



June 2016

Directors' Compliance Statement under the Companies Act 2014 – Impact on Insurance/Reinsurance Undertakings for years ending on/after 31 May 2016

Introduction

The concept of a directors' compliance statement first appeared in section 45 of the Companies (Auditing and Accounting) Act 2003 which required directors of a public limited company and qualifying large private companies to prepare a compliance statement and a directors' annual compliance statement. However, due to concerns expressed at that time, section 45 was not commenced.

The concept also exists in Part IV of the Central Bank Act 1997 which enables the Central Bank of Ireland (the '**Central Bank**'), whenever it considers it appropriate, to serve on a regulated financial service provider a notice requiring the service provider to provide it with a compliance statement. On 24 January 2014, the Central Bank served a notice (the '**Notice**') on insurance and reinsurance undertakings under section 25 of the Central Bank Act 1997 requiring those undertakings to submit an annual compliance statement to the Central Bank.

The Central Bank also issued a guideline called the 'Guideline for Life Insurance Undertakings, Non-Life Insurance Undertakings and Reinsurance Undertakings – Compliance Statements' (the '**Guidelines**') which took effect on 24 January 2014. The Guidelines prescribe the format and manner in which undertakings are required to comply with the obligation in the Notice to submit an annual

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compliance statement to the Central Bank. This includes a requirement for all directors to attest to the accuracy of the information provided in the annual compliance statement prior to submitting same to the Central Bank. In November 2015, the Central Bank indicated that the Guidelines would be subject to a review in 2016, however to date there hasn't been any feedback on the status on this review.

Separately, the Companies Act 2014 (the '**Act**'), which consolidated existing company law, re-introduced the company law obligation (albeit amended) on directors of certain companies to make an annual compliance statement in their directors' report. The statement must acknowledge that the directors are responsible for securing the company's compliance with its 'relevant obligations' and confirm that certain things have been done, or if they have not been done, explain why they have not been done. This obligation is separate and distinct to the obligation under the Notice which also remains in force.

Directors' Compliance Statement under the Act

Companies to which the requirement applies

Directors of the following companies will be obliged to sign a compliance statement and include this in their directors' report **for years ending on or after 31 May 2016**:

1. Public limited companies ('**plc**');
2. 'Large' private companies limited by shares, designated activity companies and guarantee companies which have a balance sheet total exceeding €12.5 million and a turnover exceeding €25 million. The prescribed thresholds are applied on an individual company basis as opposed to a group basis.

All insurance and reinsurance undertakings that are structured as a plc or that meet the thresholds of a 'large' private company will be obliged to comply with the requirement to produce a directors' compliance statement.

'Relevant Obligations'

Relevant obligations under the Act refer to an obligation of the company under:

- (i) Tax law; or
- (ii) The Act where failure to comply would constitute a Category 1 or Category 2 offence (i.e. the most serious offences under the Act) or a 'serious market abuse offence' or 'serious prospectus offence' (as such terms are defined in the Act).

It is important for directors to understand which of the 'relevant obligations' pertain to their company.

Contents of the Compliance Statement

A directors' compliance statement must acknowledge that the directors of the company are responsible for securing the company's compliance with its 'relevant obligations' and with respect to each of the following matters, confirm that it has been done, or explain why not:

- (i) Drawing up of a compliance policy statement which sets out the company's policies to ensure compliance by it with its 'relevant obligations';
- (ii) Putting in place appropriate arrangements or structures that are, in the directors' opinion, designed to secure material compliance with the 'relevant obligations'; and
- (iii) Conducting of a review, during the financial year to which the directors' report relates, of any arrangements or structures that have been put in place.

The arrangements or structures mentioned in (ii) above are regarded as being designed to secure material compliance by the company if they provide reasonable assurance of compliance in all material respects with those obligations. The terms 'reasonable assurance' and 'material compliance' are not defined in the Act, therefore directors of the company will need to apply their own judgement based on the circumstances for their company.

In relation to the annual review to be performed during the financial year as detailed in (iii) above, again it is a matter for the directors to determine as to who should perform the review, however, the directors should ensure that the 'reviewer' is sufficiently objective and competent.

How Dillon Eustace may help

Dillon Eustace may assist those companies subject to the requirement to prepare a directors' compliance statement in the following manner:

- ▣ Identifying the 'relevant obligations' as they pertain to your company;
- ▣ Developing appropriate compliance procedures and arrangements to secure material compliance with the 'relevant obligations' including developing a compliance policy statement or assessing the effectiveness of existing procedures in place;
- ▣ Preparation of a monitoring programme to assess if the compliance control procedures operated in the manner intended during the year to enable material compliance with the 'relevant obligations'; and
- ▣ Having regard to the above steps, developing an annual compliance statement for inclusion in the directors' report.

For further information on any of the issues discussed in this briefing note, please contact Breeda Cunningham or Andrew Bates or your usual contact in Dillon Eustace.

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