# Regulatory Impact Analysis

## Allow use of US GAAP or other accounting standards

**Policy Context/background**

It is Government policy to attract to and develop foreign investment in the State. Government policy also aims to facilitate multinational companies to continue to add activities and substance to their operations in Ireland by which they can contribute to the economy and provide employment opportunities.

Certain multinational client companies of IDA Ireland that have a substantial investment presence in Ireland have approached the Authority with a view to transferring their international headquarters (parent undertakings) to Ireland. These companies are US listed whose securities are registered with and who report to the US Securities and Exchange Commission (SEC). Establishment of these parent companies in Ireland entails a consequent legal requirement on them to prepare and file their Irish statutory financial statements in accordance with Irish Generally Accepted Accounting Practice (Irish GAAP) or International Financial Reporting Standards adopted by the EU (EU IFRS). Currently these parent undertakings prepare and file their financial statements according to US GAAP. In order to satisfy SEC requirements, these companies are obliged to continue to file US GAAP accounts with the SEC.

The companies in question have been preparing their accounts in accordance with US GAAP prior to incorporating an Irish holding company. The transition to Irish GAAP or EU IFRS is a costly and onerous task and would require some years preparation in order to be done in an orderly manner. It would be very onerous and expensive if the obligation to convert to Irish GAAP or EU IFRS were to arise over a compressed period, and inordinately so if this requirement arose in a company's current financial year.

**Statement of Objectives**

The objective is to provide in legislation for US listed parent companies incorporating in Ireland to prepare their individual parent company and group accounts using US GAAP instead of Irish GAAP or IFRS for a maximum of four financial years after its incorporation, or to end by 31 December 2015. The objective is also to provide for the making of Regulations in the future, if necessary, to allow parent companies without a listing on a regulated market in the EEA to prepare their accounts in accordance with other specified accounting standards.

The purpose is to facilitate the orderly transition to Irish GAAP or EU IFRS by US corporations who are considering moving/have recently moved their holding companies to Ireland by allowing them to continue to prepare their accounts in accordance with US GAAP on a transitional basis for a limited period of time.

The proposed provision will remove costs that would arise for companies in preparing their accounts using Irish GAAP or IFRS in the short term.

**Identification of Policy Options**

**Option 1: The "no change" option**
To adopt this option would result in parent companies establishing here being required to expend significant financial resources in preparing their accounts in accordance with Irish GAAP or IFRS – in one case this was quoted to the Department as costing €20m in the current year, for one company. Companies considering re-locating their headquarters to Ireland could be deterred from doing so because of the absence of the US GAAP provision.

**Option 2: Provide in legislation for a transitional period for prescribed parent undertakings migrating to Ireland to use US GAAP and for the Minister to make Regulations prescribing other parent undertakings to use other internationally recognised accounting standards.**

Legislation is proposed to provide for a transitional period whereby parent companies with a US, but not EEA, listing which are using US GAAP can continue to prepare their accounts for a four year period after incorporation in the State up to the end of 2015 at the latest. This is to allow these companies time to make arrangements to move to accounting standards normally used in the State e.g. Irish GAAP or IFRS, at a time when a convergence programme to harmonise or align US GAAP and IFRS is underway. This programme is projected to be completed in a broadly similar timeframe to that of the transitional period proposed to be provided for in the legislation.

Provision for the Minister to make regulations is also proposed to permit other prescribed non US or EEA listed parent companies to prepare accounts using other internationally recognised accounting standards. The applicable criteria would mirror those for US GAAP.

This proposed measure is facilitative rather than regulatory in nature in that it allows for the use of US GAAP by the parent companies in question.

**Analysis of the Costs, Benefits and Impacts of each Option**
Two options are realistically envisaged, to provide for the US GAAP facility, or not to do so.

OPTION 1 – no 'change' option

***Risks***
There are no specific risks associated with this option, other than the absence of the facility to use US GAAP could cause those companies who located parent companies here to feel they are incurring a cost that could have been avoided if the measure sought had been provided. This could give rise to negative sentiment on their part. (See also impacts below.)

