

Incorporating an Audit Firm

October 2018

**Companies Act 2014 – S.1464 – S.1473 governs
Approval of Statutory Auditors and Audit Firms**

*** Firms includes a body corporate**

Incorporation of an Audit Firm

If you are considering the incorporation of your practice you should review the following points.

Registration with CPA

Bye Law 13 Practice and Audit Regulations provides for the incorporation of an audit firm.

Conditions for approval as statutory audit firm

An Authorised Firm must be controlled in accordance with 13.38. (13.38.1) - **Registration of a Firm which is a Partnership / Body Corporate.**

Any Firm offering services to the public in accordance with bye law 13.15.3 must register that Firm in accordance with this Bye Law. The Committee may register a Firm which is a partnership or a body corporate only if the Committee is satisfied that:

- a) the partnership or body corporate meets the requirements set out in this Bye Law 13;
- b) at least one partner/director is a Member of the Institute holding a valid Practising Certificate with the exception of a firm registered in accordance with Section 1465 of Companies Act 2014. (Basis on which audit firms approved in other Member States may carry out audits in State);
- c) each partner/ director is either:
 - 1. a Member of the Institute holding a valid Practising Certificate;
 - 2. an Affiliated Partner; or
 - 3. a Statutory Audit Firm in accordance with Irish law;
 - 4. an individual who holds a qualification to audit accounts under the law of another EEA member state other than the UK and Ireland and who is also an Affiliated Partner and has been approved by the Registration Committee;
- d).
 - i). at least 51% of the voting rights are held by Statutory Auditors or individuals who hold a qualification to audit accounts under the law of an EEA member state other than the UK and Ireland in a Statutory Audit Firm;
 - ii). at least 51% of the voting rights are Practising Certificate holders in a Non-Audit Firm.
- e). if the Firm's policies are set by or implemented under the dictation of a Management Committee, Board or other body, at least 75% of the voting rights in that body are held by Statutory Auditors or individuals who hold a qualification to audit accounts under the law of an EEA member state other than the UK and Ireland in an Audit Firm or Practising Certificate holders in a non-audit firm.

The Companies (Statutory Audits) Act, 2018 Sec 1441 deletes “3 (g) a body corporate” as one of the persons not qualified for appointment as a public auditor of a society registered under the above named Acts.

Therefore, a corporate body can **now** conduct the audit of a Credit Union or a company incorporated under either the Industrial and Provident Societies Act 1893 to 2014 or the Friendly Societies Acts, 1896 to 2014.

Resignation from audit appointments

As the incorporation of a firm will result in a new legal entity conducting the audit you will need to ensure that the non -corporate body has resigned from the audit.

You must ensure that this is conducted in accordance with the **Companies Acts. Resignation as Statutory Auditor – S. 400 of the Companies Act 2014**

S. 400 of the Companies Act 2014 provides for the circumstances where the statutory auditor decides to resign as auditor (s.399 relates to the circumstances whereby the company has terminated the appointment of the auditor due to the audit exemption and S.394 where the auditor has been removed). In the circumstances of S.400 the auditor must serve a notice in writing to the company from the office on the company stating their intention to resign from the office of statutory auditors to the company. The resignation shall take effect on the date on which the notice is so served or on such later date as may be specified in the notice.

Such a statement shall contain either a statement to the effect that there are no circumstances connected with the resignation that the statutory auditors concerned consider should be brought to the notice of the members or creditors of the company, or a statement of any such circumstances as mentioned.

Sample wording where there are no circumstances that need be brought to the attention of the creditors or members;

“Dear X,

We hereby give notice in accordance with S. 400 of the Companies Act 2014 that we are resigning as statutory auditor of Y Ltd.

There are no circumstances connected with the resignation that we consider should be brought to the attention of the members or creditors of the company.”

Within 14 days of the serving of the notice a copy of the statement shall be sent to the CRO. Within 30 days of the cessation the auditor must notify IAASA - please visit <http://www.iaasa.ie/FAQs/Notifications-on-cessation-of-Office-by-an-auditor> for further information.

Additional requirements apply where the auditor is of the opinion that there are circumstances that need to be brought to the attention of the members or creditors. The auditor may also request that a general meeting of the company be convened in accordance with S.401 and 402.

