WATSON FARLEY & WILLIAMS

UK CORPORATE: BRIEFING

NEW REQUIREMENT FOR LARGE BUSINESSES TO REPORT ON PAYMENT PRACTICES

MARCH 2017

- UNDER NEW REGULATIONS LARGE BUSINESSES WILL HAVE TO REPORT ON THEIR SUPPLIER PAYMENT PRACTICES AND POLICIES TWICE A YEAR
- FIRST REPORTS WILL BE REQUIRED FROM OCTOBER 2017
- THE REQUIREMENTS APPLY TO FINANCIAL YEARS BEGINNING ON OR AFTER 6 APRIL 2017

From 6 April 2017, large companies and limited liability partnerships ("LLPs") will be required to report on their payment practices, policies and performance in relation to their suppliers. This new duty was introduced in the Small Business, Enterprise and Employment Act 2015, with the detail set out in regulations which come into force on 6 April 2017. Affected organisations will have to publish twice yearly reports containing specified information and make them available on a web-based service provided by the Government. Large companies and LLPs should prepare for the changes now. Failure to comply with the reporting requirements will be an offence.

Since our October 2016 Briefing on this topic, the Government has published a formal response to its consultation on the new duty, revised regulations and guidance for companies and LLPs to assist them with complying with their reporting duties. The revised regulations and guidance provide for some changes to the original proposed requirements as well as some welcome clarification of areas such as how to assess which companies and LLPs are subject to the duty, what needs to be reported and when and where the information must be reported. The guidance also makes clear that businesses or groups not subject to the duty may submit a report voluntarily.

Below is an update on the key aspects of the revised regulations and guidance.

Affected companies and LLPs should familiarise themselves with the new requirements if they have not already done so. Matters to consider include:

- the ability to comply with the reporting obligations and the functionality of reporting systems to ensure that these include the required metrics and enable reporting on an individual company basis; and
- current payment practices and policies in light of the potential reputational damage associated with perceived late payment to small businesses or use of unfair terms, which will become more transparent under these new reporting obligations.

"THE GOVERNMENT WANTS LARGE COMPANIES AND LLPS TO LEAD BY EXAMPLE IN PAYING THEIR SUPPLIERS PROMPTLY AND FAIRLY…"

Why is the duty being introduced?

The new duty is being introduced as part of a series of measures to tackle the growing problem of late payment to small businesses as suppliers. With overdue payments owed to micro, small and medium-sized businesses standing at £26.3bn (as of December 2016), it remains a significant problem for the economy. The Government wants large companies and LLPs to lead by example in paying their suppliers promptly and fairly, with 30-day terms being the norm and 60 days the maximum. It is intent on tackling late and unfair payment practices and encouraging a culture of prompt payment to suppliers by publicising which large companies and LLPs are good payers and, critically, which are not.

Who is subject to the duty?

The duty to report in a financial year applies only to "large" companies and LLPs that are incorporated in the UK. These are private or public companies (whether quoted or not) or LLPs that, on their last two balance sheet dates, had any two or all of the following:

An annual turnover above £36m

A balance sheet total over £18m

On average, more than 250 employees

Micro-, small- and medium-sized enterprises (as defined in the Companies Act 2006), whether quoted or not, will not be subject to the duty. Neither will other entities such as partnerships or companies incorporated outside of the UK (even if registered as overseas companies at Companies House).

The duty to report will not apply to a company or LLP in its first financial year. A company or LLP will have to report in its second financial year if, on the balance sheet date in its first financial year, it met two or all of the thresholds above.

International groups

Where an international company has several subsidiaries incorporated in different countries, including one incorporated in the UK, the UK company will need to be assessed to see whether it meets the reporting thresholds. If it does, it will need to report in relation to itself, but the international company and its other subsidiaries will not be required to report.

> “GROUPS SHOULD THEREFORE REVIEW WHETHER THEIR SYSTEMS ALLOW INDIVIDUAL COMPANIES ACCESS TO THE INFORMATION REQUIRED TO PRODUCE A REPORT.”

Parent companies and parent LLPs

For a parent company or parent LLP there is a slightly different twofold test: it will have to report in a financial year for which both the parent itself and the group it heads are large. This means that:

1. its own figures must satisfy the above thresholds on each of the last two balance sheet dates; and
2. the aggregate figures for the group on each of the last two balance sheet dates must meet two or all of the following:
   a. an aggregate turnover above £36m net (or £43.2m gross)[1];
   b. an aggregate balance sheet total over £18m net (or £21.6m gross); or
   c. on average, in aggregate more than 250 employees.

If a parent company or parent LLP does not meet one of these tests, it will not have to report on its own payment practices and performance.

Does the duty apply at group or individual level?

The duty to report applies at an individual company level. Each company in a group structure that meets the thresholds must file a report on its own payment practices and performance. So, a parent company that meets the above two-stage thresholds needs to report only in relation to itself but other subsidiaries may also need to report. Groups should therefore review whether their systems allow individual companies access to the information required to produce a report.

