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AUDIT COMMITTEE INSTITUTE

Quarterly 29

Welcome

The 30% Club – better balance means better business

Corporate Governance – moving up a gear on internal control and going concern

Companies Act 2014 – Implications for Non-Executive Directors

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Audit Committee Institute

Recognising the increasing importance of governance issues, the Audit Committee Institute Ireland (ACI) was established to serve both audit committee members and non executive directors to help them to adapt to their changing roles.

Historically, those charged with governance responsibilities have largely been left on their own to keep pace with rapidly changing information relating to governance, remuneration, audit issues, accounting and financial reporting. Supported by KPMG, the ACI provides knowledge to non-executive directors and a resource to which they can turn at any time for information, or to share knowledge.

Our primary objective is to communicate with all senior business people to enhance their awareness and ability to implement effective board processes.

The ACI aims to serve as a useful, informative resource for members in such key areas as:

- Governance, technical and regulatory issues
- Sounding board for enhancing all board committees' processes and policies
- Surveys of trends and concerns.

The ACI is in direct contact with over 1,000 members. For more information on the activities of the ACI, please visit our website at: www.kpmg.ie/aci.

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For more information on the work of the ACI please see our website www.kpmg.ie/aci or contact:

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Welcome

Welcome to the latest edition of **Quarterly**, a publication designed to help keep audit committee members and non executive directors abreast of developments in areas of corporate governance and related matters.

The key topics covered in this issue include:

- The 30% Club – better balance means better business
- Corporate Governance – moving up a gear on internal control and going concern
- Companies Act 2014 – Implications for Non-Executive Directors
- Are Audit Committee's approaching agenda overload?
- Regulatory updates
- Financial reporting matters

I hope you will continue to enjoy the ongoing benefits of ACI. Please contact us at **aci@kpmg.ie** with any comments or suggestions of topics you would like to see covered and visit our website at **www.kpmg.ie/aci** for further information.

David Meagher
Chairman
Audit Committee Institute Ireland
Partner Audit
KPMG in Ireland

The 30% Club – better balance means better business

Bríd Horan

Steering Committee member of the 30% Club in Ireland

Career History

- Joined Irish Life and qualified as an Actuary
- Moved into Industrial Relations
- After a break of four years when her sons were born, joined KPMG's Pension and Actuarial services and headed this up as Director
- Joined ESB as Group Pensions Manager
- Became an Executive Director of ESB with responsibility for internal services and Cistomer Supply, including leading the move from a regulated business to full competition and the launch of the new Electric Ireland brand
- Became deputy CEO
- Retired in late 2014
- Served on the board of the IDA and on the Commission of the NPRF, both for two terms; currently a Director of FBD Holdings plc. Also on the Council of the IMI, Governing Authority of DCU, a member of the Expert Group on Funding Higher Education (appointed by Minister for Education) and serves on a number of arts-related boards

Bríd Horan, Steering Committee member of the 30% Club in Ireland, is interviewed by David Meagher, Chairman, ACI, Ireland.

The 30% Club (www.30percentclub.org) is an initiative started in the UK in 2010 and is now a global group of company Chairs and CEOs committed to better gender balance in business. The aim is to have at least 30% of board and senior management positions occupied by women.

What is the 30% Club?

The 30% Club (www.30percentclub.org) is an initiative started in the UK in 2010 and is now a global group of company Chairs and CEOs committed to better gender balance in business. The aim is to have at least 30% of board and senior management positions occupied by women.

Importantly, the 30% Club believes in voluntary action and promotion on merit, and does not advocate quotas.

Instead, the aim of the 30% Club is to demonstrate to business why better gender balance results in better business decisions and performance and to secure the visible commitment of business leaders to achieve this. This is a key business issue and real sustainable change can only be achieved with men and women working together to improve gender balance and develop the pipeline of female talent at all levels.

Tell us about the 30% Club in Ireland

We launched the 30% Club in Ireland last year, by inviting the Chairs/Chief Executive Officers of Ireland's largest and most successful businesses to participate. In doing this we had the support of six of Ireland's leading company chairs, our Chairs Advisory Board. The Club's Irish supporters are widely drawn, including major plcs, commercial semi-state companies, private Irish businesses and major subsidiaries of global companies, as well as a number of business organisations. We're delighted that, earlier this year, Central Bank Governor Patrick Honohan became the 100th supporter in Ireland.

Can you comment on why you believe more gender diversity is required?

The diversity agenda is, of course, broad and real diversity calls for balance across several dimensions. However, research shows that gender diversity is the clearest of the imbalances we face.

There was probably a belief that the gender mix at the top of business would balance out in Ireland over time; it's not that long ago since Irish business was effectively dominated by men, and there was an underlying belief that, as more and more women continued to work after having children, this would flow through to an appropriate balance at senior and board levels. That hasn't happened, and indeed certain organisations are seeing that the number of women in top management, whilst higher, has plateaued over the past number of years. Accordingly, there is a real need for organisations to understand the issues affecting gender balance and to address them effectively.

There have been several international research reports in this area. For example, McKinsey research

confirms that female executives are ambitious and believe they have the ability to become top managers. On the other hand, they are less confident that the culture in their companies can support their rise. Earlier research shows that many companies have implemented at least one measure to recruit, retain, promote and develop women and still have not seen notable improvements as a result.

Women are not a minority grouping and yet, in business women are too often in a minority and seen as such. The title of the 30% Club was selected because research shows that it is only when a minority group's representation hits the 30% level that its voice is heard as part of the "mainstream". I believe that, while some progress is being made in many organisations, the success to date is fragile, and the real question is whether the pipeline of women coming through over the next 5-10 years is sufficient to ensure proper gender balance.

Tell us about the advantages of gender balance.

There are many ways to look at this so let me mention just three issues:

Firstly, talent is a key issue for business – at all levels of education, young women are achieving great success and recruitment into most businesses is now close to 50/50; it makes no sense not to fully develop the female cohort of the workforce. What would be the reaction, for example, if businesses decided that to focus their talent nurturing efforts only on those born between April and September, to the exclusion of those born between October and March?

Secondly, everyone has different attributes, skills and experience. Many research studies show that having balanced teams leads to better outcomes, including two recent studies "When Women Thrive, Businesses Thrive" by Mercer and "Cracking the Code": by YSC and KPMG. They note that, in terms of key leadership competencies, women often score better than men in relation to collaboration/team work; innovation; and creativity. In today's challenging business world, these are critical leadership competencies, and it seems obvious that having more women around the boardroom and senior management tables will result in better business decisions. Other studies demonstrate stronger performance by companies with more balanced leadership.

Another obvious point is that many (in fact, a significant majority) of purchase decisions are made by women – if women are underrepresented at board/senior management level, this means businesses are missing out on a female perspective on their product offering.

Do you believe that senior people are biased in making promotion decisions?

No, I think most organisations promote on merit. However, businesses need to be careful as to:

- How they assess "merit"
- How they develop people over time, so that everyone has the full package of skills and experience at the point where they are being considered for promotion and
- How they encourage women to aspire to take on leadership roles.

There is always the danger that senior management promote based on their own perspective and their own "ideals", which may well be based on their own skills and experience.

Are you referring here to "unconscious bias"?

Yes, research shows that unconscious bias exists, and not just in relation to gender diversity. One of the key initiatives of the 30% Club is to talk to businesses about how unconscious bias manifests itself and how to seek to ensure that it does not impinge negatively on decision-making, on promotion and development initiatives.

What does the 30% Club do in Ireland?

The 30% Club is operated, on a voluntary basis, by a Steering Committee and by the Council which includes representatives from each of the supporting organisations and will meet three or four times each year. The full 30% Supporters Club (which now numbers over 100 members who are the Chairs or CEOs) meets once a year. We're already undertaking various collaborative initiatives, including for example:

- Holding information sessions, typically hosted by one of the member organisations, at which companies share their approach, best practices and experience
- Working with both the IMI and UCD Smurfit School who are generously providing scholarships; these will clearly be good for the women who obtain the scholarships, but the broader benefit is to encourage women to actively consider executive education and development
- With the IMI we're piloting a cross-company mentoring programme
- In association with DCU, the 30% Club will undertake some detailed research in relation to numbers and trends i.e. track the male/female balance at board level, senior management level, and at one or two levels of management below

I believe the latter is particularly important – by accurately measuring data over time companies will truly understand whether they're making progress or whether they have issues to address. I would encourage all organisations to pull that information together now, and consider what it shows.

Aren't there other organisations and groups looking at gender balance too?

Indeed there are, and the 30% Club will collaborate with others working in this area. For example, there is widespread recognition that, whilst gender imbalance manifests itself in the boardroom and at senior

management level, its roots begin in the classroom. One example of the discussions we are having with other organisations is how to ensure that an appropriate number of females take the "STEM" (science, technology, engineering and mathematics) subjects.

Can you summarise the key points that boards and management need to focus on in order to drive change?

I think two points are particularly relevant here:

- Accurate measurement, as referred to above, is key to really understanding where the issue is.
- The need for senior executives to demonstrate authentic leadership on this issue is critical. Senior management need to really embrace the challenge and the opportunity of achieving greater balance in their organisations, and to be seen, by everyone in the organisation, as espousing and driving this belief. This visible commitment is the key to real change.

Looking forward, what would you like to achieve over the next, say, five years?

I would like to see that the percentage of females at all levels of leadership has moved in the right direction. We're working towards a figure of 30% of business leadership positions being held by women by 2020.

