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# Briefing

## Governance Obligations:

### Agenda Items



INSTITUTE OF DIRECTORS  
IN IRELAND

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Directors remain subject to a wide range of statutory obligations under company law and other areas of law, designed to increase transparency and accountability. This briefing is to briefly remind directors of some annual governance obligations.

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### Financial Statements

The Companies Act 2014 (the “Act”) sets out threshold limits that trigger mandatory disclosure requirements and availability of exemptions.

#### *Small Companies*

Broadly, a company will qualify for the small company regime if it does not exceed two or more of the following (i) a balance sheet total of €6m; (ii) a turnover of €12m; (iii) average number of employees of 50. Companies that qualify for the small company regime may be able to avail of the audit exemption and the Directors' Report does not need to include a business review.

#### *Medium Companies*

A company will come within the medium company regime if, in addition to satisfying more specific requirements in the Act, it does not exceed two or more of the following (i) a balance sheet total of €20m; (ii) a turnover of €40m; (iii) average number of employees of 250. A medium company must now give information in its Directors' Report on the use of financial statements and an analysis of key performance indicators during the financial year. A medium company is no longer permitted to file abridged financial statements but can still avail of the exemption to disclose remuneration for audit, audit-related and non-audit work.

### Large companies

A company is considered, under the Act, a large company if it does not qualify as a small or medium company. There is now little difference between the financial reporting obligations of medium companies and large companies.

Those large companies who are required to publish non-financial and diversity information in their annual financial statements under the EU (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017 are required to do so for financial years commencing on or after 1 August 2017.

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## Audit Committee

Directors of a relevant private company (or a holding company together with all of its subsidiaries) with a turnover exceeding €50m and a balance sheet total exceeding €25m, must state in their Directors' Report whether the company has established an audit committee or, if it has decided not to do so, the reasons for that decision. This is separate from the current, similar obligation in respect of companies in certain sectors (such as credit institutions) which are obliged to have an audit committee.

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## Directors' Compliance Statement

Directors may be under an obligation to include a directors' compliance statement in the Directors' Report<sup>1</sup> if the company has a balance sheet total exceeding €12.5m and a turnover exceeding €25m for that financial year. The directors' compliance statement must include an acknowledgement that the directors are responsible for securing the company's compliance with its relevant obligations<sup>2</sup>. It must confirm that the directors have an appropriate compliance policy statement and appropriate arrangements designed to secure material compliance with the company's relevant obligations. It must also confirm that the directors have reviewed, during the financial year, the effectiveness of those arrangements. This requirement applies to large companies and to some medium companies.

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## Bribery Prevention

Corporates will need to take reasonable measures to ensure that employees and other persons do not engage in bribery and corruption and draw up effective anti-bribery policies and procedures, if they have not already done so.

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<sup>1</sup> The requirement applies to directors of all public limited companies (except investment companies) and, except for unlimited companies, other company types that meet the thresholds.

<sup>2</sup> Being certain material obligations under the Companies Act and all obligations under tax law.

The Criminal Justice (Corruption Offences) Act 2018 provides that a corporate body can be held criminally liable for a bribery or corruption offence committed by its officers, employees, agents or subsidiaries, with the intention of obtaining or retaining business for the body corporate, or an advantage in the conduct of business for the body corporate. It is a defence for the body corporate to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

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## Data Protection

Any business that processes personal data will need to ensure compliance with the General Data Protection Regulation (“GDPR”). Companies must continue to resource requirements for information governance such as maintaining records of processing activity and ensure that IT systems document and evidence compliance and, address security obligations.

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## Financial Crime / Anti-money Laundering

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 is relevant to all business. The extent of a business’ obligations under this Act will depend on factors such as its products and services, customers, the sector (such as credit institutions) and geographic location of operations. However, most businesses will at least need to check that they have in place effective supervision mechanisms to avoid being convicted of an offence under that Act and review their internal controls, policies and procedures on matters such as customer due diligence.

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## Beneficial Ownership

Most Irish companies and other incorporated bodies will have taken measures to compile a beneficial ownership register, following the adoption of the EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations in 2016. In addition to imposing new obligations on corporates, the Regulations also impose obligations on individuals who are beneficial owners. For further information see our earlier briefing [\[here\]](#). Directors ought regularly review the register and take action if they suspect there have been any changes in beneficial ownership. Further regulations were adopted in 2019 to establish a central registry of beneficial owners to be maintained by the Companies Registration Office. See our briefing [here](#).

*Further information is available from*



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