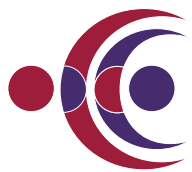


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Office of the Director  
of Corporate Enforcement

*Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach*

## Foreword



Pursuant to section 16(1) of the Company Law Enforcement Act 2001, I am pleased to present Mr Micheál Martin, T.D., the Minister for Enterprise Trade and Employment, with my Office's Annual Report for 2007.

Highlights for the ODCE in 2007 by primary activity include:

### Compliance

- participation by Office staff at more than 50 conferences, seminars and exhibitions promoting compliance with company law obligations;
- the broadcasting for the first time of a series of national radio advertisements highlighting common company law issues that arise for company directors and shareholders;

### Detection

- a significant increase (146%) in the number of complaints received about the governance of property management companies. The Office will publish a Governance Handbook for these companies in 2008 to help address the deficiencies being experienced in the area;

### Enforcement

- the conviction of 28 companies, directors and others for breaches of company law obligations;
- the disqualification of 14 persons following ODCE proceedings in the High Court;

### Insolvency

- the continuing focus on phoenix-type and other unliquidated insolvent company activity. Ten of the above disqualifications related to this area, and one director was disqualified for 12 years, the longest period yet obtained in any ODCE proceeding;

- the restriction of 144 directors of insolvent companies. Most of those were restricted by the High Court on the application of liquidators pursuant to their company law obligations;

### Customer Services

- the launch of the Office's new website which attracted about 150,000 visitors.

Office expenditure in 2007 amounted to €4.38 million (a 30% increase on the previous year's outturn of €3.36 million). Most of this increase was due to higher legal and other professional costs relating to Office investigations and enforcement activity.

I am grateful that the Department of Enterprise Trade and Employment assigned four additional staff to the Office in 2007, and these are now working to enhance our capacity to pursue the Office's compliance, insolvency and enforcement work.

I am also pleased with the results of new market research (summarised in this Report) which reported much improved levels of compliance with company law in recent years and a favourable view of the overall effectiveness of the Office.

These good results are primarily due to the commitment and hard work of ODCE staff who have made a major contribution to improving the quality of the environment for enterprise development over the last five years. Auditors, liquidators and other professional interests also continue to contribute to this objective. Over time, more people are becoming aware of this useful work, and our compliance and enforcement message is now reaching a wider constituency.

I want to acknowledge the continuing assistance and support being given to the Office's work by the Oireachtas, the Government, the Courts and the Ministers and staff in the Department of Enterprise Trade and Employment. I hope that this will continue and that we will succeed in further enhancing standards of legal compliance with the Companies Acts in the overall public interest.

**Paul Appleby**

*Director of Corporate Enforcement*

31 March 2008



# Introduction

The present Strategy Statement of the Director of Corporate Enforcement identifies the following primary ODCE goals and related sub-goals:

## Goal 1: Encouraging Compliance with the Companies Acts

- Sub-Goal 1.1: Publishing Accessible Company Law Information
- Sub-Goal 1.2: Promoting Compliance
- Sub-Goal 1.3: Improving Company Law and Associated Corporate Practices

## Goal 2: Uncovering Suspected Breaches of Company Law

- Sub-Goal 2.1: Developing Detection and Reporting Arrangements for Suspected Breaches of the Companies Acts
- Sub-Goal 2.2: Identifying Suspected Breaches of the Companies Acts
- Sub-Goal 2.3: Commissioning/Supporting Formal Company Investigations

## Goal 3: Prosecuting Detected Breaches of the Companies Acts

- Sub-Goal 3.1: Developing a Balanced Enforcement Policy
- Sub-Goal 3.2: Upholding the Disclosure Requirements of the Companies Acts
- Sub-Goal 3.3: Sanctioning Parties Disregarding Company or Other Interests
- Sub-Goal 3.4: Acting against Parties Denying Accountability under the Law

## Goal 4: Sanctioning Improper Conduct relating to Insolvent Companies

- Sub-Goal 4.1: Supervising Liquidators in the Proper Discharge of their Duties
- Sub-Goal 4.2: Assessing Directors' Conduct in Insolvent Liquidation Situations
- Sub-Goal 4.3: Sanctioning Fraudulent or Abusive Behaviour

## Goal 5: Providing Quality Services to Internal and External Customers

- Sub-Goal 5.1: Securing and Managing ODCE Resources
- Sub-Goal 5.2: Developing Staff
- Sub-Goal 5.3: Developing and Maintaining Quality Customer Services

This Report reviews progress in 2007 by reference to each of these goals and sub-goals.

