

# TECHNICALLY SPEAKING

## CONSTRUCTION WORKERS PENSION SCHEME - PENSIONS BOARD POWERS CLARIFIED

The Pensions Board has received information from trustees of the Construction Workers Pension Scheme (CWPS) that certain employers have deducted pension contributions from the wages of employees but not paid them over to CWPS. This is an offence under Section 58A of the Pensions Act 1990. In investigating instances of un-remitted contributions, the Pensions Board in many cases uses its Section 18 powers. Section 18 of the Pensions Act gives the Pensions Board powers to investigate the state and conduct of a pension scheme. Those subject to these powers include auditors and accountants of an employer. They may be required, under the Act, to provide the Board with such information and explanations and such books of account and other documents in relation to the scheme as the Board requires. The Board also has the power to enter business premises without notice or warrant in order to obtain the information. These premises may include those of the accountant or auditor. The Board may examine or remove relevant documentation and require a user of data equipment to assist the Board. Obstruction of these investigations or failure to produce information is an offence and may be punished by a fine and/or imprisonment.

Members are also encouraged to report to the Pensions Board where they become aware of failure to remit contributions. Where such reports are made, Section 84 of the Act provides protection to those making reports.

## CREDIT UNIONS

The registrar has recently clarified a number of issues with respect to dividend policy and the quantum of loans that can exceed five and 10 years in duration. The clarification is contained in the December 2008 Registrar of Credit Unions (RCU) newsletter which can be downloaded at [www.financialregulator.ie](http://www.financialregulator.ie)

## INSOLVENCY APPOINTMENTS

A number of practices have contacted Advisory Services about acquiring an insolvency licence. Insolvency licences are only necessary for UK and NI insolvencies. In ROI, all you are required to have is experience and competency in insolvency to accept an appointment. Members should be aware that insolvency can be a high-risk appointment with one practice recently being sued for and losing €6m for not exercising due care.

Insolvency is a bit like auditing: you just can't learn it from a book. It is about training and working with an experienced practitioner. There are a set of legal rules which can be read but they are not always clear, and practices that have been developed over time are impossible to learn from pure study alone. There are a series of Statements of Insolvency Practice that will help, and there is a members voluntary liquidation work pack on the market, but it is usually the simple, seemingly straight forward, assignments that go wrong. An insolvency practitioner is subject to overview from the Office of the Director of Corporate Enforcement (ODCE) and must make regular reports to ODCE.

The monitoring of insolvency assignments by ACCA is somewhat different to the monitoring of audits. Note that, in the UK, there is a licensing arrangement with additional examinations and active monitoring of insolvency appointments holders.

## FINANCIAL STATEMENT COMPLIANCE WITH ACCOUNTING AND LEGAL REQUIREMENTS I

Entities in Ireland that are quoted on a regulated market are subject to review of their financial statements by the Irish Auditing & Accounting Supervisory Authority (IAASA). IAASA does not publish the outcome of its reviews but does contribute to a CESR database of decided cases. CESR has just published the fourth extract from its database of enforcement decisions. The full detail is at [www.cesr.eu](http://www.cesr.eu) The publication includes European entities



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that had issues with areas such as deferred taxation assets; classification of financial instruments; recognition of intangible assets; post retirement benefits; and a number of other issues. The report is essential reading for anybody preparing or auditing the financial statements for an entity subject to review by IAASA.

## FINANCIAL STATEMENT COMPLIANCE WITH ACCOUNTING AND LEGAL REQUIREMENTS II

IAASA has published its observations on selected year-end financial reporting issues affecting Irish-listed entities. While no companies have been identified, the issues that are arising in IAASA's reviews are clearly identified. Go to [www.iaasa.ie/publications/FRSUjobs\\_Jan09.pdf](http://www.iaasa.ie/publications/FRSUjobs_Jan09.pdf) for more detail.

## VOLUNTARY STRIKE OFF

CRO has changed the format for advertisements for voluntary strike off with effect from 1 February 2009. If a company changed its address or name within a year of applying for voluntary strike off, the previous name or address must also be listed on the strike-off advertisement.

## INSURANCE BROKERS

The Financial Regulator allowed some insurance brokers currently authorised as AAs or MAI to transfer to IMD authorisation. IMD authorisation has a lot less regulation and, for example, auditors of IMDs do not currently need to make a Statutory Duty Report, something that is required for AAs and MAIs. The Financial Regulator maintains a registrar of all insurance intermediaries, noting their authorisation category and the agencies that they hold. The list is at: [www.financialregulator.ie](http://www.financialregulator.ie)

## AUDITING PRACTICES BOARD IN DUBLIN

Jon Grant and Richard Fleck from the Auditing Practices Board (APB) were in Dublin recently to speak at a CCABI-sponsored event on the future of audit reports and the 'clarity project'.



APB is proposing that audit reports be simplified and many of the responsibilities and duties in the current report be put on the APB website and then just cross referenced in the audit report. The proposal allows for a more structured audit report which is clearer for the user. Some issues such as the Bannerman paragraph were raised and how, while most of the profession uses a Bannerman paragraph, it is not in the standard wording in ISA 700 or Bulletin 2006/1.

