integrity[38]

An auditor must carry out his audit with professional integrity[39], in accordance with the ethical code of their regulatory authority[40]. Integrity is seen as the cornerstone of professional behaviour and requires the auditor to be to be straightforward and honest in their professional and business relationships, to maintain the auditing standards of their professional bodies, and to act honestly, responsibly and fairly in the execution of their duties. The auditor is also under an obligation to maintain confidentiality and objectivity in the performance of their duties.

C. Duty to Act with Reasonable Care and Skill

In preparing their report they must exercise the level of skill, care and caution[41] that would be expected of a reasonably competent, careful and cautious auditor. In *Re Thomas Gerrard and Son Ltd* (1967)[42] the Court noted that in the present day a reasonably competent, careful and cautious auditor would indubitably take steps to verify the accuracy of the financial figures. They further stated that:

> *"the auditors have to satisfy themselves as to the substantial accuracy of the accounts, and to do so they must go further than merely looking at the book entries."*[43]

According to Justice Astbury in *Re Republic of Bolivia Exploration Syndicate Ltd (1914)*[44]:

> *"I think that auditors of a limited company are bound to know or make themselves acquainted with their duties under the articles of the company whose accounts they are appointed to audit, and under the Companies Acts for the time being in force; and that when*

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[38] According to Francis Bacon, English philosopher and statesman, 1561 – 1626 it is "not what we profess but what we practice that gives us integrity."

[39] Section 390 of the Companies Act 2014.

[40] Click on the attached hyperlink to access the CPA Code of Ethics (June 2016): https://www.cpaireland.ie/CPAIreland/media/Professional-Standards/Technical%20Resources/Ethics/cpa-code-of-ethics-june-2016.pdf According to this code a CPA member must not knowingly be associated with reports, returns, communications or other information where they believe that the information: (a) Contains a materially false or misleading statement; (b) Contains statements or information furnished recklessly; or (c) Omits or obscures information required to be included where such omission or obscurity would be misleading. When a member becomes aware that the member has been associated with such information, the member must take steps to be disassociated from that information.

[41] As per Lord Justice Lopes in Re Kingston Cotton Mills Co. (No. 2) [1986].

[42] See footnote 29. This case concerned the issue of auditor negligence. The facts are as follows: the managing director of a company falsified the company's books by three methods. He caused the half-yearly stock valuation to be inflated by the inclusion of non-existent stock; he caused the price payable on the purchase of stock made at the end of each half-yearly period to be included in the outgoings of the succeeding period by altering invoices in a manner immediately apparent to anyone looking at the invoices; and he caused the price payable for sales made after the end of the relevant period to be included in the preceding period. The company's auditors obtained the information about the various matters on which they were required to report, principally from the managing director, whom they believed to be of the highest integrity, and they accepted his explanation of the alterations. The auditors certified the accounts, tax was paid on the inflated profits, and the directors recommended and the members confirmed a payment of dividend during the financial years ending in March, 1957 to 1962. The frauds were later discovered and the company went into liquidation. The issue arose as to whether the auditors were liable in negligence in respect of this fraud. The auditors were deemed liable in this situation as upon discovery of the altered invoices it was the duty of the auditors to make an exhaustive inquiry and to inform the board of directors, and in all the circumstances the auditors in failing to make such inquiries were in breach of their duty.

[43] At p. 468.

[44] [1914] 1 Ch. 139.

it is shown that audited balance-sheets do not show the true financial condition of the company and that damage has resulted, the onus is on the auditors to show that this is not the result of any breach of duty on their part." [45]

In *Kelly v Haughey Boland and Co (1989)* [46] the Court concluded that the auditors were in breach of their duty of care and skill in failing to attend a stock take relevant to the audit period, as their professional body required that an auditor should ascertain what arrangements a company has made for accurate stocktaking and that he should test them. According to Justice Lardner:

"The auditor's duty was to see whether the client was operating and carrying out adequate arrangements for the proper counting of stock with a view subsequently to valuing that stock. One way for the auditor to carry out this duty was to attend at the stocktaking and to observe while the stock was being taken." [47]

Auditors who fail to carry out the audit with due skill, care, and diligence may be found liable to the company and expected to pay damages for losses suffered by the company. They may also be subject to disciplinary sanctions by the Irish Auditing and Accounting Supervisory Authority[48].

In relation to their civil liability an auditor can be liable to a client in both contract law and the law of tort. It is not permissible to place a limitation on this liability, as Section 235 of the Companies Act 2014 prohibits all company officers from using an exclusion clause to escape liability for negligent actions.

In relation to this duty and tort law, an auditor owes a duty of care to the company and to the shareholders collectively. He does not owe a duty of care to existing individual shareholders who rely on the accounts for a purpose other than for which they were intended, which was to enable the shareholders to exercise their rights regarding the management of the company[49].

That is not to say that an auditor does not owe any duty of care to a third party who relies on his audited accounts, but this duty only arises where a third party relies on the accounts and the auditor knows or should reasonably be aware that the third party is relying on these accounts/reports. However, this duty arises in tort only and not in contract (as there is no contract between the parties). For example, an auditor is asked by a company to produce an updated auditors report for the purpose of due diligence, where the company is the target of an intended takeover or merger. In these circumstances the auditor also owes a duty of care to the company proposing the takeover or merger, as he should be reasonably aware that they will rely on the contents of his report for the purpose of valuing the company.