# Goal 1: Encouraging Compliance with the Companies Acts

## Introduction

The activities of the Office of the Director of Corporate Enforcement (ODCE) in 2007 in promoting compliance were guided by the actions outlined in our Communications Strategy which was finalised early in the year. Much of the focus of our compliance work was directed at the small and medium sized enterprises sector where poorer awareness of their company law responsibilities tends to be more prevalent. The Compliance Unit benefited from a small increase in staff during 2007 which allowed it to expand its work as well as improve the Office's capacity to deal with company law queries from members of the public.

## Sub-Goal 1.1: Publishing Accessible Company Law Information

During the year, the Office published five reports, notices and other documents. These are identified in **Appendix 1.1.1** to this Report.

### Information Notices

Two of the five documents published by the Office in 2007 were Information Notices.

The first Information Notice<sup>1</sup> detailed the companies for which a report under Section 56 of the Company Law Enforcement Act 2001 was received by the ODCE and in respect of which a decision to grant full relief or relief "at this time" issued in 2006. The purpose of this Notice is to provide information to creditors and other company stakeholders so as to allow them to better assess the risks of doing business with persons who may have been involved with failed companies in the past. Details of cases where no relief or "partial" relief decisions are published in ODCE Annual Reports following the determination of such cases by the High Court.<sup>2</sup>

The second Information Notice<sup>3</sup> dealt in detail with the new legal requirements for companies in respect of the disclosure of company particulars in their electronic communications and on their websites. A key purpose of the legislation which became effective on 1 April 2007<sup>4</sup> is to ensure, in the interests of transparency, that consumers receive in communications from companies certain specified particulars denoting the source of the communication. The legislation extended to company electronic communications certain disclosure requirements which already apply to paper-based correspondence. The company particulars which must now be disclosed in electronic communications include:

- (a) the name and legal form of the company;
- (b) the place of registration of the company and the number with which it is registered;
- (c) the address of the registered office of the company;
- (d) in the case of a company exempt from the obligation to use the word 'limited' or 'teoranta' as part of its name, the fact that it is a limited company;
- (e) in the case of a company that is being wound up, the fact that it is being wound up;
- (f) if reference is made in the letter or order form to the share capital of the company, the reference shall be to the capital that is subscribed and paid up.

In order to prepare companies for these changes, the Office commenced a publicity campaign from February 2007. Advertisements were placed in the national press, and the Office contributed to a number of media articles on the new requirements. The results of subsequent work done by the Office in checking company compliance with these requirements are outlined in the following Goal 2 chapter on the detection of company law offences.

<sup>1</sup> Information Notice I/2007/1 – Section 56 Reports. Section 56 of the Company Law Enforcement Act 2001 requires the liquidator of an insolvent company to report to the ODCE on the state of affairs of the company and to apply to the High Court to restrict all of the directors unless relieved by the ODCE.

<sup>2</sup> The terms full relief, relief 'at this time', 'partial' relief and no relief are explained in Information Notice I/2007/1. See also the following Goal 4 chapter of this Report dealing with corporate insolvency matters. The associated Appendices 4.2.1, 4.2.2 and 4.2.3 contain the results in 2007 of High Court proceedings taken by liquidators against the directors of insolvent companies following an ODCE decision not to relieve the relevant liquidators of their statutory obligation to initiate restriction proceedings pursuant to Section 56.

<sup>3</sup> Information Notice I/2007/2 – Disclosure of Company Particulars in E-Communications and on Websites.

<sup>4</sup> The new requirements are contained in Regulation 9 of the European Communities (Companies) Regulations, 1973 (SI 163 of 1973) as amended by the European Communities (Companies) (Amendment) Regulations 2007 (SI 49 of 2007).

## Consultation Paper on Apartment Owners' Management Companies

In late 2006, the Office issued a Consultation Paper and Draft Guidance on the Governance of Apartment Owners' Management Companies (AOMCs).<sup>5</sup> This comprehensive document, comprising almost 100 pages, sought to inform the directors and members (apartment owners) of these management companies of their duties and obligations in order to improve the sustainability of this form of modern living.

Subsequent to the launch of this Consultation Paper, the Office commenced a publicity campaign which ran throughout the early part of 2007 and was aimed at inviting those associated with management companies to give their views on the content of the Draft Guidance before the deadline of 30 April 2007. In total, the Office received 67 submissions in reply, many of which were from members of the public and professionals involved in the area.

