

Directors' Compliance Statements

13th October 2015

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Chair

Paul Egan
Partner, MHC



Directors' Compliance Statements

David Mangan
Partner, MHC



Which companies must give a Directors' Compliance Statement?

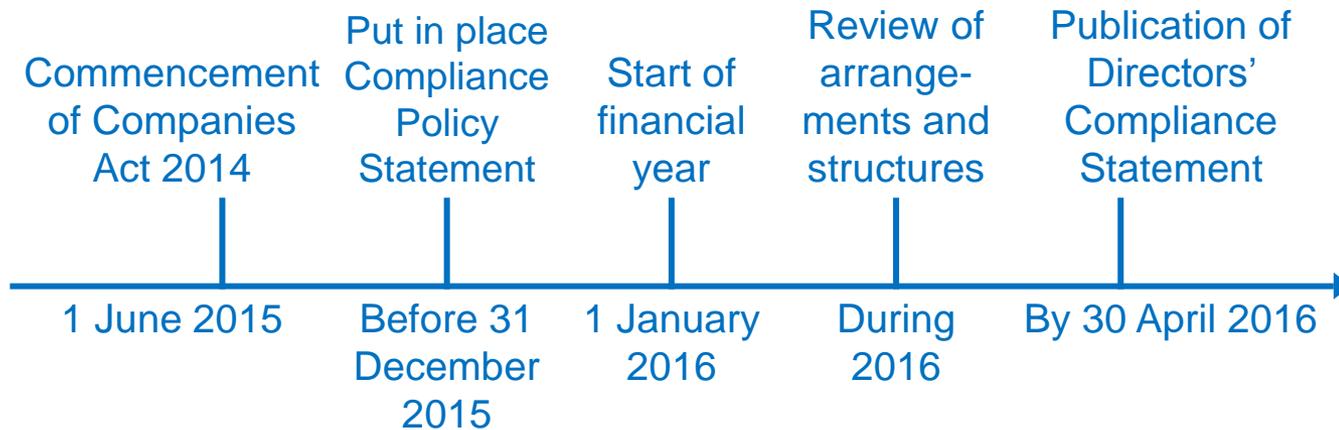
- All PLCs
- Other limited companies that have:
 - a balance sheet total for the year that exceeds €12,500,000; and
 - turnover for the year that exceeds €25,000,000

When does it apply?

- Delayed commencement
- Applies to financial years commenced on or after 1 June 2015
- However, there are certain things that must be done before the commencement of the relevant financial period

When does it apply?

Timeline for a company with a 31 December year end:



Content of a Directors' Compliance Statement

A statement in the Directors' Report for each year:

- acknowledging that the directors are responsible for securing the company's compliance with its “relevant obligations”; and
- confirming that certain actions have been taken (or an explanation for why they have not been taken).

“Relevant obligations”

“Relevant obligations” means the company’s obligations under:

(a) company law, where a failure to comply would be:

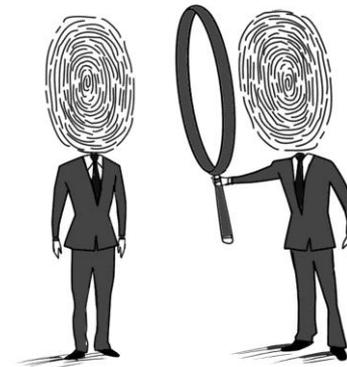
- (i) a category 1 offence or a category 2 offence; or
- (ii) a serious offence under securities law (i.e. under the market abuse, prospectus or transparency regulations);

or

(b) an offence under tax law, without qualification.

Additional actions to be taken

- (a) Compliance Policy Statement
- (b) Arrangements and Structures
- (c) Review



Additional actions to be taken

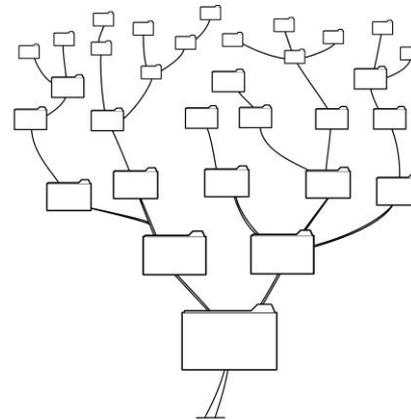
- (a) **Compliance Policy Statement** – drawing up a Compliance Policy Statement setting out the company’s policies (that, in the directors’ opinion, are appropriate to the company) respecting compliance by the company with its relevant obligations
- (b) Arrangements and Structures
- (c) Review

Additional actions to be taken

- (a) Compliance Policy Statement
- (b) Arrangements and Structures** – putting in place appropriate arrangements or structures that are, in the directors' opinion, designed to secure material compliance with the company's relevant obligations
- (c) Review

Additional actions to be taken

- (a) Compliance Policy Statement
- (b) Arrangements and Structures
- (c) Review** – conducting a review of such arrangements or structures



Compliance Policy Statement

Should describe both:

- the company's **policies** respecting compliance by the company with its relevant obligations; and
- the appropriate **arrangements or structures** that are designed to secure material compliance with its relevant obligations

Arrangements and structures

Meaning of “designed to secure material compliance”:

- “if they provide a reasonable assurance of compliance in all material respects with those obligations”

