

Management Briefing

Time to take responsibility

Risk management solutions for directors' compliance



The Minister of State for Trade and Commerce, Michael Ahern, has referred the directors' compliance statement provision to the Company Law Review Group (CLRG) following lobbying from industry groups who believe it is anti-competitive. The CLRG are expected to complete this review by 31 July 2005. However, the Minister said the aim of the provision had not changed and there could be no going back to a situation where directors could claim to have no knowledge of malpractice and illegalities taking place in their companies. The Minister has also indicated that ample notification will be given regarding the commencement of this provision.

**The Companies (Auditing and Accounting) Act 2003 (The Act)
What is it?**

Legislation drawn up by the Minister for Finance to encourage improved compliance and corporate governance in specifically defined Irish companies. Subject to various thresholds, in summary it:

- establishes IAASA to review companies' accounts and to review and regulate auditors and accounting bodies;
- allows for a set of accounting standards to be recognised by regulation;
- requires establishing an Audit Committee for large private companies;
- requires disclosure of accounting policies in the notes to the annual accounts;
- requires disclosure of remuneration for audit, audit-related and non-audit work;
- requires the preparation of a directors' compliance policy statement and an annual statement of compliance with that policy;
- raises the threshold for exemption from requirement to have audited annual accounts.

How does this affect you as a director?

Failure to comply with the Companies Acts could result in directors being found guilty of an offence and being subject to fines and penalties, as well as potential reputational loss.

In 2004 alone, substantial penalties were imposed in a number of cases involving breaches to the Companies Acts. Mr Paul Appleby indicated in his Interim Report for 2005 that he will continue to be as active in enforcement proceedings. Are you in the clear?

Addressing the issue

The introduction of the Act has resulted in a real business issue for companies and directors. The most significant part of the Act is section 45 which relates to compliance in three broad areas, i.e. tax law, company law and other enactments.



Deloitte have developed a compliance process and methodology. This is designed to assist companies and directors in identifying obligations and risks, through to monitoring and reporting on compliance.

Overview

A structure needs to be put in place to ensure that directors are informed of the risks and controls within the organisation that will support their annual compliance statement. It is critical that there is confidence with the approach and that the process provides them with relevant and timely information.

Governance

A project structure needs to be defined which has a high degree of senior management buy-in. A senior person should be appointed as compliance officer to manage and support the compliance team. This person's responsibilities would include:

- Reporting to the Board on compliance related matters.

- Managing the development and maintenance of the relevant obligations register and ensuring that this is kept up to date.

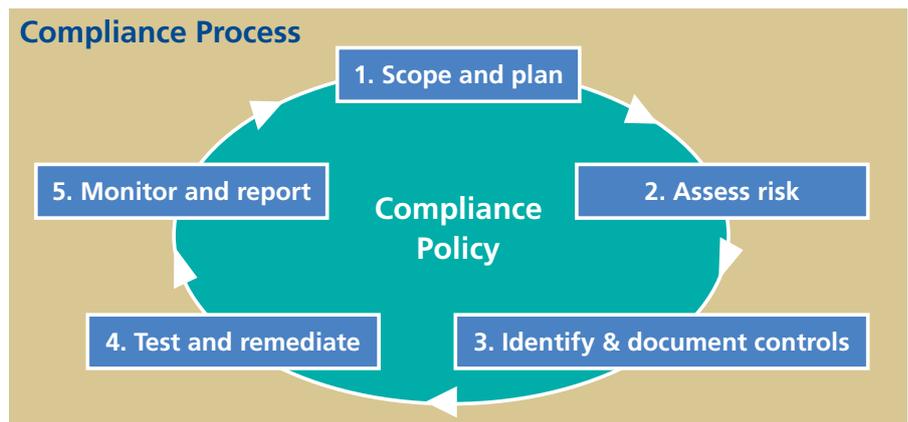
Compliance should be a standing agenda item for a company's board meetings.

Compliance Team

A compliance project team needs to be formed from a cross functional senior management group within the organisation who will initially identify the company's relevant obligations and develop the directors' compliance policy statement. These obligations should be presented and agreed by the Board.

