Reporting Obligations 2
Recorded online
September 2017
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Reporting Obligations

Auditor only

• S392, Companies Act 2014
• Section 393, Companies Act 2014
• S1079 Taxes Consolidation Act 1997

All accountants in practice

• Section 59 Criminal Justice Act 2001,
• Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 and 2013
• Section 19, Criminal Justice Act 2011
Reporting Obligations

Auditor only

- Accounting records and H4 procedure reporting to Company Registration Office
  S392, Companies Act 2014

- Category 1 and 2 offences (indictable offences) reporting to ODCE
  S393, Companies Act 2014

- Tax evasion, 6 month letter procedure reporting to Revenue
  S1079 of the TCA

All accountants in practice

- Any financial Crime to Garda,
  Section 19, Criminal Justice Act 2011
  Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 and 2013

- Anti Money Laundering reported to Garda and Revenue
  Section 19, Criminal Justice Act 2011

- All financial crime to Garda
Accounting Records and the H4 procedure
Accounting Records

When sections 281 to 285 of the Companies Act 2014 is breached (requirement to keep proper accounting records)

• Section 392 requires the auditor to:
  • Send opinion by registered post to client
  • “..are taking necessary steps..” no H4
  • Are not taking necessary steps file H4

• Timing of your formation of opinion
• Limitation of scope V’s disclaimer V’s adverse opinion
• Tax settlements, frauds and revision of accounts
A tense moment

“are taking necessary steps..”

1990 CCABI guidance: “are” is future tense

ODCE opinion “are” is past and future tense

Unless records are recreated in accordance with sections 281 to 285 you must file a H4
Category 1 and 2 offences
(Indictable offences)
Reporting Category 1 and 2 offences

Section 393 of the Companies Act 2014

“Where, in the course of, and by virtue of, their carrying out an audit of the financial statements of the company, information comes into the possession of the statutory auditors of a company that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has may have* committed a category 1 or 2 offence, the statutory auditors shall, forthwith after having formed it, notify that opinion to the Director and provide the Director with particulars of the grounds on which they have formed that opinion.”

* As amended by the Companies (Accounting) Act 2017
Reporting Category 1 and 2 offences

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Reporting Category 1 and 2 offences

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Extract from Companies Act 2014
List of all category 1 and 2 offences.

Category 1 Offences
S296 Not keeping adequate accounting records which result in insolvent liquidation or which last 3 or more years, the amount involved exceeds €1m or 10% of net assets.
S722 Fraudulent trading.

Category 2 Offence
Management and Governance:
S68 Invite the public to subscribe for shares/Offer of securities to the public
S82 Financial assistance for purchase of own shares
S87 Concealing unpaid share capital from creditors
S101 Personation of a shareholder
S192 Acquisition of own shares (share buyback) not in accordance with Act
S132 Undischarged bankrupt acting as director or secretary or involved in promotion, formation or management of a company
S239 (248) Loans to directors
Accounting and audit
S296 Not keeping adequate accounting records (company and director)
S291 Not showing a true and fair view on financial statements, financial statements non-compliant with GAAP or Act, financial statements that do not have statement of compliance with GAAP and Act
S292 Non-compliance with IFRS, not making a statement of compliance with IFRS.
S294 Same as 291 but for GAAP Group companies
S295 Same as 291 but for IFRS Group companies
S234 director’s party to approving accounts that are not true and fair and compliant
S324 If balance sheet at AGM or as filed in CRO is unsigned by directors

See full checklist on web site.
www.accaglobal.com/technicalireland
Reporting Category 1 and 2 offences
Common offences

- Illegal loans – directors or connected companies*
- False statement to CRO (audit exemption)
- Financial statements not true and fair
- Revision of accounts
- Not holding an AGM
- Accounting records not kept
- illegal share support*
- knowingly or recklessly making a statement to an auditor, which is materially misleading, false or deceptive

* Can be made “legal” using a summary approval procedure, see Chapter 7 of the Companies Act 2014
Solutions – Directors Loans / connected company loans

Was it really a “loan”
Normal trading activities
Directors bonus
9.9%
form a group (golden share)
Resign as auditor/audit exemption
Audit exemption

Knowledge defence no longer available
Taxes Consolidation Act
Reporting to the Revenue

Under the Taxes Consolidation Act 1997 - Section 1079

an auditor,

with a view to reward,

assists or advises the company in the preparation of a document likely to be used for any purpose of tax - must -
Reporting to the Revenue

Communicate particulars of material offences in writing to the company without delay and request that the matter is rectified within 6 months.

In the event that the offences have not been rectified, the relevant person must cease to act as auditor, or to advise.

