



Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

PUBLICATION OF 2017 ANNUAL REPORT

Annual Report 2017

Having been noted by Government and laid before both Houses of the Oireachtas, the ODCE has today published its Annual Report in respect of 2017¹.

Principal outputs & outcomes

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

- the conviction on indictment of an individual (following the entering of a plea of guilty) for the offence of fraudulent trading. The individual concerned was subsequently sentenced to 18 months' imprisonment (with the final 6 months suspended) and disqualified from being a company director for 5 years;
- having entered pleas of guilty, the conviction on indictment of two individuals for the offences of fraudulent trading and failure to maintain a register of lending to directors respectively. The individuals concerned were subsequently sentenced to 30 months' imprisonment and a monetary fine of €3,000 respectively;
- the submission of a further 4 investigation files to the DPP, which contained recommendations for almost 100 charges under the Companies Acts, the Criminal Justice (Theft & Fraud Offences) Act 2001, the Taxes Consolidation Act 1997 and the common law;
- the utilisation of a broad range of statutory powers in order to both secure compliance and progress investigations, including the:
 - issuing of 58 statutory Requirements (including Requirements issued to companies for the production of books and documents, Requirements issued to 3rd parties for the production of books and documents, Requirements issued to relevant persons for the provision of explanations and assistance and Requirements issued to auditors for the provision of additional information);
 - issuing of 47 Directions to individuals and companies to comply with statutory obligations;
 - execution by Gardaí attached to the ODCE of 4 search warrants and the exercise of the power of arrest on 3 occasions;
 - initiation of various proceedings in the High Court (including in relation to Console Suicide Bereavement Counselling Limited (in liquidation), Newbridge Credit Union Limited (in liquidation) and Independent News & Media plc);

¹ The report is available at <http://www.odce.ie>

- the progression of a number of large-scale and complex investigations which, if considered appropriate by reference to the available evidence, may upon completion be referred to the DPP for consideration as to whether charges should be directed on indictment;
- the restriction or disqualification of a total of 132 company directors, following examination of over 600 liquidators' reports, as follows:
 - 91 directors restricted under the Restriction Undertakings regime;
 - 1 director disqualified under the Disqualification Undertakings regime;
 - 31 directors restricted by the High Court on foot of liquidators' applications; and
 - 9 directors disqualified by the High Court on foot of liquidators' applications;
- the disqualification of a further 4 company directors under the Disqualification Undertakings regime arising from ODCE investigations into companies that had been struck off the Register of Companies while still having significant outstanding liabilities;
- the rectification of 39 cases of directors' loans infringements with an aggregate value of approximately €15.5m, thereby furthering creditors' interests;
- as a proportionate and cost-effective alternative to formal enforcement actions, the issuing of cautions in 58 cases; and
- the delivery of 26 information presentations to a combined audience of approximately 1,350.

Other issues of note arising during the year

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

Following the decision by Judge John Alymer on 23 May 2017 to direct the jury to acquit Mr Sean FitzPatrick on all counts on the indictment, Ms Mary Mitchell O'Connor, TD, the then Minister, requested a Report on the matter under section 955(1)(a) of the Act.

The resultant Report (which runs to approximately 230 pages excluding Appendices) was submitted on 23 June 2017 to An Tánaiste and then Minister for Jobs, Enterprise & Innovation, Ms. Frances Fitzgerald, TD. The Report (which, including Appendices, runs to over 3,000 pages) is a factual account based, to the maximum extent practicable, on documents within the ODCE's possession and Court transcripts.

Relevant extracts from the Report (i.e., relating to the subject of professional fees and the procurement of experts) were furnished to the Comptroller & Auditor General ("C&AG") for information at the same time as the Report was submitted to An Tánaiste. No follow up queries have been received by the ODCE from the Office of the C&AG over the intervening period in that regard.

Engagement with the Oireachtas Joint Committee on Business, Enterprise & Innovation ("the Committee")

On 25 May 2017, the ODCE received an invitation to appear before the Committee for the purpose of discussing the investigation that preceded the trial of Mr. FitzPatrick.

Over the intervening period, there has been a substantial level of engagement with the Committee, which has included, in circumstances where the Minister has informed Dáil Éireann that her legal advice is that she is not empowered to publish the ODCE Report, the ODCE offering to furnish the Committee with a detailed Submission for the purposes of enabling it to consider the matter on a properly informed basis.

Having considered the matter, the Committee reverted advising that it now proposes to consider more general issues relating to the ODCE over the last decade. The Committee further advised that the current invitation is being extended on the clear understanding that, unless and until requested by the Committee, the trial of Mr. FitzPatrick or related matters will not be discussed at the meeting nor will the Committee receive any Submission or Report in relation to that matter.

In response, the ODCE has expressed the view that, whereas it is at all times available to assist the Committee, having regard to the fact that during the period 2009 to 2012 virtually the entirety of the ODCE's investigative capacity was consumed by its involvement in Anglo-related matters, any assessment of the ODCE's performance over the past decade cannot meaningfully be performed without considering the totality of its activities over that period.

Capability Enhancement

Over the past several years, the ODCE has been engaged in a process of enhancing its investigative capabilities. Developments during 2017 in that regard included:

- the recruitment of a Digital Forensics Specialist;
- the establishment of a state of the art digital forensics laboratory;
- the recruitment of a further Investigative Accountant;
- the recruitment of 2 Enforcement Portfolio Managers (one an accountant and the other a barrister-at-law); and
- the filling by the Garda authorities of the vacant Detective Inspector post and the bringing to full strength of the ODCE's approved Garda complement.

In addition, at year end recruitment processes were underway for the appointment of 2 Enforcement Lawyers and 2 further Investigative Accountants. Two of these 4 vacancies have since been filled with the remaining appointments expected in the near future.

Transition to Agency status

Further to the Government's decision to transition the ODCE from an Office of the Department of Business, Enterprise & Innovation to an independent Agency, the ODCE is continuing to work with the Department to progress the legislative and operational arrangements necessary to give effect to the transition.

**OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT
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Enquiries

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