

A Guide to the new rules for financial disclosures and financial reporting - Companies (Accounting) Act 2017

Introduction

The Companies (Accounting) Act, 2017 (the "Act") commenced on 9 June 2017. It makes a large number of changes to the Companies Act 2014 (the "2014 Act") to give effect to the latest EU Accounting Directive (Directive 2013/34/EU) (the "Directive") in Irish law and to clarify certain issues which had arisen with the operation of the 2014 Act in practice.

We outline below our guide to these key changes including:

- **The new financial disclosure rules unlimited companies**
- **Introduction of the concept of a new micro-company**
- **Other proposed changes to regarding audits and financial statements**

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THE CONTENT OF THIS PUBLICATION DOES NOT CONSTITUTE LEGAL OR OTHER PROFESSIONAL ADVICE AND IS NOT INTENDED TO BE RELIED UPON AS SUCH.

1. NEW FINANCIAL DISCLOSURE RULES AFFECTING UNLIMITED COMPANIES

How will the Act impact on Financial Disclosures by Unlimited Companies?

A key change introduced by the Act is that many Irish unlimited companies will now be required to publicly file their financial statements in the Companies Registration Office (CRO), in most cases, for the first time, with respect to financial years commencing on or after 1 January 2017.

This is because the Act has significantly expanded the categories of unlimited companies required to publicly disclose their financial statements in CRO (known as Designated ULCs) in line with the "principles based" requirement of the Directive to ensure that it is not possible for an undertaking (including an Irish unlimited company) to exclude itself from the requirement to publicly disclose its financial statements by creating a group structure containing multiple layers of undertakings inside or outside the EU.

How does the Act change the current position for unlimited companies?

Under current Irish company law, Irish unlimited companies are exempted from the requirement to publicly disclose their financial statements (and can also effectively benefit from limited liability status) if their ownership structure involves the Irish unlimited company having at least one member which is also an unlimited company incorporated outside the EU and which is in turn wholly owned by a limited company incorporated outside the EU. Following enactment, such structures will no longer be eligible for such an exemption and, instead, such unlimited companies will fall within the scope of Designated ULCs which must publicly file their financial statements. The same applies to unlimited companies which are holding companies of undertakings with limited liability.

While there is a deferral until 2022 for a very limited category of unlimited companies as addressed below, the majority of Irish unlimited companies which currently have a limited company incorporated outside the EU in their ownership structure will not be able to avail of the deferral until 2022 and, as such, will have to file their 2017 audited annual financial statements together with their 2018 annual return.

What actions should Directors of Irish Unlimited Companies take?

- Consider the potential impact to their business of the requirement to publicly disclose the company's future financial statements, particularly as regards **sensitive financial information**.
- Be aware that the **new rules will first apply** to financial periods commencing on or after 1 January 2017 in which case, FY17 financial statements filed in CRO would also need to contain comparative financial information for the previous financial year in the usual manner.
- Note that the new rules are **deferred to financial years commencing on or after 1 January 2022** with respect only to those unlimited companies which are holding companies of undertakings with limited liability and which don't fall under any of the other categories of unlimited companies now subject to the disclosure obligations. The ownership structure of many Irish unlimited companies currently would not allow them to avail of this deferral.
- **Review corporate structures** with a view to assessing the impact of the new rules and consult with the company's accountants/auditors and solicitors with a view to determining next steps.

2. NEW RULES REGARDING AUDITS AND FINANCIAL STATEMENTS

Introduction of Micro-Company

The Act introduces the micro-company, a new concept in Irish company law, which is subject to relaxed financial reporting/disclosure requirements. The table below sets out the minimum size threshold for micro-companies as well as the proposed increased thresholds for small and medium companies.

	Micro-Company (must meet any 2 of below 3 thresholds)	Small Company (must meet any 2 of below 3 thresholds)	Medium Company (must meet any 2 of below 3 thresholds)
Net Turnover	€700,000	€12,000,000 (up from €8,800,000)	€40,000,000 (up from €20,000,000)
Balance Sheet Total	€350,000	€6,000,000 (up from €4,400,000)	€20,000,000 (up from €10,000,000)
Average number of Employees	10	50 (no change)	250 (no change)

Key features of the micro-company include the following:

- Presumption that financial statements of micro-companies which comply with the "**minimum requirements**" of the 2014 Act have given a true and fair view and new schedule added to 2014 Act dealing with format/content of micro-company financial statements.
- Micro-companies are **eligible for audit exemption**.
- Micro-companies are **exempt from preparing Directors' Report**.
- Micro-companies are **exempt from disclosing directors' remuneration** and arrangements, transactions with directors or consideration paid to third party for services of a director in financial statements.
- PLCs and Unlimited Companies cannot avail of the new micro-company regime.

Changes affecting Small and Medium Companies

- Significant **increase in minimum size thresholds** for small and medium companies (as per table above).
- **Exemption from including business review** in Directors' Report.
- Exemption from requirement to disclose number of employees employed by category. Instead companies can disclose **average number employed in financial year**.
- Medium companies will be required to prepare group financial statements as the exemption relating to the size of the company will now only apply to micro and small companies.

Changes affecting Audit Exemption

- **New minimum size thresholds** for micro-companies and small companies (as per table below) **will replace the current audit exemption thresholds** once the Act enters into force. This will allow many more companies to avail of the audit exemption.
- A company which files its first Annual Return (6 month return) late can retain its audit exemption.

3. OTHER PROPOSED CHANGES

- Proposed new disclosure requirements relating to directors' remuneration and services including **requirement for companies (other than micro-companies) to disclose payments made to third parties for services provided to a director and/or any remuneration waived by directors during a financial year.**
- Proposed amendment of the 2014 Act to require **Auditors to report to the Director of Corporate Enforcement** where there are reasonable grounds to believe that an indictable offence under 2014 Act or offence contrary to Market Abuse, Prospectus or Transparency Directives has been committed.
- Proposed new obligations for auditors of traded companies to provide opinion in the Auditors' Report that the **Corporate Governance Statement** is consistent with statutory financial statements, that it was prepared in accordance with the 2014 Act and to confirm certain related matters.
- Proposal to add new Part 26 to the 2014 Act providing for preparation and public disclosure (via filing with CRO) of the **annual report on payments made to governments** by large companies, large groups and public interest entities active in the **mining, extractive or logging industries.**
- Amendment to definition of "**credit institution**" as defined in the 2014 Act to make clear that only entities lending to the public will be considered a credit institution with the related requirement to be incorporated as a DAC company.
- Removal of the ability contained in the 2014 Act for an unlimited company to apply to the Minister for Jobs, Enterprise and Innovation for an exemption from the requirement to include the words 'unlimited company' in their name.

NEXT STEPS FOR DIRECTORS?

Directors of companies affected by the new financial reporting and disclosure rules should ensure they are fully informed about the proposed changes, review corporate structures, be aware of the impact on financial statements and on eligibility for exemptions, and liaise with auditors and legal advisors.

Our dedicated team of corporate lawyers can assist you in understanding the new rules and potential impacts and in determining next steps. Please contact any [ByrneWallace Corporate Partner](#) or your usual [ByrneWallace contact](#) for further information.

FURTHER INFORMATION

For further information on the accounting and audit related provisions of the 2014 Act, please download our [Companies Act 2014 FAQs](#) or our e-bulletin on [Companies Act 2014 - Conversion Deadlines and Other Key Dates and Actions for 2016.](#)

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