



Office of the Director  
of Corporate Enforcement

*Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach*

# **Review of ODCE Activity in 2007**

**January 2008**

# **Review of ODCE Activity in 2007 by Goal**

## **Encouraging Compliance with the Companies Acts**

2007 saw the Office extend its role in highlighting company law issues for directors and the general public, as well as working to improve compliance with the law. The ODCE targeted the small and medium enterprise sector in particular and expanded its work nationally in order to reach directors of new and expanding businesses.

### Publications

The Office continued to issue a large volume of guidance information on aspects of company law. In 2007, some 23,500 copies of its various publications were distributed to facilitate compliance (up about 50% on the numbers issued in 2006).

During the year, the Office issued six new publications (eight in 2006), including two Information Notices. One Information Notice promoted the new EU-wide obligation (which became effective on 1 April 2007) for the disclosure by companies on their e-mails and websites of certain particulars including their names and registered office details<sup>1</sup>. A primary purpose of the measure is to improve transparency in the interests of consumers and other company stakeholders in the e-commerce environment.

The Office facilitated compliance with the new requirement by way of press advertising, media interviews and presentations during 2007, and it also reviewed the websites of over 100 companies which were predominantly involved in sales to consumers. Of those, 79 company websites were found not to be in compliance, and following extensive contacts with these companies, voluntary compliance was secured in 73 cases by the end of the year. It is hoped that the remaining six companies will comply in early 2008. Otherwise, the Office will need to contemplate legal action to secure the rectification of their continuing defaults.

In response to the ODCE's publication in late 2006 of a Consultation Paper on the Governance of Apartment Owners' Management Companies, the Office received some 75 submissions in 2007, most of which were complimentary of the associated Draft Guidance. Having examined these submissions, work is well advanced at year-end on the production of a Governance Handbook for these companies in 2008.

The ODCE and the Companies Registration Office also jointly published in 2007 an edition of 'Corporate Compliance Matters' to which the ODCE contributed four articles on the new e-commerce disclosure requirements, audit committees, apartment owners' management companies and ODCE activity in 2006. This publication was distributed to more than 230,000 directors of Irish-registered companies.

### Advocacy Work

ODCE staff made some 45 presentations at conferences and seminars during the year (38 in 2006). Over 3,100 people heard these talks on company law, corporate governance and the role of the ODCE. The Office also participated in eight exhibitions and other public events in order to distribute its guidance materials and answer questions from attendees on company law matters.

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<sup>1</sup> European Communities (Companies) (Amendment) Regulations 2007 (S.I. 49 of 2007).

The Director issued ten press statements during the year (eight in 2006). The subjects included the release of ODCE publications, the highlighting of ODCE compliance projects and the results of Court actions in which the Office was involved.

The Office also continued to deal with press queries arising from its work, including participating in media interviews where appropriate. Over 100 press queries were dealt with in 2007, and the Office featured in over 300 media articles. The Office itself contributed a small number of articles to business publications.

As part of the implementation of its new Communications Strategy, the Office commissioned for the first time a series of radio advertisements highlighting common company law issues that arise for company directors and shareholders. These advertisements aired on national radio over the first two weeks in December and will be broadcast again in 2008. The Office has noted an increase in phone calls and e-mails seeking copies of guidance material as a result of this initiative.

### Market Research

The ODCE also commissioned external market research in Autumn 2007 to help assess the quality of the current company law compliance environment and obtain information on perceptions of ODCE effectiveness. Some preliminary results suggest that the general public believes that there has been an improvement in company law compliance in the last two years. 52% now rate companies as good at fulfilling their company law obligations compared with the 50% reported in the previous research undertaken in late 2005. More detailed data on the results of this research will be included in the ODCE's Annual Report for 2007.

