Patrick Coveney
A CEO’s and Non-Executive Director’s dual perspective on the differences between the Executive and the Non-Executive role.

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Private equity and corporate governance - the role of the board.

Robert Pitt
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The impact of the digital revolution on business today; the challenges and the opportunities it presents.

A CEO’s and Non-Executive Director’s dual perspective on the differences between the Executive and the Non-Executive role.

Reward and the war for talent.
Cybersecurity: Asking the right questions to guide the board
by Hugh Callaghan, Director, IT Risk and Assurance Services, EY

Interview with Sean Melly

Will today’s deal be tomorrow’s game changer?
by Derarca Dennis, Head of Financial Accounting Advisory Services, EY

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Clawback provisions on rewards
by Pat O’Brien, Director, Human Capital Tax Services, EY

Interview with Robert Pitt

The Companies Act 2014 - a director’s perspective
by Kieran Kelly, Partner, Financial Services, EY

All-island economic recovery faces challenges in 2015
by Neil Gibson, Economics Advisor to EY

Reimagining the enterprise for the digital age
by Niamh O’Beirne, Director, Performance Improvement Advisory Services, EY

Our network
Welcome to the 2015 edition of Boardroom matters, our annual publication for the Non-Executive Director community in Ireland.

Pat O’Neill  
Partner  
Assurance

Aidan Walsh  
Partner  
Tax

Our Non-Executive Directors (NEDs) programme has had huge success over the past five years and played a pivotal role in supporting NEDs execute their duties at board level. We were delighted to provide an opportunity to share with you some insights in the past year into several key emerging issues of significance for board members, including the impact of the recently published Companies Act 2014. Given its importance, we have included a specific piece on this legislation in this edition. Base Erosion Profit Shifting was also a key area of focus for many Irish boards and this was also a focus for one of our presentations earlier in the year. This is topical following the publication of guidelines in this area from the OECD at the timing of this publication.
Whilst some of our agenda over the last twelve months has been driven by such specific technical and governance matters, we are committed to bringing you some great external speakers in the coming year. We have included interviews from Patrick Coveney, Greencore, Sean Melly, Powerscourt Capital Partners and Robert Pitt, Independent News and Media herein and both Patrick and Sean will address the NED community in our first two sessions of the year. We also have great pleasure in welcoming David Styles, Director of Corporate Governance with the Financial Reporting Council in the UK, to address us this season and we will have our usual event with the Central Bank post Christmas, rounding off the year with our dinner in June.

We hope you enjoy our refreshed series of events this year and the new look and feel of this annual publication. It is important that we keep our event series as engaging as possible for you, our NED community. We hope you find this publication worthwhile and informative in your role and we look forward to seeing you again at our events this year.

To find out more about the NEDs programme visit ey.com/ie/boardmatters
Cybersecurity
Asking the right questions to guide the board
Today's predominant business issue

Cybersecurity is arguably today's predominant business issue, commanding attention from commercial organisations, the media, regulators and worldwide governments alike. Every time it seems we have passed the point of 'peak hype', more geopolitical revelations or hitherto unprecedented breaches hit the headlines, which lend the issue further momentum and propel it front and centre on the agenda.

What will keep cybersecurity top of mind for the next decade or more is the irrevocable reliance of business of all sizes, and indeed modern digital society, on technology. Digital technology has transformed both business and society beyond recognition in just a decade or two. But like its creators, technology is imperfect and its flaws are exploited by diverse actors for different reasons. These range from ideologically motivated factions wishing to further a political aim, to financially motivated criminal organisations simply wanting to steal money, state-sponsored groups bent on corporate or diplomatic espionage, and terrorist organisations seeking to inflict damage on enemies.

The main problem right now is that it's not a question of 'if' or even 'when' you experience a breach. You can't stop cyber attacks targeting you, nor can you simply build walls high enough to keep out determined and sophisticated attackers – besides crippling the business it's just too expensive. So the likelihood is that your organisation has already experienced a breach – the questions are more whether you are able to recognise the signs in time to contain it, and how well prepared you are for the ensuing crisis management.

Reasons to combat cyber threats

The stark economic implications of damage to business from these cyber threats are very real, which is sufficient incentive in itself to warrant a focus on addressing them. However, there is also a strong moral imperative at play due to the level of profits flowing to organised criminal networks and terrorist organisations. There is no such thing as a victimless crime even in the abstract world of cyber space and it makes no sense to make companies an easy target for those who seek to damage them.

Cybersecurity and business

It already feels somewhat clichéd to remark that cybersecurity is a board issue, yet it is clear that the focus of accountability for cybersecurity has shifted almost entirely from the functional heads of technology, security or risk, and now resides firmly with top business leadership. The evidence is in simply observing who makes the media statements or appears on the nine o’clock news (or more often now on social media) following a major cybersecurity incident: it is invariably the CEO or the Chairman of the board.

CEOs and boards are increasingly open in admitting that while they are instinctively comfortable in dealing with business and industry issues, they feel far less well equipped to grapple with the rapidly evolving and highly technical realm of cyber risk. This challenge is often compounded by IT and security specialists presenting risk information that is either wrapped in impenetrable jargon or lacking a comprehensible underlying framework.
Back to basics:
3 simple questions to guide the board

The solution is to return to clear principles that focus on the important simple concepts of what is at risk rather than getting lost in the details of the underlying technology. If boards can pose and satisfactorily answer the following three questions, they can begin to set the tone and direction for what needs to be done.

1. What are we trying to protect?
2. What are we trying to protect it from?
3. What is our risk appetite?
1. What are we trying to protect?
This identifies the most valuable assets to the business - is it industrial secrets, proprietary technology, commercial know-how or marketing smarts? How does the brand rely on these factors if they were disclosed, altered or destroyed? Much of the analysis is likely to have been done already in the context of business continuity, so it makes sense to leverage this as a starting point.

2. What are we trying to protect it from?
In other words, what would cyber threat actors gain from attacking the organisation? It’s important to bear in mind that you don’t have to be specifically targeted to be a target (a great example being so-called ransomware, which indiscriminately infects systems and encrypts data in order to extort money for unlocking it again). Does our company profile or line of business heighten the risk of attracting unwelcome attention from actors motivated by ideology or politics, financial gain, espionage or sabotage? Does our business model expose us to third party risks due to critical outsourcing arrangements?

3. What is our risk appetite?
Arguably the hardest question - what are we able to tolerate in terms of business disruption, loss of information or system downtime? This will be heavily dependent on prevailing legal and industry regulation obligations, as well as the level of resources and funding available. Zero tolerance for cybersecurity breaches is not a sensible position, as the reality for most businesses means that security must be balanced with agility and accessibly of information. Risk appetite is sometimes expressed in terms of the systems or information for which there is no appetite for compromise (and which therefore require isolation and heavy protection). Organisations also express risk appetite in terms of aiming to prevent common security breaches whilst acknowledging that prevention of sophisticated (e.g. state sponsored) attacks is unrealistic, relying instead on detection and reaction (i.e. being able to recognise a breach in progress early and react, rather than stopping it outright).

Armed with the answers to these questions, the board can provide clarity to executive management in defining what is sufficient in terms of the control environment, the level of resourcing and the ongoing operational monitoring. All of this needs to be communicated bearing in mind the underlying principle that cybersecurity is as much about management appropriately influencing the mindset of employees as part of the change management ethos that is required to effectively reduce rather than eliminate exposure in this area.

Note that the above three questions are simple but not easy. However, they are exactly the questions being asked by industry regulators worldwide to ensure the board is carrying out its governance obligations in a clear and demonstrable fashion.
Sean Melly
Tell us about your early career?
I started off with Citicorp – now Citi – in London and then worked for them in New York, specialising in lending and corporate finance for MNC’s. It was a very rigorous work environment but it’s where I learned the fundamentals.

