

Commencement of section 128(6B)(b) of the Companies Act 1963)(as substituted by section 46 of the 2003 Act and amended by section 61 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005) on 1 December 2005

Section 47 of the Companies (Auditing and Accounting) Act 2003 amended section 128 of the Companies Act 1963 by introducing a requirement that an auditor's report be annexed to the annual return by certain company types otherwise exempt from filing accounts with their annual return. This amendment took effect on 17 May 2004, save in respect of section 128(6B)(b) of the 1963 Act which was not commenced due to technical reasons.

Section 128(6B)(b), as amended by section 61 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005, will now come into operation on 1 December 2005.

These provisions affect the following company types only ("the relevant companies"):

- (a) a private unlimited company¹ ;
- (b) a private company not trading for the acquisition of gain by the members;
- (c) a company not having a share capital which is formed for an object that is charitable and is under the control of a religion recognised by the State under Article 44 of the Constitution and which exercises its functions in accordance with the laws, canons and ordinances of the religion concerned and
- (d) a company which is exempted by order of the Commissioners of Charitable Donations and Bequests for Ireland from the application of section 128, being a company formed for charitable purposes not having a share capital

all of which company types are exempted from filing company accounts with their annual return.

Position up to and including 30 November 2005: The auditors of the relevant companies are required to prepare a separate report to the directors which confirms that they audited the accounts for the relevant year. A copy of this auditor's report to the directors is required to be certified by a director and by the secretary of the company to be a true copy of that report and attached to any annual return of the company which is delivered to the CRO prior to 1 December 2005.

Position as and from 1 December 2005: The auditors of the relevant companies are required to prepare a separate report to the directors which confirms that they audited the accounts for the relevant year and which includes within it the auditor's report made to the members of the company pursuant to section 193 of the Companies Act 1990. A copy of this auditor's report to the directors is required to be certified by a director and by the secretary of the company to be a true copy of that report and

¹ Other than an unlimited company which is required to file accounts with its annual return pursuant to the EC (Accounts) Regulations 1993

attached to any annual return of the company delivered to the CRO on or after 1 December 2005.

(Section 193(1) of the Companies Act 1990 provides that the auditors of a company shall make a report to the members on the accounts examined by them, and on every balance sheet and profit and loss account, and all group accounts, laid before the company in general meeting. Section 193(2) provides that this auditor's report shall be read at the AGM of the company and shall be open to inspection by any member. The requirements as to content of this auditor's report are set out in subsection (4) of section 193, and include a statement as to whether the auditors have obtained all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, and whether in the auditor's opinion, proper books of account have been kept by the company).

Annual return filing requirements up to and including 30 November 2005: An annual return filed by these four company types which return is received by CRO up to and including 30 November 2005, is required to have a certified copy auditor's report attached which simply confirms that the auditor audited the accounts of the company for the relevant year.

Annual return filing requirements as and from 1 December 2005: The auditor's report must confirm that the auditor audited the accounts of the company for the relevant year and include within it the report made by the auditor to the members of the company at the company's AGM. Any annual return received by CRO on or after 1 December 2005 which does not have an appropriate auditor's report annexed will be rejected.

As a matter of administrative practice, CRO does not reject a 2003 or earlier year's return which is filed by any company falling within these four categories of company if the said return does not have an auditor's report attached. However, returns for 2004 or subsequent years from any such company which does not have the special auditor's report annexed will be rejected by CRO.

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