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With the Companies (Auditing and Accounting) Act 2003 looming, businesses are bracing themselves for significant increases in auditing, legal and internal administration costs, writes **Louise McBride**

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The new director's compliance law is expected to cost some companies millions of euro a year. Despite this, most companies and financial advisers are in the dark about the start date for the law.

The legislation, the Companies (Auditing and Accounting Act) 2003, polices auditing and accounting bodies and introduces new compliance obligations for directors. Under the law, directors must assess their firm's compliance with company law, tax law and other key areas.

As a result, businesses have been bracing themselves for significant increases in auditing, legal and internal administration costs. However, uncertainty about the scope and application of the law has delayed its implementation.

The act was expected to become law in January this year. However, the Office of the Director of Corporate Enforcement recently recommended that the requirements should not begin until July this year. This deadline is now expected to be moved back to January next year, according to industry sources.

Scope

There is also uncertainty about the scope of the law. As it stands, the law applies to listed and unlisted public limited companies and private firms with a turnover of more than €15.2 million or a balance sheet over €7.6 million.

However, there are questions about the legality of the draft legislation.

"There's a flaw in the way the legislation is drafted," said Marie Daly, executive director of enterprise with Ibec. "As it is, the legislation catches companies who meet one of the thresholds – that is the €15.2 million turnover or the €7.6 million balance sheet – rather than both. This meant that it covered much smaller companies than it normally would have."

If the flaw is corrected, the number of companies who will be affected by the law will be reduced by 2,000, according to Daly. As the law stands, about 7,000 companies will fall under the act.

New legislation means that companies are going to run into even more red tape

Costs

Last year, the Irish Business and Employers Confederation (Ibec) estimated that it would cost companies at least €30,000 to meet their obligations under the Companies (Auditing and Accounting Act) 2003.

However, this is likely to be a huge underestimate, according to Daly. The €30,000 estimate includes €10,000 for auditing costs, €10,000 for legal costs and €10,000 for internal administration costs.

"The average rise in auditing costs will be about 30 per cent," said Daly.

However, auditing costs could vary considerably from firm to firm, depending on the structure of the company.

"If you have a company with several different types of operations, this makes it more complicated and consequently more expensive," said Daly.

"However, I've been quoted €250,000 for the auditing costs of a relatively small company – this particular company has already spent €100,000 on auditing costs for the new law."

According to Daly, larger companies could face auditing bills of millions of euro. Such companies would typically have a lot of disparate offices, factories and warehouses.

Furthermore, accounting costs will be ongoing.

"If you're a company at the moment, you're likely to be using existing resources to meet requirements for the first year," said Daly.

"After a while, companies will need to employ others to do these compliance statements. As there is more demand now for compliance executives and officers, the cost of hiring them has also increased."

The legal costs of preparing the compliance statement could be as high as €100,000, according to Peter Oaks, partner with Compliance Ireland, which specialises in financial services regulation consulting and training.

"It could cost between €70,000 and €100,000 for legal advice to help a company to identify its requirements under the act and demonstrate its compliance," said Oaks.

"The leading banks will spend millions on the compliance statement. Some of the larger companies might have to pay for three months' legal fees."

IFSRA compliance

Another issue of contention relates to the prospect that companies could have to prepare an additional compliance statement for the financial regulator, the Irish Financial Services Regulatory Authority (IFSRA).

Under the Central Bank and Financial Services Authority of Ireland (CBFSAI) Act 2004, all firms regulated by IFSRA must prepare a compliance statement if they are requested by IFSRA to do so. "It is really up to IFSRA to decide whether a regulated firm is required to submit a compliance statement," said Oaks.

This means that financial services companies which are already covered by the Companies (Auditing and Accounting Act) 2003 could have to prepare two sets of compliance statements, according to Oaks.

"The fees that firms will pay to comply with the 2003 act are not theoretically different to that which IFSRA firms will incur," said Oaks. "But if you comply with one act, then arguably you should be able to rely upon your controls and procedures to satisfy the other act."

However, the compliance obligations of the CBFSAI act could be more onerous than the 2003 act, according to Oaks.

"The 2003 act requires directors to sign off that they used all reasonable endeavours to secure compliance with their relevant obligations. However the CBFSAI act requires the regulated firm to state whether or not it has complied with its relevant obligations – a big difference," said Oaks.

"Also, the obligations under the CBFSAI act are much wider than the 2003 act as it covers all IFSRA financial laws, codes, rules and guidelines and all other laws with which the IFSRA firm must comply."

A company's obligations under the Companies (Auditing and Accounting Act) 2003 relate to company law, tax law and other laws that could materially affect the company's financial statements. However, the CBFSAI act has no test of 'materiality'.

"Theoretically, this means that IFSRA could require a firm to state that it has complied with data protection law, employment law, occupational health and safety and so on, even though a company might not think that a breach of these laws may materially affect their financial statements," said Oaks.

IFSRA said it would issue a consultation paper on the compliance obligations under the act over the next few months. "In general it is our intention to follow, in so far as possible, the approach set out in the Companies (Auditing and Accounting) Act 2003," said a spokeswoman for the regulator.

Money laundering

Another potential cost for firms relates to their anti-money laundering obligations under Section 32 of the Criminal Justice Act. Last month, the Criminal Justice (Terrorist Offences) Act 2005, created a new offence of financing terrorism.

It could cost the financial services industry between €20 million and €25 million to prove it was meeting its anti-money laundering obligations under this law, according to Oaks.

"A similar study in Britain found that it would cost the financial services industry there between stg£85 million (€124 million) and stg£152 million (€220 million) to confirm it was meeting its anti-money-laundering obligations," said Oaks.