### Policy Developments

The ODCE made a number of policy submissions on company law and related issues in 2007. These included contributions to:

- the Company Law Review Group as part of its 2007 Work Programme and in respect of the European Commission's Consultation Paper on the Simplification of Company Law;
  - the Department of Enterprise Trade and Employment in the context of its new Strategy Statement;
  - the Financial Reporting Council in the UK in response to its Paper on Promoting Audit Quality;
  - the Law Reform Commission in reply to its Consultation Paper on Multi-Unit Developments;
  - Dublin City Council in respect of its Draft Guidelines on Sustainable New Apartment Homes, and
  - the International Association of Insolvency Regulators urging improved information-sharing and cooperation among its constituent members.
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## **Uncovering Suspected Breaches of Company Law Duties**

Overall, 673 new cases of alleged breaches of the Companies Acts came to ODCE attention in 2007, a 4% decline on the 703 new cases which emerged during 2006. A significant feature was the reduction in mandatory reporting by auditors and recognised accountancy bodies where the number of reports dropped by 32% from 297 in 2006 to 203 in 2007. This decline was substantially offset by an increase in voluntary reporting from the general public and other regulators and as a result of the ODCE's own detection efforts. The number of these detected issues increased from 406 in 2006 to 470 in 2007. **Appendix 1** contains further details on these figures.

### Property Management Companies

The number of complaints received in 2007 in respect of property management companies was 64, a 146% increase on the previous year's figure of 26. This increase is likely to have been prompted by the publication of the ODCE's Consultation Paper on the Governance of Apartment Owners' Management Companies in December 2006 and the attendant media interest in the subject.

The company law issues which provoked these complaints primarily related to the non-convening of annual general meetings, the failure to inform members in good time of the holding of these meetings, the failure to disclose to members the companies' latest financial accounts and the dissolution of a number of these companies. The ODCE successfully rectified difficulties in 43 of these cases by contacting the directors in question. Legal action is being considered in two cases at the end of 2007 following the failure of the directors involved to act to remedy the defaults administratively. 19 other cases are continuing to be assessed at year-end.

### Directors' Loans

The ODCE's efforts in recent years to highlight the excessive use by directors of company assets for personal purposes continued to bear fruit in 2007. While 135 further reports of this character were received from auditors in 2007, this represented a 43% drop on the 237 reports received in 2006. The reported loan amounts in aggregate similarly declined to €33.7 million from €73 million in 2006.

In suitable cases, the Office continued during the year to encourage the administrative rectification of the defaults in question on the basis that the repayment of these loan amounts to the company would reduce the risk to creditors and stakeholders in general. In all, 189 cases involving loans to the value of €63 million were examined in detail, and 368 company directors were cautioned. At year-end, 55 cases remained on hands, and the associated loans amounted to €30 million in aggregate.

### Other Issues

Following assessment, over 100 suspected offences were referred in 2007 for possible enforcement action. This included about 40 auditor reports denoting a failure by companies and their directors to keep proper books of account.

The ODCE's own monitoring of the Registers of Disqualified and Restricted Persons also uncovered some 30 possible cases of restricted and disqualified persons acting contrary to law, and these were subjected to detailed scrutiny during the year. The

Office clearly wants to ensure the integrity of the disqualification and restriction<sup>2</sup> regimes in the interests of the general body of company stakeholders.

The failure of companies to pay outstanding debts again featured in a significant minority of public complaints to the Office. In the absence of any evident breach of company law, the ODCE continued in 2007 to urge these complainants to explore their own legal remedies to recover any monies due to them.

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### **Sanctioning Improper Conduct relating to Insolvent Companies**

Company directors have a duty to ensure that they act responsibly with respect to the interests of other company stakeholders and especially to those who may suffer financial losses in the event of a future insolvent failure of the company. Directors who fail in their duty face restriction, disqualification or even criminal sanction.

#### Companies in Insolvent Liquidation

The liquidator of a company in insolvent liquidation is required by law to report to the ODCE on its demise and on the conduct of any person who was a director of the company during the 12 months preceding its liquidation. The liquidator must also apply to the High Court for the restriction of each of the directors, unless relieved of that obligation by the ODCE<sup>3</sup>. In 2007, 377 initial liquidator reports were considered or received (423 in 2006), and 287 were determined (319 in 2006). A further 916 later reports from liquidators were also addressed (849 in 2006), and 754 were determined (635 in 2006). Further information on the throughput of liquidator reports and insolvency-related issues in 2007 is contained in **Appendix 2**.

