

# LAW SOCIETY SUBMISSION

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**SUBMISSION AND RECOMMENDATION TO AMEND:  
SECTION 7 OF THE COMPANIES (ACCOUNTING) BILL 2016**

DEPARTMENT OF JOBS, ENTERPRISE AND INNOVATION

OCTOBER 2016

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## ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

## 1. Section 7 of the Companies (Accounting) Bill 2016

- 1.1 The Law Society of Ireland (the “Law Society”) wishes to make the following comments on Section 7 of the Companies (Accounting) Bill 2016.
- 1.2 The intention behind the proposed new subsection (8A) of Section 68 of the Companies Act 2014, which is proposed to be inserted by Section 7 of the Accounting Bill, appears to be to ensure that none of the affected companies (i.e. those with debt securities traded or listed on any market in denominations of less than €100k or acquired for less than €100k) would be caught by Section 68(2) of the Companies Act 2014.
- 1.3 Currently, none of the affected companies have committed any breach of the 2014 Act. As the Department will recall, this was achieved, following submissions made on the issue (in which various parties including members of the Business Law Committee and the CLRG were involved), by virtue of the non-commencement of the relevant provisions of the 2014 Act, pursuant to Article 3 of S.I. No. 169 of 2015, as amended by Article 2 (b) of S.I. No.220 of 2015 (and we assume that the Department intends to appropriately address the fact of such non-commencement, when the amending provision takes effect).
- 1.4 However, the Law Society has noticed that the text of the new subsection (8A) does not include "deeming language", to ensure that subsection (2) of Section 68 of the 2014 Act *shall be deemed never to have applied* to the securities in question, prior to the coming into force of the amending provisions.
- 1.5 In a number of other Irish Acts, such an approach has been taken in order to make it absolutely clear that the relevant provision being disapplied could not be said to have applied in the interregnum between the relevant commencement date of the original legislation and the date of entry into force of the new provision.
- 1.6 Analogous deeming language was inserted in s. (7) of Section 6 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006, in order to ensure that statutory declarations, sworn outside the State for the purposes of the Companies Acts before persons who were not diplomatic or consular officers, would be valid and would be deemed always to have been valid. Further examples of statutory provisions where such language was employed include the following:
- Section 594(4)(c) of the Taxes Consolidation Act 1997; and
  - Section 4 of the Collection of Taxes (Confirmation) Act 1969.
- 1.7 The inclusion of similar words is in our view necessary in the case of the proposed new subsection (8A) of Section 68, as it is important to ensure, in the case of the

affected companies that no doubt could arise with regard to compliance by the affected companies with that Section, in the interregnum between (1) the relevant commencement date of the original legislation (being, in the case of the 2014 Act, 1 June 2015), and (2) the date of entry into force of the new provision (in this case, the date of entry into force of Section 7 of the Accounting Bill, which will insert new subsection (8A) in Section 68 of the 2014 Act, will be when the Accounting Bill is enacted and commenced).

- 1.8 If these words are not included, doubts could arise e.g. in connection with covenants in finance and other agreements regarding compliance by companies with Irish law, and the giving of legal opinions as to such compliance. It would be very important for the affected companies (which include subsidiaries of several Irish banks) to be certain that no concerns will arise with regard to the traded securities issued by them, particularly as, if the suggested amendment is not made, affected parties would never be able to prove that there had not in fact been a problem.

## **2. Recommendation**

- 2.1 To deal with this matter, the Law Society would therefore recommend that the words:

“...(and shall be deemed never to have applied) ...”

be inserted, after the word "apply" in the first line of the proposed new subsection (8A).

We hope that the Department will find the above comments constructive and helpful. The Law Society will be happy to engage further with the Department if required.

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