After Citicorp, I worked for the Belzbergs, a Canada-based family who had active investment offices in New York and London, working on active investments in public companies and management buyouts. Then I worked for Dermot Desmond based out of New York, who, as an eclectic investor, generated an environment where one day I could be working on semiconductor chips and the next day it could be potato chips.

I imagine that those were formative experiences?
Very formative, I’m very glad that I worked abroad for an extended period after studying; I think it’s very important.

Were you, at that stage, considering a more entrepreneurial path?
I always thought I’d like to do my own thing, I’ve always had ideas percolating in the back of my mind, I’d jot them down on a piece of paper and look back on them, adding something every once in a while.

So tell us about your first business venture?
In 1993, I set up Tel Atlantic Corporation, in the front room of my Manhattan apartment. The cost of international telecommunications was very high in those days and the industry was highly regulated. Our switch was based in the Worldcom offices in New York.

In 1994, I moved to Dublin and rolled Tel Atlantic into my Irish company called TCL Telecom. Finance was a major issue; there was no venture capital industry in Ireland. Fortunately, Bernard Somers – who has been a Non-Executive Director of a number of private companies and PLCs – agreed to provide seed financing for the business and became our Chairman. We sold...one day I could be working on semi-conductor chips and the next day it could be potato chips.
“A key success factor was having a really good COO, who handled day-to-day stuff and allowed us to scale quickly.”

Currently you aren’t required to have any qualifications to be a Non-Executive Director; however, in reality you need to be well-qualified to contribute and add real value.

Could that include spending time with the entrepreneur before you invest?

I typically work with an entrepreneur for a year before investing in the venture. That year allows me get close to the founder, to understand the business model and to get the company ‘investor-ready.’

For example, we have recently completed a fundraising for Beats Medical, which is run by Ciara Clancy, who’s a talented and ambitious 24-year-old chartered physiotherapist. Naturally her experience wasn’t necessarily based on running a business, but she’s a fast learner. I talk to Ciara most days; she manages the day-to-day business, and I ensure this dovetails with the key strategic objectives for the business.

Is there a danger that the Non-Executive Directors can become too involved?

Ultimately, you have to let the CEO/founder get on with running the business. Nevertheless, an entrepreneur will appreciate getting an independent and experienced perspective. For example, the Non-Executive Directors can accelerate growth by making sure the entrepreneur is focused on the right things and helping them to make fast, quality decisions.
It’s also often a good idea to have an Advisory Board, who lend their credibility as experts in their field. In the case of Beats Medical, we have a great Advisory Board. If I could go back in time, I would have put together a telecoms Advisory Board for TCL and eTel.

**How did you get involved with the MBA programme at Trinity?**

I was asked to join the Board of Trinity Business School, and then to be Chairman, to continue its development as a world-class business school. Subsequently, I was asked to teach corporate finance on the MBA Programme. It’s a challenging but complementary role that keeps me up to speed on the intersection of the theory and practice of corporate finance.

**How do you balance your work with life outside of work?**

I’m typically in the office from 10:00 until around 17:00, so I’m not tied to the desk. At the same time, the job is really 24-7, which I don’t mind, because I enjoy what I do.

When I’m not working I enjoy long distance cycling and participating in sports – we all need a physical outlet to relax and keep perspective.

*Interviewed by Sean Duffy, EY Entrepreneur Of The Year Programme™ Director*
Today’s deal environment involves much more than just the opportunistic acquisition of market share through M&A for financial gain. Transactions have evolved into strategic initiatives aimed at acquiring, maintaining and defending a company’s competitive advantage. This strategy has to support the growth objectives of the business, in an environment of innovation and sector disruption.

CFOs need to ensure that their companies win market share and maintain – or improve – their competitive position. That goal may require the acquisition of intellectual property (IP), new innovations, or fresh technology to maintain and improve competitiveness. It may also involve divesting some assets in order to reshape and shift the core of the business. Companies are not just divesting to raise capital; they are divesting for growth and progression.

Will today’s deal be tomorrow’s game changer?

This article highlights the strategic importance of mergers and acquisitions; the principles of successful transaction strategies; and suggests some key questions that boards should pose when considering acquisitions, mergers or divestments.
Any transaction has to drive value and fit the longer-term company strategy. Stakeholders, shareholders and board members will want to know the reasons for a transaction, from a financial and a strategic perspective. It is the CFO’s role to clearly articulate the metrics and the value of the deal.

Companies are not just trying to grow the business; they also seek to future-proof their success. Among the drivers for M&A ambitions are:

- **IP**: Companies are looking to buy IP and innovative products that complement their current portfolios and underpin future growth.

- **New markets**: According to EY’s latest *Global Capital Confidence Barometer (CCB)*, 84% of executives globally are looking beyond their domestic market as the main focus of their M&A strategy. CFOs will increasingly incorporate cross-border M&A as a route to establish footholds in new markets or to strengthen their existing presence.

- **Talent**: 20% of CCB respondents cited talent acquisition as the main factor influencing their M&A strategy. Ensuring that talent is appropriately assessed and transitioned is critical to realising value.

Leading corporates will examine their portfolio and take calculated risks. A portfolio review is a part of future-proofing the business, and a regular check of how the portfolio is aligned to the overall strategic objectives of the business will drive strategy.

It is important to explore all options and to increase ‘scouting activity’ to determine which transactions dovetail with the company’s current and future objectives. The CFO is essential to this early-stage assessment, bridging the financial, technological, talent and market sector aspects required to realise an effective transaction strategy.

Successful transaction strategies are built upon four principles:

1. **Buying the right business, at the right time.** Market-leading companies carefully construct pipelines of opportunities that are aligned with their growth objectives.

2. **Developing a deep understanding of the target.** The ability to do broader, deeper and more robust due diligence has increased the likelihood of buyers abandoning a transaction.

3. **Planning ahead and anticipating issues.** The CCB cited poor operating costs as the leading reason why deals fail to meet expectations. Executives need to be prepared to weather unexpected changes in the economic and corporate environment.

4. **Retaining talent.** Talent management is becoming ever-more important to successful deals. The inability to properly integrate new employees is a key factor behind failed M&A transactions.
M&A success depends upon how well and how quickly the target is integrated. The CFO needs to ensure that post-deal integration is well-planned, by determining how the new business fits into the larger context of the core business.

Divestments are vital to portfolio optimisation. They allow companies to free up resources to fuel additional growth in new territory, whether that involves innovative companies, IP or new markets. EY’s Global Corporate Divestment Study 2015 revealed that 74% of firms are using divestments to fund growth.

Divestments also have a positive effect on the rest of the business, by freeing capital and ridding the company of less-productive or less-profitable units. Two-thirds of respondents saw an increased valuation multiple in the remaining business after a divestment.

Tax consequences and liabilities have the potential to help or hurt value creation. Although tax planning should not be a driver of business strategy, it should be aligned with the broader strategy, in order for two companies to merge in a meaningful way. Ideally, tax should be aligned with all of the functional areas in a transaction. CFOs should understand the tax implications up-front, so they will not have to react to unforeseen developments later.

Tax and accounting considerations have an impact on the over-arching capital strategy, and planning should encompass all of the key stakeholders. The following questions could help CFOs inform those decisions:

- Do you understand which tax and accounting drivers will lead to the efficiencies you expect in the deal?
- Does the board understand the tax-related, regulatory, and reputational pressures a deal may have?
- Do you feel comfortable that the advice you are receiving is fully synthesised and integrated?

If the chief executive has clear answers to these questions, or a framework for deriving those answers, then their M&A strategy has a much stronger chance of success.
CFOs should understand the tax implications up-front, so they will not have to react to unforeseen developments later.
Patrick Coveney is the CEO of Greencore Group plc and serves as Chairman of the Greencore Group Executive Board. Prior to becoming CEO in 2008 he served as the CFO at Greencore. He joined McKinsey & Company in 1996 and held the position of Managing Partner of McKinsey Ireland before joining Greencore in 2005.

