Governance *in brief*

New duty to report on payment practices and performance

Headlines

- The Government continues to strive for a change in UK payment culture.
- In December 2016, the Department for Business, Energy and Industrial Strategy (BEIS) published its post-consultation proposals on Duty to Report on Payment Practices and Performance, including draft regulations covering reporting obligations on payment practices, policies and performance and driving companies towards payment within 60 days.
- The regulations will be effective for UK companies and limited liability partnerships (LLPs) defined as large under the regulations, for periods commencing on or after 6 April 2017.
- Businesses will be required to publish reporting on these areas twice per year, in line with their financial reporting timetable, on a Government web-based service. The information must be approved by a director of the company.
- Sanctions will apply to companies reporting late, failing to report or publishing false or misleading information.

Background to the changes

The need for new reporting requirements to support small and medium sized businesses and to tackle late payment has been trailed for some time, in conjunction with government support for payment codes, particularly the Prompt Payment Code which has been recognised as the "gold standard" in fair payment practices.

The draft Reporting on Payment Practices and Performance Regulations 2017 introduce a new requirement for large UK companies and limited liability partnerships (LLPs) to disclose their payment practices and performance. The regulations are expected to come into force in April 2017.

The new requirement aims to increase transparency and public scrutiny of the payment practices and performance of "large" businesses and to give suppliers better information so they can make informed decisions about who to trade with, negotiate fairer terms, and challenge late payments. Additional guidance to reporting on payment practices and performance has now been published to assist companies and LLPs who must comply with this statutory reporting duty.

Which companies will be affected?

The requirement to report on payment practices and performance, including key policies, applies to individual large UK companies and large LLPs, in any sector, which have exceeded two of the large company thresholds under the Companies Act 2006 s465(3) on both of their last two balance sheet dates:

- Over £36 million annual turnover.
- Over £18 million balance sheet total.
- Over 250 employees.

For parent companies and LLPs, the size of the group they head determines whether they qualify as small or medium-sized under the Companies Act for accounting purposes. For this duty to report, parent companies or LLPs which head large groups will only be required to report if they qualify as large (as per definition above) in their own right and if the group headed by them also exceeds two or all of the thresholds.

Where a company or a parent company has only recently been formed, it will qualify to report under the regulations in their second financial year if on its first balance sheet date it exceeded two of the thresholds and, in the case of a parent company, if the group headed by it also exceeded two of the group thresholds.

Each business will be required to publish its own individual reports (i.e. not a consolidated group report). This will give (potential) suppliers clarity about the payment performance of a particular business, so that they can make informed decisions about that business.

New proposed reporting requirements

Type of reporting	Requirement	Further detail
Narrative description	The organisation's payment terms	Including: • Standard contractual length of time for payment of invoices • Maximum contractual payment period • Any changes to standard payment terms and whether suppliers have been notified or consulted on these changes
Narrative description	The organisation's process for dispute resolution related to payment	
Statistics	Average time taken to pay invoices	From the date of receipt of invoice
Statistics	Percentage of invoices paid within the reporting period	In 30 days or fewer, between 31 and 60 days, over 60 days
Statistics	Proportion of invoices due within the reporting period which were not paid within agreed terms	
Statements (tick-box)	Does the organisation offer e-invoicing?	
Statements (tick-box)	Does the organisation offer supply chain finance?	
Statements (tick-box)	Do the organisation's practices and policies cover deducting sums from payments as a charge for remaining on a supplier's list, and have they done this in the reporting period?	
Statements (tick-box)	Is the organisation a member of a payment code?	If so, the name of the code

Scope – contracts covered

Businesses in scope will have to publish information about their payment practices and policies in relation to contracts which are: for goods, services or intangible assets (including intellectual property) connected to the carrying on of their business. Contracts will also have to have a significant connection with the UK to be covered by the duty to report, which may lead to detailed considerations being required for companies with non-UK suppliers. Whether a contract has a significant connection with the UK will depend on the circumstances, but the examples would include a contract which will be performed in the UK, or where one or both parties is established in the UK or carries on a relevant part of their business in the UK. Financial services contracts are excluded from the reporting requirement but of course financial services companies themselves are still required to report.

Form of reporting

Due to stakeholders' concerns about the accessibility of reports published on company websites, BEIS has proposed a central online portal to report payment practices, which is under development.

Businesses will be free to publish the information on their own website if they choose to do so, but this would need to be in addition to publishing through the web-based service provided by the government. The approval of a director (or designated member for an LLP) will be required for the reporting.

There is no requirement for external assurance on the information reported.

Frequency and timing of reporting

Reporting is within 30 days of each six month period and will be aligned with the business's key financial reporting dates, i.e. the first report will be due 30 days after the end of the first six months of a business' financial year, and the second reporting period will end at the same time as the business' financial year, with the second report due 30 days afterwards.

Where the financial period is significantly shorter or longer than 12 months, special provisions apply. If the financial period is nine months or less, only one report will be required, if 15 months or longer, three reports will be required.

What steps can you take to improve payment performance?

Perhaps the most important step, which this duty to report will go some way to addressing, is to put payment practices and performance firmly on the board's agenda, with a commensurate level of internal reporting to the board.

Steps to improve payment performance and practices could include:

- Review of supplier complaint or challenge regarding slow payments. A good first step for many organisations will be to introduce a mechanism to capture supplier feedback.

- Assessing dispute resolution mechanisms relating to payment to ensure they are efficient and effective. Where there are concerns, a third party review could be helpful.

- A review of supplier contracts, particularly long-standing contracts, to ensure payment terms and dispute mechanisms meet the needs of the business, including working capital requirements.

- Requesting management to analyse current payment practices for different parts of the business to identify any pockets of slower payment than 60 days and to provide the opportunity to identify and start to address the root causes of slower payment.

Failure to comply – reputation risk, criminal offence and fines

Any failure to comply runs the real risk of commercial and reputational damage, including public and media pressure.

Further to this, the draft regulations provide that failure to publish a report within the filing period (or failure to publish at all) is a criminal offence, as is publication of false or misleading information, with the company and directors (or designated members for an LLP) liable to a fine.

For further information
The guidance to reporting on payment practices and performance is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/587465/payment-practices-performance-reporting-requirements.pdf

Deloitte View

- Deloitte supports this BEIS initiative. It has long been suggested that a release of working capital would stimulate economic growth. Poor payment practices hamper the cash flows of many small and medium-sized enterprises and, in the worst case, threatens their survival.
- We encourage all companies to consider their payment practices and performance, as well as their working capital requirements, in advance of their first reporting obligations under the new requirements.
- Due to the level of detail and the potentially commercially sensitive nature of the disclosures, boards should ensure payment practices and performance are on the board's agenda and that directors are fully informed of the upcoming reporting requirements and the level of public scrutiny poor performance may invite.

Contacts – Working Capital Improvement Team
Our Working Capital Improvement team helps clients to release cash tied up in trade working capital, and has worked with clients to assess the impact of and improve compliance with the Prompt Payment Code and Duty to Report.

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