The majority of the submissions expressed support for the ODCE initiative and commented favourably on the quality of the Draft Guidance. One regular suggestion made during the consultation process was the need for the planned final Guidance Handbook to be accompanied by a summary document of the Handbook's key provisions. In addition, many respondents made constructive comments on the proposed amendments to the model Articles of Association which were included in the publication.

At the end of 2007, the Office had made progress in developing its planned Governance Handbook and associated summary document and in preparing an evaluation of the extensive comments received in the consultation process.

### "Corporate Compliance Matters"

The ODCE and the Companies Registration Office (CRO) jointly issued a new edition of the "Corporate Compliance Matters" newsletter in March 2007. This publication was mailed directly to the home addresses of every company director on the CRO database, some 230,000 company directors in total. It included four ODCE articles highlighting:

- areas for attention by company directors in the light of the Office's recent compliance and enforcement work;
- the value and purpose of audit committees;

- the Consultation Paper and Draft Guidance on AOMCs; and
- the new disclosure requirements for company e-mails and websites.

## Planned Publications

By year end, the Office had commenced work on two new publications. The first initiative involves the production in summary leaflet form of each of our seven Information Books for Company Directors, Shareholders, Creditors, etc. The new publication is intended for use at exhibitions, conferences and other events and will operate in parallel with the present Information Books which will still be available from the Office. The leaflets are being drafted in conjunction with the National Adult Literacy Agency in order to obtain the Plain English mark, and an equivalent version in the Irish Language will also be made available.

In addition, the Office is preparing draft guidance aimed at the directors and investors in companies benefiting from the Business Expansion Scheme (BES). The guidance will focus solely on the main company law issues of which individuals either investing or seeking investment through BES and Seed Capital Schemes should be aware. This document will be issued initially as a Consultation Paper in mid-2008.

## Sub-Goal 1.2: Promoting Compliance

### Advocacy Work

In early 2007, the Office finalised a two year Communications Strategy aimed at broadening compliance awareness among business and social enterprise and their advisers. During the year, the Office set about implementing several aspects of that Strategy. By way of example, the Office launched its remodelled website in 2007. The new website contains a "Company Law and You" section which targets specific audiences such as company directors, shareholders, auditors and liquidators, in order to improve its accessibility to those market segments. Further information on the attributes and performance of the new website is contained in the following Goal 5 chapter of this Report dealing with corporate services developments.

The Office's primary work in encouraging good corporate governance continued to be the delivery of presentations throughout the country to groups of company directors and associated enterprise interests. In 2007, Office staff gave some 45 presentations to over 3,100 individuals.

<sup>5</sup> Consultation Paper C/2006/2 – Draft ODCE Guidance on the Governance of Apartment Owners' Management Companies (December 2006).



**Appendix 1.2.1** lists these presentations. Particular beneficiaries were directors in the small and medium enterprise sector and business students. Our particular purpose in doing so is to encourage entrepreneurs and potential entrepreneurs to develop their businesses on a solid compliance footing.

During the year, the Office attended seven exhibitions, conferences and open day events. The list of events is at **Appendix 1.2.2**. ODCE staff were available to meet with attendees, distribute our publications and answer questions on company law issues. In this way, thousands of people were given the opportunity to inform themselves about company law issues and to address any compliance issues in the area with our staff. A number of enquiries made subsequently led to formal complaints being made to the Office in respect of suspected company law defaults.

The tagline “Get Informed” was adopted in 2007 and was repeated in all relevant Office advertising (see **Illustration 1.2.1** below). The Office is considering expanding its publicity activity on this theme at year-end.

**Illustration 1.2.1: Sample ODCE Advertisement used in 2007**

If you are a company director,  
shareholder or creditor then  
Company law is relevant to you

**GET INFORMED!**

Avoid the risk of breaching it and  
protect yourself from those who might.

**Contact the ODCE**  
For free information on company law  
www.odce.ie 1890 315 015

 Office of the Director  
of Corporate Enforcement  
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Fhorfheidhmiú Corparáideach

*The ODCE - Creating a better environment for enterprise*

Also as part of the Office’s Communications Strategy, the Office prepared and broadcast for the first time a series of national radio advertisements aimed at addressing topics that are of relevance to company directors and shareholders in particular. These were initially aired in December 2007

and will be repeated and possibly expanded in 2008. The topics covered included:

- the importance of company directors informing themselves of their duties,
- the legal limitations on the use by company directors of company assets for personal purposes,
- the need for companies to maintain proper company accounting and other records, and
- the right of shareholders to information on the performance of their company, including the right to participate at the company annual general meetings.

