



**ADVISORY**  
Industry Information

## Companies (Accounting) Act 2017

August 2017

### 1. Background

The Companies (Accounting) Act 2017 (the “Act”) came into force on 9 June 2017 in order to bring the Companies Act 2014 (the “CA 2014”) into line with the latest EU accounting rules and remedy certain unintended consequences of the CA 2014. The Act is the most significant piece of companies’ legislation in Ireland since the CA 2014. We have set out some of the key changes made by the Act below.

### 2. New accounting provisions

	Micro	Small	Medium
Turnover	€700,000	€12m (€8.8m)	€40m (€20m)
Balance Sheet Total	€350,000	€6m (€4.4m)	€20m (€10m)
Employee (Average)	10	50	250

The Act introduced new criteria for companies to qualify as ‘small’, ‘medium’ or ‘large’. The old thresholds are set out in brackets above.

To qualify, a company must not exceed two of the three thresholds. It is hoped these increased thresholds will allow a greater number of Irish companies to qualify as ‘small’ or ‘medium’ companies and reduce their financial-reporting obligations. The Act also introduces a new concept of a ‘micro’ company. Amongst their exemptions, ‘micro’ companies can avail of abridged financial statements, avoid disclosing details of directors’ remuneration and preparing a directors’ report. Only ‘small’ and ‘micro’ companies will be permitted to file abridged statements with the Companies Registration Office (“CRO”) - ‘medium’ companies will be required to file full financial statements.

### 3. Amendment of the definition of a ‘credit institution’

The CA 2014 provided that an LTD (as opposed to a DAC) ‘shall not carry on the activity of a *credit institution* ..’. Unfortunately, the CA 2014 defined a ‘credit institution’ in a very broad manner. This drafting created a concern that a company not carrying out traditional banking activities (i.e., a company only involved in intra-group lending) would come within the meaning of a ‘credit institution’ and should be registered as a DAC. The Act has amended the existing definition of a ‘credit institution’ to make it clear that only a company engaged in lending to the public must now be a DAC.



#### 4. Unlimited companies/non-filing structures

The Act reduces the possibility of creating '*non-filing structures*'. Previously, unlimited companies, whose ownership was structured in a particular way, were permitted to not publicly file their financial statements while effectively maintaining the limited liability of their ultimate owners. Now, under the Act, any Irish registered-unlimited company which has a direct or indirect limited-liability holding company will have to file financial statements. An unlimited company with no ultimate protection of limited liability in the group structure will still be able to avail of a filing exemption for financial statements.

#### 5. Funds

UCITS-investment companies, which are established as public-limited companies, are now obliged to file financial statements, a directors' report and an auditors' report with the CRO in respect of a financial year. As this is a public register, these documents will be publicly available once filed. The Act has also extended this obligation to AIF-investment companies. Previously, investment companies had only been required to file audited-annual financial statements with the Central Bank of Ireland and such documents were not made available to the public.

#### 6. Financial-reporting framework

The Act provides that a company may change its financial-reporting framework once every five years irrespective of whether there is a change in the company's circumstances. A company must explain, in the notes to the financial statements, the reason for any accounting-policy change and, to the extent practicable, the impact of the change in accounting policy on the financial statements for the current financial year and on the financial statements of preceding years.

The Act will apply to financial periods beginning on or after 1 January 2017 for financial statements and other reports. The Act provides for early adoption by the directors of a company of certain specified provisions (mainly to do with financial statements for financial years beginning on or after 1 January 2015).

#### 7. Charges over shares in foreign entities

The Act has clarified that there is no requirement to register charges created by an Irish company over shares held in a foreign-incorporated company.

#### 8. Change to '*external company*' definition

The definition of an '*external company*' (i.e., relevant companies with a branch in Ireland) has been widened under the new Act. The CA 2014 had defined an '*external company*' to mean a non-Irish body corporate (EEA or non-EEA) whose members' liability in respect of that body corporate was limited. The definition now covers a non-Irish undertaking whose members' liability in respect of such an undertaking is unlimited and which is a subsidiary undertaking of a body corporate whose members have limited liability.

#### 9. Disclosure of third-party remuneration for director services

The Act has brought in an obligation for a company to disclose, in the notes to the financial statements, any consideration (including non-cash benefits) to third parties for the services of any person as a director of the company or of any of its subsidiaries, or otherwise in connection with the management of the company's affairs or that of any of its subsidiaries. The new category of '*micro*' companies will, however, be exempt from such disclosure.

#### 10. Crystallisation of a floating charge

The pre-existing position under the CA 2014 was that, where a floating charge crystallised into a fixed charge prior to the commencement of insolvency proceedings, such fixed charge had priority over preferential creditors. The position now under the Act is that a floating charge, which is created as a floating charge, and whether or not that charge has crystallised, will not have priority over preferential creditors.



## 11. Merger relief

Merger relief under the CA 2014, as previously worded, was only available where the company being acquired in the merger is Irish. Under the Act, a new definition of 'company' is introduced for these purposes, extending merger relief to all bodies corporate acquired in a merger, including a foreign company.

## 12. Parent-company guarantee

Any guarantee given by a parent company in relation to the liabilities of its subsidiary (when relying on the filing exemption which allows a subsidiary to file the consolidated financial statements of its parent company) will be required to cover 'commitments' entered into by the subsidiary as well as 'liabilities'.

## Walkers are ready to help

If you have any queries or would like to discuss any of the above in more detail please contact the persons below or your regular Walkers contact.



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