We also want to build a pipeline of strong women leaders – the present pattern of women's participation in business can best be described as a pyramid with steadily declining percentages of women at more senior levels. We want to balance this at all levels, to the benefit of business and women.

Any final thoughts?

The last point I would make is that businesses and organisations today face many challenges. Unleashing the leadership potential of women will result in a stronger leadership cohort within the business, which in turn will be better able to address all of the various challenges that management face. To quote the title of the Mercer report, when women thrive, businesses thrive.

Questions to be asked at the Board in relation to Gender Diversity

- What is our Male/Female split at the following levels:
  - Board
  - Executive management (reproting to CEO)
  - Next level of management
- What is the CEO's and the Board's view on the analysis above? Is there a sufficient number of females in the pipeline?
- Does the company track the trends in relation to the proportion of females at senior and other management levels over time?
- Have management explicitly considered whether appropriate numbers of females are being promoted?
- Do female managers leave the company more frequently than their male counterparts? If so, why?
- Have management considered areas such as:-
  - Employees' view of management's awareness of gender diversity and its importance
  - Ongoing feedback programmes
  - Unconscious bias/inclusive culture
  - Support programmes at different stages of female careers
  - A mentoring programme for females
  - Work life/flexibility strategies
- Have management 'compared notes' with peer companies in relation to best practices, etc.?
- What goals should the organisation set in relation to retention/promotion of female talent?

Corporate Governance – moving up a gear on internal control and going concern

The 2014 reporting season saw the second iteration for boards of applying the benchmark of 'fair, balanced and understandable' in drafting annual reports, introduced by the FRC's 2012 Corporate Governance Code together with more specific and informative reporting on audit committee activities and extended reporting by auditors. Meeting those challenges is not the end, however: new and demanding provisions affecting both internal processes and external reporting on risk management, controls and going concern issues come into force in 2015.

The FRC issued its latest update to the UK Corporate Governance Code in September 2014 ('the 2014 Code') together with a number of related documents:

- 'Guidance on risk management, internal control related financial and business reporting' (the 2014 Guidance), which replaces the FRC's earlier guidance on internal controls ('the 'Turnbull Guidance')(2005) and that set out in 'Going concern and liquidity risk: guidance for directors of UK companies' (2009);
- supplementary guidance for directors of banks in 'Guidance for directors of banks on solvency and liquidity risk management and the going concern basis of accounting'; and
- complementary updates to auditing standards, including a new requirement in ISA 700 (UK&I) 'The independent auditor's report on financial statements' for auditors to include in their reports a statement as to whether they have anything material to add, or draw attention to, in relation to the expanded disclosures required by the 2014 Code in relation to Solvency and liquidity.

The 2014 Code applies to reporting periods beginning on or after 1 October 2014. Hence directors will need to report on compliance – or explain, if not complying – with the enhanced requirements in late 2015 or early 2016, when reporting on 30 September 2015 and later year ends.

Extent and impact of new requirements

The 2014 Code's new and amended provisions cover, in addition to internal controls and going concern, provisions relating to directors' remuneration and relations with shareholders, including conduct of general meetings.

On internal control and going concern, the updated Code and

related 'how to' material in the 2014 Guidance taken together consolidate recommendations for changes to requirements and best practice put forward in the report on the Sharman inquiry into going concern and liquidity risk (2012) and in the FRC's report 'Boards and Risk' (2013). Whilst the changes do not alter the audit committee's remit under the Code, they will have a significant effect on the matters that both boards and audit committees need to consider in fulfilling their responsibilities – in the case of audit committees, in particular the responsibility set out in Code provision C.2.3 requiring to review internal financial controls and risk management systems.

Key changes in this area consist of:

- New requirement to confirm that the board has conducted a 'robust assessment' of the principal risks faced by the entity and to describe these risks and how they are mitigated (Code provision C.2.1);
- Clarification of the term 'going concern', which is now used solely in the context of the basis on which financial statements are prepared, together with a revised disclosure requirement requiring the board to make an explicit statement as to
  - whether the going concern basis has been applied, and
  - whether there any material uncertainties as to the entity's ability to continue in operation over at least the next twelve months (C.1.3).
- New explicit statement is required as to the board's expectation as to the entity's longer term viability, having undertaken a robust assessment of the principal risks facing the entity and its current position. This is to state
  - how the board has assessed the entity's prospects,
  - over what period it has done so,
  - why the directors consider that period to be appropriate, and
  - that the directors have a reasonable expectation that the entity can continue its operations over that period and meet its debts as they fall due (C.2.2);
- Amended requirements relating to risk management and internal controls, making it clear that boards need to monitor those controls on an ongoing basis, not just annually. As in earlier versions of the Code, 'controls' cover those relating to financial, operational and compliance issues (C.2.3).

These are far reaching requirements – and all are in scope of the auditors' new obligation to state whether they have anything to add. In addition, the 2014 Guidance on risk management and internal controls sets out considerably more granular direction, linked to each of these new provisions, clearly delineating factors that boards and audit committees now need to take into account – and from which it is clear that meeting the new Code provisions are likely to need an extensive stock-take of internal processes as well as external reporting.

Key aspects of 'Guidance on Risk Management, Internal Control and Related Financial and Business Reporting' (the 2014 Guidance)

Starting with an overall statement of board responsibilities for risk management and internal control, the 2014 Guidance makes it clear that the board has full responsibility for the entity's overall approach, including (but not only)

- ensuring that the design and implementation of systems are adequate to enable the board to make the 'robust assessment' the Code requires and that appropriate culture and reward systems have been embedded throughout the organisation (Section 2) and
- specifying the nature, source, format and frequency of information it requires and monitoring the quality of information and determining to what extent, if any, it wishes to delegate some activities (section 3).

It then goes on to set out key matters to consider in establishing and monitoring systems and making

appropriate disclosures in the entity's annual report. These include directions that the board should

- when identifying the principal risks, focus on risks that could threaten the entity's business model, future performance, solvency or liquidity – including external risks, such as market or regulatory risk, over which the board may have little or no direct control (section 4). This wide-ranging assessment could involve consideration, for example, of risks relating to
  - development of new products and extent of R&D or other similar costs and likelihood of return (such as exploration in oil extraction industries)
  - geopolitical factors
  - environmental issues
  - adequacy of anti-money laundering safeguards
  - exposure to cyber-attacks;
- define the processes to be adopted for its on-going monitoring, including requirements, scope and frequency of reporting and assurance and ensuring that its annual review covers, in particular, a number of specified matters (section 5).

In making the disclosures required by the 2014 Code, boards should ensure that the descriptions of principal risks and uncertainties affecting future operations are sufficiently specific that a shareholder can understand why they are important. Additionally, in their statement on risk management and internal control, boards should include specified minimum information, set out in the table overleaf (section 6).

Boards will also need to consider whether the length of the period for which they have considered longer term viability is appropriate. The FRC guidance indicates that it is expected to be 'significantly longer' than 12 months – exact length being determined by specific factors, which it indicates include but are not limited to

- the board's stewardship responsibilities
- previous statements made by the board, especially in raising capital
- the nature of the entity's business and its stage of development, and
- its investment and planning period (Appendix B).

In view, perhaps, of the extent of the Code's new disclosure requirements – in particular the statement on longer term viability - the 2014 Guidance goes on to comment that boards may find it helpful to take into account both legal obligations and 'safe harbour' provisions protecting directors from liability if the company suffers loss as a result of an untrue or misleading statement in (or omission from) disclosures. These 'safe harbour' provisions are contained in UK, but not Irish, company law.

Other related factors to consider

For directors of Irish companies, 2015 is also the year in which the long-awaited Companies Act 2014 will be brought into effect. The Act marks a considerable improvement in accessibility and clarity of legal requirements affecting companies. However, whilst many of its provisions consolidate, rather than change, underlying requirements of company law, nonetheless there are some provisions which boards may wish to consider alongside their assessment of steps to implement the 2014 Code, for example:

- an amendment to provisions relating to books of account (now accounting records) to include a requirement for adequate precautions to prevent or detect falsification (section 282);
- amended provisions relating to the directors' compliance statement, including a requirement to confirm, in the directors' report, that appropriate arrangements are in place so as to secure material compliance with the company's relevant obligations (as defined) (section 225);
- recast provisions relating to approval of statutory financial statements underpinning the shared responsibility of all directors holding office at the date of approval for ensuring those statements meet the 'true and fair' requirement (section 324).

Lastly, it is interesting to note that the European Commission is also looking for improvements in reporting on corporate governance issues. In April 2014, it issued the EC 'Recommendation on the quality of corporate governance reporting ('comply or explain') (EC 2014/4/208/EU) which – as its title suggests - reinforces the 'comply or explain' principle. Specifically, it indicates that in meeting the requirements of Article 20(1) of Directive 2013/34/EU for listed companies to provide information about corporate governance arrangements companies should, in addition to identifying the code they have applied (whether on a mandatory or voluntary basis),

- describe how they have applied the relevant code, in a manner sufficiently clear, accurate and comprehensive to enable stakeholders to gain a good understanding of the manner in which the company is governed, taking account of its specific characteristics;
- if not complying with the relevant code, describe the measures taken instead and how these achieve the underlying objective of the specific provision(s) of the code, in a manner that enables stakeholders to assess the consequences arising from the departure.

The Recommendation is not binding but member state regulators were also asked to 'benchmark' local quality and report to the Commission – whether this will prompt further action by the way of legal specification at the EU level remains to be seen.