He has been an Executive Director of Greencore Group plc since September 2005 and a Non-Executive Director of Glanbia plc since May 2014. Patrick has a B. Comm. (First Class) from University College Cork and is a former Rhodes Scholar, holding an M. Phil. and D. Phil. from Oxford University.
How would you characterise your professional experience before you joined Greencore?

I feel as though I had fifty different jobs while working with McKinsey, working with a range of clients, in various sectors, to solve a broad range of issues. I worked with them in London and Atlanta and moved to McKinsey’s Dublin office in 2001, where I was elected Partner and Managing Partner for McKinsey Ireland.

Was there a natural transition from McKinsey to Greencore?

Not really. I didn’t expect to become the CFO of Greencore, I didn’t have any formal training in treasury or accounting, nor a professional qualification in finance, which seem like important qualifications in such a complex business as Greencore; so, fundamentally, it was a challenge for me and a risk for Greencore.

However, I didn’t go into the role being blind to the challenges. I brought a lot of transferrable skills from working in the food industry with McKinsey, had been exposed to many of the core competencies required by the role, and knew several of the Greencore Directors well.

Could you see the opportunities in Greencore when you joined?

I could see some of them.

Greencore started off as the Irish Sugar Company, but was in the process of winding down its dependence on the sugar division when I joined. However, in November 2005, it wasn’t just that the sugar division became less important, it simply ended completely. This brought about a big shift in terms of the focus and philosophy of the firm.

Yet I could see that the company had a strong and well-motivated workforce, a platform for success in UK convenience foods and a well-established senior management team. I could see that the company had a track record of resilience and that it could use this to achieve further successes. We now have a well-founded strategy, which has evolved in iterations.

Did you have a plan, in 2005, for where the company would be in 2015?

At the time I didn’t envisage expanding beyond Ireland and the UK. I certainly didn’t foresee the opportunities in the US and it is only with time - and the experience gained by taking risks - that these opportunities have come to the fore. The US market currently only represents 15% of group turnover, but it is growing strongly. Over the next number of years we’re looking to combine organic growth with mergers and acquisitions.

How would you characterise the difference between the UK market and the US market?

Despite the same language and some cultural similarities, it is important to realise that the UK and US really are very different markets. The US is much more regionally-focused and also more regulated. Their workforce is also more hierarchical and scale is a lot more important. Size matters; companies aim to be big, both in terms of their operations and their sales.
employees across the UK, the US and Ireland

I remember being told years ago that the first investment that you make in a new location tends to be worthless, apart from the learnings gleaned from it. That advice turned out to be correct in relation to the US market. However, we have learned from it and are using it to our advantage to help us grow faster.

You are the CEO of Greencore Group and you are also a Non-Executive Director at Glanbia. Is it difficult to balance these roles?

My priority as a Director has to be Greencore and I had to be sure that I could maintain full commitment to Greencore before accepting the Glanbia role. On the other hand, Glanbia is complementary to my Greencore responsibilities. It is a challenge, to operate in both roles, and is demanding, particularly in terms of time. However, I am learning a lot from the Non-Executive position and I enjoy the role.

Glanbia is a good business and has a great executive team. Obviously, I knew both of these things before I took on the role; however, I don’t think I realised the true extent of this prior to commencing the position. I have been really impressed, especially by the expertise and talent of the team. Due to recent strategic changes, the focus of the team has changed, which has made the experience there even more interesting.

How would you characterise the difference between the Glanbia Board and the Greencore Board?

Of course, I have a much greater sense of ownership with the Greencore Board, in comparison to the Glanbia Board. One difference is the size of the Board, since, for historic reasons, the Glanbia Board is much bigger, we have had to work hard to build a feeling of shared ownership. People on the Board at Glanbia are well prepared for every meeting and the quality of discussion in these meetings is of a very high standard. There have been a lot of changes on the Board recently, but these have proved effective.

We also have less meetings at Glanbia than at Greencore which means there is more emphasis on making big changes at each meeting.

I feel as though I had fifty different jobs while working with McKinsey, working with a range of clients, in various sectors, to solve a broad range of issues.
In some ways I think that a smaller board can be more effective, it allows you to bring ideas and strategies to fruition much faster. The Board at Greencore used to be larger, which resulted in a lot of matters being dealt with ‘off-line’, when they could and should have been dealt with at board meetings.

It is not the case that one board size or structure is better than the other, it is that the board needs to fit the needs of the organisation. I believe that, in both cases, they do.

How are the two Boards similar?

Collegiality is a common factor on both Boards. There is always the feeling of a shared purpose, that it’s one team moving in the one direction. People on the Board are invested in the purpose of it in many ways, and all tend to be at a senior stage in their career. With this shared incentive and the level of different experiences and views among the members, everyone buys into the end goal which the Board has in sight. The strategic involvement of the Board is another key similarity between both organisations. This is where ideas arise and plans are made.

As regards scheduling, I have more control over any Greencore meetings which occur, if a conflict arises between Greencore and Glanbia meetings.

I am fully aware that I have to stay committed to Glanbia events. I know that I can’t do the Glanbia job if I am not going to be present at meetings. Most formal dates with each organisation are locked in the diary and they are only rearranged in really special circumstances.

One aspect that is helpful - in terms of bringing experience to both companies - is the similarity in terms of business focus. Although there are many differences, the transition between Greencore and Glanbia meetings is made easier by the fact that both companies target the food market, both are growth focussed and both have healthy financing structures.

Given the high requirement for involvement and focus with both roles, I am unlikely to take on a further Director role.

How does your contribution vary between the two Boards?

I have much more accountability at Greencore, this brings more pressure and responsibility. I’m not an executive at Glanbia, so I don’t control the meetings; this is done by the Chairman and the CEO.

What key learning have you gained from the dual role?

Even with similarities in culture and many other comparisons between the two organisations, the roles, and the core philosophy of the companies are very different, because the rules and the people make them different. This is something I am seeing within the Greencore global organisation too, and by understanding this from my dual role, I can adapt better to the differences in Greencore and effectively plan for different strategies wherever needed, whether that is between different geographic markets or different sub lines of the business.
How do you manage your work-life balance?

I have always worked hard, but I think that I have a sensible work-life balance. However, I also understand that one person’s sensible work-life balance is another person’s madness.

On the one hand, I don’t think I work any harder now than I did say 15 years ago. I get time off for activities outside work and I think it’s important to give time and focus to other things such as family or sport. One major plus I find to my current situation is that I probably have more control over my schedule now than ever before.

The main factor which disrupts my schedule - and results in me missing things outside of work - is the amount of travel I need to do. I miss a lot of family events due to travel. Travel is the biggest impediment to a healthy work-life balance.

What is your single most compelling achievement?

I would probably have to say becoming CEO of Greencore. However, once achieved, most business achievements also become career achievements. This is a real change from all roles preceding being appointed CEO.

Could you have worn the green?

No. I was a good enough player. But, I was a level below guys that played for Ireland. Maybe I could have played if a lot of the Irish players got injured at the same time (laughs). I loved playing and I was ambitious in the game, but for me, it actually wasn’t very hard to give up my rugby career after leaving Oxford University. Once I left Oxford, the scope and the level of resources for playing weren’t available anymore, and for me, my business career was swiftly taking centre stage. I am still very involved in the game, just not in a playing sense. I have been a member of the Munster Rugby Commercial Board since April 2013, providing guidance and support to the Branch committee structures and management team. I like to retain some tangible connection to the game, apart from watching.