What will be required from 6 April 2017?

For financial years beginning on or after 6 April 2017, large companies and LLPs will need to prepare and publish information for each reporting period on:

- their payment practices and policies for “qualifying” business to business contracts under which they are supplied with goods, services or intangible assets (such as intellectual property); and
- how they have performed in relation to those practices and policies.

A “qualifying” contract may not be for financial services and must have a significant connection with the UK. The latter is clarified further in the guidance. Whether a contract has a significant connection with the UK will depend on the circumstances but, broadly, would include a contract that will be performed in the UK, or where one of the parties is established in the UK or carries on a relevant part of their business in the UK. Contracts that are not qualifying contracts should not be reported on.

What information must be provided?

Broadly, the following information on payment practices, policies and performance must be published (some as narrative description, some as statistics and some as tick-box statements):

[1] “Net” here means after any set-offs and other adjustments to excluded group transactions. These set-offs and adjustments are to be made in accordance with the accounting rules that apply to the group. “Gross” means without these set-offs and adjustments.

Standard payment terms (in days), including any changes in the last reporting period and whether suppliers were consulted.

What proportion of invoices were paid:

- within 30 days;
- between 31 and 60 days;
- over 60 days; and
- beyond agreed terms.

The average time taken to pay (from the invoice receipt date).

The dispute resolution process for overdue invoices.

Whether a business:

- may deduct sums from payments for suppliers to remain on supplier lists and whether it has done this during the reporting period;
- offers e-invoicing or supply chain finance; and
- is a member of a payment code and the name of the code (e.g. the voluntary Prompt Payment Code).

Further information in relation to each of these and some useful examples are provided in the guidance.

How frequently will the information need to be published?

There will usually be two reporting periods in a financial year, covering the first six months and then the remainder of the year (usually six months). If a business' financial year is nine months or shorter, only one report will be due in that financial year. If a business' financial year is longer than 15 months, three reports will be required – one for the first six months, one for the second six months and one for the remainder of the financial year.

"A REPORT WILL NEED TO BE PUBLISHED WITHIN 30 DAYS OF THE END OF THE RELEVANT REPORTING PERIOD."

When will the information first need to be published?

A report will need to be published within 30 days of the end of the relevant reporting period. As the reporting requirements apply for financial years beginning on or after 6 April 2017, the following table sets out when businesses will be required to publish their first reports under the new duty:

FINANCIAL YEAR BEGINNING	WHAT IS THE FIRST REPORTING PERIOD?	WHEN MUST THE FIRST REPORT BE PUBLISHED ON THE WEB SERVICE?
1 January	1 January 2018 to 30 June 2018	On or before 30 July 2018
1 April	1 April 2018 to 30 September 2018	On or before 30 October 2018
5 April	5 April 2018 to 4 October 2018	On or before 3 November 2018
6 April	6 April to 5 October 2017	On or before 4 November 2017
After 6 April	First six months of the business' 2017-2018 financial year	Within 30 days starting on the day after the end of the business's first reporting period

Where will the information need to be published?

Each applicable company and LLP must publish its report on a web–based service to be provided by or on behalf of the Government within 30 days of the end of the reporting period to which it relates. Each report must be approved by a named company director or, for LLPs, a designated member before it is published. Businesses will also be free to publish the information on their own website.

The information will be available to the public and publication in this manner should make comparison between reporting companies and LLPs accessible and easy.

> "IT IS A CRIMINAL OFFENCE… IF THE BUSINESS FAILS TO PUBLISH A REPORT, CONTAINING THE NECESSARY INFORMATION, WITHIN THE 30-DAY FILING PERIOD."

Who is responsible for the report?

It is a criminal offence by the business, and every director of the company or designated member of an LLP, if the business fails to publish a report, containing the necessary information, within the 30-day filing period. It will be a defence for a director or designated member to prove that he took all reasonable steps for securing compliance.

It will also be an offence for a person (whether an individual or a business) to publish (or cause to be published) a report or any information, or to make any related statement, that is misleading, false or deceptive if he knew or was reckless about it being false or misleading.

In each case, the penalty for conviction is a fine.

What should organisations do now?

If you haven't already, it is important to take action now to prepare for these changes and their likely consequences. Otherwise, the organisation and its directors could suffer reputational damage, whether as a result of committing an offence by not complying or from publishing information that reflects negatively on the organisation.

We suggest that large companies and LLPs take the time to read the guidance, consider who will be responsible for ensuring compliance and ask the following questions:

- will you and/or any of your subsidiaries be caught by the reporting requirements?
- if so, when will your/their first report be due?
- do you currently have the ability to comply with the reporting obligations?
- do your reporting systems allow you to provide the information that will need to be published in the report?
- are your current policies and procedures fit for purpose and in accordance with industry norms given that they will be made available to the public?
- how does your actual record of payment compare to your agreed terms for payment? What proportion of invoices are paid on time and what is the average length of time for payment? Do these timeframes need to be improved?

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.

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