



COMPANY REPORTING REQUIREMENTS: AN OVERVIEW OF THE DUTY TO REPORT ON PAYMENT PRACTICES AND PERFORMANCE

Which companies are subject to the duty?

The Department for Business, Energy & Industrial Strategy has recently launched a new initiative to ensure that certain UK registered companies, are obliged to report their payment practices, policies and performance. The duty has been imposed on these companies in an attempt to reduce the frequency of delay in the processing of payments – an issue which can lead to severe administrative and financial burden to the would-be recipient, a provider which in most cases has already suffered a financial outlay in providing the service.

The duty is imposed for most companies by regulations made under section 3 of the Small Business, Enterprise and Employment Act 2015 although, for limited liability partnerships (LLPs), the imposing legislation is the Limited Liability Partnerships Act 2000.

For a company or an LLP to fall within the scope of this duty they must have exceeded at least two of the three qualifying criteria for a medium-sized company under s.465(3) of the Companies Act 2006. These criteria must have been exceeded on both of the previous two preceding balance sheet dates.

The criteria under s.465 are currently that:

- The company has an annual turnover of at least £36 million.
- The balance sheet of the company exceeds £18 million.
- The company has at least 250 employees.

These thresholds are periodically updated and clients are advised to seek professional advice in order to ensure compliance with the latest regulations.

No company is required to report in the first financial year it meets the criteria although a company will be within the scope of the duty in its second financial year if, in its first financial year it exceeded at least two of the s.465 criteria.

What are the obligations imposed?

Businesses to which this duty applies are required to meet certain reporting requirements which oblige a company to prepare and publish



information about their payment practices and performance. The duty only extends to contracts which satisfy all of the following:

- The contract is between at least two businesses.
- The contract has a significant connection with the United Kingdom.
- The contract is for goods, services or intangible property, including intellectual property.
- The contract is not for financial services.

A significant connection with the UK will depend on the specific circumstances. Examples include agreements where a contract will be performed in the UK, where one or both parties are established in the UK or where the governing law of a UK country would be the natural governing law of the contract under general legal principles irrespective of the governing law elected by the parties in the contract.

The obligation will require companies to:

- Provide narrative descriptions of:
 - Standard payment terms such as maximum contractual payment periods.
 - The process of the business for resolving disputes relating to payment.
- Provide statistics on:
 - The average time taken to make payment from the date of a received invoice.
 - The percentage of payments made: (1) within 30 days or less; (2) between 31 and 60 days; and after 61 days or more.



Failure to make the report within the specific 30 day filing period is a criminal offence which is committed by both the business and every director of the company or designated member of an LLP.

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- The percentage of payments due within the reporting period which were not paid within the agreed terms.

- Confirm statements regarding:

- Whether suppliers are offered e-invoicing.
- Whether supply chain finance is available to suppliers.
- Whether the practices and policies of the business cover deducting sums from payments as a charge for remaining on a supplier's list, and whether they have done this in the reporting period.
- Whether the business is a member of a payment code.

When must the report be made?

The report must be made once every six months, companies will therefore be required to provide the report twice in a single financial year.

The report must be approved by a company director (or for LLPs a designated member) and must be published on a government web-based service (due to be available from April 2017) within 30 days of the end of each reporting period. Failure to make the report within the specific 30 day filing period is a criminal offence which is committed by both the business and every director of the company or designated member of an LLP. The offence is punishable on summary conviction in the Magistrates' court by a fine.

Whilst the legislation comes into effect on 6 April 2017 and will apply to qualifying companies and LLPs in financial years beginning on or after this date, The Department for Business, Energy & Industrial Strategy note that the majority of businesses are expected to begin reporting in mid-2018.



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