Conclusion

All in all, there is more than ample material requiring digestion and discussion over the summer, by both boards and auditors. The new provisions involve a significant extension of matters boards will need to consider – bringing both a wider and deeper scope, especially in relation to identification of principal risks and the new, longer term viability statement. Boards need to take steps now to make a critical evaluation of the adequacy of current processes and information flows and extend and strengthen them as needed, so as to ensure that they will have sufficient and reliable information to support the new disclosures in their next Annual Report.

Contents of the board's report on its review of the effectiveness of risk management and internal control systems

The 2014 Guidance states that, as a minimum, the board should acknowledge that it is responsible for the entity's risk management and internal control systems and for reviewing their effectiveness and disclose

- that there is an on-going process for identifying, evaluating and managing the principal risks faced by the company;
- that the systems have been in place for the year under review and up to the date of approval of the annual report and accounts;
- that they are regularly reviewed by the board; and
- the extent to which the systems accord with the 2014 Guidance.

In addition, the 2014 Guidance indicates that the board's report should

- summarise the process it has applied in reviewing the systems' effectiveness and explain actions to remedy any significant failings or weaknesses (this may be in the audit committee report, in which case cross-reference should be made)
- incorporate or cross refer to the description of the main features of the entity's risk management and control system required by company law (in Ireland: equivalent provisions in the UK are contained in the Disclosure and Transparency Rules).

Article by

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Companies Act 2014 – Implications for Non-Executive Directors

The Companies Act 2014 is the most significant change in Irish corporate law for two generations and took effect on 1 June 2015. What are the key reforms that a non-executive director should be aware of and what are the key questions the audit committee now needs to ask in relation to the Act?

After some 15 years in gestation the Companies Act 2014 was enacted on 23 December 2014 and comes into effect by way of statutory instrument on 1 June 2015. The Act is the single biggest piece of legislation ever enacted in Ireland, running to some 1,400 sections, and represents the most significant change in Irish corporate law in 50 years. All existing company legislation has been repealed and replaced by the Act. The Act applies to all Irish incorporated companies and consolidates, modernises and reforms all existing Irish company law. It aims to make it easier and more efficient for a company to do business in Ireland. The Act has significant implications for all Irish companies and their officers, not least their non-executive directors and audit committee members.

Key Reforms for Non-Executive Directors

The key changes introduced by the Act which impact on the discharge of duties by non-executive directors include the following:

- Creation of new company types
- Codification of directors' duties
- Directors' compliance statement obligations
- Additional duties in relation to financial statements and accounting records
- Expansion of Audit Exemption and Audit Committee obligation
- Introduction of a new Summary Approval Procedure

We consider the implications of each reform in turn below.

Creation of new company types

All existing private companies must decide within an 18 month transition period from 1 June 2015 whether to become one of two new entity types – (i) a Private Company Limited by Shares (LTD) or (ii) a Designated Activity Company (DAC)

The main company types (together with the entity identification letters which will appear after their names) provided for under the Act are as follows:

- Private Company Limited by Shares (Limited or LTD)
- Designated Activity Company (DAC)
- Public Limited Company (PLC)
- Guarantee Company (CLG)
- Unlimited Company (ULC)

The Act provides for an 18 month transition period from 1 June, during which existing private companies must decide which type of new entity best suits their needs. Accordingly, ABC Limited will have from 1 June 2015 until 30 November 2016 to decide whether to become an LTD and remain known as "ABC Limited" or become a DAC and be known as "ABC DAC" in future.

Key differences between the LTD and the DAC are set out in the table below.

Private Company Limited by Shares (LTD)	Designated Activity Company (DAC)
Minimum one director	Minimum two directors
One document constitution	Memorandum and articles of association
No objects clause – capacity not limited	Objects clause – capacity limited
May adopt written AGM in all cases	May adopt written AGM only if single member

During the transition period private limited companies that have not resolved to become either an LTD or a DAC will be deemed to operate as a DAC. However, on 1 December 2016 those companies that have not resolved to become either an LTD or a DAC will automatically convert to an LTD meaning they will no longer have an objects clause and an amended version of their existing memorandum and articles of association will be imposed upon them as a one document constitution.

Companies can proactively decide by way of shareholders' resolution to become either an LTD or a DAC at any time during the transition period. Best practice dictates that they should do so to ensure that they can actively adopt a new company constitution or memorandum and articles of association that fits their corporate governance requirements rather than have an untidy, unsuitable constitution imposed upon them on 1 December 2016.

The LTD may be more suitable for straightforward structures given the administrative convenience of operating the entity. Certain companies, such as regulated financial institutions, will be required to become a DAC. Private limited companies with banking covenants restricting activities or those governed by a shareholders' agreement or party to a joint venture may favour a DAC over an LTD as the permitted activities of the company will remain limited to those contained in the objects clause in its memorandum of association which can only be changed with shareholder approval. We expect that many corporate groups will require their subsidiaries to convert to DACs for corporate governance oversight reasons to ensure the activities of the subsidiaries will remain limited to those permitted under their objects clauses.

Directors' duties

For the first time under the Act, directors' common law fiduciary duties have been codified. Whilst this codification now gives directors greater clarity as to what is expected of them, it is important to note that the list is non-exhaustive and existing duties (contained in the Act, other legislation and case law) continue to apply.

The following fiduciary duties of directors have been codified and require that all directors must:

- act in good faith;
- act honestly and responsibly;
- act in accordance with the company's constitution and exercise those powers only for lawful purposes;
- not use company property unless approved by the shareholders or the company's constitution;
- not fetter discretion unless permitted by the constitution or unless it is in the company's interest;
- avoid conflicts of interest;
- exercise care, skill and diligence; and
- have regard for the interests of members as well as employees.

These duties apply to **all directors equally whether executive or non-executive directors**. Also, the duties extend to "shadow directors" and "de facto directors" who have not been formally appointed as directors.

Directors' duty of disclosure

The Act eases the obligation on directors and secretaries to disclose certain interests in shares and debentures in the company or any group company. De minimus interests (when aggregated with those of persons connected with the director) amounting to less than 1% in nominal value of the company's issued share capital carrying voting rights do not need to be disclosed in most cases.

Loans to Directors and Connected Persons

The Act introduces new evidential rules in relation to loans to and from the company with directors and persons connected with directors (which includes other group companies controlled by the directors). These new rules make it essential for such loans to be formally documented to ensure default provisions under the Act in terms of the nature of the arrangement, interest, repayment and security are not imposed on the parties.

Company Secretary

The Act provides that directors have a duty to ensure that the person appointed as company secretary has the requisite skills and resources for the role or access to such skills or resources (including, where required, the appointment of a reputable service provider).

Directors' Compliance Statement

The Act requires the directors of all PLCs (other than investment companies), LTDs, DACs and guarantee companies that reach prescribed thresholds (balance sheet in excess of €12.5 million and turnover exceeding €25 million) to prepare a statement of compliance with company law that gives rise to serious criminal offences and all tax law. This obligation is essentially a diluted version of the directors' compliance statement obligation enacted under the Companies (Auditing and Accounting) Act 2003 (frequently referred to as the IAASA Act) but never commenced. The new obligation will first apply in respect of accounting periods starting on or after 1 June 2015.

The directors are required to include a statement in the directors' report that the company is in material compliance with these "relevant obligations" or explain the reasons for the company's non-compliance. The Act requires the directors to:

- draw up a "compliance policy statement";
- put in place appropriate "arrangements or structures" designed to secure "material compliance"; and
- conduct a review during the financial year of these arrangements and structures.

Unhelpfully the Act provides no definition of "material compliance". Failure to comply with the directors' compliance statement obligation is a criminal offence for directors.

Additional duties in relation to accounts

Directors have an enhanced duty under the Act to ensure that statutory financial statements give a true and fair view and attain to comply with the Act. In particular all directors (including non-executive directors) commit a category 2 offence (reportable to the ODCE) if they are "party to" approval of accounts that do not provide a true and fair view or otherwise comply with the Act. Being "party to" consists of being a director at the time of approval and not taking "all reasonable steps" to prevent approval of non compliant account. Further, the Act also imposes an obligation on directors (including

non-executive directors) to put in place adequate precautions to protect against the falsification of the company's accounting records and to facilitate the discovery of such falsification.

Expansion of Audit Exemption and Audit Committee obligation

Under the Act, LTDs, DACs, guarantee companies and dormant companies may avail of the audit exemption where two of the following three conditions are met (previously companies had to meet all three of these conditions):

1. the balance sheet total of the company does not exceed €4.4 million;
2. the turnover of the company does not exceed €8.8 million; and
3. the average number of employees does not exceed 50.

Before the commencement of the Act, only 'public interest entities' were required to establish an audit committee. Under the Act all "large companies" (which includes large private companies) are required to establish an audit committee or explain in the directors' report the reasons for the company's decision not to establish the committee. A "large company" is defined under the Act as a company that in both of its two most recent financial years meets the following criteria:

- balance sheet total (i.e. total net assets) in excess of €25 million; and
- annual turnover in excess of €50 million.

It should be noted that where the company is part of a group these conditions must be applied on a consolidated group basis as opposed to an individual entity basis.

