

# Directors' Compliance Statement

COMPANIES ACT 2014

The Companies Act 2014 (the “**Act**”) came into effect on 1 June 2015 and has introduced significant reforms in company law in Ireland. The Act has since then been amended and updated.

The requirement for the directors of certain companies to include a directors' compliance statement in their Directors' Report was included in the Companies (Auditing & Accounting) Act 2003. However, that requirement was more onerous than the Act provides and the provisions of the 2003 Act were opposed on that basis and never brought into force. The Act provides for a more measured requirement for a directors' compliance statement. Separately, directors of certain regulated financial services entities must prepare compliance reports on specific matters where requested to do so by the Central Bank.

## Key Features

- Directors of a public limited company (other than an investment company) are required to include a compliance statement in their Directors' Report acknowledging their responsibility for securing the company's compliance with “relevant obligations” and confirming certain other matters.
- This requirement also applies to directors of large limited companies but unlimited companies are not affected.
- “Relevant obligations” means certain obligations under the Act (being obligations breach of which carry a significant penalty) and under tax legislation.
- The directors must also confirm that the company has drawn up a compliance policy statement on its relevant obligations and has put in place appropriate structures to secure material compliance with those relevant obligations. Those compliance structures must also be reviewed. If those measures are not taken the directors need to explain why not, in their statutory report.

# Companies Act 2014 Directors' Compliance Statement

(continued)

## Companies Affected

The requirement to produce a compliance statement applies to directors of every public limited company (“**PLC**”), regardless of the company’s turnover or balance sheet total for the relevant year.

The requirement applies to every:

- company limited by shares and having a share capital (“**LTD**”),
- designated activity company (“**DAC**”), and
- guarantee company (“**CLG**”)

which, in respect of the financial year of the company to which the directors’ report relates, has:

- a) a balance sheet total for the year that exceeds €12.5m, and
- b) turnover for the year exceeds €25m.

The obligation to prepare a compliance statement does not apply to investment companies or to certain other companies that are subject to an exemption given by ministerial regulations.

## Relevant Obligations

The “relevant obligations” covered by the compliance statement mean the obligations of the company:

- which, if an obligation were to be breached, would either be a category 1 or a category 2 offence under the Act (for example, failure to keep adequate accounting records, carrying on the business of the company with an intent to defraud creditors or non-compliance with financial assistance provisions) or be a serious market abuse offence or a serious prospectus offence; and
- under tax law (for example, Taxes Consolidation Act, Capital Gains Tax Acts and the Value-Added Tax Acts).

## Statement in the Directors’ Report

The directors must include in their directors’ report an acknowledgement that they are responsible for securing the company’s compliance with the relevant obligations together with confirmation that the directors have (or have not, in which case, the reason for that failure must be given):

- drawn up a compliance policy statement setting out the company’s policies (that are, in the opinion of the directors, appropriate to the company) in respect of the company’s compliance with its relevant obligations; and
- put in place appropriate arrangements or structures that are, in the opinion of the directors, designed to secure material compliance with the company’s relevant obligations. This is clarified to mean that the arrangements or structures provide a reasonable assurance of compliance in all material respects with the company’s relevant obligations. The arrangements can include reliance on the advice of an employee or service provider (in either case appearing to the directors to have the requisite knowledge and experience to advise the company on compliance with its relevant obligations); and
- conducted a review, during the financial year to which the Directors’ Report relates, of any arrangements or structures put in place to ensure material compliance with the company’s relevant obligations.

Failure to comply with these compliance statement requirements is a category 3 offence attracting a term of imprisonment of up to six months or a fine of up to €5,000 (or both).

*Companies Act 2014  
Directors'  
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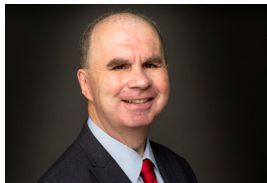
**Action Required**

Companies covered by the obligation to prepare a compliance statement need to develop a compliance policy statement and appropriate structures to secure material compliance with the relevant obligations.

Directors need to be familiar with what the company's relevant obligations are and, having adopted a compliance policy and put in place appropriate arrangements to secure material compliance with those obligations, keep those arrangements under review.

*For further information please contact*

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**Paul Heffernan**  
*Partner, Corporate*

DDI +353-1-607 1326

EMAIL paul.heffernan@  
mccannfitzgerald.com



**Peter Osborne**  
*Consultant, Corporate*

DDI +353-1-611 9159

EMAIL peter.osborne@  
mccannfitzgerald.com



**Frances Bleahene**  
*Senior Associate, Knowledge  
Team*

DDI +353-1-607 1466

EMAIL frances.bleahene@  
mccannfitzgerald.com

*Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.*

This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting or refraining to act on any of the matters discussed.

# McCANN FITZGERALD

## **Principal Office**

Riverside One  
Sir John Rogerson's Quay  
Dublin 2  
D02 X576  
Tel: +353-1-829 0000

## **London**

Tower 42  
Level 38C  
25 Old Broad Street  
London EC2N 1HQ  
Tel: +44-20-7621 1000

## **New York**

Tower 45  
120 West 45th Street  
19th Floor  
New York, NY 10036  
Tel: +1-646-952 6001

## **Brussels**

40 Square de Meeûs  
1000 Brussels  
Tel: +32-2-740 0370

## **Email**

[inquiries@mccannfitzgerald.com](mailto:inquiries@mccannfitzgerald.com)

[www.mccannfitzgerald.com](http://www.mccannfitzgerald.com)