In about 75% of cases, the directors avoided restriction proceedings. Of the 287 cases determined in 2007, “full relief” was given in 66% of cases, while “partial relief” was granted in a further 2% of cases. Another 22% of cases received “relief at this time” decisions in response to requests from liquidators for further time to complete their enquiries. Subsequent decisions in these cases may lead to some directors facing restriction proceedings in due course. Where liquidators are required to comply with their statutory obligation to institute restriction proceedings against directors, the vast majority of directors find themselves being restricted by the High Court.

The Director welcomes the continuing success of liquidators in bringing disqualification proceedings against the directors of insolvent companies, because the nature of the indicated misconduct warranted, in the liquidators’ view, a more serious sanction than restriction. He hopes that further similar cases will be taken in 2008.

#### Number of Restricted Directors

Over 120 directors were notified to the Companies Registration Office in 2007 as having been restricted, most as a direct consequence of the above reporting regime.

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<sup>2</sup> Where an individual is restricted, s/he may only act as the director or secretary of a company for a period of five years thereafter if that company meets certain capitalisation requirements. In a private company, a minimum called up share capital of €63,487 is required, and it must be fully paid for in cash.

<sup>3</sup> Section 56 of the Company Law Enforcement Act 2001.

At end-2007, the Register of Restricted Persons contained details of over 780 restricted directors (685 at end-2006)<sup>4</sup>.

#### Unliquidated Insolvent Companies

The ODCE continued in 2007 to target the phenomenon of ‘struck-off’ companies. These are companies which have never been placed in liquidation but which have been dissolved after being struck off the Register of Companies for failing to file annual returns. In order to curb abuses in this area, the law provides that the directors of struck-off companies may be disqualified by the High Court unless they can show that the company had no outstanding liabilities.<sup>5</sup>

During the year, the Office investigated a significant number of struck-off companies to establish if the companies had outstanding liabilities. By producing appropriate evidence such as company accounts and auditors’ reports, some of the relevant directors were able to satisfy the ODCE that there were no debts at the time of strike-off or that those liabilities had since been discharged. On occasion, directors reinstated the companies to the Register and brought the annual returns up to date. Where, in other cases, it was evident to the ODCE that the struck-off companies had outstanding liabilities, the Office initiated legal action against the relevant directors. As indicated below, the ODCE secured the disqualification of ten of these directors in 2007, some of whom were the directors of multiple struck-off companies.

#### Number of Disqualified Persons

At end-2007, more than 2,110 persons were listed on the Register of Disqualified Persons (some 1,780 at end-2006). About 1,960 of these are deemed to be disqualified by virtue of their having been convicted on indictment in the last five years of any indictable offence in relation to a company or involving fraud or dishonesty<sup>6</sup>. Approximately one third of the balance comprises persons disqualified as a result of specific ODCE proceedings.

#### Liquidators

The ODCE continued in 2007 to ensure that liquidators complied with their statutory obligations to report to the Office and where appropriate to initiate High Court restriction proceedings. Correspondence issued to liquidators on over 130 occasions during the year in an effort to secure voluntary compliance and so avoid the need for legal action against the defaulting liquidators. The Office was nevertheless required to take two liquidators to the High Court to secure compliance with their reporting obligations, and these actions proved to be successful.

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### **Prosecuting Detected Breaches of the Companies Acts**

In 2007, the ODCE continued to focus its enforcement resources on cases of suspected serious breaches of company law, including in particular some larger and more complex cases which necessarily take longer to investigate and bring to Court.

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<sup>4</sup> The net increase in numbers on the Register at year-end reflects the fact that a number of directors would have completed their five-year periods of restriction during 2007.

<sup>5</sup> Sections 160(2)(h) and (3A) of the Companies Act 1990 as amended.

<sup>6</sup> Section 160(1) of the Companies Act 1990.

The Office again enjoyed a high degree of success in the civil and criminal proceedings in which it participated during the year.