Restricted Activity	Members Special Resolution	Directors' Solvency Declaration	Auditor's Report	Available to Plcs	Court Approval Option
Financial Assistance in connection with the purchase of a company's own shares or those of its holding company	✓	✓	✗	✗	✗
Reduction in Company Capital	✓	✓	✓	✗	✓
Variation in Company Capital on reorganisation	✓	✓	✓	✗	✓
Pre-Acquisition Reserves being treated in holding company's financial statements as profits available for distribution	✓	✓	✓	✓	✗
Provision of loans, credit or guarantees to directors or persons connected with them	✓	✓	✗	✓	✗
Mergers of domestic private companies	✓	✓	✗	✗	✓
Members Voluntary Winding Up	✓	✓	✓	✓	✗

Summary Approval Procedure

A key innovation of the Act is the introduction of the Summary Approval Procedure (SAP), a simplified written approval process for certain restricted activities (i.e. those that may prejudice shareholders or creditors).

The table below briefly outlines the relevant restricted activities, the steps to be taken to obtain approval, whether an auditor's report is required for approval, whether a PLC can avail of the SAP to perform the relevant restricted activity and whether court approval for those activities remains an option.

In all cases, a Members' Resolution and a Directors' Declaration of Solvency are required.

Where the directors provide a Declaration of Solvency as part of a Summary Approval Procedure without having reasonable grounds for doing so, the High Court may declare that any director that provided the Declaration is personally liable without limit for all or any debts of the company. If the company is wound up on an insolvent basis within 12 months of the provision of the Declaration of Solvency there is a rebuttable presumption that each director that made the Declaration did not have reasonable grounds for doing so. Accordingly, for restricted activities where the option to apply for High Court approval exists, many companies may decide that it is more prudent to do so to ensure that the directors are not exposed to potential personal liability.

Clearly any non-executive director being asked to provide a Declaration of Solvency in support of a Summary Approval Procedure should only do so in circumstances where an appropriate investigation process has been conducted and where they are absolutely confident that undertaking the restricted activity will not undermine the solvency of the company.

Conclusion

The role of the non-executive director under the Act continues to be an onerous and challenging one. However, having considered the key reforms introduced and the responses elicited by asking probing questions such as those above, the non-executive director should be better placed to discharge his or her duties and make a valuable contribution to the governance and oversight of the company.

Key Questions to Raise

Some of the key questions that an audit committee member should consider raising in appropriate circumstances, in light of the reforms introduced by the Act, include those set out below.

1. Will private limited companies within the group be converted to LTDs or to DACs and why?
2. When will this conversion process be completed?
3. If private limited companies within the group are being converted to LTDs, what safeguards will be adopted from a corporate governance perspective to ensure such companies do not engage in activities which are not permitted by the group holding company?
4. Does the company have loans with directors or persons connected with directors (including other group companies controlled by directors) and if so are the terms of these loans documented in writing in clear and unambiguous terms?
5. Does the company secretary have the requisite skills and resources necessary for the role or access to such skills and resources?
6. Is the company required to provide a Directors' Compliance Statement? If so, has the company prepared a Compliance Policy Statement, and has it put appropriate arrangements and structures in place to ensure material compliance which have been reviewed during the financial year?
7. Will any group companies qualify for the expanded Audit Exemption?
8. Have any additional group companies been brought within the scope of the Audit Committee obligation under the Act?
9. In any case where it is proposed that the company will perform a restricted activity pursuant to the Summary Approval Procedure, what investigations have been conducted to allow the directors to determine whether or not they have reasonable grounds to swear a statutory declaration of solvency in support of same?

Article by

Michael Moore
KPMG Legal Services Ireland

Are Audit Committees approaching agenda overload?

The Audit Committee Institute ("ACI") recently published a summary of the results from its survey entitled "2015 Global Audit Committee Survey". This is an annual survey which presents views of approximately 1,500 audit committee members from across the globe (including a significant sample from Ireland).

On a global basis key themes emerging are

- Uncertainty and volatility, regulation and compliance, and operational risk top the list of challenges facing companies today
- Audit committees want to spend more time on risk oversight – particularly cybersecurity and the pace of technology change
- The quality of information about cybersecurity and technology risk, talent, innovation and business model disruption is falling short
- More boards are reallocating risk oversight duties as the audit committee's workload becomes more difficult
- CFO succession planning is still a major gap, and many audit committees want to dive deeper into finance issues
- Views on audit reforms are mixed; and while confidence in audit quality continues to be strong, there's still room for auditors to offer more insight
- A deeper understanding of the business, greater diversity of thinking, more open dialogue, and IT expertise would most improve the audit committee's effectiveness

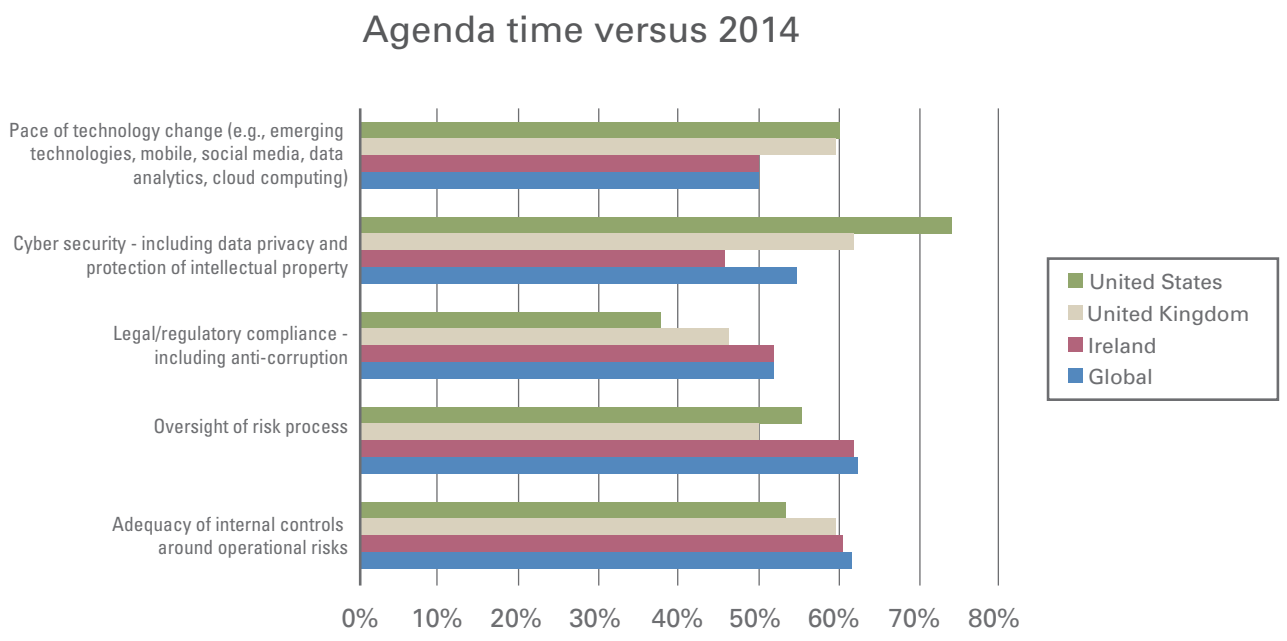
Outlined below are some of the topics and concerns which became evident from the survey, and how the global concerns compares to the attitudes of those audit committee members in Ireland that were surveyed. Broadly, survey topics came under the headings of:

- Top Challenges and Concerns
- Risk and information quality
- Audit Committee workload and agenda
- Oversight of Auditors
- Audit Committee Effectiveness

Are audit committees area of focus changing from 2014?

On a range of 15 topics, audit committees were asked "How much agenda time should your audit committee devote to the following matters in 2015, compared to 2014?" Their choices were More time, Significantly more time, Less time or No change. Perhaps representing the ever increasing demands of audit committee, no topic received more than 7% in the "Less time" category. As summarised in the table, globally five topics received 50% or more in the More time or Significantly more time category.

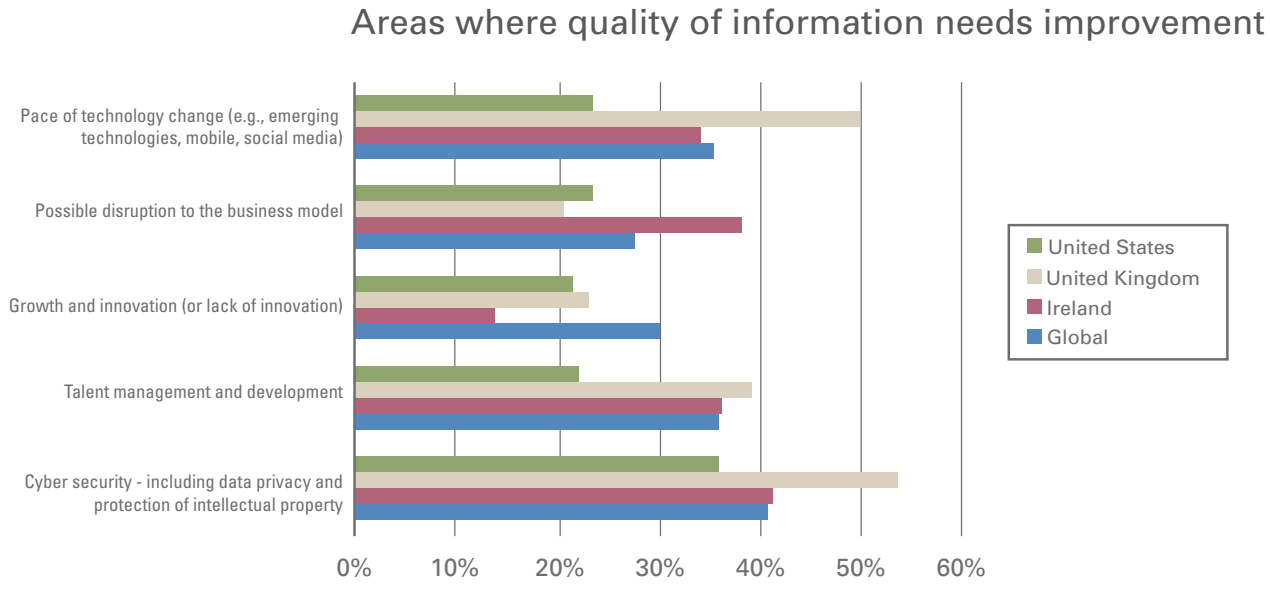
Interestingly, Ireland has less of an expectation of increased focus on cybersecurity in 2015, compared to our neighbours in the UK or colleagues in the US. Does this reflect the fact that Ireland was ahead of the curve in 2014 in dealing with this risk, or will there be a learning curve ahead for Irish Audit Committee members on this topic in 2015?