## Public Enquiries

The Office issued some 23,500 copies of its various publications during 2007. Many of these were distributed through the Companies Registration Office to the directors of new companies. This represented a large increase on the 15,000 copies which were distributed in 2006.

The Office continued to deal with a large number of company law queries received primarily by phone and e-mail to [info@odce.ie](mailto:info@odce.ie). During 2007 and helped by the assignment of an extra staff member to the area, the Office consolidated the delivery of this customer service within the Office’s Compliance Unit and put in place systems for measuring and monitoring the significant queries. In the last quarter of the year, some 150 queries received a considered response. A sample of the public enquiries dealt with by the Office in 2007 is contained in the accompanying **Illustration 1.2.2**.

While these enquiries reflected the diverse nature of company law issues which were addressed in the Office in 2007, many of them were centred around AOMCs as well as general disputes between company directors. Unfortunately, we were unable to assist with the majority of AOMC queries as the subject matter did not relate to company law. Those making enquiries were often encouraged in appropriate cases to raise their difficulties with the directors of the management company or with the managing agent who is contracted to service the apartment or housing complex.

While the Office strives to deal with all company law queries it receives by providing copies of its publications or other general information on company law requirements, it cannot and does not dispense legal or other professional advice related to an individual’s difficulty. In circumstances where correspondents seek such advice, the Office always suggests that they consult a solicitor knowledgeable in company law or another relevant professional person.

**Illustration 1.2.2: Sample of Public Enquiries dealt with by the Office in 2007**

A member of the public wanted to know if a company director who had notified the company of his resignation could file notice of his resignation direct with the CRO, where the company had failed to accept his resignation and notify it to the CRO.	The person was directed to Section 195 (11A) and (11B) of the Companies Act 1963 (as amended by Section 47 of the Companies (Amendment) (No. 2) Act 1999) which outlines the process to be followed by a person wishing to notify his or her resignation as a director with the CRO.
An individual claimed to be aware that a number of the community/voluntary companies were not complying with various company law requirements. She specifically asked if failing to hold an annual general meeting, failing to record minutes of meetings and failing to maintain an accurate and complete register of members were offences under the Companies Acts.	The person was informed that each of the mentioned defaults was a company law offence. The Office arranged for two copies of its seven general Information Books on the duties of company directors, etc. to be issued to the enquirer.
A person enquired if a restricted person could become a director of a management company which was constituted as a company limited by guarantee.	The individual was informed that a person who is restricted is precluded from acting as a director of a company limited by guarantee. This form of company cannot be capitalised to meet the statutory requirements and thereby permit a restricted person to serve as a director.

**Press Statements, Briefings and Queries**

The Office issued ten press statements during 2007. The full list of press statements is available at **Appendix 1.2.3**. These statements related, for example, to the launch of the Office's Annual Report for 2006, as well as the highlighting a number of compliance projects. Also where necessary or appropriate, the Director commented on significant enforcement results and Court decisions.

Over 100 press queries were dealt with in 2007, and the Office's work was profiled in a wide range of print media on more than 300 occasions. In addition, Office staff also carried out a number of media interviews during the year. The Office also contributed articles to publications on issues such as the new disclosure requirements for company electronic communications, AOMCs and the Office's compliance work.

During the year, the Office invested in a part-sponsorship of the "Irish Director" magazine, the quarterly publication of the Institute of Directors in Ireland, in order to maintain an awareness of company law issues among the membership of that organisation. As part of that sponsorship, the magazine carries at least one article on the Office's work in each issue.