Approach

There needs to be a structured approach to the compliance project to ensure that all of the relevant obligations and related risks are captured, managed and reported upon. Outlined across are some of the key modules and tasks from the Deloitte Compliance Methodology that should be performed to support the project.



Phase	Thread	Key tasks
Scope and Plan	Project Management	<ul style="list-style-type: none"> • Identification of project sponsor at board level • Workshop to identify relevant obligations and assign owner to each obligation • Obtain agreement from board in relation to obligations
	Process	<ul style="list-style-type: none"> • Constitute the team • Train the project team on compliance obligations and methodology
	People	<ul style="list-style-type: none"> • Communicate project objectives and background to company leadership
	Enabling Technology	<ul style="list-style-type: none"> • Identify project support tools • Identify impacted technologies e.g. ERP, BI, databases
Assess Risk	Project Management	<ul style="list-style-type: none"> • Perform project management processes • Report to board on activities and findings
	Process	<ul style="list-style-type: none"> • Review related legislation and update obligations in relation to directors compliance • Obtain support from relevant subject matter experts • Evaluate existing risk and controls assessment process • Obtain and update/ develop documentation
	People	<ul style="list-style-type: none"> • Communicate project objectives and background to all stakeholders • Communicate project initial assessment to company leadership and next steps
	Enabling Technology	<ul style="list-style-type: none"> • Implement project support tools e.g. compliance risk tracking database
Identify and Document Controls	Project Management	<ul style="list-style-type: none"> • Perform project management processes • Report to board on activities and findings
	Process	<ul style="list-style-type: none"> • Perform initial review of control activities • Identify and document control design deficiencies • Develop control deficiency remediation plan
	People	<ul style="list-style-type: none"> • Identify change risks associated with the compliance program and identify mitigating strategies • Communicate project progress to all stakeholders
	Enabling Technology	<ul style="list-style-type: none"> • Perform as-is technology assessment • Define technology internal controls and required remediation
Test and Remediate	Project Management	<ul style="list-style-type: none"> • Perform project management processes • Report to board on activities and findings
	Process	<ul style="list-style-type: none"> • Perform testing of control activities • Identify and document improvement opportunities • Implement controls to address deficiencies • Prioritise improvement opportunities • Implement process changes to support compliance
	People	<ul style="list-style-type: none"> • Develop and implement process change management • Communicate and manage improvement initiatives • Implement change management activities • Evaluate end-user knowledge and skills • Conduct end-user training needs assessment
	Enabling Technology	<ul style="list-style-type: none"> • Build and/or reconfigure technology solution • Create enabling technologies user profiles, procedures, and standards • Test technology solution
Monitor and Report	Project Management	<ul style="list-style-type: none"> • Perform project management processes • Report to board on activities and findings • Develop ongoing monitoring process and schedule • Close project and move to ongoing monitoring state
	Process	<ul style="list-style-type: none"> • Perform ongoing monitoring
	People	<ul style="list-style-type: none"> • Communicate and manage improvement initiatives • Complete end-user training
	Enabling Technology	<ul style="list-style-type: none"> • Deploy solution(s) • Maintain and update project support tools e.g. compliance risk tracking database

When does this start?

While some of the requirements of the Act have already commenced, some of the more significant provisions still await commencement. There is still no firm indication of when these provisions will become effective; however, the expectation is that it would not be before 1 January 2006. With the broadness of the requirement there will be a need for companies to ready themselves now for these obligations.

How can we help?

Deloitte have a cross functional service team drawn from experienced professionals in Enterprise Risk Management, Tax, Audit, Company Law, Legal & Secretarial and Management Consulting that can assist you with the implementation of the Act.

Our experienced cross-functional team can assist companies in determining the extent of their obligations under the Act and documentation relating to compliance. We can provide meaningful advice on risk management and assist with the implementation of a structured framework and process to facilitate compliance based on our expertise.

We regularly issue publications on guidance on corporate governance and regulatory matters, much of which is available at www.deloitte.com/ie.

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