Interviewed by John Higgins, Partner, Transaction Advisory Services, EY

“...it is important to realise that the UK and US really are very different markets. The US is much more regionally-focused and also more regulated.”
The return of growth to the Irish economy and a renewed confidence in the Irish business environment has resulted in an increased level of activity in the Irish employment market. This has led to a surge in the number of job vacancies, increases in staff turnover, longer recruitment periods, and a greater pressure for employers to be competitive by remunerating employees effectively – each representing a significant additional cost to the employer. As a result, employees have more opportunities available to them and a greater ability to negotiate when it comes to remuneration and choosing employers. Recruiting, motivating and retaining top talent has returned to the forefront of the employer’s mind and an effective, competitive and flexible reward strategy has become more important than ever when competing for the attraction and retention of talent.

Financial reward can be divided into four main categories:

1. Basic, e.g. basic salary or cash allowances
2. Benefits, e.g. employer paid medical insurance or gym membership
3. Short Term Incentives, e.g. annual bonuses or commission payments
4. Long Term Incentives, e.g. pension contributions or share awards.
A robust reward package should contain at least one component from each of the categories listed to the left, and be linked to the performance of the employee and value the employee creates for the business. A powerful reward package should also be flexible, transparent and communicated effectively to all employees.

In Ireland, remuneration such as basic salary and cash allowances cannot be delivered tax efficiently because of the current high rates of employment taxes and the additional charge to employers’ PRSI (in general at a rate of 10.75%) that these types of cash payments attract. This is the case for all employers, whether they are a small private company or a larger multinational corporation. Therefore, employers, small and large, have begun to look towards other components of reward as a means of incentivising their employees.

Benefits
A key component of any reward package is the provision of a Benefit, i.e. a non-cash payment. A benefits package with a number of different constituents can act as a strong attraction and retention tool for employers. Many employers provide flexible benefit allowances which enable employees to tailor their own reward package to suit their own personal needs. Flexible benefits packages can contain a wide range of benefits including additional holidays, education fees, travel passes and increased employer pension contributions.

Certain benefits can be delivered tax efficiently in Ireland. For example, the provision of meals to staff in a canteen can be provided tax-free (where meals are provided to staff generally). Travel passes can also be delivered tax-free once certain conditions are met. There is also a small benefit exemption available whereby an employer can provide an employee with a small non-cash benefit to the value of €250 per annum without attracting PAYE, USC or PRSI. Employer pension contributions to Revenue-approved pension schemes remain one of the most valuable benefits that can be provided to employees tax-free and are particularly valued by the middle aged employee and at senior management levels. This is of particular relevance now that most employer schemes have switched from Defined Benefit to Defined Contribution schemes, resulting in less certainty for employees as to their final expected annual pension at retirement.

Short Term and Long Term Incentives
Similar to basic salary and cash allowances, the delivery of Short Term Incentives such as cash bonuses or commission payments is not particularly tax efficient for the same reasons. However, deferred cash bonuses can still be used as a retention tool by employers due to the requirement that the employee remains employed during the deferment period. This may be advantageous if it
is expected that the marginal rates of tax may reduce over the coming years, however, care must be taken to ensure that the bonus is earned and paid when the rates of tax have been reduced.

Long Term Incentive plans and, in particular, share awards have become much more prevalent with the increase in the number of multinational corporations locating in Ireland. In many industries across Ireland, share awards have become an expected part of any reward package. Share participation can be extremely powerful both from an employee and employer perspective as it allows the employee to participate in the growth and success of the business while aligning the employee’s goals with those of the business.

**Share schemes**

Share schemes can be tailored to meet the needs of the employer and are a useful means of rewarding and retaining key talent when they are linked with either employee performance, the performance of the business, or both. However, the use of share awards as a means to incentivise employees is predominantly advantageous for public companies. The use of this type of reward in smaller private companies is much less prevalent because of the lack of a ready market for shares. Furthermore, while there are still a number of Revenue approved tax efficient share schemes such as the Approved Profit Sharing Schemes (APSS) and the Save As You Earn (‘SAYE’), these types of schemes are complex and can be extremely costly for the smaller private company to implement.

Some small private companies are awarding their employees with shares or share options subject to a restriction on the employee’s assignment or sale of the company for a certain number of years or to forfeiture where performance conditions are not met. Once certain conditions are met, these types of share awards can be tax efficient. The taxable value of a restricted share is reduced by virtue of the restriction placed on it, and forfeitable shares can be awarded to employees when they have a low taxable value. These types of share awards can be used as a retention tool where the employee is required to remain in employment until the restriction is lifted or the risk of forfeiture is removed in order to benefit from the share award (for example, by virtue of the fact that performance conditions are met).

Privately owned businesses in Ireland are currently finding it difficult to compete with the larger public companies in terms of offering share awards to employees mainly due to the lack of a ready market for the sale of a share in a private company.

**Broader definition of reward**

While financial reward packages remain an important tool in competing for key talent, there has also been a switch in the employee mindset resulting in the

“In Ireland, remuneration such as basic salary and cash allowances cannot be delivered tax efficiently because of the current high rates of employment taxes and the additional charge to employers’ PRSI (in general at a rate of 10.75%) that these types of cash payments attract.”
ECJ ruling

A recent ECJ ruling has underlined the emphasis on the notion of reward and remuneration for employees in today’s employment sphere and is one which may prove to have a substantial impact for Irish employees in the months to come. The ECJ recently released a judgement in a case involving technicians employed by a Spanish company whose jobs required them to call to client sites. The point at issue in the case was whether the journeys which the workers made from their home to the first call of the day, and from the client site to their home at the end of the day should be regarded as part of their working time. The Court concluded that it should.

While the ruling was given in the context of the EU Working Time Directive, it could nonetheless have significant tax implications for those employees who do not have a ‘normal place of work’. This includes categories such as sales representatives, service technicians and engineers whose job is essentially ‘on the road’ and for whom travel to client sites is a normal part of their daily work.

The Revenue Commissioners have for many years taken the view that while the cost of such travel is an allowable expense for tax purposes, the journey from home to the first appointment, as well as the journey home from the last, is ordinary commuting, and therefore the allowable mileage is limited to the shorter of the distance from the employee’s home to the work location, or the employer’s base (which Revenue regards as the normal place of work) and the work location.

The reasoning behind this lies in the tax legislation dealing with employee expenses, which requires that the cost must be incurred while ‘travelling in the performance of the duties’. While this may seem a straightforward requirement at first sight, historically, it has proved a difficult test to satisfy. This is largely due to UK case law dating back to the early part of the last century, which interpreted the legislation essentially as meaning that the work did not begin until the point when the individual arrived at the work site. Any travel up to that point was merely ‘preparatory’. The ECJ ruling would seem to contradict this traditional viewpoint. The Court has very clearly ruled that in the circumstances of the case before it, the journeys made by the workers between their homes and the first and last customer of the day constituted working time, and that they were carrying out their duties over the whole duration of those journeys. If the ECJ’s interpretation were applied to the tax legislation mentioned above, it would seem difficult to deny that the travel was undertaken while ‘travelling in the performance of the duties’, and that in similar circumstance, the cost of travel should be considered an allowable expense.

The ruling comes at a particularly opportune time, as the Department of Finance is currently conducting a public consultation process around the tax treatment of travel and subsistence expenses generally. It is to be hoped that those conducting the process will have regard to the ECJ judgment.
In recent times there has been a trend towards the inclusion of Clawback provisions in variable remuneration structures. These may arise by reason of regulatory requirements (such as CRD IV) or by a decision of the employer that such provisions are appropriate, particularly if the outturn on which the bonus arises may be impacted by events that have not fully materialised at the time the bonus is paid. Apart from the questions which such structures raise from the perspective of remuneration and reward structures, questions also arise concerning the taxation treatment.