***Costs***
There are no costs incurred by the State under this option.

***Benefits***
There are no benefits under this option.

***Impacts***
Because of the approaches to IDA Ireland by a number of their client US listed parent companies seeking the facility to prepare their accounts under US GAAP, a decision not to grant this option could impact on Ireland's international reputation as being actively pro business. The absence of legislation to provide for this could result in companies being dissuaded from relocating their international headquarters to Ireland and thereby failing to positively influence future developments in Ireland within the companies. Such companies could decide to move to another competing location, with economic consequences for Ireland. It has been reported to the Department that one such company established here would have to engage in an onerous process and expend up to €20m to comply with IFRS in its current financial year.

OPTION 2 - Provide in legislation for a transitional period for prescribed parent undertakings migrating to Ireland to use US GAAP and for the Minister to make Regulations prescribing other parent undertakings to use other internationally recognised accounting standards.

***Risks***
The proposal could draw criticism from the EU Commission and other Member States who may consider this proposal as inconsistent with developments favouring the international adoption of IFRS. A convergence programme to harmonise or align US GAAP and IFRS is currently the subject of discussions between the EU Commission and the US Authorities. The proposal could also be viewed by the US Administration as encouraging parent companies currently/previously domiciled in locations such as Bermuda to relocate outside of the United States.

IDA Ireland, the Department of Finance and the Revenue Commissioners were consulted in the matter and did not consider the proposal as presenting any particular reputational risks in so far as the US Authorities are concerned.

On the EU front, the Committee of European Securities Regulators (CESR) has recommended that the Commission find US GAAP equivalent to IFRS for use on EU markets. (This recommendation is in accordance with Commission Regulation (EC) No 1569/2007, which, *inter alia*, establishes a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 20041109/EC).

It should also be noted that the proposal to provide for the use of US GAAP is for a limited period of time and for a specific category of companies and is to facilitate an orderly transition by these companies to the use of Irish GAAP or IFRS. A similar lead in period was afforded by the EU prior to the introduction of the IFRS regime (under EU Regulation 1606/2002) in 2005.

***Costs***
Some enforcement costs may arise in relation to the proposal to use US GAAP.

***Benefits***
For those companies with existing operations in Ireland, the US GAAP facility is likely to support further development and integration of their business here and attract new parent undertakings. The proposal facilitates companies to move to the use of IFRS in an orderly manner and removes the costs associated with the immediate move to these accounting standards.

***Impact***
The enactment of the proposal would have a positive impact on Ireland's reputation as being actively pro business. It could also impact positively on other companies who meet the criteria to relocate their headquarters to Ireland and thereby contribute further to the Irish economy and to employment and it enhances Ireland's inward investment regime. Facilitating companies new to Ireland to relocate their international headquarters to Ireland could result in further inward investment on the part of these companies.

***Other Impacts***
*National competitiveness*
Foreign direct investment contributes in a significant way to national competitiveness. This proposal would have a positive impact on national competitiveness, both in terms of the likely further development of the existing operations of the companies already incorporated in Ireland and also additional foreign investment.

*Socially excluded or vulnerable groups*
The proposal would not entail the imposition of any regulatory requirements but rather facilitate a specified category of companies in preparing accounts to prescribed standards.

*Environmental impacts*
There are no environmental impacts associated with the proposal.

*The rights of citizens*
There will be no impact on the rights of citizens.

*North-South and East-West Relations*
There are no impacts on North-South or East-West relations.

## Consultation
The main parties who were consulted in relation to the proposal were the Office of the Attorney General, IAASA, ODCE, Revenue Commissioners, Department of Finance, accountancy practitioners and legal firms.

## Enforcement and Compliance
The purpose of the legislation is to facilitate the use of US GAAP for a specified category of companies and for a limited period of time. From a Company Law perspective enforcement will be a matter for the ODCE. The Office may require additional resources to ensure that it has the necessary expertise in the relevant accounting standards or it may be required to engage the services of parties with the requisite knowledge/expertise to assist it with the task of enforcement. It is proposed

that provision be made in the legislation to give power to the Minister to make regulations for the purposes of defraying the enforcement costs arising.

The accountancy practitioners have confirmed that there is the capability among the large audit firms to audit the companies who would use US GAAP.

**Review**

There are no specific provisions for review of the proposed provision as it is solely facilitative and is time bound.