



The Consultative Committee of Accountancy Bodies-Ireland

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

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Ms Sabha Green
Company Law
Auditing and Accounting Policy
Department of Jobs, Enterprise and Innovation
Earlsfort Centre
Lower Hatch Street
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25 May 2017

Dear Sabha

General Scheme of Companies (Statutory Audits) Bill 2017 Head 167 – audit exemption

The Business Law Committee ('BLC') of the Consultative Committee of Accountancy Bodies-Ireland ('CCAB-I') welcomes the opportunity to respond to the General Scheme of Companies (Statutory Audits) Bill 2017 ("the Heads"). CCAB-I represents the following prescribed accountancy bodies in Ireland:

- Institute of Chartered Accountants in Ireland ("Chartered Accountants Ireland");
- Association of Chartered Certified Accountants ("ACCA");

- Chartered Institute of Management Accountants (“CIMA”);
- Institute of Certified Public Accountants (“CPA”).

The Heads primarily seek to transpose the requirements of the EU Audit Regulation and Directive (‘ARD’) – elevating the provisions of Statutory Instrument 312 of 2016, European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016 (“S.I. 312 of 2016”) to primary legislation and legislating for the public oversight and regulatory framework for audits. As such, the proposals in the Heads are being considered by the audit technical and regulatory functions of our respective bodies.

In this submission, BLC focusses on the proposal in Head 167 to amend section 343(5) of the Companies Act 2014 such that there would be an automatic loss of audit exemption for companies applying to the Court for an extension of the filing deadline.

CCAB-I strongly advocates a regulatory environment which is effective in promoting compliance but is also both proportionate and supportive of business. This view is consistent with stated government policy to reduce the cost and regulations around doing business in Ireland.

The principle of audit exemption being available for small companies is also supported in EU law. In that regard article 43 of Directive 2013/34/EU of the European Parliament and of the Council states:

“The annual financial statements of small undertakings should not be covered by this audit obligation, as audit can be a significant administrative burden for that category of undertaking, while for many small undertakings the same persons are both shareholders and managers and, therefore, have limited need for third-party assurance on financial statements.” We recognise the importance of companies complying with legal obligations as regards the publication of financial information and consider that, in most circumstances, the ten month period allowed for preparing and filing this information is sufficient. However, consistent with the significance placed on audit exemption in article 43 above, CCAB-I continues to consider the loss of audit exemption for late filing to be an overly-punitive sanction.

The CCAB-I recommendation in our submission on the 2012 Bill previously raised these concerns including that:

- The appropriate penalty for late filing should be monetary penalties, escalating in circumstances of persistent repeat offenders and which may ultimately lead to more serious penalties, including strike-off or prosecution of directors;
- The relevant sections should be reconsidered with a view to removing the penalty of loss of audit exemption in cases of late filing. Failing that, the Bill should make provision to address '*force majeure*' scenarios, perhaps by granting some discretion to the Registrar of Companies in such circumstances.

In this context, CCAB-I does not support the proposed changes to section 343(5) to provide for an automatic loss of audit exemption. It is our view that the proposed amendment would render the section ineffective in all cases, even in genuine '*force majeure*' circumstances.

CCAB-I considers that should the Court accept the points made in the submission of the company in question for an extension to the filing deadline, then this should equally suffice as justification for the purposes of maintaining the audit exemption. The decision as to whether audit exemption is lost should therefore rest with the Court in such cases.

On a practical level, in addition to the punitive cost to companies of arranging an audit, it should be noted that the removal of audit exemption may force companies into a last minute change of accounting firms, as many accounting firms are not registered auditors. The need to move from an existing accounting firm who may have a long-standing relationship with the company and knowledge of the company's business to a new firm with no previous relationship with the business requires an investment of time and expense on behalf of the company and the auditor. This undoubtedly adds to the costs involved and may lengthen the delay in filing. We consider this administrative and financial burden to be disproportionate to the late filing offence for small companies. The cost and disruption which can arise from switching accounting services provider seems to us to be contrary to government policy to ensure Ireland remains an attractive business environment for companies of all sizes.

CCAB-I understands that there was a significant increase in applications to the Court for an exemption during 2016. CCAB-I notes that the financial reporting environment for small companies in Ireland was subject to significant uncertainty and consequently challenge during 2016 due to the delay in transposing the EU Accounting Directive in Ireland (due by mid-2015, the Companies (Accounting) Bill 2016 was published in August 2016 and is not yet enacted at the time of writing). CCAB-I is of the view that this uncertain environment with such significant challenge for Irish small and micro companies correlates with and may well have been a contributory factor in the 'spike' in applications to the Court for an extension in 2016.

Please feel free to contact either me, or my colleague Karen Flannery at karen.flannery@charteredaccountants.ie or on 01-637-7389, if you would like to discuss this issue further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark Kenny', with a stylized flourish at the end.

Mark Kenny

On behalf of the Consultative Committee of Accountancy Bodies - Ireland