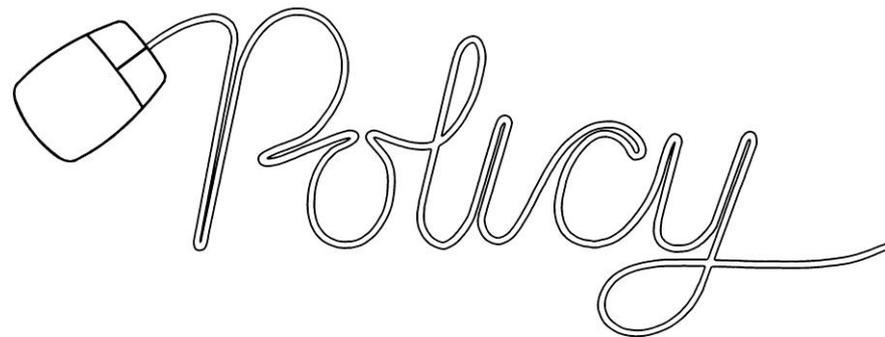
Arrangements and structures

Meaning of “designed to secure material compliance”:

- “if they provide a reasonable assurance of compliance in all material respects with those obligations”
- may include “reliance on the advice of one or more than one person employed by the company or retained by it under a contract for services, being a person who appears to the directors to have the requisite knowledge and experience to advise the company on compliance with its relevant obligations”

Drawing up a Compliance Policy Statement

- **Annex**
- **Sections**
- **Policies**



Drawing up a Compliance Policy Statement

- **Annex** – List all of the relevant company law and securities law obligations/offences in an Annex.
- **Sections**
- **Policies**

Drawing up a Compliance Policy Statement

- **Annex**
- **Sections** – Sections in the Statement should follow the list in the Annex – with section headings, such as:
 - Share Capital and Directors' Loans
 - Financial Statements
 - Statutory Books and Records and Companies Registration Office Returns
 - Insider Dealing and Market Manipulation
 - etc.
- **Policies**

Drawing up a Compliance Policy Statement

- Annex
- Sections
- **Policies** – Address the relevant obligations/offences in each Section by either:
 - referring to an existing policy, arrangement or structure of the company – such as a Continuing Obligations Memorandum or a Share Dealing Code; or
 - stating the company’s policy in the area – such as a policy not to make loans to directors.

Compliance with tax law

- Requires a different approach

Review of policies, arrangements and structures

- To be conducted during the year covered by the relevant Directors' Report.

Review of policies, arrangements and structures

- To be conducted during the year covered by the relevant Directors' Report.
- May be conducted by the Audit Committee, with the assistance of relevant advisers, and covering each of the Sections in the Compliance Policy Statement.

Additional – Statement on relevant audit information

Directors must now state in the directors' report that:

- there is no “relevant audit information” of which the company’s statutory auditors are unaware
- each director has taken all the steps in order:
 - to make himself or herself aware of any relevant audit information; and
 - to establish that the company’s statutory auditors are aware of that information.

Sanctions

- **Directors' Compliance Statement** – Category 3 offence
- **Audit Statement** – Category 2 offence, where a director:
 - (a) knew that the statement was false, or was reckless as to whether it was false; and
 - (b) failed to take reasonable steps to prevent the report from being approved

Sanctions

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- **Audit Statement** – Category 2 offence, where a director:
 - (a) knew that the statement was false, or was reckless as to whether it was false; and
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- **Category 3 offence** – summary conviction: imprisonment for up to six months or a fine of up to €5,000 (or both); and

Sanctions

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- **Audit Statement** – Category 2 offence, where a director:
 - (a) knew that the statement was false, or was reckless as to whether it was false; and
 - (b) failed to take reasonable steps to prevent the report from being approved
- **Category 3 offence** – summary conviction: imprisonment for up to six months or a fine of up to €5,000 (or both); and
- **Category 2 offence:**
 - on indictment: imprisonment for up to five years or a fine of up to €50,000 or both; or
 - on summary conviction: imprisonment for up to 12 months or a fine of up to €5,000 (or both)

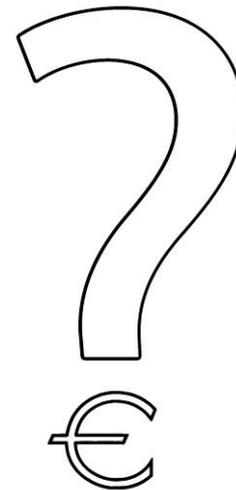
Tax Aspects of Compliance Statement

Maura Dineen
Partner, MHC



Compliance with tax law

What does compliance mean?



Compliance with tax law

- Self-assessment system of taxation
- What taxes are covered?

Taxes covered

“tax law” means—

- (a) the Customs Acts;
- (b) the statutes relating to the duties of excise and to the management of those duties;
- (c) the Tax Acts;
- (d) the Capital Gains Tax Acts;
- (e) the Value-Added Tax Acts;
- (f) the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act;
- (g) the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act; and
- (h) any instruments made under an enactment referred to in any of paragraphs (a) to (g) or made under any other enactment and relating to tax.

Compliance with tax law

- Self-assessment system of taxation
- What taxes are covered?

Compliance with tax law- arrangements and structures

- Letter from tax agent tax affairs up to date and in order
 - Ability under law to rely on advice of employee or consultant who appear to have requisite knowledge and experience to advise the company on compliance.

Compliance with tax law- arrangements and structures

- Independent review

Compliance with tax law- arrangements and structures

- No acts in isolation in respect of tax matters
 - Tax committee ?



@mhclawyers

Paul Egan

Chairman of Corporate
Mason Hayes & Curran

t: +353 1 614 5021

e: [*pegan@mhc.ie*](mailto:pegan@mhc.ie)





@mhclawyers

David Mangan

Partner

Mason Hayes & Curran

t: +353 1 614 5807

e: dmangan@mhc.ie





@mhclawyers

Maura Dineen

Partner

Mason Hayes & Curran

t: +353 1 614 2444

e: mdineen@mhc.ie