The clarity project is designed to re-write the auditing standards to make them clearer, for example, removing words such as 'should' and replacing them with 'must' and, generally, making the requirements clearer. In the re-write, most of the so-called 'plusses' have been removed. When ISAs replaced SASs, the UK and Ireland adopted ISAs as promulgated by the IAASB but added additional requirements (the plusses) to make the IAASB standards at least as robust as the SASs that they were replacing. The IAASB standards have now been clarified and enhanced to the extent that, other than for specific legal

requirements in the UK and Ireland, there are less than a dozen plusses left. Firms will need to update their audit programmes for the clarified ISAs, which are effective in 2009.

### CURRENT OPPORTUNITIES FOR MEMBERS IN PRACTICE

How many of your clients need serious hand holding and guidance, and how grateful will they be when this current recession is over and their businesses are thriving again? How much bigger will they grow if there is significantly less competition in the future? If the business has to cease, clients will remember the person who guided them through the process, making it painless and salvaging as much as possible.

They will know where to go when seeking advice for their next business. Also, take the opportunity to improve your practice, make your service offering more robust and wider, and your systems leaner and more efficient. Package up and sell on your unprofitable clients, concentrate on and mind the good clients. Make a care call to

all. While I would not subscribe to an often quoted 'where there is fear, there are fees,' I would subscribe to 'where there are fears in business, it is time to call in expert help and, in a difficult market, there are always new opportunities.' There will always be a need for accounting services, just make sure that it is your accounting services.

### CURRENT OPPORTUNITIES FOR MEMBERS IN INDUSTRY

Acquisition opportunities abound and second-hand machinery is at historically low prices. For most fundamentally sound businesses there are sources of finance that can be availed of. SMEs need to speak to their accountant who is likely to have some other clients who are disillusioned with the stock market, property and miserly deposit interest, and looking to invest in the real economy. How much easier will it be next year when competition is thinner on the ground? For a small, open economy like Ireland, any negative stimulus arising from tax increases is irrelevant; what is more relevant is what is done in America and elsewhere, where our exports are sold.

Energy costs are in free fall; interest rates are heading to historical lows; wage costs are decreasing; and it is now easier to hire experienced staff.

And what if you go bust? It is now a mark of having tried, not of failure. Real failure is to not have tried.

Directors of companies who genuinely tried and, due to circumstances outside their control, found their businesses failed, are not facing restriction or disqualification in the courts. It is important to face up to reality early though: think of this as giving you more time to plan and launch your next business.

### DEFINED BENEFIT PENSIONS ASSUMPTIONS

Defined benefit pension deficits or surplus (yes, there are some surpluses) have become a larger percentage of a much reduced market capitalisation for many companies. Pension liabilities for some companies now far exceed their market capitalisation and the net deficit or surplus can be a substantial number on a balance sheet. This has brought the calculation of the net deficit or surplus pensions into sharper focus. The calculation of a pension deficit or surplus is based on complex calculations and on a number of assumptions. Most of the assumptions are published in the annual financial statements and make interesting comparisons with, for example, the staff in one Irish company expected to live to 87 (male) and only 82 in another.

The assumption with the greatest effect on the overall surplus or deficit is the discount rate used for scheme liabilities. In one Irish company, a 0.25% change in discount rates changed the pension liability by 5%. FRS 17 and IAS 19 require pension scheme liabilities to be discounted using the rate of return on a high quality corporate bond of equivalent term to the scheme liabilities. AA rated corporate bond indices are used but there is a shrinking pool of such bonds. The average AA bond rates have increased almost 25%, and the recent market volatility has led to considerable additional difficulty in determining which rate to use. Rates used by Irish companies varied by 0.9% from the highest to lowest, although this may reflect the age of the workforce and, therefore, the maturity date for the particular scheme, and is not necessarily an indicator of deliberate manipulation. Directors of companies with defined benefit schemes will need to choose their discount rate carefully as there are a number of AA bonds that are substantially out of sync with the market, and bonds that are due to be upgraded or downgraded will remain within an index for a month

after their re-rating. IAASA has also drawn attention to the importance of choosing appropriate assumptions in their recent commentary.

### DEFINED BENEFIT PENSIONS II

Under the Funding Standard provisions of the Pensions Act, 1990, defined benefit schemes are required to prepare and submit actuarial funding certificates at three yearly intervals. The purpose is to assess whether pension assets are sufficient to meet its liabilities. The certificate is submitted to the Pensions Board within nine months after its effective date. If the scheme could not have met its liabilities, a funding proposal must be submitted to the Board. A funding proposal of up to 10 years was usually acceptable, but the Board has now confirmed that a period of longer than 10 years will now be acceptable in certain circumstances.

