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Mr Paul Smith
Corporate Frameworks, Accountability and Governance Team
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

9 December 2015

Consultation on the technical legislative implementation of the EU Audit Directive and Regulation

Dear Mr Smith

Chartered Accountants Ireland and the Chartered Accountants Regulatory Board are pleased to respond to the above consultation.

Chartered Accountants Ireland is a recognised supervisory body ("RSB") under the Companies Act 2006; the Chartered Accountants Regulatory Board is responsible for regulating members of Chartered Accountants Ireland independently, openly and in the public interest. Together we are committed to contributing to the discourse and processes that shape statutory audit and we support initiatives aimed at enhancing audit quality and confidence in statutory audit as well as measures which promote the harmonisation of regulatory regimes and the market for statutory audit services.

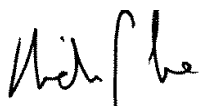
We have not commented on the specific questions set out in chapter 14 of the consultation paper as such issues are predominantly matters for the public interest entity audit firms affected by the proposals. Our focus at this time is the overarching regulatory structure set out in the draft legislation and our detailed comments in this regard are set out in the appendix to this letter. Our views have been shaped in large part by our experience as an RSB. We hope that our submission will be of assistance to BIS in finalising the proposed regulations and the draft amendments to the Companies Act 2006 implementing Regulation (EU) 537/2014 and Directive 2014/56/EU ahead of consideration by Parliament.

At the outset we would emphasise that we welcome the Government's commitment to an implementation approach that avoids the imposition of further regulatory burdens on business. In this regard, we believe it is critical that BIS oversees implementation of those EU measures for which responsibility has been devolved to other competent authorities and bodies to ensure appropriate adherence to Government policy.

Needless to say that once the detail of these regulatory and legal amendments has been finalised significant additional discussions will need to take place between the competent authority and the RSBs. We look forward to participating fully in this work.

Please do not hesitate to contact us if you would like to discuss any of the issues raised or views expressed. We look forward to engaging with you further on this matter.

Yours sincerely



Aidan Lambe
CARB Director

Appendix

As an RSB we make our comments with a view to ensuring that the arrangements pertaining to the overall regulatory structure are clear and workable both from an RSB perspective and from the competent authority's perspective.

Our specific comments are set out in the table in the table below.

	<i>Reference</i>	<i>Issue</i>	<i>Comment</i>
1.	Draft Regulation 3 (2)	Delegation of functions by the FRC to RSBs	<p>We had anticipated, further to the statement made by the Parliamentary Under-Secretary of State for Business, Innovation and Skills and Minister for Intellectual Property, that the implementing legislation would <u>require</u> the competent authority, the Financial Reporting Council ("FRC"), to delegate those of its functions capable of delegation to the RSBs; however, the draft Regulations require only that the competent authority <u>consider</u> whether and how its functions may be delegated. The resulting position we believe, lacks certainty</p> <p>We do appreciate that there may well be sound legal or policy reasons for stopping short of including an express requirement for the competent authority to delegate certain functions, where possible, to the RSBs. We suggest, as an alternative, that BIS consider including in the draft Regulations a presumption of delegation by the competent authority in respect of the matters listed in draft Regulation 3(1)(c)-(g), subject to established criteria being met. Where the competent authority decides not to delegate one or more of these matters to an RSB in circumstances where the criteria have been met, the competent authority should be required to give its reasons to both the RSB and the Secretary of State.</p>
2.	None	Oversight of the sole competent authority	As the sole competent authority with direct legal recognition and ultimate responsibility for supervision and regulation of statutory auditors and audit firms, a great

