

Chartered Accountants Ireland or CCAB-I material

Technical Release

TR 04/2015 - Companies Act 2014 A statutory auditor's duty to report to the Director of Corporate Enforcement

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1.INTRODUCTION

The Companies Act 2014 ('CA 2014') was signed into law on 23 December 2014. The vast majority of the provisions of CA 2014 are to commence on 1 June 2015. With limited exceptions, the accounting and auditing related provisions commence for financial statements approved on or after 1 June 2015¹.

This Technical Release addresses the obligation on a statutory auditor to report to the Director of Corporate Enforcement ('DOCE') in accordance with sections 392 and 393. The intention of this Technical Release is to highlight changes to these reporting obligations vis-à-vis the existing requirements under previous Companies Acts.

This Technical Release is intended to assist members in familiarising themselves with some of the key changes in CA 2014 and not to be an in-depth analysis of the relevant provisions of CA 2014.

References to 'section(s)' are references to the relevant sections of CA 2014, unless otherwise indicated.

2.DUTY TO REPORT

Section 393(1) sets out the duty as follows:

“Where, in the course of, and by virtue of, their carrying out an audit of the financial statements of the company, information comes into the possession of the statutory auditors of a company 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, the statutory auditors shall, forthwith after having formed it, notify that opinion to the Director and provide the Director with particulars of the grounds on which they have formed that opinion.”

This duty has not changed substantially from what was previously addressed by section 194(5) of the Companies Act 1990 (as amended). The methodology and approach contained in APB Bulletin 2007/2 “The Duty of Auditors in the Republic of Ireland to Report to the Director of Corporate Enforcement” continue to apply when deciding if a report to the DOCE is required although the company law offences and references change with the commencement of CA 2014.

The changes most likely to affect reporting by a statutory auditor to the DOCE are set out below.

3.CATEGORY 1 AND CATEGORY 2 OFFENCES

Section 871(1) defines a category 1 offence as one which could give rise to either:

- A summary conviction, a Class A² fine or a prison term not exceeding 12 months or both; or
- A conviction on indictment, a fine not exceeding €500,000 or a prison term not exceeding 10 years or both.

Section 871(2) defines a Category 2 offence as one which could give rise to either:

- A summary conviction, a Class A2 fine or a prison term not exceeding 12 months or both; or
- A conviction on indictment, a fine not exceeding €50,000 or a prison term not exceeding 5 years or both.

While the terminology has changed, the obligation on a statutory auditor to report to the DOCE continues to relate to offences that can be tried on indictment.

4.CHANGES IN REPORTABLE OFFENCES

CA 2014 has introduced a number of newly reportable offences and has also changed some previously reportable offences. In particular a statutory auditor should have regard to the following:

New Offences

4.1 True and Fair View

Section 324(6) provides that every director of a company who is party to the approval of statutory financial statements that do not give a true and fair view or otherwise comply with the

requirements of CA 2014³ knowing that the financial statements do not give such a view or otherwise so comply or is reckless as to whether this is so is guilty of a category 2 offence.

A statutory auditor will consider the reporting obligation to the DOCE where the opinion in the statutory audit report is qualified with regard to:

- the truth and fairness of the entity or group financial statements of a company;
- the compliance of the financial statements with the requirements of CA 2014³;

in light of the provisions of section 324(6).

There are various types of qualification of the statutory auditor's report possible in accordance with CA 2014 and International Standards on Auditing (UK and Ireland). A qualification may not automatically give rise to a reporting obligation to the DOCE in all cases; it will be necessary for the statutory auditor to give due consideration to the facts and circumstances involved. Chartered Accountants Ireland is continuing to consider the implications of this new reportable offence with respect to the statutory auditor's duty to report to the DOCE and may issue further guidance in due course.

4.2T Directors' Report - Relevant Audit Information

Section 330⁴ requires directors to state in their Directors' Report that, as far as each director is aware, there is no relevant audit information of which the statutory auditor is unaware and that each director has taken all the steps necessary to be aware of and establish that the statutory auditor is aware of relevant audit information. Any director who knew that such statement was false or was reckless as to whether it was false and who failed to take reasonable steps to prevent the approval of the Directors' Report shall be guilty of a category 2 offence.

A statutory auditor should be aware of this requirement when considering the Directors' Report in the course of the audit and consider any obligation to report to the DOCE if necessary.

4.3T Signature of Balance Sheet

Section 324 requires a director/directors of a company to sign the original balance sheet and the signatory/ies' name/s to be shown on each copy of that balance sheet to be laid before the members of the company or otherwise circulated or published or delivered to the Registrar of Companies. If these requirements are not complied with, the company and any officer of it in default shall be guilty of a category 2 offence.

A statutory auditor will consider the reporting responsibility to the DOCE in the event of becoming aware that such signature/s or signatory's/ies' name/s are absent from the specified documents.

4.4T Abridged Financial Statements

Section 355(7) provides that every director of a company who is party to the approval of abridged financial statements which have not been prepared in accordance with CA 2014 and who knows that they have not been so prepared or is reckless as to whether they have been so prepared shall be guilty of a category 2 offence. Additionally sections 355(9) and 356(5) provide that the company and any of its officers who are in default due to non-compliance with the requirements of CA 2014 as regards the documents, including the statutory auditor's special report on the abridged financial statements, to be annexed to the Annual Return will be guilty of a category 2 offence.