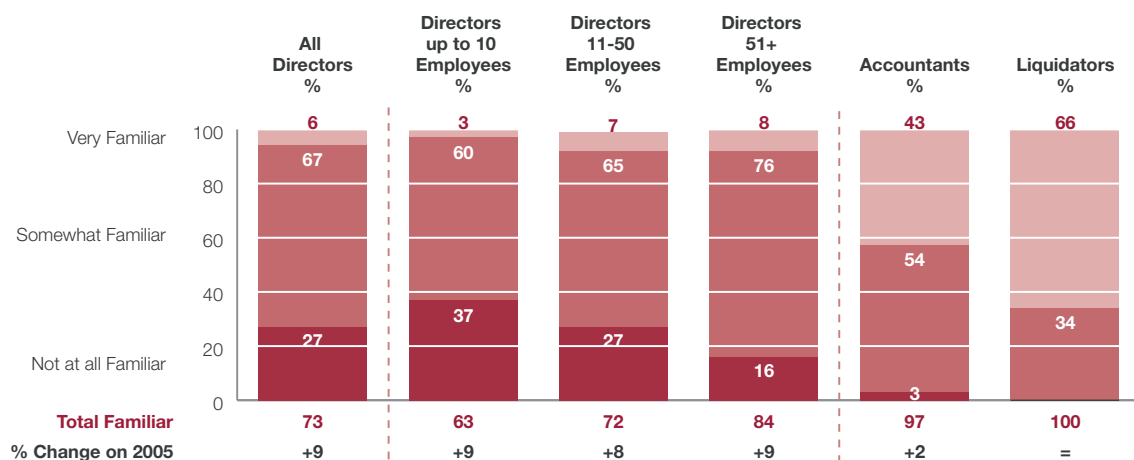
**Market Research**

Towards the end of the year, the Office commissioned further market research to obtain an overview of the company law compliance environment and the performance of the Office in the discharge of its functions. Following a competitive tender process, the Office engaged Millward Brown IMS to carry out the research.

The approach in 2007 followed broadly along the same lines as the last exercise carried out in 2005. In all, some 299 company directors, 100 accountants and 41 liquidators (a total of 440 respondents) were contacted during November/December 2007 and asked a series of questions concerning their understanding of company law and the Office, their opinions on company law compliance generally, and where relevant, their experiences in dealing with the Office. A number of key business professional and media interests were also interviewed on a one to one basis to obtain more detailed feedback on company law compliance and on the work of the Office. Finally, a sample of some 1,000 members of the general public was also asked during October 2007 for their opinions on the quality of corporate compliance with company law and other legal obligations.

The results of this research were very positive from the Office's perspective. As indicated in the following **Illustration 1.2.3**, awareness of the Office and its functions continues to increase amongst company directors and now stands at 73% on average, rising to 84% for directors of larger companies.

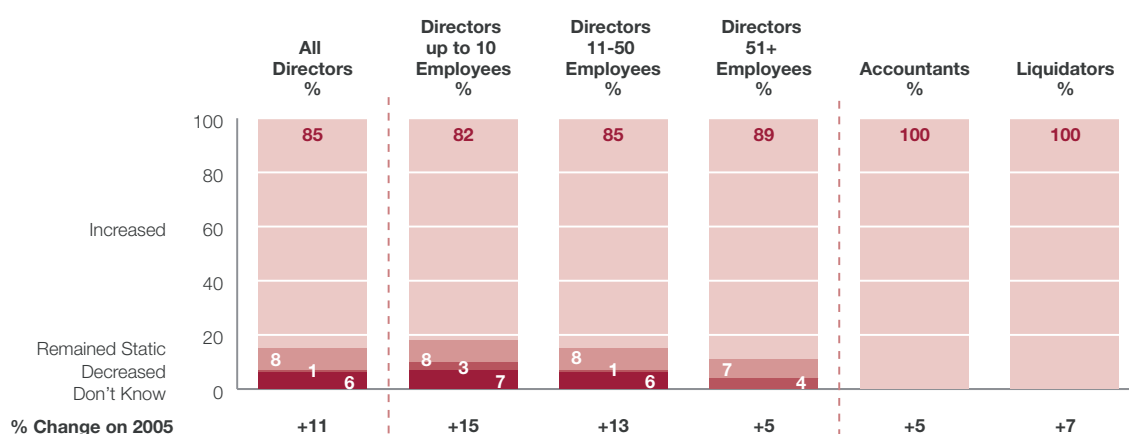


**Illustration 1.2.3: ODCE Market Research 2007****Familiarity with ODCE**

Q. How familiar are you with the Office of the Director of Corporate Enforcement, or ODCE, and its functions?

When shown, as part of the research, a selection of possible ODCE functions and asked what was the Office's primary role, 60% of the 299 company directors identified its work in encouraging adherence to company law requirements. In comparison, sanctioning company directors for non-compliance was selected by only 12% as the Office's primary role. The Director is heartened by this result, as it has been his objective in recent years to promote the compliance side of the Office's remit.

As indicated in the following **Illustration 1.2.4**, the 440 respondents were asked for their opinion of the qualitative change in the company law compliance environment over the last five years. 85% of directors were of the opinion that compliance had improved over the last five years, an 11% increase on the result obtained in the last equivalent research in 2005. And all 141 accountants and liquidators expressed the belief that compliance had improved!

**Illustration 1.2.4: ODCE Market Research 2007****Movement in Compliance Levels**

Q. In your opinion, have levels of compliance with Company Law in Ireland increased, decreased or remained static over the past five years?

