Introduction

On 31 January 2017, the Department for Business, Energy & Industrial Strategy (BEIS) published guidance regarding the statutory reporting duty concerning payment practices and performance in relation to financial years beginning on or after 6 April 2017 (Guidance). The guidance applies to DMGT and its operating companies from 1 October 2017.
Background

In December 2013, the United Kingdom (UK) government committed to develop a new reporting framework on payment practices and policies, designed to assist suppliers and customers. The Small Business, Enterprise and Employment Act 2015 gives the Secretary of State power to impose a requirement on companies to publish information about their payment practices and policies and their performance by reference to those practices and policies. The Secretary of State has exercised this power in the form of the Reporting on Payment Practices and Performance Regulations 2017 (Regulations), which will come into force on 6 April 2017.

Which companies must report?

Large companies
The reporting requirement applies to large companies (whether private, public or quoted) and LLPs operating in the UK. A company or LLP will qualify as large if it has exceeded two or all of the turnover, balance sheet and average number of employees thresholds for a medium-sized company as set out in section 465(3) of the Companies Act 2006 (CA 2006), on both of its last two balance sheet dates. The thresholds are as follows:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>more than £36 million</td>
</tr>
<tr>
<td>Balance sheet total</td>
<td>more than £18 million</td>
</tr>
<tr>
<td>Number of employees</td>
<td>more than 250</td>
</tr>
</tbody>
</table>

Please see below for some worked examples showing how to determine which companies or LLPs qualify as large companies or LLPs (and are therefore subject to the Regulations).
Table 1: Using the current Companies Act thresholds for medium-sized companies, some examples of businesses in scope are set out below. A tick indicates the figure exceeds the relevant thresholds.

<table>
<thead>
<tr>
<th>Business</th>
<th>Last Balance sheet date</th>
<th>Balance sheet date before last</th>
<th>Did the business exceed the thresholds for a medium-sized company in both financial years?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Annual Turnover</td>
<td>Balance Sheet Total</td>
<td>Average no. of employees</td>
</tr>
<tr>
<td>A</td>
<td>£45 million ✓</td>
<td>£25 million ✓</td>
<td>350 ✓</td>
</tr>
<tr>
<td>B</td>
<td>£40 million ✓</td>
<td>£17 million</td>
<td>200</td>
</tr>
<tr>
<td>C</td>
<td>£30 million</td>
<td>£19 million ✓</td>
<td>450 ✓</td>
</tr>
<tr>
<td>D</td>
<td>£35 million</td>
<td>£17.5 million</td>
<td>250</td>
</tr>
<tr>
<td>E</td>
<td>£40 million ✓</td>
<td>£25 million ✓</td>
<td>251 ✓</td>
</tr>
</tbody>
</table>

Both DMGT plc and any ‘large’ UK operating companies must report.

Companies and LLPs that are incorporated outside the UK are not required to report so this only relates to DMGT’s UK ‘large’ companies – Associated Newspapers Limited, Daily Mail and General Trust plc, Landmark Information Group Limited and Searchflow Limited.

New companies
No company or LLP will be required to report in its first financial year. However, any company or LLP that exceeds two or all of the thresholds in its first financial year will need to report in its second financial year.
What must be reported on?

Qualifying contracts
Companies with a duty to report must prepare and publish information about their payment practices and performance in relation to qualifying contracts.

What is a qualifying contract?
A qualifying contract is one that:

- is between two or more businesses; and
- has a significant connection with the UK; and
- is for goods, services or intangible property (including intellectual property); and
- is not for financial services.

Whether a contract has a significant connection with the UK will depend on the circumstances, but examples would include:

- Contracts to which a UK law would apply without the parties choosing a governing law.
- Contracts which would have been governed by a UK law had the parties not specified an alternative governing law.
- Contracts that will be performed in the UK.
- Contracts where one or both parties is established in the UK or carries on a relevant part of its business in the UK.

Information to be reported
For each reporting period, companies and LLPs must provide the following information in relation to qualifying contracts:

- Narrative descriptions* of the qualifying entity’s standard payment terms and the company’s process for resolving payment-related disputes.

