



COMPANY SECRETARIAL AND COMPLIANCE

Compliance Statements: What Directors Need to Know

by **David Brangam**

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The Companies Act 2014 introduced a requirement on directors of certain types of Irish company to include an annual compliance statement (Compliance Statement) in the directors' report accompanying the company's financial statements.

What companies are affected?

The requirement to complete a Compliance Statement applies to all Irish public limited companies and all Irish private companies with a balance sheet of over €12.5m and turnover of over €25m.

The obligations do not apply to unlimited companies or companies which are operating in Ireland which are not Irish registered companies.

A Compliance Statement should be included in the financial statements relating to all financial years commencing on or after 1 June 2015. Many companies that have December year ends have recently come through their 2015 audit and are now focusing on this new requirement, which will apply to them for the first time in respect of the year ending 31 December 2016.

What should be included in the compliance statement?

The Compliance Statement is a simple paragraph to be included in the directors' report:

1. The directors acknowledge their responsibility for securing the Company's compliance with its relevant obligations (set out below).
2. The directors confirm, on a "comply or explain" basis, that the assurance measures have been undertaken.

What are the relevant obligations?

The relevant obligations include all obligations under Irish tax law and certain obligations under the Companies Act 2014, a breach of which could give rise to serious criminal sanctions under the Companies Act 2014.

The obligation to acknowledge compliance with Irish tax law is clearly broad in its scope and affected companies will need to consider this in the context of their own particular circumstances, as not all tax obligations will be relevant to every company.

The relevant legal obligations are those under Companies Act 2014 that could give rise to serious criminal sanctions including:

- Requirements in relation to accounting records, audits, and financial statements.
- Certain offences in relation to the operation of a company's business issues.
- Offences when a company is being wound up.
- Offences involving the Office of the Director of Corporate Enforcement.
- Serious market abuse, prospectus and transparency offences.

The directors of affected companies must confirm that:

- The company has a compliance policy statement.
- Processes have been put in place to secure the company's material compliance.
- An annual review of the compliance processes had been carried out during the year.

The Companies Act 2014 does not set out any requirements that these actions have to be taken, and provides that the directors can instead choose to explain why the actions have not been undertaken, but this may be difficult in practice.

Consequences of failing to comply

A failure to include a Compliance Statement or to adequately explain why actions have not been taken, carries a maximum personal fine for each of the directors of €5000 and/or a maximum prison sentence of six months.

What processes can be put in place to secure material compliance?

There are three assurance measures identified in the Companies Act 2014 which companies can use to secure compliance with their relevant obligations.

1. Drawing up a compliance policy statement, setting out the company's policies designed to ensure material compliance with the relevant obligations.
2. Putting in place appropriate arrangements or structures that, in the directors' opinion, provide "a reasonable assurance of compliance in all material respects".
3. Conducting a review, in respect of the financial year to which the Directors' Report relates, of the arrangements or structures referred to above.

The compliance processes may include reliance on the advice of employees and service providers who appear to the directors to have the requisite knowledge and experience to advise on compliance with the relevant obligations. If the relevant statements, confirmations and reviews have not been made or carried out by the company, the directors must specify the reasons why in the annual directors' report.

What steps should directors take?

We would recommend that directors take the steps listed below:

- Undertake an internal review of the relevant obligations to ensure that appropriate arrangements and structures to secure material compliance are in place.
- Draw up a compliance policy statement setting out a proposed course of action for ensuring compliance.
- Map out the company's corporate activities relative to the relevant obligations and introduce controls on any flash-points involving those activities.
- Commit management time, adequate resources and expertise to assist directors with their compliance review.
- Undertake compliance assessments at regular intervals during the year.
- Document compliance obligations and monitoring activities/arrangements/procedures.

How we can help

The degree of involvement required by directors will vary and will depend on factors such as the nature, scale and the complexity of the company's business as well as its legal and tax framework. The continuing nature of the obligations and the need to establish structures and arrangements will require ongoing involvement by directors. LK Shields would be happy to assist companies and their directors in ensuring compliance with these new obligations.

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About the Author



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David specialises in advising Irish and international clients on a broad range of corporate and commercial matters. He has advised on some of the largest M&A deals in Ireland in recent years with Chambers Guide describing him as being "highly capable and proactive".

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