In the event that your position as auditor has been terminated you will need to inform IAASA to ensure compliance with S.403 of the Companies Act 2014 -Duty of auditor to notify Supervisory Authority regarding cessation of office within 30 days of the cessation

You will find some details on the IAASA website, for further information, please visit <http://www.iaasa.ie/FAQs/Notifications-on-cessation-of-Office-by-an-auditor>

The notice to IAASA should be accompanied by a copy of any representations in writing made to the company by the outgoing auditor, in relation to the intended resolution removing the auditor, except where such representations were not sent to the members of the company in consequence of an application to the court.

Professional Indemnity insurance

CPA Ireland requires that all holders of practising certificates obtain a minimum level of insurance cover and practising certificate holders will be required to evidence compliance, with the Institute's Professional Indemnity Insurance Bye-Law 9.

The level of indemnity required by practitioners holding practising certificates will be dependent upon the firm's 'total income' for the previous financial year. The Bye Laws require that the minimum limit of indemnity on PII in respect of each and every claim shall be the higher of two and one-half times the gross fee income of the practice for its last financial year or in the case of a sole practitioner, €70,000 or in any other case €130,000. The minimum limit of indemnity shall not be construed as the recommended level which is a matter for each Member to consider carefully taking their individual circumstances into consideration. For the purposes of the Bye-Laws an upper limit of €1,500,000 is acceptable.

Engagement Letters

You should ensure that your engagement letters are updated to reflect the required changes to the Firms Audit engagements.

Care should be taken to ensure that the text is tailored according to the circumstances of the agreement with your clients.

The ISAs (Ireland) as adopted by the Irish Auditing and Accounting Supervisory Authority (IAASA), are mandatory for audits of financial statements in periods beginning on or after 17 June 2016 for which audit opinions are signed after 1 February 2017).

Please refer to ISA 210 (Ireland) "Agreeing the terms of audit engagements" (Effective for audits of financial statements of periods beginning on or after 17 June 2016 for which audit opinions are signed after 1 February 2017.

Members are reminded of the requirements under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended as amended by Part 2 of the Criminal Justice Act 2013 to identify clients and to maintain the CDD documentation.

Stationary

You should ensure that you firm's stationary reflect the change and meet legal requirements.

S. 151. of the Companies Act 2014 provides for the Particulars to be shown on all business letters of company

A company shall have the following on all its business letters and order forms:

- a) The name and legal form of the company;
- b) The place of registration and the registered number under which it is registered;
- c) the address of its registered office; and
- d) If on any business letters or order forms of a company there is reference to the share capital of the company, the company shall ensure that the reference is not stated otherwise than as a reference to the issued share capital of the company that is paid up.

Where a company has a website, it shall display in a prominent and easily accessible place on that website the referred to in (a) to (c) above and if there is reference on such a website to the share capital of the company the same requirement under (d) applies.

Administrative and Filing Requirements

Some additional compliance and filing requirements apply to a company, which do not apply to a partnership. For example:

- the requirement to keep proper books of account which give a true and fair view of the state of affairs of the company;
- the requirement to present accounts annually to shareholders at the AGM; and
- the requirement to file an annual return in the Companies Registration Office.

If there is a concern in relation to the public availability of company's accounts, it is possible to implement a structure such that the audit company would not have to file its accounts, whilst maintaining the protection of limited liability.

Taxation

There may be taxation implications of this change which you should also consider.

Both the tax implications of incorporating and the tax implications following incorporation should be given due consideration prior to proceeding with the incorporation of an audit business.

Summary

- Various regulatory requirements (for example registration with the CPA as an Audit firm and the minimum percentage voting rights in the company required to be held by statutory auditors) will also need to be complied with in the incorporation process.
- Future audits will be conducted by a new legal entity therefore the audit firm will need to resign as auditor in compliance with the Companies Acts and IAASA notification requirements.
- The company will need to be appointed as auditor and a new engagement letter should be put in place.
- Professional Indemnity Insurance will need to be obtained in the name of the company.
- The firm's stationary shall reflect the change and meet legal requirements in accordance with the Companies Act 2014.
- Administrative and Filing Requirements shall meet the legal requirements in accordance with the Companies Act 2014.

Further information

Should you have any queries, please feel free to contact Cath Matthews, Professional Standards Department on 01-4251023.