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* For the purposes of the narrative description, the standard payment terms should be the company’s standard terms for payments relating to qualifying contracts, or, if it does not use standard terms, the most frequently used payment terms for qualifying contracts. If there are different payment terms for different types of qualifying contract, then each set of terms should be described.
• In respect of the relevant reporting period, statistics on: the average number of days taken to make payments; the percentage of payments made in 30 days or fewer, between 31 and 60 days, and in 61 days or longer; and the percentage of payments that were not paid within the agreed terms.

• Statements confirming whether: suppliers are offered e-invoicing; supply chain finance is available to customers; the business’ terms cover deducting sums from payments as a charge for remaining on a supplier’s list, and if any such deductions have been made; and if the qualifying entity is a member of a payment code, the name of the code.

In describing standard payment terms, a company should also state:
• The length of time, in days, for the company to make payments, as set out in its standard terms.

• The longest period for payment that the company has agreed to in respect of a qualifying contract during the relevant reporting period.

• Any variations made to the standard payment terms in the reporting period, whether suppliers were consulted or notified of the variation before it was made.

The Guidance sets out examples of how the required statistics should be calculated and presented.
When must you report?

Qualifying entities must provide information on their payment practices and performance during a reporting period. There will generally be two reporting periods in a year, the first being for the six month period beginning on the first day of the entity’s financial year, and the second starting on the day after the first period ends and running until the end of the financial year.

So for standard DMGT Group year ends (30 September), the reporting periods will be:

1 October – 31 March
1 April – 30 September

This will apply from 1 October 2017 so the first publication will need to be by the end of April 2018.

The requisite information must be published within 30 days of the end of each reporting period. Director (or in the case of a LLP, designated member) approval of each report is required, and so board schedules should be built into your timeframe for compliance.

The Guidance includes further details on reporting periods.

How must I report?

The UK government will make a web service available from April 2017 for entities to publish the required information. The information will be available for viewing as soon as it is published.
What are the consequences of failure to report?

If a qualifying entity fails to publish a report containing the necessary information within the specified 30-day filing period, an offence is committed by that entity and by each of its directors or designated members.

Anyone (whether an individual, company or LLP) who knowingly or recklessly publishes a report or information, or makes a related statement, which is misleading, false or deceptive, commits a criminal offence.

These offences are punishable on summary conviction (in the Magistrates’ court) by a fine charged to the business and its directors/designated members.

Anyone who is concerned that an entity has not complied with the reporting requirements or has made a false statement will be able to alert BEIS directly using a dedicated email address. On being notified of any such concern, BEIS will usually contact the company to remind it of the reporting obligation and to seek an explanation for non-compliance or discrepancies.
Next steps

- Establish as soon as possible whether or not your company or LLP is a “large” company or LLP

- If your company or LLP is not a large company or LLP, no further action is required at this stage. Diarise to re-evaluate whether or not your company or LLP is a large company or LLP as soon as possible once each new set of half-yearly results is available

- If your company or LLP is a large company or LLP:
  - assign two employees the primary responsibility for coordinating the payments practices reporting process and publishing the relevant report within the required timeframes. To the extent possible, we recommend that one of these employees is a senior member of the finance team, and the other is a senior lawyer or contracts manager
  - identify qualifying contracts now and put in place processes for the designated employees to be notified if any new qualifying contracts are entered into
  - ask the designated employees to consider whether your entity’s current systems and processes can provide the requested information. If not, ask the designated employees to prepare a written plan regarding updating the current systems and processes. This plan might include measures to harmonise payment terms across your business’ contracts, or to require counterparties to report to you on your business’ payment performance
  - bring the Regulations and any plan produced by the designated employees to your board’s attention at the next board meeting
  - to the extent that existing payment periods exceed 60 days, consider whether it is feasible to reduce these periods to around 30 days
  - diarise key deadlines for gathering the requisite information and filing reports, and notify key individuals of the requirements
Questions

If you have any questions about the Regulations and how they will affect your company, please contact Fran Sallas or Claire Chapman (details below).

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