A statutory auditor will consider the reporting responsibility to the DOCE where the opinion is formed that the abridged financial statements were prepared incorrectly or in the event of becoming aware that the Annual Return fails to include all the necessary attachments.

Changed Offences

4.5 Adequate Accounting Records

Sections 281 to 285 set out the obligation on a company to keep adequate accounting records and also set out the particular requirements to be met in this regard. A company that fails to keep adequate accounting records and any director who fails to take all reasonable steps to secure the company's compliance with the requirements of sections 281 to 285 inclusive shall be guilty of a category 1 or a category 2 offence, depending on the nature of the non-compliance.

A statutory auditor is required, in the statutory auditor's report, to express an opinion on whether the accounting records of the company were sufficient to permit the financial statements to be readily and properly audited.

Additionally, in the course of, and by virtue of the audit, a statutory auditor may form the opinion that the accounting records are not adequate in relation to another requirement set out by CA 2014. A statutory auditor should be aware that companies are required to comply with all the requirements set out in sections 282 to 285 in order to have adequate accounting records. Requirements newly introduced by CA 2014 include:

- taking adequate precautions to guard against falsification, and facilitating discovery of such falsification if it occurs, when the accounting records are kept otherwise than in a bound book (section 282(2));
- location of a server computer in the State where that computer provides services to another computer which are necessary for the maintenance of the accounting records of the company in the State (section 282(6) and (7)⁵).

Where a statutory auditor forms the opinion that adequate accounting records are not held, section 392 requires the statutory auditor to notify the company, by recorded delivery, of that opinion, and, if the directors do not take steps to ensure the adequacy of the records within seven days of that notification to the company, that the statutory auditor notifies the Registrar of Companies in the prescribed form. A statutory auditor is not required to make this notification where the opinion is formed that the contravention concerned is minor or otherwise immaterial in nature.

A statutory auditor is obliged by section 393(1) to report to the DOCE, if he/she forms the opinion that the company has not kept adequate accounting records. Such an opinion may also require the statutory auditor's report on the financial statements to be qualified if, in the statutory auditor's opinion, the accounting records did not permit the financial statements of the company to be readily and properly audited. See section 2.4 of Technical Release TR 03/2015 '*Companies Act 2014 Implications for a statutory auditor's report on statutory financial statements*' for further information on the audit opinion with regard to accounting records.

4.6A Statutory Auditor's Right to Information and Explanations

A statutory auditor's right to information and explanations, within two days of having made the request, from the officers of the company being audited is set out in section 387. Section 388 further requires a subsidiary entity and its statutory auditor to provide the parent company's statutory auditor with information and explanations requested reasonably by the parent company's statutory auditor for the purposes of that parent company's statutory audit within five days. Any officer of a company or subsidiary undertaking or statutory auditor not complying with these provisions is guilty of a category 2 offence.

Should a statutory auditor experience difficulty in obtaining information from the officers of a company or from its subsidiary company or that company's statutory auditor, consideration is given to the reporting requirement to the DOCE.

Additionally, section 389 provides that an officer of a company who knowingly makes a false or misleading statement to the statutory auditor or makes a statement reckless as to whether it is false or misleading in a material particular shall be guilty of a category 2 offence. Should a statutory auditor believe that he/she has received such false or misleading statements, consideration is given to the reporting obligation to the DOCE.

4.7 False Statements in returns, financial statements, etc

Section 406 provides that any person who intentionally makes a statement that is false, knowing that statement to be false, in a material particular in any return, statement, financial statement or document required by Part 6 of CA 2014 is guilty of a category 2 offence⁶. Part 6 of CA 2014 includes requirements for adequate accounting records to be kept, financial statements and directors' report to be prepared and annual returns to be filed containing all necessary documentation.

Should a statutory auditor, in the course of and by virtue of the audit, become aware of a misstatement in a document specified by Part 6, this will prompt a consideration of the reporting requirement in relation to section 406, if the statutory auditor considers that the document is false in a material particular and that the person who made that statement did so intentionally, knowing the statement to be false in a material particular.

4.8 Other Reportable Offences

The categorisation of Company Law offences (into Category 1 to Category 4 offences) in CA 2014 has resulted in a decrease in the number of offences that are reportable by a statutory auditor to the DOCE from those previously reportable under the previous Companies Acts. However, in addition to the offences specified above, there are other Category 1 and Category 2⁷ offences that would prompt a statutory auditor to consider the duty to report to the DOCE if, in the course of

and by virtue of the audit, the opinion is formed that a company, its officers or agent has committed one or more of these offences.

[1](#) The Companies Act 2014 (Commencement) Order 2015 (S.I. No. 169 of 2015)

[2](#) The Fines Act 2010 sets a Class A fine as a fine not exceeding €5000 but exceeding €4000

[3](#) Or, where applicable, with the requirements of Article 4 of the IAS Regulation

[4](#) Section 330 commences with respect to the first day of a company's financial year beginning on or after 1 June 2015

[5](#) Where the accounting records are kept outside the State, this requirement will not apply unless Ministerial Regulation provides otherwise

[6](#) Section 876 provides for a similar offence, though it pertains to statements and documents required throughout CA 2014.

[7](#) See section 3 of this document for an explanation of what constitutes a category 1 or 2 offence.