Taking a simple example: in 2014 an individual participates in a bonus scheme under which some or all of his bonus payment may be clawed back in certain circumstances. The bonus is paid out under deduction of tax. Two years later he is notified that the full amount of the bonus is to be clawed back. A number of questions arise from this i.e.,

• Is he required to pay back the gross amount of the bonus, or the net amount after tax (i.e. the amount that he actually received)?
• What is the nature of the amount repaid? Is it a reimbursement of the earnings to the employer or something else?
• Given that tax has already been paid on earnings which he now has to repay, is he entitled to a refund?
• Should the adjustment be made in 2016, the tax year in which the repayment is made, or in 2014, when the bonus was received?

The Irish tax code does not currently contain provisions which specifically address these issues. Some insight can however be gleaned from the UK tax case of HMRC v Julian Martin. Mr. Martin had entered into a contract under which he was paid a bonus for committing to remaining with his then employer for a period of five years. He subsequently left before completing the service period and the bonus was clawed back on a pro-rata basis. He subsequently sought a refund from HMRC, which was denied. On a subsequent appeal, HMRC contended that the payment was not a refund of the bonus, but damages due to the employer for breach of the service agreement. The UK’s equivalent of the Appeals Commissioners found in Mr Martin’s favour, but only by reference to specific provisions in UK law, for which there is no direct equivalent in Irish tax law. This raises some doubts as to whether the case would have a similar outcome in Ireland.

It seems clear that in light of mandatory provisions such as CRD IV, clarification and certainty is needed around the tax treatment. In the interim, remuneration committees and those tasked with determining remuneration structures, need to look closely at the wording of any such agreements to consider how they might operate in practice, and in particular to confirm whether the affected individuals are required to repay the gross (pre-tax) amount, or the net, after tax, amount of any clawback.
Robert Pitt
Robert is Chief Executive Officer of Independent News and Media plc, a position he has held since October 2014. Prior to taking on his current role, he worked for Tesco in Eastern Europe from 2008 until 2014. His roles included Operations Director of Hypermarkets in the Czech Republic and Slovakia; Managing Director of Tesco Franchise Stores, Czech Republic; and most recently, as Chief Operating Officer with Tesco, Czech Republic.

Robert also gained retail experience at a senior level as Chief Operating Officer of Lidl for the Czech Republic and Slovakia, between 1999 and 2007. He worked as General Manager for Shibo in China between 1997 and 1999. Prior to this, he worked in the tax department of PwC from 1995 until 1997. Robert is an Economics and History graduate of University College Dublin.

**Can you take us through your career path to date?**

When I graduated from UCD, I could see that, due to the collapse of communism, there were a lot of opportunities in Eastern Europe. After four years in the Czech Republic, I moved to China to set up a joint venture in retail, where I gained a lot of invaluable experience. At the time, it was a big and daunting change, however it really stood to me when I went to work with Lidl, firstly in Ireland, and then back in eastern Europe. This experience gave me a strong background in the retail industry, which prepared me for the challenge of joining Tesco in that region.

**How did your earlier career experience equip you for your current position?**

Tesco really taught me a customer-first approach and to appreciate the power of data. The Tesco Clubcard allowed us to get very close to customers, to gain real insight into how they live and to plan for emerging trends, which kept Tesco ahead of the market. This has given me an appreciation of how critical it is to have a customer-focused philosophy. Setting up the first franchise operation in Tesco Group led to me gaining an appreciation of the franchising model and the cultural shift it required within Tesco was something which required a lot of influencing to allow it to succeed in the Tesco Group. The franchise model is much more complicated than the standard retailer-to-customer model. Because of the value proposition, you need to consider the franchisee’s needs too. This requirement - to balance the needs of all parties, within a complex and changing business model - is something that has been very useful when coming into the media industry.

A third experience, that is very useful in the Independent News and Media (INM) context, was my involvement in the establishment of tesco.com in Central Europe. The dotcom move was a bold initiative for Tesco and brought great growth in markets which were already very competitive. It also threw me into the deep end, in terms of formulating a digital strategy for the company. The key results for me were gaining a thorough understanding of constructing a digital platform as well as getting closer to the make-up of the
digital customer while realising the differences which exist between the online and offline customer. This was an initiative which we pioneered with Tesco in the markets, and when you look at the continued success it has had, along with the overall growth it has contributed to the organisation, it is an achievement that I am particularly proud of.

What attracted you to the role at INM?

The challenge was the main attraction. The media industry is changing rapidly and print circulation is in decline, which creates lots of challenges. On the other hand, I recognised the opportunity and potential of INM, as a flagship media organisation.

I don’t see any need to run up the white flag, print is still relevant in the industry, many customers still want their news on printed paper.

There are other developments which are changing the industry for the better and this is where I perceive my value to be the greatest. INM must become very customer-focused, because media customers are now more demanding, more sophisticated and are ‘always on.’ I bring a deeply engrained appreciation and understanding of the customer experience, which is of huge value to an organisation operating in an industry undergoing rapid transformation.

We would love to get your perspective on the impact of the digital revolution on your industry and to explore what lessons Non-Executive Directors and senior management can take from that. So with that as a backdrop:

What is the biggest challenge you have faced coming into a business with a need to focus so heavily on digital?

In order to move a business in a new direction you need to examine and understand the culture of your organisation. Regardless of the business the success of your strategy will depend on the ability to bring your people with you. It’s important to have change agents - what I refer to as ‘fire-starters’ - in the business to help drive this change.

We also reached out to our customers to shape our plan for the future.

“I don’t see any need to run up the white flag, print is still relevant in the industry, many customers still want their news on printed paper.”
We knew that unless our product was relevant to our customers' needs, then we wouldn't succeed. We asked them about their needs to help understand what we were good at and where we needed to improve.

This data helped to shape a new, more relevant and progressive culture at INM. The challenge was to use the data honestly, to avoid tweaking it or colouring it in any way that might make it appear more optimistic. It was only by holding firm to the difficult truths, that we were able to persuade people to align to the new strategy, which in turn allowed us to move the organisation in a new direction.

**How has this affected the customer experience at INM?**

In traditional print media, the editorial, the content, was driven by the gut instincts of the journalists and editors; the point of view of the customer wasn't really considered, because the process didn't allow for it. Tight deadlines had to be met, so all of the elements of the process were managed so that the news could be published on time. If you think of a newspaper as a product, then the products we sold weren't really tailored to individual customer's needs.

When people access the news from a digital platform, the news can be published at different times across the day. The customer can get a morning edition, a lunchtime edition and an evening edition of the paper. They expect that the news stories will be instant and constantly updated. This is more demanding, but it also means that we can adapt our offerings to meet their needs.

Digital allows us to adapt some of the techniques used in retail to get close to the customer. We have incorporated features such as 'social log-ins,' which link customers' social platforms to the paper. We also champion important aspects of the content itself - such as our leading Rent Report and Crime Statistics Report- offering unique, high quality and value added content which our customers can't get anywhere else.

Do you think a Non-Executive Director, or board member can help to accelerate this shift?

Yes, certainly. Board members work at a strategic level, so Non-Executive Directors can promote a long-term strategy of incorporating digital into the business model. They also need to ensure that the strategy is successfully implemented by setting short-term goals, which align with long-term objectives.

They can also be the voice of the customer, by reminding the Executive Directors of the hard data. By bringing a fresh and slightly detached approach, a NED can prevent personal experience from colouring the data.

**Do you have any examples of how senior management and Non-Executive Directors have initiated digital adoption at INM?**

I mentioned the importance of fire-starters in driving change.

An example of this is a system we have adopted called 'Atex, Write to Fit'. A member of our team - who had been in our team for years - initiated and promoted this innovation. This software effectively takes the place of a sub-editor, while making the filing of stories much quicker. It also allows us to move swiftly on a multi-platform stage. This change was championed by senior and experienced editorial people in the organisation. They owned it and believed in it, hence it was success and was seen as being part of their own solution to address challenges. It was not imposed on the team from the outside.

