



May 2017

Companies (Accounting) Act 2017

Nearly two years after it came into force, amendments are being made to the Companies Act 2014 to bring it into line with new EU accounting rules.

These amendments are set out in the Companies (Accounting) Act 2017 (the "Act"), which has now been signed by the President and is awaiting a commencement order to bring the legislation into operation.

It is believed that, for the most part, the new accounting rules will apply for financial years commencing on or after 1 January 2017. However, this will only be confirmed on publication of the commencement order. The Act allows certain companies to elect to adopt the new accounting provisions for financial years ending before the operative date for those provisions in the legislation.

Companies and their officers should familiarise themselves with the changes and assess what, if any impact they will have.

Purpose

The main purpose of the Act is to transpose Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (the "Accounting Directive"). The aim of the Accounting Directive is to simplify and reduce the administrative burdens associated with the preparation of financial statements for enterprises, in particular SMEs. It also introduces mandatory requirements for large companies, large groups and "public interest entities" that are active in the mining and extractive industries or the logging of primary forests to prepare and file annual reports on payments made to governments.

In addition, the Act makes a number of miscellaneous amendments to the Companies Act 2014 not related to the transposition of the Accounting Directive.

The key provisions of the new legislation are set out below.

General accounting provisions

Thresholds

The Act sets out new criteria for companies to qualify as "small", "medium" or "large" and introduces a new "micro" category of company. The old thresholds are indicated in brackets.

	Micro	Small	Medium
Net turnover	€700,000	€12m (€8.8m)	€40m (€20m)
Balance sheet total	€350,000	€6m (€4.4m)	€20m (€10m)
Average employees	10	50	250

To qualify, a company must not exceed 2 of the 3 thresholds. Large companies are ones which exceed 2 of the 3 thresholds for medium companies. A PLC or a public unlimited company cannot qualify as a small or micro company.

New micro company regime

The Act introduces a simplified regime for micro companies with regard to the preparation and filing of financial statements. Amongst other exemptions, micro companies will be exempt from disclosing directors' remuneration in the financial statements and from preparing a directors' report.

Change in financial reporting framework

At present, a company may only change financial reporting framework (i.e. from IFRS to Companies Act requirements and vice versa) if there is a "relevant change of circumstances". The Act provides that, in the absence of a relevant change of circumstances, a company may change its financial reporting framework once every 5 years.

A new requirement to explain in the financial statements the reason for, and any impact of, a change in accounting policy, is introduced.

Exemption from obligation to prepare group financial statements

More companies will be required to prepare group financial statements as the exemption on grounds of size will only apply to small and micro companies. Such companies may still elect to prepare group financial statements if they wish.

Abridged financial statements

Only small and micro companies will be permitted to file abridged financial statements with the Companies Registration Office (CRO). Medium sized companies will be required to file full financial statements.

Payments to third parties for services of directors

A new section is included concerning payments to third parties for services of directors. Consideration paid to or receivable by third parties for making available services of any person as a director of the company or any of its subsidiaries or otherwise in connection with the management of the company's (or its subsidiaries) affairs must now be disclosed. Third parties do not include the director or a person connected with the director, a body corporate controlled by the director or the company itself or any of its subsidiaries.

Parent company guarantee

The guarantee to be given by a parent company with regard to the liabilities of its subsidiary (when relying on the filing exemption) will be required to cover "commitments" entered into by the subsidiary as well as "liabilities".

Non-filing structures

A much broader scope of unlimited companies will be obliged to file financial statements going forward. The changes are intended to capture unlimited companies that, through the use of group structures involving off-shore companies and limited companies, enjoy limited liability for the ultimate shareholders. Where a company is a "pure" unlimited company (i.e. there is no ultimate protection of limited liability in the group structure) it will still be possible to avail of an exemption from filing financial statements.

There are a broad range of unlimited companies set out in the Act that will now come within scope of the filing obligation, but the following are the ones that are most likely to impact on non-filing structures currently in place:

- (a) An ULC that has been at any time during the financial year a direct or indirect **subsidiary** of a limited undertaking;
- (b) An ULC that has been at any time during the financial year a **holding company** of a limited undertaking; or
- (c) An ULC, the direct or indirect members of which comprise any combination of companies such that the **ultimate beneficial owners enjoy the protection of limited liability**.

It is expected that the filing requirements will apply for financial years commencing on or after 1 January 2017, meaning the first filings for most unlimited companies in scope will be required during 2018 or 2019, depending on the financial year end date of the company. We await the publication of the commencement order for confirmation of this. A concession has been granted for unlimited holding companies with limited liability subsidiaries (at (b) above) – such companies will only be obliged to file for financial years commencing on or after 1 January 2022.

Definition of "credit institution"

The Companies Act 2014 provides that a LTD (as opposed to a DAC) cannot carry on the activity of a "credit institution" meaning that any company coming within this definition that wishes to be a private company limited by shares must be a DAC rather than a LTD. Unfortunately, the definition was drafted in a very broad manner and was thought to potentially encompass a wide variety of companies not carrying out traditional banking activities including, for instance, companies involved in intra-group lending. An amendment has been introduced to deal with this which clarifies that only companies lending to the public will need to be a DAC. LTDs involved in intra-group lending only will be able to safely carry out that activity as they no longer have the potential to fall within the definition of "credit institution".

Unlimited company names

Since the end of the transition period for the Companies Act 2014, unlimited companies are obliged to include the word "unlimited company" in their name. Until now, such companies could apply to the Minister for Jobs, Enterprise and Innovation for an exemption from this requirement. Such exemptions had been granted for a period of 5 years. The Act removes the possibility of applying for this exemption going forward. It seems that companies that have already been granted an exemption will retain it until the period specified in the letter of exemption has elapsed.

How can William Fry help?

We would be happy to assist companies concerned about the possible impact of the proposed changes, particularly in relation to non-filing structures. We can assist in examining your existing corporate structure to determine whether it will come within scope of the expanded filing rules.