In the poll of some 1,000 members of the public, 52% rated companies as good at fulfilling their obligations under company law. This was also slightly up on the previous result of 50% achieved in the 2005 research.

## Sub-Goal 1.3: Improving Company Law and Associated Practices

### Policy Submissions and Contributions – General

In 2007, the Office made a number of policy submissions on company law and related issues. These included contributions to:

- the Department of Enterprise Trade and Employment (DETE) in the context of its new Strategy Statement;
- the Company Law Review Group (CLRG) as part of its 2007 Work Programme;
- the Law Reform Commission (LRC) in reply to its Consultation Papers on Multi-Unit Developments and Privity of Contract – Third Party Rights;
- Dublin City Council in respect of its Draft Guidelines on Sustainable New Apartment Homes;
- the European Commission's Consultation Papers on the Simplification of Company Law and Auditor Liability;
- the Financial Reporting Council (FRC) in the UK in response to its Paper on Promoting Audit Quality;
- the International Association of Insolvency Regulators in respect of its ongoing and future programmes of research projects in the insolvency area.

### DETE Strategy Statement

The Department of Enterprise Trade and Employment developed a new Strategy Statement during 2007, and the Office responded to an invitation to comment on the content of the draft Statement. In its comments, the Office advocated strong recognition within the Strategy Statement of the value of regulation in promoting well-functioning and orderly markets. The ODCE noted its support for the modernisation and consolidation of company law but was anxious that the focus should be on better regulation which did not necessarily mean less regulation. In the company law area for example, improved standards of regulation have been effective in improving legal compliance to the overall benefit of the market. Similar positive results had been achieved in other regulatory areas. DETE took on board these views in finalising its Strategy Statement.

### Company Law Review Group

As a member of the CLRG, the Director, supported by five ODCE colleagues, participated in its heavy work programme in 2007. The Director chaired the Committee on Criminal and Enforcement Issues with assistance from three colleagues, while three staff represented the Office on three other Committees dealing respectively with matters under the Registration and Incorporation, Auditors and Financial Statements and Modernisation for Competition headings.

While the ODCE had an interest in over half of the 25 items on the CLRG work programme, four were ODCE proposals for legislative change. These had originally been recommended to the Department in 2006 for possible inclusion in the Bill which came to be enacted as the Investment Funds Companies and Miscellaneous Provisions Act 2006. The four ODCE proposals dealt with:

- the introduction of a framework of consent undertakings for uncontested restriction and disqualification proceedings<sup>6</sup>;
- the consolidation, within a single set of proceedings, of multiple prosecutions of companies, directors and/or other persons where they are based on the same set of facts<sup>7</sup>;
- the inclusion of a rebuttable presumption in the offence provision with respect to excessive directors' transactions (Section 40 of the Companies Act 1990), in order to mitigate the associated very high burden of proof;
- the verification of a company's entitlement to avail of audit exemption as provided for in Section 32 of the Companies (Amendment) (No. 2) Act 1999.

Regrettably, only the first two of the above proposals received positive CLRG recommendations at the conclusion of its 2007 work. The CLRG Report for 2007 is available on its website at [www.clrg.org](http://www.clrg.org).

The Committee on Criminal and Enforcement Issues also addressed the desirability of including a provision on good faith reporting (otherwise known as "whistle-blowing") in Irish company law. This suggestion emanated from the Irish Congress of Trade Unions following the Government's formal decision in 2006 that Ministers would examine on a sectoral basis if such a provision should be included in forthcoming Government legislation. Notwithstanding

<sup>6</sup> The ODCE proposal constituted an amendment of the new provision included at Head 51 of Part A13 of the published Companies Consolidation and Reform Bill, a copy of which is at [www.clrg.org](http://www.clrg.org).

<sup>7</sup> The ODCE proposal constituted an amendment of Section 240A of the Companies Act 1990 (as inserted by Section 105 of the Company Law Enforcement Act 2001) and of Head 53 of Part A13 of the published Companies Consolidation and Reform Bill, a copy of which is at [www.clrg.org](http://www.clrg.org).

the Committee's substantial national and international research work and the subsequent development of a detailed ODCE Discussion Paper on the topic, the CLRG decided in its 2007 Report not to recommend the inclusion of a good faith reporting provision in Irish company law.

