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Companies (Accounting) Act 2017: Changes to filing requirements

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Technical Alert October 2017- Companies (Accounting) Act 2017: Changes to the filing requirements

1. The Companies (Accounting) Act 2017¹ ('CA 2017'), which transposes the EU Accounting Directive in Ireland, became law on Wednesday 17 May 2017 with the signature of the President. CA2017, apart from section 80, was commenced² on 9 June 2017.
2. The purpose of this Technical Alert is to update members of the Consultative Committee of Accountancy Bodies – Ireland ("CCAB-I") regarding the changes in the filing requirements for certain companies, in particular;
 - Unlimited companies as a result of section 78 of the CA2017;
 - Subsidiaries with Section 357 guarantees;
 - Investment companies;
 - External companies with branches.

Unlimited companies

3. Section 1274 of the CA2014 provides an exemption to certain private unlimited companies ('ULC's) from the requirement to file annual financial statements with their annual returns. ULCs availing of that filing exemption are required under section 1277 of CA2014, to attach to the ULC's annual return a copy of a report from the statutory auditors which;
 - a) Confirms that the statutory auditors audited the financial statements of the ULC for the relevant financial year, and;
 - b) Includes within it the statutory auditors' report on those financial.
4. Section 78 of CA2017 Act amends section 1274 of the Companies Act 2014 ('CA2014') such that the filing exemptions pertaining to certain ULC's have been removed³.
5. The amended section 1274 of CA2014 significantly broadens the group which will now be obliged to file statutory financial statements, in particular:
 - ULCs that have been at any time during the financial year a direct or indirect subsidiary of a limited undertaking;
 - ULCs that have been at any time during the financial year a holding company of a limited undertaking;
 - ULCs, the direct or indirect members of which comprise any combination of companies such that the "ultimate beneficial owners enjoy the protection of limited liability".
6. The commencement order, S.I. 246 of 2017, did not specify explicitly the commencement of the new filing provisions that affected unlimited companies. S.I. 246 of 2017 only specified that provisions relating to financial statements would commence by reference to financial years beginning on or after 1 January 2017. We understand that the intention was for the new filing requirements to apply with respect to the filing of financial statements of relevant ULCs for financial statements commencing on or after 1 January 2017. So, for example, a ULC impacted

¹ <http://www.irishstatutebook.ie/eli/2017/act/9/enacted/en/html>

² SI No 246 of 2017 Companies (Accounting) Act 2017 (Commencement) Order 2017
<https://www.djei.ie/en/Legislation/SI-No-246-of-2017.html>

³ CA2014 also defines public unlimited companies ('PUC's) and public unlimited companies that have no share capital ('PULC's) – there has been no change to the filing requirements for PUCs and PULCs as a result of CA2017. The exemption from filing under original section 1274 did not apply to such PUCs or PULCs in any case.

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by these changes, with a 31 December 2017 reporting date, would have to annex financial statements to its 2018 annual return.

7. A concession was granted in the amended section 1274 of CA2014 to delay implementation to financial years beginning on or after 1 January 2022 for ULCs, which are holding companies, with limited liability subsidiaries. This concession is only available on the basis that the ULC is not otherwise obliged to file e.g. if it was itself a subsidiary of a limited undertaking.
8. The amended section 1274 of CA2014 refers explicitly back to the filing requirements under sections 347 and 348 of the CA2014 - i.e. the same filing requirements as apply to limited companies.
9. If there is a lack of clarity as to the application of amended section 1274 of CA2014 to a particular company's circumstances, the company may need to seek independent legal advice.

Filing exemption under section 357 of CA2014

10. Section 357 of CA2014 provides an exemption from the filing of financial statements for a company which is a subsidiary of a holding company established under the laws of an EEA state when certain conditions are satisfied. One of those conditions, following amendment of section 357 of CA2014 by section 55 of CA2017, is that there is in place an irrevocable guarantee by the holding company of "commitments entered into by the company, including amounts shown as liabilities in the statutory financial statements". This condition was previously somewhat narrower in that the irrevocable guarantee by the holding company was only required to be of "all amounts shown as liabilities in the statutory financial statements" of the company.

Investment companies

11. New filing requirements are also introduced for investment companies (falling under Part 24 of the CA 2014). Prior to commencement, such entities, which are subject to filing obligations with the Central Bank, were exempt from filing financial statements, directors' reports and auditors' reports with the Companies Registration Office ('CRO'). Section 86 of CA2017 inserted section 1401A into CA2014, thereby requiring that such investment companies will deliver to the CRO financial statements, directors' reports and auditors' reports thereon. Section 1401A is also understood to apply to financial periods commencing on or after 1 January 2017.

Undertakings for Collective Investment in Transferable Securities ('UCITS plc corporates')

12. Section 100 of CA2017 amended the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) ('the UCITS Regulations') to require that relevant UCITS will deliver to the CRO financial statements, directors' reports and auditors' reports thereon.
13. The relevant UCITS which are affected by this amendment, as described in Regulation 42A of the UCITS Regulations, are UCITS which are constituted as—
 - (a) investment companies with fixed capital that are registered as public limited companies, or

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- (b) investment companies with variable capital that are registered as public limited companies and the articles of which provide that—
 - (i) the amount of the paid-up share capital of the investment company concerned shall at all times be equal to the net asset value of the company, and
 - (ii) the shares of the investment company concerned shall have no par value.
14. This new CRO filing requirement has not been inserted into the Irish Collective Asset-management Vehicle Act 2015.

External companies and branches

15. Section 80 of the CA2017 has expanded the definitions of “EEA company” and “Non-EEA company” to extend the filing requirement of external companies with Irish branches to instances where the Irish branch is a branch of an unlimited subsidiary of an EEA or Non-EEA limited company. Previously only EEA and Non-EEA external limited companies had filing obligations in respect of their Irish branches. Section 80 has not yet been commenced – S.I. 250 of 2017, Companies (Accounting) Act 2017 (Commencement) (No.2) Order 2017, revoked the original commencement of that particular section and as a consequence this has been deferred for the present.