Another example is the way in which some of our journalists use Twitter profiles. Their established names and wide network drive traffic, not only to their Twitter account, but to other parts of our digital platform.

**Do you believe that every business today needs a digital strategy?**

I believe that every business today...
needs to understand digital. Of course, some businesses can have long and successful lives without digital. However, I think that any business looking to grow and to expand their reach needs to formulate a digital strategy.

**What other advice would you offer a senior manager or Non-Executive Director in adapting to digital?**

I think that it’s important for organisations to make room for innovation including digital. For example, this year, INM took on 15 new graduates. They all have a strong understanding and knowledge of digital mediums because they weren’t taught to use it; they grew up immersed in it. This investment will lay a foundation and develop a platform for future growth in our business.

It’s important to continue investing in the organisation. Although we are outperforming the competition in areas such as advertising, we still have to cut costs in some other areas of the business. Executives and NEDs should promote investment in innovation across the organisation, to align the old with the new, so that one helps to build the other.

**What do you see as the biggest opportunity for businesses in digital?**

For us, the opportunity is a global one. We are now expanding our reach and acquiring subscribers from all over the world, we are no longer confined to the island of Ireland. Our digital platform allows us to tap into new regions and markets.

After that, it’s probably the ability to tailor our offering to each customer individually. Because of our ‘social log-ins’ people can log into our content using their Facebook account. This allows us to engage with them and provide more personalised content. There really isn’t just one version of a paper anymore. A paper can now be divided into many versions, which is personalised for users. The more that we can connect with the customer, the more we can tailor the content they come to view. This enables us, potentially, to create a more relevant offering to each customer and deliver a much more impactful experience for them. This positive and memorable experience for the customer will be the difference between an organisation like INM surviving and leading in the industry.

**What challenges do you face in building your digital base?**

The biggest challenge is the fact that customers are reluctant to pay for online content. If I were a customer, I would be reluctant too. Why would I pay for something that I can get for free elsewhere? That’s why it is crucial that we offer something different, something unique and value added. We have to ensure that our products can provide customers with something that they won’t find with competitors. We want customers to be interested and satisfied enough by our offering that it encourages them to come back again. We need to offer a quality and consistent package; this consistency is what will drive profitability.

**As regards work/life balance – how do you remind yourself of what’s important in life?**

Honestly, I don’t think I have a balance! It’s important to enjoy what you do and I’m very lucky to have come into an industry that I find interesting, and a job I really enjoy. My home life and my work life are essentially integrated, I don’t really ever ‘shut off,’ because our customers never shut off.

I am also fortunate to work with a fantastic management team and on a personal level my wife and family are immensely supportive and they keep me focused and constantly engaged with the business and our plans.

**Do you think it’s more important in today’s business world to remain in tune with work while away from the office?**

I do. Modern work has more of an ‘always on’ feel about it, which matches the nature of the modern customer. However, I think we also have more scope to make the workplace more enjoyable these days, through digital and online social tools.

Our new recruits can teach us a lot about this, they mix their work and their leisure and they are our ‘canaries in a cage’ for the digital lifestyle. It’s important to look at them, not only as employees, but also as a potential customer and to learn from them.

*Interviewed by Colin Smith, Partner, Tax Services, EY*
The Companies Act 2014
A director’s perspective

The Companies Act 2014, which was enacted at the end of 2014, has been substantively commenced into law on 1 June of this year. This concludes a programme - which commenced in 2000 - to incorporate the provisions of the pre-existing Companies Acts 1963 to 2013 into a single accessible act.

The Act has been welcomed as a mechanism to modernise, simplify and consolidate company law. In essence it will make it easier for the vast majority of businesses to operate and will deliver benefits for society.

Although it has many benefits in terms of simplification, the Act poses some challenges for directors. It is a vast piece of legislation - one of the biggest to date passed into law by the state - numbering some 1,160 pages, in 1,448 sections and 17 schedules. It will be a challenge for any director to familiarise herself or himself with the entire Act. Directors must retain a sound overall understanding of the Act and develop an awareness of the key implications for them.

What has changed?

Many things have changed in the Act, particularly for private companies, which are the primary focus of the simplification. It is beyond the scope of this article to explain all changes, as many are quite detailed. At a high-level, changes have occurred in four main areas - basic company structures; compliance and enforcement; Summary Approval Procedures; and finally the codification of directors’ duties, including common law fiduciary duties.

Private companies limited by shares are the primary focus of the Act and the provisions relating to these are easily identifiable. Other forms of company - including Designated Activity Companies (DACs); unlimited companies, including private with share capital and public with or without share capital; companies limited by guarantee; and public limited companies - are dealt with separately under the Act and the provisions that apply to each are separately codified.

The Companies Act 2014 has teeth. Part 14 deals with compliance and enforcement including disqualification,
restriction and a four-tiered classification of offences, depending on severity. For example, conviction of a category one offence could result in a ten-year jail sentence and/or a €500,000 fine.

The Act has introduced procedures designed to simplify the means by which matters such as mergers, reorganisations and reductions in capital may be dealt with. These are an alternative to court applications and are termed ‘Summary Approval Procedures.’

The Act has also codified directors’ common law fiduciary duties. These duties are in addition to the general duties of directors and the company secretary. There are few fundamental changes to directors’ duties, although there are some additional requirements, including the requirement - for companies over a size threshold - to draw up a Directors’ Compliance Statement.

A summary of the general and fiduciary duties of directors is given below:

**General Duties of Directors**
- Ensure compliance with the Act
- Have regard to the interests of employees as well as members - this duty is owed to the company
- Put in place appropriate compliance arrangements and draw up a statement setting out policies - applies to PLCs and large private companies
- Appointment of a Company Secretary with the skills necessary to maintain the records necessary to be maintained under the Act
- Disclose interests in contracts (or proposed contracts) that a director is directly or indirectly interested in
- Account to or indemnify the company for any gains or losses made as a result of a breach of certain of the fiduciary duties

**Fiduciary Duties of Directors (s228)**
- Act in good faith in best interests of the company
- Act honestly and responsibly in relation to the conduct of the affairs of the company
- Act in accordance with the company’s constitution and exercise powers for the purposes allowed by law
- Not use company property, information or opportunities for own or others benefit unless permitted
- Not agree to restrict director’s power to exercise independent judgment (with three limited exceptions)
- Avoid conflict between duties as a director and other (including personal) interests
- Exercise care, skill and diligence
- Have regard to the interests of shareholders of the company
Implications for Directors

The legislation is extensive and detailed and directors will need to familiarise themselves with the specifics of those requirements as they relate to the company type they serve. The Act envisages seven separate forms of company. Directors of all existing private companies will be expected to take actions to ensure that they are converted to a suitable company type, or re-registered as a DAC. Directors of all companies will need to review their existing articles of association, to ensure they are in conformity with the mandatory provisions of the Act.

Certain company forms are restricted in their powers. For example, DACs and public companies - limited and unlimited - may issue public debt, while others may not. Some forms of company will be able to claim exemptions - from holding an AGM, carrying out an audit, or from filing full accounts - based on revenue, balance sheet and employee thresholds. A general observation is that the greater flexibility and range of options facilitated by the Act places increased focus on ensuring that the directors get it right.

a. Directors' duties

Directors are naturally concerned to meet the responsibilities codified in Part 5 of the Act. Directors must ensure that their board can demonstrate compliance. The importance of detailed board minutes - recording the reasoning behind decisions and considerations applied - will be enhanced. Directors may need to obtain formal professional advice on issues, in order to demonstrate that they have considered and discharged their duties with proper attention. There will be enhanced third-party scrutiny from regulators and lenders of the actions of boards.

b. Compliance statements

Directors of large companies will be required to report annually, acknowledging that they are responsible for securing the company's compliance with relevant obligations. In addition they will be expected to confirm that:

1. An appropriate compliance policy statement has been drawn up;
2. Appropriate arrangements or structures, designed to ensure material compliance with the company's relevant obligations are in place; and
3. That a review of the arrangements or structures has occurred during the financial year.