Inform Revenue of Resignation under this section.
Reporting to the Revenue

Legislation is almost redundant as any offences will also be reported under AML
Criminal Justice (Theft & Other Fraud Offences) Act 2001
S59 Criminal Justice (Theft & Fraud Offences) Act 2001

BACKGROUND

Anybody involved in preparing accounts must report any instances of suspected fraud or theft to the Garda.

Everybody covered (except Schedule E employees)
What type of clients
The term “firm” includes:
- partnership
- a corporate body
- unincorporated body
- self-employed individual
- a charity
- a credit union
- a pension scheme

S59 Criminal Justice (Theft & Fraud Offences) Act 2001
S59 Criminal Justice (Theft & Fraud Offences) Act 2001

Offences covered

• Theft
• Making gain or loss by deception
• Obtaining services by deception
• Unlawful use of computer
• False accounting
• Suppression of documents
• …and lots more obscure laws!
S59 Criminal Justice (Theft & Fraud Offences) Act 2001

False Accounting

- where a person, intending to make a gain for oneself or another, or to cause loss to another, does any one of the following:
  - destroys or otherwise falsifies accounts or documents for accounts;
  - fails to complete accounts or documents;
  - furnishes false or misleading accounts or documents. Falsifying accounts or documents arises where misleading or false entries are made or where relevant particulars are omitted.
S59 Criminal Justice (Theft & Fraud Offences) Act 2001

In practice

- Dual report made under this and AML
- The report goes to a different section of Garda
- Tipping off is not illegal under this legislation
Anti-Money Laundering
The Requirements in Ireland
Criminal Justice Act 2011
Criminal Justice Act 2011

“White Collar” Crime Act
• August 2011
• Section 19
• Report information
• Knows or believes
• Material in assisting
• Prevention
• Relevant offence
Criminal Justice Act 2011

19.—(1) A person shall be guilty of an offence if he or she has information which he or she knows or believes might be of material assistance in—

(a) preventing the commission by any other person of a relevant offence, or
(b) securing the apprehension, prosecution or conviction of any other person for a relevant offence,

and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.
Criminal Justice Act 2011

- Any person
- “As soon as practical”
- Employees covered as well
- Protection for whistle blowers (S20)
- “Reasonable cause”
- Arrest without a warrant if information withheld
- 130 offences listed
Criminal Justice Act 2011

Offences
- Under the Central Bank Act
  - Banking offences
  - Keeping proper books
  - Excess commissions
  - Insurance Act
- Investment intermediary Act
  - False statement to auditors
  - Books of account
  - Client money rule breaches
Criminal Justice Act 2011

Offences

• National Asset Management Agency Act 2009
  • False information to NAMA
• Companies Acts
  • Financial assistance for purchase of own shares
  • fraud
  • Failure to disclose to a liquidator
Criminal Justice Act 2011

Offences

• Companies Acts
  • Not preparing T&F accounts
  • Non disclosure of subsidiaries
  • Failure to take steps to ensure T&F accounts
  • False statement on accounts
• Failure to provide information to auditor
• Destruction of company documents
• False statement on accounts
Criminal Justice Act 2011

Offences
• Money Laundering
  • Any AML offence
  • Actual money laundering
  • Not doing CDD
  • Not reporting
  • Tipping off
Criminal Justice Act 2011

Offences

• Theft and fraud
  • Theft, false accounting and suppression of documents
  • Possession of false or forged documents
  • Destruction of documents relevant to a Garda investigation
## Criminal Justice Act 2011 – list of reportable offences

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Maximum Penalty for non-compliance</th>
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<tbody>
<tr>
<td>An offence under section 58 of the Central Bank Act 1971 insofar as it relates to a contravention of section 17, 18, 23, 24 or 25 of that Act.</td>
<td>A requirement for a holder of a banking licence to keep certain books and records. A holder of a banking licence must make certain returns to the Central Bank. The requirement for a bank licence holder to maintain certain specified capital ratios. The requirement to hold a deposit with the Central Bank by holders of bank licences in certain circumstances. The maintenance of accounts in relation to clearances with the Central Bank in certain circumstances.</td>
<td>On conviction on indictment, to a fine not exceeding five thousand pounds.</td>
</tr>
<tr>
<td>An offence under section 37 (6) or 41 (1) of the Insurance Act 1989.</td>
<td>Inserted by Central Bank and Financial Services Authority of Ireland Act 2003. Relates to payment or receipt of excess commissions.</td>
<td>£10,000 or imprisonment for a term not exceeding three years.</td>
</tr>
</tbody>
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More Information

www.accaglobal.com/technicalireland
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