



whistle-blowers by ensuring that there are avenues in place to allow for complaints to be voiced.

The audit committee will also usually prepare a report for each financial year documenting its contribution throughout that year which can be provided to shareholders when approving the financial statements.

## “Comply or Explain” Provision

Where a large company does not establish an audit committee, the directors' report must state that it has not done so, and the reason for their decision in this regard. A director who has failed to take all reasonable steps to comply with the requirement to comply or explain is guilty of a category 3 offence which carries the potential for up to 6 months imprisonment and a fine of up to €5000.

It is interesting to note that it is not an offence under the legislation for companies not to appoint an audit committee where they meet the criteria to do so, the offence is in respect of *not providing an explanation* as to why an audit committee has not been appointed.

Furthermore, section 167 does not provide any guidance as to what an appropriate explanation may be, and whether directors would be entitled to cite the expense and administrative burden involved in taking such steps as justification for non-implementation of an audit committee. This is arguably a key flaw in this provision; however it would seem that giving any reason at all will provide a sufficient defence to criminal proceedings.

It is understood that from 1 January 2016 the operation of this legislation will come into force and companies that meet the criteria will be required to make the appropriate arrangements to put in place an Audit Committee or indeed provide an explanation as to why they haven't complied.

For further information on section 167 of the 2014 Act, the ODCE has collated a very valuable [audit committee's guide](#) which offers reliable and practical advice on the implementation and instruction of audit committees.

## Directors' Compliance Report

Also of relevance to 'large' companies is the requirement under Section 225 of the Companies Act 2014 to include a compliance statement in the Directors' report. This requirement applies only to 'large' private companies limited by shares and public limited companies – it does not have any bearing on unlimited companies regardless of their size.

For this purpose, a 'large' company is any private limited company which satisfies the following criteria:-

- The balance sheet total exceeds €12,500,000 for the year in question; or
- The balance sheet represents the amount prescribed by the Minister in accordance with section 943(1)(h)(i)

and

- The turnover for the year exceeds €25,000,000; or
- The turnover represents the amount prescribed by the Minister in

accordance with section 943(1)(h)(i).

That compliance statement must contain an acknowledgement by the Directors that they are responsible for securing the Company's compliance with its relevant statutory obligations. Furthermore, the statements must confirm whether the following matters have been dealt with and, if not, specifying the reasons why they have not been dealt with:-

1. The drawing up of a compliance policy statement setting out the Company's policies in respect of compliance by the Company with its relevant obligations;
2. The putting in place of appropriate structure to secure material compliance; and
3. The conducting of a review during the financial year of any structures implemented in pursuit of securing material compliance.

In tying this requirement back to the establishment of an audit committee, it is even more expedient that the directors of large companies take the 'comply or explain' requirement attached to section 167 seriously. Their express acceptance of responsibility for the Company's compliance obligations will leave them with no reasonable excuse for failing to provide an explanation for non-implementation of an audit committee.

## Assistance

Our team would be delighted to discuss with you any queries that you may have in relation to the Audit Committees and indeed any further queries that you may have in respect of the Companies Act 2014.