Risk and information quality - quality of the information received about risks and their potential impact on the company

Similar to last year, Audit Committees globally are generally satisfied with the quality of information they received. There were five areas where on a global basis, respondents noted at least a 25% "needs improvement" status. The variation between Ireland, UK and the US in quality of information in certain areas is stark. UK respondents are clearly concerned with technological change and cybersecurity, and feel there can be much improved information provided to them to assist them in managing those risks. Ireland appears to be grappling more with getting information that will highlight key risks and potential disruptions to business models.

These differences might again point to our US colleagues having a greater focus and more mature reporting process around technological change and cybersecurity, suggesting there may be a catch up effect locally in the coming years. However, many of these topics were also prominent on this list in last year's survey.



The prominence of IT related topics on this list is not surprising when the results of the question "Please rate the quality of the Audit Committee's communications and interactions with the following professionals / functions" are considered. Globally 20% of respondents noted that the CIO communications needed improvement, while only 23% noted the communication was excellent. This rating left CIO communications as the worst of both ratings.

Audit Committee's workload and agenda

Responses under this heading reflect an increasingly difficult and time consuming role for the Audit Committee. 75% of respondents noted that the time required to carry out audit committee responsibilities has increased moderately or significantly over the past two years. 40% note that while they feel the Audit Committee has the time and expertise to oversee the major risks on its agenda in addition to carrying out its core oversight responsibilities, it is becoming increasingly difficult to do so.

If Audit Committee members feel that the increase in responsibilities is relentless, then respite might be in sight. 35% of respondents note that the Board has reallocated/rebalanced risk oversight responsibilities among the full board and board committees and away from the Audit Committee, and 21% explain that the Board has created a new committee(s) to focus on specific category of issues/risks. Where change has not been made, 32% note they may consider changes in near future.

Oversight of auditors

Audit Committees globally continue to believe there is room for improvement in the external auditors' performance when it comes to:

- Offering insights / benchmarking on industry-specific issues (62%)
- Helping Audit Committees stay apprised of accounting / auditing developments (44%)
- Sharing views on the quality of the financial management organisation (43%)

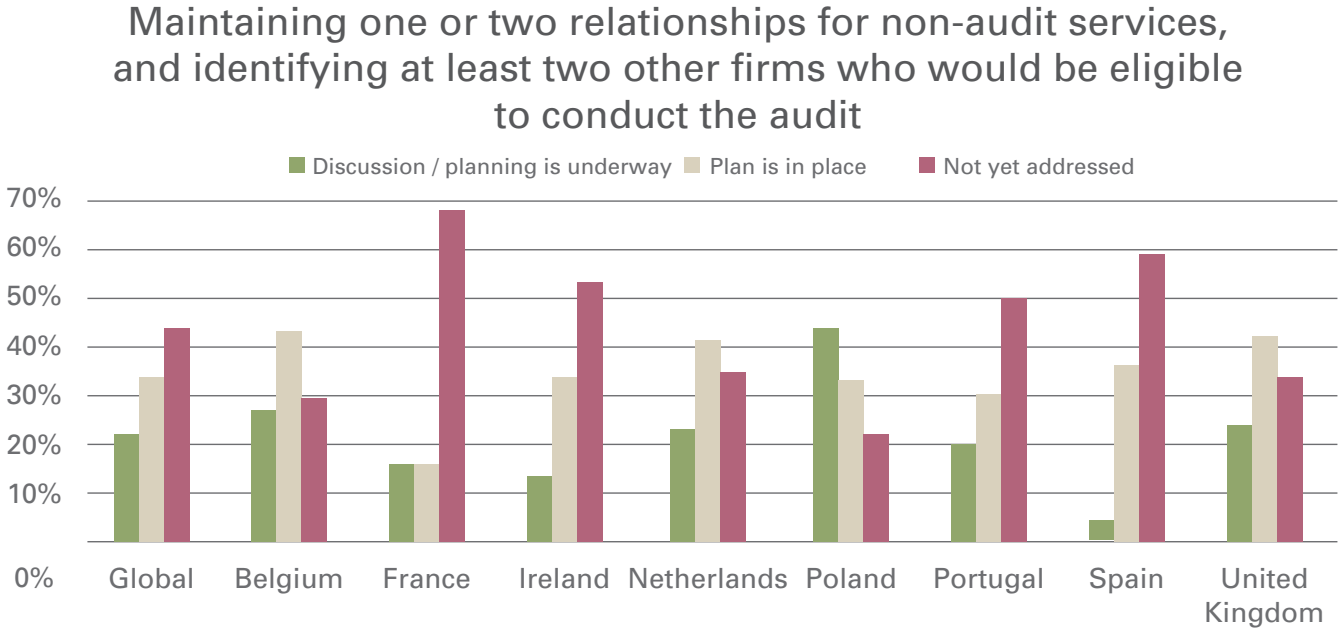
While Ireland, UK and US would reverse the sequence of bullet two and three, they are very much in agreement with the top three areas.

Only 23% of global respondents were within the EU, and responded to the question: In light of recent EU audit reforms (mandatory firm rotation, restrictions on certain non-audit services, etc.) to what extent has your Audit Committee considered:

- Maintaining one or two relationships for non-audit services, and identifying at least two other firms who would be eligible to conduct the audit
- Taking an ad hoc approach, where service providers are determined on a case-by-case basis and limitations/conflicts are addressed as they arise
- Aligning tender processes for audit and other key non-audit service contracts

On the first point the attached chart shows that countries like Belgium and the Netherlands are well ahead of countries like France, Ireland, Portugal and Spain in this regard. Similar pictures emerge in response to the other questions. Given that Netherlands has already introduced mandatory audit firm rotation and restrictions on the provision of non-audit services for Dutch public interest entities, their status is not surprising.

Although the vast majority of respondents are not within the EU, the majority of them had clear views on the impact such reforms could have. 23% believe the EU's new audit reforms will improve audit quality, while

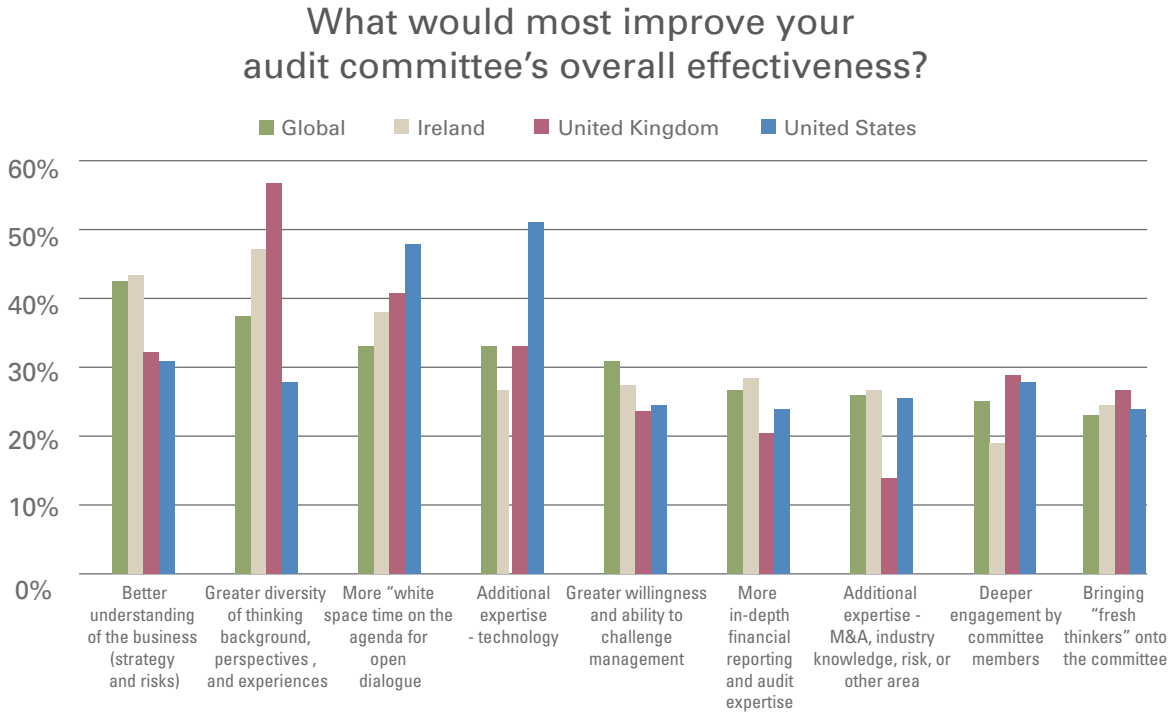


40% believe it will not, with the majority in this category believing it could potentially decrease audit quality. Countries like Brazil, Chile, India, Mexico, Poland, Portugal and Spain were most in favour of the reforms with 45%+ of respondents answering yes, and as high as 57% in Brazil.

