

Audit Committees – A New Standard

The ODCE has recently issued Guidance for public limited companies (“plcs”), large private companies and relevant undertakings on the legal requirements relating to audit committees. The main elements are summarised below.

What must audit committees do?

The duties of an audit committee include:

- reviewing the individual or group accounts, determining if they give a true and fair view of the company’s affairs and its profit or loss and recommending to the Board whether or not to approve the accounts;
- advising the Board on the appointment of the company’s auditor, monitoring the performance and quality of the auditor’s work and independence and recommending if non-audit work should be awarded to the auditor;
- satisfying itself that the arrangements made and the resources available for internal audits are suitable; and
- reporting annually on the audit committee’s activities in the directors’ annual report.

What companies are covered?

The requirements are mandatory for all Irish-registered plcs. Wholly-owned Irish-registered subsidiary plcs of another Irish plc are however exempted.

A large private company or relevant undertaking whose balance sheet total exceeds €25 million **and** whose turnover exceeds €50 million for the last two financial years has the freedom to either establish an audit committee with some or all of the above duties or to elect not to do so. Either way, the directors must disclose the nature of this decision in their annual directors’ report and give the reasons for any decision not to establish an audit committee. Where a large private company or relevant undertaking and all of its subsidiary undertakings together meet the above criteria, then it is also required to address this issue.

Composition of the audit committee?

The audit committee must comprise two directors. However, they cannot be, or have been in the past three years, company employees or the Board’s chairperson.

Where only one director meets these criteria, that person may constitute the audit committee or be appointed as the chairperson of a committee of no more than two persons if he/she has the casting vote. Where none of the directors meet these criteria, at least one qualifying director must be newly appointed to the Board.

Terms of reference?

Written terms of reference for the audit committee must be adopted and reviewed annually by the full Board.

EU Law?

Existing Irish law will have to be slightly amended by 29 June 2008 to implement elements in a new Eighth Company Law Directive dealing with audit committee duties and composition.

What happens now?

The law will become effective when the Minister for Trade and Commerce makes a statutory instrument specifying its commencement date. He will also need to decide if the additional requirements of the Eighth Directive are to be implemented at the same time. The Minister is expected to exempt certain classes of company from the provision.

Pending these clarifications, the ODCE Guidance offers company directors the opportunity to prepare for the implementation of the substantive requirements. The ODCE will revise its Guidance to reflect the Ministerial decisions in due course.

More information?

The Guidance is available on the ODCE website, www.odce.ie. Hard copies can be obtained free of charge on request to info@odce.ie or Maria Leavy at 01- 8585833. The ODCE website also has the ODCE's submission to the Minister on the implementation of the audit committee provision.