

New compliance statements, audit committee and audit confirmation requirements for certain Irish companies: do you need to take action now?

- Ensuring and monitoring compliance.
 - Audit Committee?
- Be aware of new directors audit confirmations needed.

Introduction

As we have explained in previous bulletins, the Companies Act 2014 (the **Act**) has introduced, among other measures, three new requirements affecting directors of a large number of Irish companies, which require action to be taken.

These provisions apply in respect of financial years **commencing on or after 1 June 2015**. With a lot of companies starting their new financial year on 1st January 2016 preparations should be put in place now. A number of other companies should already have taken measures to comply or, if not, should do so now.

Compliance Statements

Directors of companies over a certain size and of most PLC's have to include an annual compliance statement in their directors' report accompanying the company's financial statements. This provision applies in respect of financial years **commencing on or after 1 June 2015**.

Compliance statements will be required from directors of private limited companies and guarantee companies which have a balance sheet of over €12.5m and a turnover in excess of €25m in the year to which the directors' report relates. They will also be required from directors of all public limited companies, (other than investment PLCs), regardless of balance sheet or turnover figures and whether listed or unlisted.

Under the new regime, the directors of the affected companies will have to include a **compliance statement** in the directors' report, acknowledging their responsibility for securing compliance by the company with Irish tax laws, and also a number of company law provisions imposing serious penalties for non-compliance. These laws are referred to collectively in the Act as **Relevant Obligations**.

Compliance Policy Statements

The directors of affected companies must also confirm:

- that they have drawn up a **compliance policy statement** setting out the company's policies regarding compliance by the company with its Relevant Obligations,
- that arrangements or structures are in place that are, in the director's opinion, designed to secure material compliance with those Relevant Obligations, and
- that they have reviewed, during the financial year, the arrangements or structures which have been put in place to secure such material compliance.

If these statements, confirmations and reviews have not been made or carried out, the directors must, in the directors' report, specify the reasons why not.

Compliance Statements and Compliance Policy Statements - action required

Directors of affected companies, whose current financial year commenced after 1 June 2015, who have not already put arrangements in place, should now consider their obligations and take appropriate legal and tax advice, to ensure that they will be in a position to comply with the new law. This may need to be tabled at the next board meeting.

Audit committees

The Act requires boards of directors of "large" private companies (balance sheet total in excess of €25 million, and turnover in excess of €50 million, or a company and its subsidiaries which together meet these thresholds, in the most recent financial year and the one preceding it) and also all PLCs (other than investment PLCs), regardless of financial thresholds, to establish audit committees, or else explain in the directors' report why such committees have not been established. There are specific requirements as to the composition of the committee, and its functions, so even if there is an existing audit committee, its composition and terms of reference should be reviewed. There may also be overlapping regulatory requirements for some companies, such as banks and insurance companies.

Audit committees-action required

These new requirements also apply in respect of financial years **commencing on or after 1 June 2015**. Accordingly, if they have not already done so, directors of companies which are subject to the new regime, and whose current financial year commenced after 1 June 2015, should be taking the necessary steps now to either establish an audit committee which will comply with the requirements of the Act, or alternatively to determine the reasons why such a committee will not be established. In the case of affected companies whose financial year will commence in January 2016, the directors of those companies should meet early in the New Year to consider this.

New statutory audit confirmations from directors

New statutory audit confirmations will be required in the directors' report whereby the directors will be required to include a statement that:

- so far as each director is aware, there is no relevant audit information of which the company's auditors are unaware, and
- he or she has taken all the steps that he or she ought to have taken as a director to make himself or herself aware of any relevant audit information, and to establish that the company's auditors are aware of that information.

This requirement also applies for companies in respect of financial years **commencing on or after 1 June 2015**. Directors need to be aware of this by the commencement of the relevant financial year.

How we can help

We can advise you on all these requirements, including as to:

1. the wording to be included in the directors' report;
2. audit committee requirements;
3. the suggested terms of the compliance policy statement;
4. draft board minutes dealing with these matters; and
5. a table of "Relevant Obligations" which forms a checklist and facilitates monitoring of compliance throughout the year with "Relevant Obligations".

If you would like advice or assistance on how to deal with the above requirements, please get in touch with your usual contact at A&L Goodbody.

KEY CONTACTS



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Note: The above information is a summary for information purposes only of some changes which were introduced into Irish company law by the Companies Act 2014. Specific advice should always be sought before taking any action.

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