Audit Committee effectiveness

Globally, audit committees believe they are generally effective or highly effective in most areas of oversight, with the exception being CFO related, where respondents note that they are not effective in CFO succession planning (42%) and in assessing the CFO's performance (17%). Irish (35%) and the US (22%) responses are better than the global responses to CFO succession planning, while the UK (48%) clearly thinks there is more work to do in this area.

When asked what would most improve the Audit Committee's overall effectiveness, the most popular response (43%), was a better understanding of the business (strategy and risks). Much of this can be connected back to earlier themes emerging in relation to which board committee should have oversight responsibility and the quality of information Audit Committee members receive in relation to certain risks. Interesting differences between Ireland, the UK and the US emerge when it comes to diversity, "white space" time on the agenda, and additional technology experience, with Ireland and the UK placing more emphasis on the first and the US placing more emphasis on the last two.



Article by John Corrigan KPMG Ireland

Local regulatory update

As we head towards the summer solstice, the Companies Act 2014 is about to be commenced, the Department of Jobs Enterprise and Innovation is considering the responses to its consultation on Member State options in the EU Audit Regulation and Directive, the Financial Reporting Council has been busy publishing its Extended auditor's report: A review of experience of the first year, Developments in Corporate Governance and Stewardship 2014 and its Plan and Budget for 2015/2016. The Central Bank of Ireland has also been busy during the period and there have been several developments in relation to financial services regulation.

Companies Act 2014

Since our last publication, the Companies Bill has been enacted and has a commencement date of 1 June 2015. The majority of the Act has commenced from 1 June 2015, thus all of Part 6 Financial Statements, Annual Return and Audit has taken effect for all financial statements approved on or after 1 June 2015. Part 6 contains a number of provisions that will be beneficial to many companies such as:

- Reduction in disclosable interests (section 260);
- Consolidation exemption size limits increased (section 297);
- Audit exemption widened (section 359); and
- Dormant company audit exemption (section 365).

However, the proposed method of commencement of Part 6 would mean differing requirements will apply, depending on the month of approval, to the directors' report, financial statements and the auditor's report for the same financial year, for example:

- Different information in the Directors' Report (Chapter 9 of Part 6);
- Changed definitions (e.g. turnover and undertaking – section 275);
- New terminology (e.g. financial reporting framework – section 274); and
- Changes in requirements (e.g. proper books of account under Companies Act 1963 – 2013 versus adequate accounting records – sections 282 & 283).

Notwithstanding the method of commencement and the one-off issues that may arise, the Companies Act 2014 on balance is a welcome development as it is a significant improvement to the corporate legislative framework in Ireland.

The following provisions only apply for financial years beginning on or after 1 June 2015:

a) Section 167 – requirement for certain companies to set up audit committees or explain why not;
b) Section 225 – requirement for certain companies to include a directors' compliance statement in the directors' report;
c) Section 305(1)(b) – requirement to include gains on exercise of share options in directors' remuneration;
d) Section 306(1) – requirement to include amounts paid to connected persons in directors' remuneration;
e) Section 326(1)(a) – requirement to include the names of all directors' in the directors' report; and
f) Section 330 – requirement to include statement on relevant audit information in the directors' report

EU Audit Reform

Following the publication of the Directive and Regulation in the Official Journal of the EU, the Department of Jobs, Enterprise and Innovation sought the views of interested parties on:

I. the use of Member State options under Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC;
II. the use of Member State options under Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts;
III. cost/benefits of the options or any other provision of the Regulation/Directive;
IV. difficulties of legal interpretation;
V. practical operability issues; and
VI. any other aspect of the Regulation/Directive that interested parties may wish to raise.

Audit Committees may be interested in the collated responses which are available here: http://www.djei.ie/commerce/companylawlegislation/publications.htm

Furthermore Audit Committees may be interested to know that the U.K. Competition and Markets Authority (CMA) released its Statutory Audit Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014 (the Order) in relation to mandatory audit tendering and the responsibilities of the Audit Committee. The Order applies to financial years beginning on or after 1 January 2015. The key matters are that FTSE 350:

- companies are required to tender their statutory audit every 10 years; and
- audit committee responsibilities have been strengthened.

The Order and related guidance can be found on the CMA's website: www.gov.uk/government/organisations/competition-and-markets-authority or the Order itself can be found here:

https://assets.digital.cabinet-office.gov.uk/media/54252e-ae40f0b61342000bb4/The_Order.pdf

Financial Reporting Council (FRC) developments

FRC's Extended auditor's reports: A review of experience in the first year

The FRC, on 2 March 2015, published its survey Extended auditor's reports: A review of experience in the first year which confirms that auditors appear not only to have met the new requirements but in many cases to have gone further and reported more widely than required. The FRC considered the scale of innovation and diversity of approach adopted by the different audit firms to be very encouraging.

Audit Committees may be interested in areas in which significant innovation was noted by the FRC and areas in which the FRC suggested improvement might be made.

Innovation was seen in the following areas:

- Disclosing the materiality benchmark used;
- Disclosing the magnitude of unadjusted audit differences being reported to the Audit Committee;
- Reporting of detailed audit findings with respect to identified risks;
- Experimentation with detailed broader explanation of the audit scoping process;
- Improved presentation of auditor's reports through the use of diagrams and graphs;
- Addressing going concern disclosures in auditor's reports;
- Locating the auditor's opinion at the beginning of the report rather than at the end; and
- Moving generic descriptions of the scope of an audit to a website.

Areas in which improvements might be made:

- Increasing entity-specific risk reporting;
- Improving the discussion of the auditor's application of materiality and why a particular benchmark or level was chosen; and
- Making a clearer linkage between the discussions of risks and materiality and the description of how these influenced the scope of the audit.

Read the Extended auditor's reports: A review of experience in the first year survey here: https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2015/March/FRC-finds-good-take-up-of-new-auditor-reporting-re.aspx

FRC's Developments in Corporate Governance and Stewardship 2014

The FRC, on 15 January 2015, issued its annual review of developments in Corporate Governance and Stewardship for 2014. The report highlights the importance of good culture within organisations. Commenting on board culture, FRC Chairman Sir Win Bischoff said:

"The governance of individual companies depends crucially on the culture that is in place. The UK's strong governance culture encourages companies to list in London and provides assurance to investors. Unfortunately we still see examples of governance failings in this area. Boards have responsibility for shaping the culture, both within the boardroom and across the organisation as a whole. This requires constant vigilance."

Audit Committees will be interested in the Governance of Listed Companies section of the report which sets out how the UK Corporate Governance Code was implemented during 2014 and provides an assessment of the quality of corporate governance reporting. Of particular interest is the finding that a third of an FRC sample of FTSE 350 audit committee reports were rated as needing to give better disclosure of significant issues.

Read the Developments in Corporate Governance and Stewardship 2014 report here https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Developments-in-Corporate-Governance-and-Stewardsh.pdf

FRC publishes its Plan and Budget for 2015/2016

The FRC published, on 25 March 2015, its Plan and Budget for 2015/16 and set out its priorities for the next year therein. Of the areas that the FRC will focus on over the next year, the following will be of interest to Audit Committees:

- Corporate Governance – there will be a focus on company culture and how to promote good practice and on company succession planning;
- Corporate Reporting – promote reports that are fair, balanced and understandable, and also clear and concise; and continue to help smaller listed and AIM companies with the quality of their reporting; and
- Investor stewardship – support better engagement between boards and shareholders and ensure that Stewardship Code signatories deliver on their commitments.

Read the Plan and Budget 2015/16 here: https://www.frc.org.uk/Our-Work/Publications/FRC-Board/Plan-Budget-and-Levies-2015-16.aspx

Financial Services

ICAV – Irish Collective Asset-management Vehicle

The ICAV is a new form of corporate vehicle specifically tailored for funds. The ICAV Act came into effect in March 2015. The ICAV provides managers with a corporate structure that is designed specifically for investment funds and which is not subject to company law (thereby helping to reduce the administrative burden

and cost). The new legal structure provides a number of key benefits:

- A tailor made corporate structure which excludes elements of company law not appropriate to an investment fund;
- A regulated corporate fund structure which is more tax efficient for US investors;
- Can be established either as a UCITS fund or an AIF (Alternative Investment Fund);
- Existing funds will be able to convert or redomicile to the ICAV; and
- Acts as an alternative to similar vehicles available elsewhere.

Like an investment company, an ICAV is a corporate entity that is governed by a board of directors and owned by shareholders. ICAVs are regulated funds and, therefore, have all the benefits of a regulated structure. Consequently an ICAV needs an authorisation to carry on business either as an AIF or as a UCITS fund. It also represents a simpler, more tax efficient structure for US investors. This is because the ICAV effectively allows taxable US investors to be in the same tax position as if they had invested directly in the underlying investments of the ICAV.

There are streamlined and relatively straightforward procedures for:

- the establishment of a new investment fund as an ICAV;
- the conversion of an existing Irish company to an ICAV;
- the migration or re-domiciling of investment funds established as companies to Ireland as ICAVs; and
- a merger involving an ICAV as the receiving fund.