In *ADT v BDO Binder Hamlyn (1995)* a partner in the defendant accountancy firm met with a representative of the plaintiff company. At this meeting the partner confirmed to the representative that he stood over the audited accounts of Britannia Security Systems (which he had signed off on 11

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[45] Ibid at p. 171.
[46] [1989] I.L.R.M. 373 (HC (Irl)).
[47] Ibid.
[48] According to an article in the Irish Times online (Dec 2, 2019), IAASA has the power to impose hefty fines on individuals and their firms for any failings. For individuals a penalty of up to €100,000 can be levied, and for a firm a fine of up to €100,000 per partner can be imposed. IAASA can also impose various other conditions on firms, and it can convene a panel of experts to conduct a disciplinary inquiry into individuals or firms. In the UK in 2019 the Regulator imposed a fine of ST£5m on KPMG for misconduct in relation to work done for *BNY Mellon*, the world's largest custodian bank. The misconduct related to a failure by KPMG to comply with rules on safeguarding client assets during the financial crisis.
[49] As per Caparo Industries PLC v Dickman [1990] UKHL 2.

weeks previously). ADT required this confirmation as they were in the process of making a bid to effect a takeover of this company. This Court ruled that this confirmation was taken as an assumption of responsibility and, as the accounts had been prepared negligently, and Binder Hamlyn was aware that these accounts would be relied upon for the purpose of the takeover bid, they were held liable to repay the amount that ADT had overpaid for Britannia Security Systems, a total of ST£105 million (including interest and costs).

In *Royal Bank of Scotland v Bannerman Johnstone Maclay (2005)*[50] the Court determined that a firm of chartered accountants owed a duty of care not only to the company they were auditing, but also to the bank who relied on the auditor's accounts in assessing the company's loan application. Accordingly the auditors were deemed liable when the company was declared insolvent, as the Court was of the opinion that it was reasonable to assume that his accounts would be relied on by third parties, such as banks who had dealings with the company. According to Lord Justice Clerk (on appeal):

> *"... auditors may incur liability to third parties such as shareholders, creditors and prospective investors if they undertake work that exceeds the specific functions of auditors under [the companies legislation] for example, by assisting in a due diligence operation being carried out on behalf of a prospective investor, … by making express representations to a prospective bidder as to the financial state of the company, … by preparing accounts for submission to a prospective investor … or by making representations for inclusion in bid defence documents … [however] mere knowledge of an auditor that the company will probably supply the audited accounts to a third party creditor is not enough in itself to impose a duty of care … the provider of the information or advice [must] know that it will be passed to the third party recipient for a specific purpose and that the recipient is likely to rely on it for that purpose."*[51]

Duty to Report Indictable Offences[52]

Auditors are required to make a report to the Director of Corporate Enforcement if in the performance of their duties information comes to their attention that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has committed a category 1 or 2 offence under the Companies Act[53]. The Director may then require that the auditor furnish them with the relevant information, give them access to the books and documents in their possession or control, or access to facilities for taking extracts or copies from these documents.

Such a report is not a breach of an auditor's professional or legal duties to their client, and contravention of this obligation is classed as a category 3 offence.

Duty to Report Failure to Maintain Proper Books of Accounts[54]

If the auditors at any time form the opinion that the company is failing to maintain accounting records (in contravention of Sections 281-285) the auditors must deliver a written notice (by recorded delivery) on the company notifying it of their opinion and within 7 days of the delivery of

[50] [2005] 1 S.C. 437
[51] Ibid at 448-449.
[52] Section 393 of the Companies Act 2014.
[53] In 2018 the ODCE received a total of 73 indictable offence reports from auditors (compared to 82 in 2017), 29% of which related to Directors' loan infringements, 18% in relation to a failure to maintain proper accounting records, and 47% of which related to infringement of entity financial statements.
[54] Section 392 of the Companies Act 2014.

this notice on the company, notify the Registrar of Companies[55] (who will then notify the Director of Corporate Enforcement) of this breach[56]. This reporting obligation does not arise where the breach is deemed to be minor or otherwise immaterial in nature.

Furthermore, if after forming their opinion to the effect that proper accounting records are not being maintained, the auditors form the subsequent view that the directors of the company have taken the necessary steps to ensure that proper books of account are being kept, the requirement to notify the Registrar of Companies ceases.

Such a report is not a breach of an auditor's professional or legal duties to their client, and contravention of this obligation is classed as a category 3 offence.

Miscellaneous Reporting Obligations

The EU Audit Regulations 2016[57] also requires statutory auditors to report an irregularity to the authorities, if the statutory auditor believes that the irregularity is not being addressed appropriately by the company.

In addition, Section 172 of the Finance Act 1995 requires an auditor who becomes aware that the company or its officers have committed a revenue offence, to communicate with the company and request their compliance. They must also notify the Revenue Commissioners of the breach. Unless the company and its officers achieve compliance within six months of the notice of the breach, the auditor must resign from his position, and is thereafter precluded from acting as auditor for this company for a period of three years or until compliance occurs.
Failure to comply with the requirements of this legislation can result in the imposition of a fine and/or up to two years imprisonment, where prosecution arises on indictment.

Conclusion

The role of a statutory auditor is not to be undertaken lightly, and the requirements imposed upon them by their regulatory body, the company's own Constitutional Document(s), the companies legislation, as well as other statutory obligations (both domestic and EU) is significantly onerous, and can result in the imposition of both of civil and criminal sanctions. Therefore, a statutory auditor must act cautiously and competently at all times, when undertaking their duties.

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[55] In April 2019 the auditing firm Deloitte reported the Football Association of Ireland to the CRO, noting that the association's accounts were not being properly kept.
[56] 18 such reports were received in 2018.
[57] S.I. No. 312/2016 - European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016.