#### Civil Enforcement Proceedings

The ODCE secured a total of 14 disqualifications in 2007 (14 disqualifications and two restrictions in 2006), and 13 of these were the result of civil enforcement actions<sup>7</sup>. In addition, the Office secured two orders arising from High Court compliance proceedings<sup>8</sup> (one order in 2006). Details of these proceedings are as follows:

- two persons were disqualified for three and five years respectively arising from the findings of the High Court Inspectors into Ansbacher (Cayman) Ltd. The Office's legal proceedings following from the Inspectors' Report are now completed;
- one person was disqualified for nine years as a consequence of the findings of the High Court Inspectors into National Irish Bank Limited (NIB) and National Irish Banks Financial Services Limited (NIBFS), although the disqualification order was stayed on certain conditions following the person's appeal of the High Court judgment to the Supreme Court;
- ten disqualifications for periods ranging from two to twelve years were obtained in respect of directors whose companies had been struck off the Register of Companies as a consequence of outstanding annual return defaults and who failed to show to the Court that the companies had no outstanding liabilities. Three of the disqualification terms of six, eight and twelve years arose from the ODCE proceeding for the first time against three common directors of multiple struck-off companies. Twelve years is the longest disqualification term imposed by the High Court in any ODCE proceeding to date;
- the two sets of compliance proceedings were taken against liquidators who had repeatedly failed to report to the ODCE as required by law. Both actions secured the submission of the overdue reports, one following the making of a Court order. Orders for costs were also made in favour of the ODCE.

At year-end, the ODCE is involved in numerous other Supreme Court and High Court proceedings. For instance, the ODCE appealed in 2007 two unsuccessful applications for disqualification orders to the Supreme Court. High Court judgment is awaited in two further ODCE cases taken as a consequence of the Inspectors' Report into NIB and NIBFS, and four other similar cases are awaiting hearing. The ODCE remains involved in disqualification proceedings taken against two directors of a construction and development company following the High Court's hearing in 2007 of a preliminary application made by the respondents on certain evidential issues. The Office also continues to be interested in the insider dealing case involving Fyffes plc, DCC plc and Others following its intervention in the Supreme Court during the year.

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<sup>7</sup> Pursuant to Section 160(2) of the Companies Act 1990 (as amended).

<sup>8</sup> Pursuant to Section 371 of the Companies Act 1963 (as amended).

### Criminal Enforcement Proceedings

In 2007, the ODCE secured 28 convictions against seven individuals and companies for various breaches of the Companies Acts (48 convictions in 2006). In all, some 53 charges were determined in nine cases (103 charges in 2006). At the end of 2007, a further 29 charges in five cases are awaiting Court determination (six charges at end-2006). The Director of Public Prosecutions is prosecuting one of these outstanding cases following the decision of a District Court judge to decline jurisdiction on the ODCE's initiation of the prosecution.

The successful proceedings were taken in respect of the following offences:

- acting as auditor while unqualified<sup>9</sup>. This is a priority area for prosecution as company stakeholders may unwittingly be placing reliance on company accounting information which may have been 'audited' by unqualified persons. In 2007, the ODCE prosecuted three of these cases which involved 38 charges and resulted in 23 convictions and the imposition of fines totalling almost €7,000;
- failing to keep proper books of account<sup>10</sup>. It is important that companies and directors maintain adequate accounting and other records in the interests of company stakeholders who depend on those records providing an accurate reflection of the company's financial standing. The ODCE prosecuted four of these cases in 2007, three of which were determined and resulted in four convictions and the imposition of over €2,000 in fines;
- acting as a director while restricted and in breach of the statutory conditions relating to company capitalisation<sup>11</sup>. As indicated earlier, the Office monitors compliance by restricted persons with the requirements of law in the interests of protecting company stakeholders. In 2007, the Office prosecuted three cases in this category resulting in a conviction and a deemed disqualification for five years of one of the directors involved.

**Appendix 3** contains further details on the nature and results of the ODCE's civil and criminal enforcement activity in 2007.

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### **Providing Quality Customer Services**

The ODCE continued to provide quality services to its external and internal customers in 2007.

### Financial Expenditure

Overall expenditure by the ODCE in 2007 amounted to about €4.37 million, a 30% increase on the outturn of €3.36 million in 2006. Much of the increase was attributable to a continuing rise in the level of legal and other professional costs in

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<sup>9</sup> Contrary to Section 187 of the Companies Act 1990 (as amended).