For further information see the CBI website here: http://www.centralbank.ie/regulation/industry-sectors/funds/Pages/RegistrationofanICAV.aspx

Loan Originating AIFs (Alternative Investment Funds)

Since October 2014, Qualifying Investor Alternative Investment Funds ("QIAIFs") in Ireland have been permitted to engage in direct lending to corporate entities. These loan funds are subject to the AIFMD Directive and so can avail of the AIFMD marketing passport. They are also subject to additional rules in the AIF Rulebook including rules on:

- Credit assessment - policies and procedures must be in place;
- Diversification - loan funds must comply with a 25% limit of the fund's net assets to any one issuer or group;
- Disclosure - additional disclosures may be made to investors on an aggregate basis but they must be reported to the Central Bank on an individual basis;
- Liquidity - loan funds must be liquid i.e. must be closed-ended, must be established for a finite period and must have pre-determined redemption dates; and
- Stress testing - loan funds need to undertake monthly credit and market stress testing and quarterly multi-factor stress testing. This is in addition to the stress testing required under AIFMD.

The requirements, which these funds are subject to, have been incorporated into Chapter 2, Part II, Section 4 of the AIF Rulebook and the AIF Rulebook is available on the Central Bank's website. http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Pages/default.aspx

Client Asset Requirements

On 30 March 2015 the Central Bank of Ireland published two separate sets of regulations; the Investor Money Regulations and the Client Asset Regulations.

The Investor Money Regulations will apply to fund service providers ("FSPs") for the first time. Previously FSPs did not, in practice, apply the Central Bank's old Client Asset Requirements regime to their activities, even though they were not specifically exempted. The Investor Money Regulations will apply to money received by the FSP from an investor where it is held in a "collection account" in the name of the FSP or a nominee of the FSP and where the FSP has the capacity to effect transactions on that collection account. The Investor Money Regulations are applicable to an FSP that is authorised in Ireland and is holding investor money irrespective of whether the investor money is in respect of Irish or non-Irish Funds.

The Client Asset Regulations update the client asset regime for investment firms. The principles are the same as before, albeit new requirements have been added. For example the governance arrangements around client assets have been tightened up. Firms are required to appoint a Head of Client Asset Oversight, which will be a pre-approved controlled function and the appointee will need to be approved by the Central Bank. Firms are required to create, document and maintain a Client Asset Management Plan. There is also be an obligation for firms to give clients a Client Asset Key Information Document which sets out to clients how their assets will be managed. Similar governance arrangements feature in the Investor Money Regulations.

Further information is available on the Central Bank's website: http://www.centralbank.ie/Pages/home.aspx

Solvency II – Feedback Statement on the consultation paper on National Specific Templates for Insurers (CP89)

The Central Bank issued its feedback statement in response to CP89 on 23 April 2015, setting out that, having taken into account the nature, scale and complexity of insurance undertakings in Ireland, it concluded that:

- Reinsurance undertakings will not be in scope of the National Specific Templates requirements although the Central Bank reserves the right to change this position in the future;
- Non-Life National Specific Templates nos. 3 – 7 inclusive will be collected twice per annum commencing with the first half of 2016 although the Central Bank reserves the right to change this position in the future;
- National Specific Templates nos. 1 – 7 inclusive will apply to undertakings rated as High Impact under the PRISM risk rating system only;
- Variable Annuity Business National Specific Templates nos. 8 - 11 will permit the use of company's own hedging bases for the P&L attribution (with regular reconciliations to the Solvency II basis) and will require stress tests to be submitted on an annual basis only; and
- The only acceptable format for submission of National Specific Templates will be XBRL.

The feedback statement can be found on the Central Bank's website: http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/closed.aspx?CPNumber=CP89

Date of issue	Title	Closing date	CP Number	Status
17 Apr 2015	**Central Credit Register** Consultation on the Central Credit Register	12 June 2015	CP93	Active
2 Apr 2015	**Domestic Actuarial Regime and related Governance Requirements under SII CP92** Domestic Actuarial Regime and related Governance Requirements under SII CP92	29 May 2015	CP92	Active

Financial reporting update

This section provides an overview of the key developments in IFRS and UK/Irish GAAP since our last edition.

Overview

There have been numerous developments in UK and Irish GAAP since the last edition of ACQ in October 2014. In February 2015, the Financial Reporting Council (FRC) issued amendments to FRS 102 in respect of pension obligations and in March 2015, the FRC issued FRS 104 Interim Financial Reporting for use by entities in their interim financial statements which apply FRS 102 in their annual financial statements. In addition, the FRC has a number of ongoing projects in respect of FRS 102 primarily relating to the withdrawal of the FRSSE, the adoption of a new financial reporting standard for micro entities (FRS 105) and ensuring that FRS 102 remains compliant with the requirements of the new Accounting Directive.

Meanwhile, there have been fewer developments in IFRS over the period. Significant standards such as IFRS 15 and IFRS 9 are not becoming effective until 2018 following the recent decision by the IASB to defer the effective date of IFRS 15. The IASB did issue a number of amendments during the period which are generally applicable from 1 January 2016. Therefore companies have the opportunity to prepare for the significant changes which will be coming in the future.

The future of UK and Irish GAAP

In February 2015, the FRC issued amendments to section 28 'Pensions' of FRS 102. The amendments concern whether or not an entity applying FRS 102 should have regard to the principles of IFRIC 14 and IAS 19 – The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their interaction when it might be relevant to its circumstances.

The amendments clarify that, for entities already recognising assets or liabilities for defined benefit plans in accordance with FRS 102, no additional liabilities need to be recognised in respect of a "schedule of contributions".

The amendments also clarify that the effect of restricting the recognition of a surplus in a defined benefit plan, when the surplus is not recoverable, shall be recognised in other comprehensive income rather than in the profit or loss.

The amendments are accessible at the following link on the FRC website, as is the impact assessment and feedback statement:

https://www.frc.org.uk/Our-Work/Codes-Standards/Accounting-and-Reporting-Policy/New-UK-GAAP.aspx

FRS 104 Interim Financial Reporting

FRS 104 sets out the interim reporting requirements for FRS 102 adopters and is based on IAS 34 Interim Financial Reporting. FRS 101 adopters may also use FRS 104 as a basis for their interim financial reports.

FRS 104 does not impose an obligation on entities to produce interim financial reports nor does it mandate its application by the entity. However entities that do make a statement of compliance with FRS 104 are required to apply all of the provisions of FRS 104.

FRS 104 is effective for interim periods commencing on or after 1 January 2015, with early application permitted.

Editorial amendment and clarification statement

The following editorial amendment to FRS 102 was published during the period:

Date of issue or update	Section of FRS 102	Issue
16 April 2015	*Section 12 Other Financial Instruments Issues*	Clarification statement in relation to net investment hedges of foreign operations that are branches.

Ongoing Projects

The FRC has a number of ongoing projects in respect of new UK and Irish GAAP which are set out below.

Project	Status
FRED 57: Draft amendments to FRS 101 Reduced Disclosure Framework (2014/15 cycle)	FRED 57 was issued on 15 December 2014. The purpose of this FRED is to update FRS 101 at regular intervals to ensure that FRS 101 maintains consistency with EU adopted IFRS. The 2014/15 cycle of this FRED sets out proposed amendments to FRS 101 to provide an exemption from: • Paragraph 18(a) of IAS 24 Related Party Disclosures; and • The requirements of paragraphs 6 & 21 of IFRS 1 First time adoption of International Financial Reporting Standards to present an opening statement of financial position. The 2014/15 cycle also sets out proposed amendments to the Application Guide to reflect: • Changes made to paragraph 40 of IFRS 3 Business Combinations; and • The deletion of paragraph 33(b) (iv) of IFRS 5 Discontinued operations and assets held for sale
FRED 58: Draft FRS 105 *The Financial Reporting Standard applicable to the Micro-entities Regime*	FRED 58 was issued on 19 February 2015 alongside FRED 59 & FRED 60 as a suite of FREDs relating to the implementation of the EU Accounting Directive. FRED 58 is a proposed new standard to support the introduction of the micro-entities regime into UK company law. The micro-entities legislation is not available for application in the Republic of Ireland - however the Department of Jobs, Enterprise and Innovation (DJEI) has consulted on the possible enactment of this legislation in its consultation on the transposition of the EU Accounting Directive.

Project	Status
FRED 59: Draft amendments to FRS 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland – small entities and other minor amendments	FRED 59 proposes a new section of FRS 102 developed specifically for small entities. It is proposed that small entities apply the recognition and measurement requirements of FRS 102, but presentation and disclosure requirements based on company law to ensure that all entities reporting under new Irish and UK GAAP apply a consistent framework. In addition, there are some other minor proposed amendments to FRS 102 to ensure continued compliance with changes to company law.
FRED 60: Draft amendments to FRS 100: Application of Financial Reporting Requirements and FRS 101 Reduced Disclosure Framework	FRED 60 proposes minor amendments to FRS 100 to withdraw the Financial Reporting Standard for Smaller Entities (effective January 2015) (FRSSE) and to ensure continued compliance with changes to company law. FRED 60 also includes proposed amendments to FRS 101, the most significant of which is to provide greater flexibility in relation to the format of the profit and loss account and balance sheet, by allowing the use of IFRS based presentation requirements similar to those used for group accounts.
FRED 61: Draft amendments to FRS 102: Share based payment transactions with cash alternatives	FRED 61 Draft Amendments to FRS 102 - Share-based payment transactions with cash alternatives has been issued by the FRC which proposes clarifying and simplifying the accounting for share and share option awards where a cash-settlement alternative exists. The amendment aims to achieve greater consistency with the equivalent requirements of IFRS 2 Share based payments and reduce the cost of compliance with FRS 102.
Implementation issues	The Accounting Council and its UK GAAP Technical Advisory Group will review any issues arising relating to the implementation of FRS 102 as they arise. It is not expected that FRS 102 will be revised prior to the first three year review, with the exception of financial instruments.
XBRL Project – Accounting Taxonomies	The FRC is currently finalising the draft taxonomies for final implementation.

