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Directors' Compliance Statements: A practical guide for directors

by **Richard Curran**

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The Companies Act 2014 (“**Act**”) introduces a requirement on directors of the following types of Irish company to include an annual compliance statement (“**Compliance Statement**”) in the directors’ report accompanying the company’s financial statements:

- Public limited companies; and
- Private companies with a balance sheet of over €12.5m and turnover of over €25m.

In the Compliance Statement, the directors must (i) acknowledge their responsibility for securing the Company’s compliance with its relevant obligations (set out below); and (ii) confirm, on a “comply or explain” basis, that the assurance measures (set out below) have been undertaken.

A Compliance Statement should be included in the financial statements relating to all financial years commencing on or after 1 June 2015. For example, if a company’s most recent financial year commenced on 1 December 2015, the first Compliance Statement which it would be required to provide would be for the financial year from 1 December 2015 to 1 December 2016.

What are the relevant obligations?

The relevant obligations in the Act are outlined below.

1. Obligations under the Act where a failure to comply would amount to:
 - (a) A category 1 or category 2 offence which mainly relate to
 - (i) unlawful financial assistance;
 - (ii) unlawful acquisition of a company’s own shares;
 - (iii) a subsidiary holding shares in its parent company;
 - (iv) failure to maintain proper accounts;
 - (v) provision of information to an expert for their report on a statutory merger or division;
 - (vi) certain obligations on a winding up or dissolution; and
 - (vii) acting in contravention of a restriction notice from the Director of Corporate Enforcement.
 - (b) A serious market abuse offence.
 - (c) A serious prospectus offence under Irish prospectus law.

2. Obligations under tax law, including the Customs Acts; statutes relating to excise duties and the management of these duties; the Tax Acts; the Capital Gains Tax Act 2003, the VAT Acts, the Capital Acquisitions Tax Consolidation Act and the Stamp Duties Consolidation Act 1999.

Assurance measures to secure compliance

There are three assurance measures identified in the Act 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 arrangements or structures referred to above may include reliance on the advice of persons employed or retained by the company 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.

Recommended steps for Directors

We would recommend that directors take the steps that are 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.

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 their obligations.

For further information, please contact our [Corporate and Commercial team](#).

About the Author



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