A 'comply or explain' approach exists whereby directors who decide not to provide the confirmation for the three matters listed above must fully disclose the reasons for not doing so. The explanation must set out the reasons why the three matters have not been complied with. However, it may be difficult for directors to explain why - for example - they do not have arrangements or structures for dealing with tax laws. Therefore, such an approach would be difficult to support and could have adverse consequences.

The Directors' Compliance Statement requirement is likely to cause directors some concern, at least until people witness its implementation in practice. The concept is that the company processes should be sufficient to provide reasonable assurance of compliance, in all material respects, with the relevant obligations. Relevant obligations are the company's obligations under the Act - where failure to comply is a category one or category two offence - and tax law.

The concept of reasonable assurance has not been defined by the Act and, as a result, may pose a challenge to directors. It can range from there being little or no risk of a material matter being undiscovered - absolute assurance - to their being a significant risk that a material matter may be undiscovered. Reasonable assurance is a high but not absolute level of assurance. Neither has the concept of material compliance been defined by the Act.

The challenge for directors, in seeking to comply with the requirements, will be to determine the level of assurance they must obtain, combined with the level of oversight and review that must be applied to demonstrate compliance. The starting point, in terms of developing the policy and designing appropriate arrangements or structures, will be a formalised risk assessment of the exposures present.
The arrangements and procedures to monitor compliance will need to be documented thoroughly and will need to be in place for the entire period. It is important that management allow sufficient time to complete the process in order to provide an appropriate basis for its assessment and to respond to any deficiencies that are identified.

Early preparation may provide management with sufficient time to correct deficiencies and to determine the operating effectiveness of the arrangements and structures prior to year-end reporting. The significance of any deficiency identified will depend on the potential for misstatement, not necessarily on whether an issue actually has occurred.

c. Other matters

There are other important issues highlighted by the Act, of which directors will need to be aware. These include new requirements for clearly documenting the terms and conditions attaching to any loans to or from directors. In the absence of such documentation the loan will be deemed to be repayable on demand - in the case of a loan to a director - or subordinated to other liabilities, in the case of a loan from a director. This will result in boards, regulatory and other authorities paying more detailed attention to such transactions.

Additionally there is a requirement for large companies to have Audit Committees, with effect for financial years commencing on or after 1 June, 2015. At least one member of this committee must be an independent Non-Executive with a competence in accounting or auditing. The Audit Committee’s responsibilities shall include the monitoring of the financial reporting process; the effectiveness of the company’s internal control; internal audit; risk management; as well as the statutory audit and auditor’s independence. Similar in some respects to the requirements regarding compliance statements, there is a ‘comply or explain’ onus, and again many companies will wish to see how this requirement is dealt with in practice.

Another noteworthy change is a requirement which mirrors UK company law, which requires that statements be included in the Directors’ Report, confirming that all relevant audit information has been disclosed to the auditor and that each director has taken all steps that he or she ought to take to ensure that the auditor is aware of the relevant information. Currently, representation letters signed by some of the directors on behalf of the board include statements about the completeness of information and the explanations supplied to the auditor. Companies will now need to consider whether amendments to their existing internal compliance and audit processes are required. Appropriate systems and procedures will need to be determined.
Directors must retain a sound overall understanding of the Act and develop an awareness of the key implications for them.
by each company on an individual basis, and will vary according to that company's size, nature and existing financial statement approval process.

The role of Company Secretary will become more important, as a key resource to the board to secure compliance; to ensure that board processes and protocols are maintained; and to secure advice and support for directors, to enable them to discharge their duties. Under the Act, directors are required to ensure that the Secretary has the skills necessary to maintain the records required to be kept, as well as the skills or resources necessary to discharge his or her statutory and other duties.

**Implications for directors of Irish subsidiaries of multi-nationals**

Directors of Irish subsidiaries of multi-nationals will have additional concerns under the new legislation. The challenges posed by the increased focus on compliance will be a concern and there will need to be some allowance made for the increased costs and resources which will be required. Directors will need to take time to explain the options available and ensure that the parent organisations are aware of the need to provide additional support.

Directors will also need to understand how the various forms of companies - such as a private limited company without memorandum and articles of association - will be viewed from the perspective of the laws of the parent jurisdiction. The changes brought into force by the Act will need careful consideration within foreign-owned groups. The question that will have to be answered is whether the changes to the status of an entity will cause any issue in how it is viewed from the legal or tax perspective of the foreign jurisdiction.

There are provisions in the Act for certain companies to dispense with the holding of AGMs and to have a single director. A question that may arise is whether, in a scenario of only one director, it may become more difficult to demonstrate clearly the tax residence of the company, which normally is influenced very strongly by the location of board meetings.

**Conclusion**

The Companies Act 2014 will affect the manner in which directors carry out their duties. While many of its provisions restate pre-existing provisions into a single accessible act, the increased focus on directors will mean additional emphasis on taking formal advice and on documenting the reasons underpinning board decisions. Additionally there will be increased emphasis on the composition of boards. Previously boards of listed companies would have been more likely to seek to ensure an appropriate mix of skillsets, but this is now likely to extend to large private companies as well.
All-island economic recovery faces challenges in 2015

The robust performance of the all-island economy in 2014 has continued in 2015. Last year’s performance was led by very good growth in the Republic of Ireland (ROI) and solid growth in Northern Ireland (NI). However, 2015 has seen the emergence of potential challenges to the all-island economy, due to potential shortages of capital and skills in fast-growing sectors in ROI and a deepening of austerity in exchequer-dependent NI.

GDP grew by 4.8% in ROI in 2014 and by 2.8% in the UK, a growth rate higher than any other G7 or Eurozone countries. Economic growth in NI was estimated to be lower, at 1.7%, using the Gross-Valued Added (GVA) measure. GVA is a measure of the value of goods and services produced in a particular region of a national economy.

In 2014, ROI had double-digit export growth of 12.6%, outperforming the Economic Eye Winter 2014 forecast of 9.7%. IDA Ireland enjoyed a record year for foreign direct investment and employment continued to grow, with the unemployment rate falling below 10% barrier early in 2015, and most recently standing at 9.4% for September.

Although NI’s rate of economic growth in 2014 lagged behind the ROI and UK, this still represented an improvement on its 2013 performance. In some respects, the labour market may be a better barometer of the health of the NI economy. Employment increased by more than 12,000 in 2014 while unemployment fell. InvestNI recorded its best ever foreign direct investment performance in the 2014/2015 fiscal year, driven by an impressive growth in professional services employment.

The key question is, how sustainable is this economic growth? The strong 2014 performance was initially expected to moderate in 2015, however the balance of risks indicate that the ROI is in a better position to maintain its growth than NI.

The Economic Eye Summer 2015 GDP growth forecast for the ROI is 3.7% for 2015 and an average of 3.0% over the period from 2016 to
...this positive outlook, over the medium-term, is underpinned by a positive international outlook.
The long-awaited recovery of ROI's domestic sector is underpinning a more broad-based and sustainable recovery. This is having a more positive effect on employment than the export-led recovery of recent years had. Growth in the domestic sector - which is the sum of consumer spending, government consumption and investment - is projected to rise from 3.0% in 2014 to 3.2% in 2015, with consumer spending and investment growth of 2.5% and 8.4% respectively in 2015.

Contributors to improving consumer sentiment include low inflation, helped by cheaper oil; low interest rates; an improving labour market; rising house prices; anticipated tax cuts in 2016; and the prospect of rising real wages. These contributing factors have a positive impact on retail sales growth, particularly for discretionary and big-ticket items. While export growth is pivotal for a small, open economy, a domestic pick-up will drive a recovery in household disposable incomes.