Further detail on the ongoing projects being undertaken by the FRC can be accessed at the following address: https://www.frc.org.uk/Our-Work/Codes-Standards/Accounting-and-Reporting-Policy/The-future-of-UK-GAAP/On-going-Projects.aspx

IASB activity

New IFRS standards and amendments

The following new IFRS standards and amendments were published by the IASB since our last update:

Standard or amendment	Issued date	Effective date
Investment entities: Applying the consolidation exception (Amendments to IFRS 10 Consolidated financial statements, IFRS 12 Disclosure of interests in other entities and IAS 28 Investments in Joint Ventures and Associates)	December 2014	1 January 2016*
Disclosure Initiative (Amendments to IAS 1 Presentation of financial statements)	December 2014	1 January 2016*

*Please note that this standard has not yet been endorsed for use by IFRS as adopted by the EU.

KPMG publications summarising the new IFRS standards and amendments are available at the following addresses below:

- KPMG Breaking News article – provides an overview of the impact of the amendments to Investment entities: Applying the consolidation exception (Amendments to IFRS 10, IFRS 12 and IAS 28).

  http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/ifrs-breaking-news/Pages/breaking-news-2014-129.aspx

- KPMG Breaking News article - provides an overview of the impact of the amendments to IAS 1 in respect of the disclosure initiative.

  http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/ifrs-breaking-news/Pages/breaking-news-2015-133.aspx

New IFRSs and narrow scope amendments

The following IFRSs and narrow scope amendments to IFRSs are expected as follows:

IFRSs and narrow scope amendments	2015 Q3/ Q4
Leases	✓

A KPMG publication summarising the Leases standard is available at the following address below:

- KPMG IFRS Leases newsletter – provides an overview of the IASB and FASB discussions regarding the leases project between November 2014 and March 2015:

  http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/ifrs-newsletters/Documents/leases-newsletter-2015-17.pdf

IASB exposure drafts

- Exposure Draft: Classification of liabilities (proposed amendments to IAS 1). The proposed amendments are designed to improve presentation in financial statements by clarifying the criteria for the classification of a liability as either current or non-current through clarifying that it depends on the company's rights at the end of the reporting period and making clear the link between the settlement of the liability and the outflow of resources from the entity.
- Exposure Draft: Classification and Measurement of Share-based Payment Transactions (proposed amendments to IFRS 2). The proposals provide guidance on:

  (i) the accounting for the effects of vesting conditions on the measurement of a cash-settled share-based payment;

  (ii) the classification of share-based payment transactions with net settlement features; and

  (iii) the accounting for a modification to the terms and conditions of a share-based payment that changes the classification of the transaction from cash-settled to equity-settled.

KPMG publications summarising the above exposure drafts are available by clicking the links below:

- Exposure Draft: Classification of liabilities (proposed amendments to IAS 1)

  https://portal.ema.kworld.kpmg.com/grm/depts/isg/isgnsltts/ITH-2015-03.pdf

- Exposure Draft: Classification and Measurement of Share-based Payment Transactions (proposed amendments to IFRS 2)

  https://portal.ema.kworld.kpmg.com/grm/depts/isg/isgnsltts/In%20the%20Headlines%202014_22.pdf

Further exposure drafts expected are as follows:

Exposure draft	2015 Q2
Conceptual Framework	✓
Clarifications to IFRS 15 Revenue from contracts with customers	✓
Elimination of gains or losses arising from transactions between an entity and its associate or joint venture (Proposed amendments to IFRS 10 and IAS 28)	✓
Remeasurement of a plan amendment, curtailment or settlement / Availability of a refund of a surplus from a defined benefit plan (Proposed amendments to IAS 19 and IFRIC 14)	✓

Further information on these projects is available on the IASB website at: http://www.ifrs.org/Pages/default.aspx

Newly-effective IFRSs

IFRSs as adopted by the EU for 31 March 2015 year ends and 30 June 2015 year ends

For those companies which have adopted IFRS as adopted by the European Union with a 31 March 2015 year end and a 30 June 2015 year end, the following will apply for the first time in their annual financial statements:

- IFRS 10 Consolidated financial statements
- IFRS 11 Joint Arrangements
- IFRS 12 Disclosures of interests in other entities
- IAS 27 Separate financial statements (2011)
- IAS 28 Investments in Associates and Joint Ventures (2011)
- Amendments to IAS 32 Offsetting financial assets and financial liabilities
- Amendments to IFRS 10, IFRS 12 and IAS 27 Investment entities
- Amendments to IAS 36: Recoverable amount disclosures for non-financial assets
- Amendments to IAS 39: Novation of derivatives and continuation of hedge accounting;
- IFRIC 21 Levies

IFRSs as adopted by the EU for annual periods beginning on or after 31 March 2015

IFRS standards as adopted by the European Union that are effective for the first time for annual periods beginning on or after 31 March 2015 are:

- Defined Benefit Plans: Employee Contributions (Amendments to IAS 19);
- Annual improvements to IFRSs 2010-2012 Cycle;
- Annual Improvements to IFRSs 2011-2013 Cycle

The above standards first become effective for accounting periods beginning on or after 1 February 2015 for IFRS as adopted by the EU with early adoption permitted. They are already effective for full IASB IFRS for accounting periods beginning on or after 1 July 2014. These new standards/ amendments bring insignificant changes compared with the numerous major changes in the past two years. Therefore this is a chance for companies to prepare for the implementation of the upcoming bigger changes such as the new revenue (IFRS 15) and financial instruments (IFRS 9) standards which will become effective in 2018.

IASB IFRSs

Newly effective IASB IFRSs for the year ended 30 June 2015

A KPMG publication providing an overview of newly-effective IASB IFRSs for the year ended 30 June 2015 is available at:

https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/In-the-Headlines/Documents/ITH-2015-04.pdf

Events

Throughout the year the Audit Committee Institute hosts a number of informative seminars and training sessions.

Upcoming event

Cyber Security breakfast seminar in planning for late June, details will be communicated by email invitation, and updated on our website at www.kpmg.ie/aci.

Audit Committee Handbook

The Audit Committee Institute launched an updated version of the Audit Committee Handbook in late 2013. This publication, written for both the Irish public and private sectors, highlights the Audit Committee's role and provides guidance to help Audit Committees gain a better understanding of the processes and practices that help create effective Audit Committees. The guide is designed to be an easy reference guide to a range of topics from the Irish regulatory landscape to the duties of audit committees and communications with shareholders. The guide is available for download at http://www.auditcommitteeinstitute.ie/audit-committee-handbook.htm. Word versions of the various questionnaires, and other appendices, which can be customised to the companies specific circumstances are also included.

Annual survey questionnaire

The questionnaire for the 2014 ACI Global Audit Committee Survey was launched in September 2014 and closed in late October 2014. We thank members for their strong participation in again this year. Results of the survey will be published on the KPMG website in early 2015.

For previous editions of the Global Audit Committee Survey findings please refer to the ACI International Publications page at http://www.auditcommitteeinstitute.ie/publications-international.htm.

ACI Publications since Quarterly 28

Global Boardroom Insights - Issue 5 - December 2014

On the 2015 Audit Committee Agenda - January 2015

2015 Global Audit Committee Survey - January 2015

Hitting the ground running: Becoming an AC Member - January 2015

Audit Committee Trends - March 2015

2015 ACI Global Pulse Survey - Is the Board Calibrating Its Oversight of Risk and Strategy? - May 2015

Global Boardroom Insights – The Future of Audit - May 2015

How Boards Drive Value in Family-Owned Businesses

Let us know what you think

We are always grateful for feedback regarding topics for breakfast seminars, roundtables and Quarterly.

Let us know what you would like covered by phoning us at +353 1 410 1160 or e-mailing us at **aci@kpmg.ie**

Events

For details of future events go to **www.kpmg.ie/aci.**

Training Certificate

If you wish to receive a training certificate in relation to attendance at the ACI events, please e-mail us at **aci@kpmg.ie** or phone us at +353 1 410 1160.

ACI International

The Audit Committee Institute, sponsored by KPMG, is an international initiative with thousands of members sharing resources across borders. A list of affiliated sites is available at **http://www.auditcommitteeinstitute.ie/aci-international-sites.htm**

Many members of ACI in Ireland are board members of international companies, or often spent a significant amount of time in other jurisdictions. Please feel free to follow the links of our affiliated members to register for events or download publications from their countries. For ease of reference, registration for ACI UK can be achieved by emailing **auditcommittee@kpmg.co.uk.**

Registration for ACI US can be achieved by following the simple instructions at **www.kpmginstitutes.com/aci/insights/2012/about-audit-committee-institute-aci.aspx**.

Contact us

If you have feedback on this issue or would like to suggest a topic for a future edition, please contact:

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