Nevertheless, the CLRG decided that the ODCE Discussion Paper which included the Committee's research work was an extensive and valuable document which merited publication on its own website as it would be of interest to other Government Departments in considering the introduction of good faith reporting provisions in planned legislation under their aegis. A copy of the ODCE Discussion Paper which advocated a limited good faith reporting provision in Irish company law is also published as a companion document to this Annual Report on the ODCE website at [www.odce.ie](http://www.odce.ie).

### Law Reform Commission Consultation Papers

In November 2006, the LRC issued a Consultation Paper on Privity of Contract: Third Party Rights<sup>8</sup>. In 2007, the ODCE made a submission to the LRC in which it expressed concern that the present legal framework for corporate and other insolvencies would be unlikely to sustain a universal conferral of third party rights. Where, for instance, a company in liquidation owed money to a contractor, the conferral of a right of third party enforcement to unpaid sub-contractors could result in the liquidator facing multiple proceedings in circumstances where it was desirable both for economic and public policy reasons to avoid the cost associated with such proceedings. Accordingly, the ODCE suggested inter alia that the LRC consider exempting insolvencies and rescue procedures like examinership from any general recommendations which it might make in the area. The issue is still under consideration by the LRC.

In December 2006, the LRC issued a detailed Consultation Paper on Multi-Unit Developments<sup>9</sup>. In its response to the Paper, the ODCE offered various comments and suggestions on the current legal and operating structures of AOMCs and similar developments. These included the following:

- the case for a dedicated regulator in the area was not persuasive from the ODCE's perspective, but if one were to be created, it should operate at a high level only;
- a comprehensive review of the current legal agreements and standard provisions was needed, as these did not reflect in many cases the actual operation of AOMCs subsequent to the sale of apartments;
- rescue provisions were urgently needed to deal with the dissolution of AOMCs and other serious problems arising from the inadequate maintenance of apartment developments;
- residents and potential residents of AOMCs should receive more financial and other information on AOMC governance and performance to facilitate their decision-making;
- each new AOMC should be funded at the outset by the allocation to the company of 10% of the purchase price of each apartment. This would ultimately be paid to the developer when and in consideration of the vesting of the apartment development's common areas to the AOMC. This would also allow the AOMC to fund any legal or other costs that it may face prior to the transfer of the common areas and act as an incentive to developers to expedite the transfer.

Following the publication of the LRC Consultation Paper, the Government established a High Level Inter-Departmental Committee, comprising representatives of relevant Departments and Offices, to assist in the development of a coherent and comprehensive legislative response to the identified issues. The ODCE was invited to serve on this Committee which is being chaired by the Department of Justice Equality and Law Reform, and an ODCE representative participated in the Committee's deliberations during 2007.

### Dublin City Council Draft Guidelines on Sustainable New Apartment Homes

The ODCE made a short submission to Dublin City Council in respect of its Draft Guidelines on Sustainable New Apartment Homes. We commented solely in respect of the structure of AOMCs and suggested in the interests of sustainability that planning authorities might give some consideration to the proposed governance structures for apartment developments when planning permission was sought.

<sup>8</sup> A copy of LRC Consultation Paper 40-2006 is available at [www.lawreform.ie](http://www.lawreform.ie).

<sup>9</sup> A copy of LRC Consultation Paper 42-2006 is available at [www.lawreform.ie](http://www.lawreform.ie).

## European Commission Consultation Papers

The ODCE submitted through the CLRG a response to the European Commission's Consultation Paper on the Simplification of Company Law. In our submission, the Office commented that proposals to reduce or eliminate reporting obligations for small businesses would have a major impact in Ireland due to the very large proportion of our companies that would fall into that sector. The Office stated that the information filed by companies in the CRO constitutes an important resource for business and consumers in evaluating the risks of entering into transactions with companies. Any reduction in the quantity or quality of this information would not be conducive to informed and competitive market decision-making. In certain instances such as the option of filing abridged accounts for certain small companies, availing of the option already entailed additional cost for business.

The European Commission also issued a paper on auditors' liability and its impact on European Capital Markets. The Office expressed support for the concept of limiting auditor liability but commented on the difficulties in achieving this in practice. It gave guarded support for the concept of negotiated limited liability with a degree of court oversight but counselled that such an approach may meet constitutional challenges.

## Financial Reporting Council Paper on Promoting Audit Quality

In response to the FRC Paper on Promoting Audit Quality, the ODCE expressed some concerns, notwithstanding the overall satisfactory performance of the profession, about the quality of some audit reports and the inadequate knowledge possessed by a minority of auditors of the associated company law provisions. In its experience, this applied particularly to smaller practices which suggested that there were deficiencies in continuing professional education which required to be addressed.