The revival of the property market and expectations surrounding a new public capital-spending programme can further underpin the recovery of ROI's construction sector. Construction has been one of the top three sectors for job creation in ROI over the past year, along with manufacturing, financial services and real estate activities.

In contrast, NI is forecast to experience economic growth of 2.0% in 2015 and 2.0% over the period between 2016 and 2020. The annual rate of net job creation in NI is predicted to slow from over 12,000 net jobs in 2014, to an average of 4,000 net jobs per year to 2020. Northern Ireland’s employment levels are not projected to return to pre-recession peak levels until after 2020.

Some of the factors supporting the positive outlook for ROI have a negative effect on the NI economy. The period of austerity - which is coming to an end in ROI - is set to intensify in NI, due to the election of a majority Conservative government in the UK. Continued deadlock on welfare reform in Northern Ireland and the suggestion of direct intervention from Westminster could bring political and economic instability to NI. Consumer confidence and future investment plans could also be hit by the latest bout of political instability in Northern Ireland.
The strengthening of sterling against the euro hit NI’s export sector in 2014, including important and previously strong performing sectors such as agri-food. This will be an important factor impacting north versus south export competitiveness throughout 2015 and 2016, before the euro recovers. The small size of the NI private sector export base means that it is less well-positioned to benefit from positive growth outlooks among key trading partners. Impending changes to EU State Aid rules will also reduce the ability of InvestNI to continue to offer financial incentives to attract FDI.

Both economies are vulnerable to regional and international risks. These include a potential UK exit – or ‘Brexit’ – from the EU, which could have a dramatic effect, since the ROI trades extensively with the UK and a Brexit could bring about a reintroduction of a trade border within the Island of Ireland.

Further afield, the prospect of an increase in interest rates by the US Federal Reserve could have the effect of slowing the US economy, the world’s largest. Although neither the ROI nor NI are major trading partners with China, the global consequences of the recent economic slowdown in China could also have an effect on the All-Island economy. Although the threat of a Greek exit from the Eurozone seems to have been avoided, Greece is still in great difficulty and is seen as an on-going challenge to the EU economy. Figures released in mid-September provided some positive news, showing that industrial output in the Eurozone rose 0.6% month-on-month, providing a 1.9% year-on-year gain.

ROI also faces risks such as skills shortages in strategically important sectors such as IT; on-going bank lending restrictions; and an uneven economic recovery that is over-dependent on Dublin and other urban areas.

GDP grew by 4.8% in ROI in 2014 and by 2.8% in the UK, a growth rate higher than any other G7 or Eurozone countries.
Reimagining the enterprise for the digital age

Today’s boards should include directors who have expertise in digital media, so that the organisation can foster a competitive advantage in this area. These digital advocates must challenge executive directors to develop a digital culture and to align this expertise with the organisation’s business and financial strategies. Organisations who can achieve this will be the likely winners in the new digital economy.

Non-Executive Directors have a key role to play when it comes to advising organisations on the impact that the digital economy will have on the enterprise. Their role is to think about the longer-term health of the business, to ensure that it is able to compete effectively, both in the present and in the future.

The challenge for directors is that the organisational capability requirements for digital are moving into unknown territory, due to the rapid evolution of this technology. This is compounded by the fact that many of the executives who advise organisations on digital transformation lack first-hand experience of such disruptive shifts, both in terms of business models and organisational culture.

Over the last five years, digital implementations were focused on the reduction of cost. They are now focused on the enhancement of the customer experience. Fuelled by the convergence of social, mobile, cloud and big data – as well as by the growing demand for anywhere access to information - digital technology is disrupting every area of the enterprise, across all industries and in all geographies.

Digital also facilitates new challenges to which that organisations must respond, including new competition; changing customer engagement; new business models; privacy concerns; and cybersecurity threats. The unfortunate reality is that most organisations, who are wedded to traditional employment models, are unable to keep pace with the changes required to adapt to this new digital environment.

Not only are new skills required, but the required pace of workforce skill-evolution is greater than ever. Some of the skills that were previously in great demand are now redundant as new capabilities are required. As a result, employees are no longer expected to have either technical skills or problem-solving skills; they are now expected to have both.

Digital is also introducing new levels of automation into the organisation. Traditionally automation was focused on routine repetitive tasks. Now, due to advancement in technology, as well as innovation in artificial intelligence, more complex jobs can be automated.

Within the technology field, previously-prized skillsets are being commoditised.
Many existing technology jobs will become redundant, as new opportunities to develop, service or operate the next generation of software and machines arise. In this new job market, the relative importance of digital and technology occupations is expected to increase. This is already occurring among those occupations that the United States’ O*NET programme considers to be ‘bright outlook’ jobs, where employment is projected to increase by more than 22% over the period 2012-2020. Within this cluster of occupations, information technology roles are well ahead of all other careers. Similar occupational trends have been reported in Europe. It is also predicted that significant shortages in key niche areas - such as data analytics, cloud, digital architecture, digital designers and app development - will drive wage inflation, unless companies can change their traditional fixed-employment models.

Non-Executive Directors can highlight these challenges to their boards and propose a strategy to ensure the success of their organisations into the future.

The first requirement will be to move from an employment model that retains people with a defined skill-set, to a model that hires individuals based on their overall capability and on their ability to adapt to the future needs of the organisation.

Such a model would be informed by both workforce capability data as well as by business performance metrics, to ensure that both skills-supply and skills-demand are understood in real-time. Human resources analytics are already having a significant impact on business forecasting and decision-making.

The model would also consider the impact that industry, sector and environmental factors have on the organisation, even though the organisation may have no influence over these factors.

It would also assess, on an on-going basis, which capabilities are brought into the organisation and how they are introduced. Such an approach would enable flexible employment models that cater to the ebbs and flows in demand, while including supply options that suit the needs of the business and the employees.

Organisations will also need to engage digitally with talented workers, through use of contracting; outsourcing; partnerships; online crowd-sourcing; talent-hubs and freelance platforms.

Other important initiatives will include the stocktaking of organisational capabilities and the tracking of how much of these are used and when; the linking of variable remuneration to current performance, rather than using historical fixed elements; as well as the acquisition and retention of the best digital talent; and the development of the digital capabilities among existing employees.

In order to implement such a strategy, boards need to have advisors who are experts in this area and have the first-hand experience required to make decisions about technologies, thereby translating digital requirements into enabling capabilities. The organisations that can evolve will remain relevant within their sector and will enhance their competitive advantage. These will be the winners in the new digital economy.

Over the last five years, digital implementations were focused on the reduction of cost. They are now focused on the enhancement of the customer experience.
Our network

EY’s Non-Executive Director network was established five years ago and has benefitted from some top-class speakers who have shared their knowledge and experience. Our commitment is to facilitate the creation of better boardroom dynamics and we have designed this network to support Non-Executive Directors with the regulatory and technical challenges faced today.

We recognise that effective corporate governance is a vital element in growing a successful business and by using our professional competencies and global network; it allows us to identify and share emerging trends through data-rich content and practical tools that support this role.

Over the past number of years we have created a supportive community amongst our members and by combining our energy, knowledge and creativity we can make great improvements within the boardroom that will benefit our businesses.

This publication and other EY board resources are available online at ey.com/ie/boardmatters. To find out more about how to join the network, please contact ie.eyevents@ie.ey.com.

- Non-Executive Director quarterly briefings on current issues facing the NED community
- Distribution of key learnings following each briefing
- Non-Executive Director specific publications and analysis
- Boardroom development tools and best practice guidance
- Annual Non-Executive Director gala dinner
...by combining our energy, knowledge and creativity we can make great improvements within the boardroom that will benefit our businesses.
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