



Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

PUBLICATION OF 2016 ANNUAL REPORT

Annual Report 2016

The ODCE has today published its Annual Report in respect of 2016¹.

Principal outputs & achievements

Amongst the ODCE's principal outputs and achievements during the year were:

- the submission of 5 investigation files to the Director of Public Prosecutions for consideration, with the associated recommendations including charges under both company law and the Criminal Justice (Theft and Fraud Offences) Act 2001;
- the obtaining of 93 restriction undertakings from directors of insolvent companies, thereby avoiding the necessity for the underlying matters to be litigated before the High Court;
- following the scrutinising of reports submitted by liquidators of insolvent companies, 90 company directors being restricted with a further 11 company directors being disqualified by the High Court;
- the rectification of 60 cases of directors' loans infringements with an aggregate value of approximately €17m, thereby furthering creditors' interests;
- the issuing of 108 directions to companies and their directors requiring compliance with a range of obligations under company law, thereby furthering a range of affected stakeholders' interests;
- as a proportionate and cost effective alternative to formal enforcement actions, the issuing of cautions to 61 companies and their directors.

Developments over the past 5 years

The report also details the principal developments that have occurred within the ODCE, and the environment within which it operates, over the past 5 years. Significant developments in that regard have included:

- changes to the organisation's structure with a view to enhancing effectiveness;
- a review of the organisation's capabilities and skills mix and the extent to which they were aligned with the organisation's mandate and remit;
- arising from the aforementioned review, and with the support of successive Ministers and their Departments:
 - the recruitment of 5 suitably qualified and experienced investigative accountants from a variety of backgrounds including other law enforcement agencies and professional services firms (with a further 2 positions currently in the process of being filled); and

¹ The report is available at <http://www.odce.ie/en-gb/publications/corporatetestatutory.aspx>

- the recruitment of a suitably qualified and experienced digital forensics specialist from a law enforcement background,
- changes in the composition of the ODCE's inputs, changes in how certain matters are dealt with (e.g., on foot of the introduction of the restriction/disqualification undertakings regime as provided for under the Companies Act 2014) and changes in the ODCE's strategic direction (i.e., the ODCE's enforcement priorities having shifted towards a greater focus on indications of wrongdoing at the more serious end of the spectrum); and
- changes to the organisation's investigative practices.

Issues arising in the case of DPP v Sean FitzPatrick

While the Annual Report makes reference to the abovementioned case, it was written and finalised prior to the coming to a conclusion of that case. As such, certain of the report's contents in that regard have been superseded by subsequent events. In particular, the Director was requested to prepare a report on certain issues that contributed to the ultimate outcome of that case. That matter is elaborated upon below.

Report under section 955(1)(a) of the Companies Act 2014

By letter dated 24 May, 2017, the then Minister for Jobs, Enterprise & Innovation, Ms. Mary Mitchell O'Connor, TD, requested the Director to provide her with a report on certain issues that contributed to His Honour Judge Aylmer's decision in the case of *DPP v Sean FitzPatrick* to direct the jury to acquit the accused on all counts. Minister Mitchell O'Connor requested that the aforementioned report be furnished to her by 23 June, 2017.

On 23 June, 2017 the Director submitted the report requested of him to An Tánaiste and Minister for Jobs, Enterprise & Innovation, Ms. Frances Fitzgerald, TD. That report is not, and does not purport to be, the result of an investigation or inquiry. Neither is it, nor does it purport to be, a detailed analysis of every aspect of the underlying investigation – an investigation of over three years' duration that involved many thousands of documents. Rather, to the extent practicable within the timeframe laid down for delivery, the report is a summary of the principal facts. That being the case, the report is, to the maximum extent practicable, grounded in relevant documents within the ODCE's possession and in transcripts of Court proceedings.

Not being an investigation or inquiry but, rather, a presentation of the principal facts through a statutory accountability mechanism, those identified in the report (several of whom are no longer employed within the ODCE and many of whom are, or were, employed by third parties), have not had an opportunity to comment, or furnish observations, on its content. Such an exercise would not have been feasible within the timeframe set for the preparation and delivery of the report.

It is the Director's understanding that An Tánaiste and Minister for Jobs, Enterprise & Innovation has referred the report to the Attorney General for his advice and that, subject to that advice, it is her intention to publish the report.

Joint Oireachtas Committee on Jobs, Enterprise & Innovation ("the Committee")

By letter dated 25 May, 2017, the Committee invited the Director to meet with it to discuss issues associated with the abovementioned case. On the same day, the Director responded to the Committee confirming his availability to assist the Committee in whatever way possible. However, in view of the Minister's request for a report and the associated timeframe set for delivery, the Director enquired of the Committee as to whether it would be willing to defer its invitation until after he had prepared and submitted his report to the Minister. By letter dated 26 May, 2017, the Committee indicated that it was willing to grant such a deferral – for which the Director is grateful. On 23 June, 2017, the Director advised the Committee that he had submitted the report requested of him to An Tánaiste and Minister for Jobs, Enterprise & Innovation.

Enquiries

Queries regarding the foregoing should be directed to Mr. Conor O'Mahony at +353 1 858 5827 or conor_omahony@odce.ie