The Board will consider the following matters in deciding if a period of more than 10 years will be allowed:

- the extent to which a longer-term pension reduces the contribution rate below that required to fund a 10-year proposal;
- the existence and quality of any enforceable guarantees provided by the employer;
- the proposed investment strategy of

the fund, and the extent to which the fund will be exposed to investment risk over the course of the funding period; and,

- any exceptional circumstances which differentiate the scheme from other under-funded schemes.

It should be noted that the Board considers that an inability to pay, on its own, is not considered to constitute exceptional circumstances.

### COMPANY LAW REVIEW GROUP 2007 REPORT

The 2007 Company Law Review Group (CLRG) has a number of welcome inclusions for auditors. CLRG has recommended that the ban on auditors incorporating be removed and has recommended that there be a statutory cap on auditor liability. A statutory cap on auditor liability is quite common across Europe and would protect auditors from catastrophic claims. CLRG is also going to do some public consultation on limited liability partnerships.

CLRG has recommended that company size and audit exemption size criteria be increased. The report also recommends that small groups be allowed to claim audit exemption. Audit exemption is available to small groups in the UK.

CLRG has endorsed the IAASA position that there should be some restriction on



the use of the description 'accountant' to qualified and regulated accountants. This, they recognise, is in the consumer interest.

### COMPANIES LIMITED BY GUARANTEE

Having reviewed a few files for companies limited by guarantee, where, quite correctly, the auditor had removed the Section 40(1) paragraph from the opinion section of the audit report, it was still mentioned in the auditors responsibility section. This would appear to be a glitch in some accounts production software and it is easily missed in a review. A full disclosure list for companies limited by guarantee is available from advisory services.

ODCE has made several complaints to professional bodies about auditors filing abridged accounts for companies limited by guarantee, even when the infringements were corrected prior to ODCE discovering the error. Typically, these are tiny companies set up to own and manage the common area in an apartment block, with often less than 10 transactions a year, but being companies limited by guarantee they must file full shareholder accounts in Company Registration Office. ODCE complete the paperwork by copying the complaint to the Irish Auditing and Accounting Supervisory Authority (IAASA). Realistically, IAASA should only become involved if it is a public interest case or ODCE were dissatisfied with how a professional body dealt with the complaint. It is hard to argue that these are public interest or even of interest to the public. Although these are technical breaches of Company Law, ODCE is, to our knowledge, not itself taking a prosecution. Some ACCA members and members of other professional bodies literally pressed the wrong button on their accounting package and out came abridged accounts rather than full shareholder accounts, and they are now facing professional misconduct allegations from ODCE.

### CONSTRUCTION INDUSTRY CLIENTS

Auditors in this sector face difficult a task in auditing going concerns and drafting their audit report. In most cases, a limitation of scope on the valuation of land banks and work in progress will be necessary. An example of the audit report wording is: *'We planned our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. However, with respect to a land bank having a carrying*



*amount of €X and work in progress having a carrying amount of €X, the evidence available to us was limited because, although the directors have valued the land bank and work in progress to the best of their ability, there is no active market from which we could make an assessment of the net realisable value or value in use. Owing to the current construction industry environment, we were unable to obtain sufficient appropriate audit evidence regarding the land bank and work in progress by using other audit procedures. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements.*

*'Qualified opinion arising from limitation in audit scope  
Except for the financial effects of such adjustments, if any, as might have been determined to be necessary had we been able to satisfy ourselves as to the valuation of work in progress and land banks, in our opinion the financial statements: give a true and fair view, in accordance... etc.'*  
It is important that auditors do not take on the role of valuers or opine on valuations where professional auctioneers would fear to tread. If in doubt, limit the scope of your audit and, in some circumstances, if the matter is so material and pervasive, the auditor may want to consider a disclaimer of opinion rather than the 'except for' example illustrated above.

### AUDITING IN A RECESSION

APB has issued two bulletins (2008/10 and 2008/1) emphasising how important it is to consider carefully the implications of the restriction in credit and general recession

on an auditor's assessment of the directors' assumptions about the ability of the company to continue as a going concern for at least one year from the date of the audit report. There is a requirement in the Companies Act to disclose the 'principal risks' in the directors' report (1986 Act Section 13(1)a as amended) and accounting standards (FRS 18, para. 61) require any material uncertainties in respect of going concerns to be disclosed in the notes to the accounts. It would be unwise for an auditor to opine on a set of financial statements that did not fully disclose any going-concern issues. In addition, ISA 700, para. 31 requires that auditors add a paragraph to their audit report to highlight a material matter regarding a going-concern problem. An example of such a paragraph is below:

*'Emphasis of Matter  
Without qualifying our opinion, we draw attention to Note X in the financial statements which indicates that the company incurred a net loss of €Z during the year ended December 31, 200Y and, as of that date, the company's current liabilities exceeded its total assets by €Z. These conditions, along with other matters as set forth in Note X, indicate the existence of a material uncertainty which may cast significant doubt about the company's ability to continue as a going concern.'*

This paragraph would be positioned under the S40(1) paragraph at the very end of the audit report and just before the auditor's signature.