

The Companies Act 2014

Directors' Compliance Statement (Section 225 of the Act)

June 2016



Directors' Compliance Statements ("Compliance Statements") were originally introduced in the Companies (Auditing and Accounting) Act 2003. At the time the obligation on directors to prepare compliance statements was met with widespread opposition and as a result no commencement order was ever made to enact the obligations. The Company Law Review Group (CLRG) found the Compliance Statement to be disproportionate and presented a series of risks to the economy in 2005.

A more targeted and proportionate Director Compliance Statement has been included under section 225 of the Act. The requirement is that the compliance statement must outline the company's policies which are, in the opinion of the directors, appropriate to the company meeting certain obligations while also recognising the legal obligations of the company.

Any contravention of a director to fulfil their obligation to prepare a Compliance Statement is classed as a category three offence which carries a fine of up to €5,000 or imprisonment not exceeding six months, or both.

In practical terms, the inclusion of the compliance statement in the directors' report provides companies with an opportunity to demonstrate and promote their compliance with good corporate governance for current and future investors, shareholders and other interested parties.

The companies that are required to comply with the requirement to prepare and include a compliance policy statement in the annual director's report are:

- all Public Limited Companies (PLCs); and
- large private companies - i.e. private companies limited by shares (LTDs), Designated Activity Companies (DACs) and Companies Limited by Guarantee (CLGs) where the balance sheet for the year exceeds €12.5 million and the turnover for the year exceeds €25 million.

Unlimited companies and investment companies are not required to prepare Compliance Statements irrespective of turnover or balance sheet value.

In simple terms, the requirement to make a Compliance Statement places the directors in a position where they must make a formal statement confirming that the company has policies in place to ensure that it complies with its relevant obligations and that they have checked the appropriateness of these policies and structures during the course of the financial year.

Relevant obligations include obligations of the company under tax law (encompassing all tax legislation), significant company law obligations and any obligation a breach of which would constitute a serious market abuse offence or a serious prospectus offence.

The Compliance Statement in the directors' report must contain the following:

- a statement acknowledging that the directors are aware that it is their responsibility to ensure that the company fulfils its relevant obligations; and
- confirmation that the following have been completed:
 1. drawing up of a policy statement setting out the company's policies which the directors consider appropriate to the company's compliance with its relevant obligations;
 2. implementation of appropriate arrangements or putting structures in place that are, in the directors' opinion, sufficient to ensure material compliance with the company's relevant obligations; and
 3. the conducting of a review, during the financial year, of those arrangements or structures that have been put in place to secure compliance with relevant obligations.

If any of these three requirements have not been satisfied, the Act has introduced a 'comply or explain' mechanism allowing directors explain why a particular requirement has not been satisfied (e.g. why a policy statement has not been drawn up or a review has not taken place during the financial year).

The Act recognises that when implementing appropriate arrangements and structures companies may need to engage specialist advice from a person employed by the company or an external provider with the requisite knowledge and experience to advise the company on compliance with its relevant obligations.

Finally, arrangements or structures will be regarded as being designed to secure material compliance with relevant obligations if they provide a reasonable assurance of compliance in all material respects with those obligations (e.g. relevant professional advice).

The new obligation applies to financial statements with accounting periods commencing on or after 1 June 2015.

Grant Thornton can provide assistance or advice in relation to:

- reviewing existing procedures and arrangements to assess suitability to ensure compliance with the company's specific obligations in tax and company law compliance;
- assist in identifying potential risk areas and propose potential control measures;
- conduct an annual review of structures and arrangements for purposes of reporting to directors to support their requirement to have performed an annual review for compliance statement;
- assist in drafting and/or review of the company's 'compliance policy statement';
- provide company with relevant and specific tax and company law compliance advice to fulfil requirement to have arrangements and/or structures in place to ensure compliance with relevant obligations;
- provide a continuous update service for the purpose of informing directors of additional obligations introduced under company and/or tax legislation together with advices on how best to ensure compliance with any new measures; and
- provide training to directors and/or senior management tailored to the company's particular tax and company obligations.

Contact

If you require assistance or want to learn more about the Companies Act 2014, please refer to our other publications at www.grantthornton.ie or contact our Companies Act 2014 team at companiesact2014@ie.gt.com

Jillian O'Sullivan

Partner
T +353 (0)1 680 5850
E jillian.osullivan@ie.gt.com

Bernard Doherty

Partner
T +353 (0)1 680 5611
E bernard.doherty@ie.gt.com

24-26 City Quay, Dublin 2, D02 NY19

 [@GrantThorntonIE](https://twitter.com/GrantThorntonIE)

www.grantthornton.ie

Offices in Dublin, Belfast, Cork, Galway, Kildare, Limerick and Longford

#GTCompaniesAct



This briefing is provided for general information purposes only and is not a comprehensive or complete statement of the issues to which it relates. It should not be used as a substitute for advice on individual cases. Before acting or refraining from acting in particular circumstances, specialist advice should be obtained. No liability can be accepted by Grant Thornton for any loss occasioned to any person acting or refraining from acting as a result of any material in this briefing.