			<p>deal of power is now concentrated in the FRC without, it seems, the checks or balances one might expect.</p> <p>Of particular concern is the absence of a review or appeal mechanism in respect of decisions of the FRC affecting an RSB, for example, where the FRC decides to either refrain from delegating a task to an RSB or to reclaim a task that has been delegated previously on the basis that it believes the RSB is unable to carry out the task (or for any other reason).</p> <p>We firmly believe an RSB should have access to some further avenue of adjudication in relation to decisions affecting its functions either prior to or as an alternative to escalating to judicial review proceedings. Judicial review is in any event concerned with the decision-making process rather than the substance of the decision and has the disadvantage of putting the RSB publicly at odds with its oversight body over a matter which might well have been resolved through an integrated process.</p> <p>There are a number of possible ways in which this concern could be addressed. One approach is to require the FRC to put in place an independent review mechanism which could be availed of by an RSB in in such circumstances. Where the independent reviewer appointed agrees with the FRC's decision, the decision should stand and where the independent reviewer disagrees with the decision, the independent reviewer's reasons should be provided to the FRC, the RSB and the Secretary of State.</p> <p>In such circumstances the FRC should then be required to reassess its decision in light of the independent reviewer's reasoning and any additional representations made by the RSB or the Secretary of State. The FRC would remain the ultimate decision-maker but this added layer of independent scrutiny and accountability by the FRC would</p>
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			satisfy our concerns.
3.	Proposed amendments to the Companies Act 2006, Schedule 10, Section 26	Funding of tasks performed by the competent authority	<p>We regard as unreasonable the apparent requirement for an RSB to pay the costs of the competent authority (or another RSB) for performing a task that the competent authority has elected not to delegate to the RSB, particularly since there is currently no review appeal mechanism in respect of a decision not to delegate or in respect of the quantum of costs considered reasonable by the competent authority.</p> <p>We consider that where such a circumstance applies the competent authority should recover cost directly from the other party to the contractual relationship. In principle, the funding responsibilities should be between the parties to the regulatory task.</p>
4.	Draft Regulations Part 4	Maintaining a register of statutory auditors	<p>Maintaining the register is an integral part of the approval of auditors function and so one would expect this to be the responsibility of the competent authority. Unusually however, the legislation confers the obligation to maintain the register on the RSBs directly. This is a somewhat anomalous approach given that there is no requirement for the competent authority to delegate any of its functions to the RSBs (including the actual task of approving persons as eligible for appointment).</p> <p>We suggest that the provisions relating to the maintaining of the register should be aligned with policy on legislating for delegation. Our views with regard to legislating for delegation are outlined above.</p>
5.	Draft Regulation 14 (1) (d)	Obligations of an RSB in circumstances where another RSB has been directed to	It appears from draft Regulation 14 that one RSB ("B") may be compelled by the competent authority to discharge certain obligations which another RSB ("A") has directed to cease discharging.

		cease discharging an obligation	We submit that the competent authority should only be permitted to direct B to discharge A's obligations where B consents.
6.	Consultation Document, Chapter 6, paragraphs 6.5 and 6.8 and daft direction of the Secretary of State	Intended meaning of public interest	The competent authority may reclaim responsibility for tasks on a case by case basis if it considers this to be in the public interest. We consider it essential in the interests of consistency, transparency and legal certainty that what is intended by "public interest" be clarified. If this is not possible to achieve via legislation then the competent authority, following consultation with the RSBs should be required to establish criteria for assessing the public interest.
7.	Consultation Document, Chapter 6, paragraphs 6.20 and 6.21	Funding of proceedings in respect of directors of public interest entities who are not subject to the Accountancy Scheme	<p>Confirmation is sought that, where the competent authority seeks to exercise the power to suspend a director of a public interest entity who is not covered under the Accountancy Scheme, there is no expectation that the process will be funded by the RSBs.</p> <p>In this regard, it might be appropriate to consider a levy on public interest entities themselves to contribute to the competent authority's exercise of this responsibility.</p>
8.	Draft Regulation 3 (2)	Scope to delegate aspects of complaints handling in respect of public interest entity auditors to RSBs	Consistent with the Government's commitment to adopting a minimal implementation approach, we believe that the suite of implementing measures, be they legislative or non-legislative, should allow for the delegation of responsibility for investigations and determinations in respect of public interest entity auditors to the RSBs by the competent authority, wherever this is permitted under EU law. We note that the delegation of sanctioning is not permitted.
9.	Proposed amendments to the	Monitoring of audits – persons	Section 13 (4) (e) of Schedule 10 to the amended Companies Act 2006 specifies that inspections must be conducted by persons who have not been an employee or



	Companies Act 2006, Schedule 10, Section 13 (4) (e)	conducting inspections	partner or member of the management body of the person subject to inspection and who have not been <i>“otherwise associated”</i> with that person for at least three years. Since those carrying out the inspection must also have declared that they do not have any interests likely to conflict with the proper conduct of the inspection under Section 13 (4) (d) the implication is that Section 13 (4) (e) is intended to prohibit participation in an inspection on the basis of something other than an actual or perceived conflict of interest. We therefore consider the <i>“otherwise associated”</i> preclusion hazardously vague and suggest that this be clarified or perhaps deleted.
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