With respect to audit committees, the Office drew attention to the recent Irish legislation and suggested that it might assist the development of future FRC guidance.

## International Association of Insolvency Regulators (IAIR)

As part of the ODCE's continuing membership of the IAIR, the Office contributed in 2007 to two research projects on employee rights in corporate insolvencies and on the fees and costs charged by insolvency regulators. These projects were led respectively by the members from

the Russian Federation and Canada. All research papers which the IAIR decides to publish are available on its website at [www.insolvencyreg.org](http://www.insolvencyreg.org).

The Director participated in the IAIR's Annual Conference in Bangkok in September 2007. The Conference agreed, in advance of its 2008 Conference, to undertake two ODCE proposals for research projects dealing with:

- improving information-sharing among the IAIR's members with respect to their regulation of personal and corporate insolvency matters, and
- the mutual recognition of sanctions imposed in IAIR member jurisdictions.

The former research project will be undertaken in conjunction with the Office of the Superintendent of Bankruptcy in Canada which has a particular interest in establishing the policies of IAIR member jurisdictions with respect to the disclosure of insolvency data collected as part of their supervisory remits.

## OECD Peer Review of Bribery Convention

In the ODCE's Annual Report for 2006, reference was made to the Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (1997). As a party to that Convention, Ireland's compliance with its terms is regularly monitored by the Organisation for Economic Cooperation and Development (OECD)<sup>10</sup>. In March 2007, the latest OECD evaluation report on Ireland's implementation of the Convention was published following consideration of its contents at a plenary meeting of the OECD Working Group on Bribery in International Business Transactions at which the ODCE was represented. In connection with Ireland's implementation of its obligations under this Convention, the Government established a Senior Officials' Compliance Committee during 2007, and a staff member of the ODCE serves on this Committee.

The Working Group's report is available on the OECD's website.<sup>11</sup> Although the criminal offence of bribery is not directly relevant to company law enforcement, the ODCE was nevertheless pleased that the OECD Report welcomed the creation of the Office and its action in effectively enforcing accounting offences under company law. The Report also acknowledged that recent reforms in the area of company law strengthen accounting and auditing standards and should allow for more effective enforcement of fraudulent accounting offences ancillary to foreign bribery.

<sup>10</sup> Information on the Convention is available at [www.oecd.org](http://www.oecd.org).

<sup>11</sup> See [www.oecd.org/dataoecd/27/45/38322693.pdf](http://www.oecd.org/dataoecd/27/45/38322693.pdf).

### **ECJ Case on the Transfer of a Company's Registered Office**

Reference was made in the ODCE's Annual Report for 2006 to our contribution to the preparation by the Offices of the Attorney General and the Chief State Solicitor of Ireland's Written Observations to the European Court of Justice (ECJ) in Case C-210/06 Cartesio Oktató és Szolgáltató Betéti Társaság. The ECJ heard the case in July 2007, and the opinion of the Court's Advocate General (which is a step preliminary to the delivery of the Court's ultimate judgment) was still awaited at the end of the year.

### **Visit by the Estonian Justice Ministry**

At the request of the Justiits Ministerium in Estonia which has responsibility for the regulation of corporate and personal insolvencies, the ODCE hosted a meeting in Dublin in May 2007 at which an Estonian delegation was briefed on the ODCE and on Irish legislation and regulation of insolvency matters.

### **NSAI – ISO 26000 on Social Responsibility**

The International Standards Organisation (ISO) continued its work in developing a global standard in the area of Corporate Social Responsibility in 2007. This large and complex project has proceeded more slowly than originally envisaged. As a member of the Irish Mirror Committee tasked with reviewing the work of the ISO on behalf of the State, the ODCE has maintained a watching brief on developments. The Mirror Committee, managed by the National Standards Authority of Ireland (NSAI), met once during 2007.

### **Irish Auditing and Accounting Supervisory Authority (IAASA)**

The Director is a member of the Board of IAASA, and he also serves on the Board's Remuneration Committee. The Director contributed to the Authority's work during the year in both capacities. A copy of IAASA's Annual Report for 2007 will be available from mid-2008 on its website at [www.iaasa.ie](http://www.iaasa.ie).

### **Conclusion**

The results of the recent market research have clearly indicated that the ODCE's efforts are successfully securing an ongoing market improvement in the quality of compliance with the provisions of the Companies Acts. The Office will continue to implement its current Communications Strategy with a view to reaching in particular the large constituency of people who are involved in business and social enterprises and who need to know the basic requirements of company law in order to help build sustainable businesses.