<sup>10</sup> In accordance with the requirements of Section 202 of the Companies Act 1990.

<sup>11</sup> Contrary to Section 161 of the Companies Act 1990.



support of the Office's remit. A provision of €4.96 million has been made available for 2008 which represents an increase on the 2007 outturn of some 13% and reflects increased staffing levels and the expected costs in 2008 associated with current and anticipated investigations and legal proceedings.

#### Staffing

In 2007, the Department of Enterprise Trade and Employment sanctioned an extra eight staff for the Office in response to an ODCE staffing submission made originally in 2005. Four of these staff were provided at year-end, and the remaining four are scheduled to be assigned in early 2008. This will bring the approved ODCE full-time staffing complement to 38 (excluding Gardaí).

The Garda Commissioner also undertook in 2007 to provide an additional Detective Garda in early 2008 which will bring to eight the number of approved Garda staff assigned to the Office.

#### ODCE Website

In early 2007, the ODCE launched its redeveloped website which is compliant with the highest standards of accessibility. It is planned to add more Irish language content to the website over time, as the Office complies with its commitments under the Official Languages Act.

The website at [www.odce.ie](http://www.odce.ie) once again attracted large numbers of people interested in corporate governance matters. In 2007, some 150,000 visits were made. Analysis of the visitor statistics showed that approximately 80% were "unique visitors" to the site with only 20% visiting a number of times. The analysis also indicated that the duration of each visit has slightly lengthened.

#### Accountability

In addition to producing a comprehensive Annual Report of ODCE activities in 2006 for the Minister for Enterprise Trade and Employment and the Oireachtas, the Director attended before the Joint Oireachtas Committee on Enterprise and Small Business in March 2007 to account for the recent performance of his Office. The Director and his staff also had a number of liaison meetings with the Department of Enterprise Trade and Employment, accountancy body representatives and other regulators during the year.

**Office of the Director of Corporate Enforcement**  
**7 January 2008**

## Appendix 1

### Throughput of Reports and Complaints of Possible Corporate Misconduct<sup>12</sup>

Reports/Complaints of Possible Misconduct	2006	2007	% Change
<b>Total Cases in the Reporting Period</b>	<b>1,310</b>	<b>940</b>	<b>-28%</b>
of which Cases on hands at the start of the Reporting Period	607	267	-56%
New Cases Received during the Reporting Period	703	673	-4%
of which Auditor/Auditing Body Reports	297	203	-32%
Public Complaints and Other Reports	406	470	16%
<b>Cases Closed during the Reporting Period</b>	<b>913</b>	<b>506</b>	<b>-45%</b>
<b>Cases Referred for Detailed Investigation during the Reporting Period</b>	<b>130</b>	<b>111</b>	<b>-15%</b>
<b>Cases on hands at the end of the Reporting Period</b>	<b>267</b>	<b>323</b>	<b>21%</b>

<sup>12</sup> All figures are provisional outturns at this stage.

## Appendix 2

### Throughput of Liquidator Reports and Insolvency-Related Issues<sup>13</sup>

<b>Liquidator Reports</b>	<b>2006</b>	<b>2007</b>	<b>% Change</b>
<b>Total Reports in the Reporting Period</b>	<b>1272</b>	<b>1293</b>	<b>2%</b>
of which Reports on hands at the start of the Reporting Period	301	318	6%
Initial Reports received in the Reporting Period	316	273	-14%
Further/Final Reports received in the Reporting Period	655	702	7%
<b>Initial Reports Determined in the Reporting Period</b>	<b>319</b>	<b>287</b>	<b>-10%</b>
of which 'Full Relief' Granted	190 (60%)	188 (66%)	-1%
'No Relief' Granted	40 (13%)	30 (10%)	-25%
'Partial Relief' Granted	10 (3%)	7 (2%)	-30%
'Relief at this time' Granted	78 (24%)	62 (22%)	-21%
Other Decision	1 (0%)	0 (0%)	-100%
<b>Further/Final Reports Determined</b>	<b>635</b>	<b>754</b>	<b>20%</b>
<b>Reports on hands at the end of the Reporting Period</b>	<b>325</b>	<b>252</b>	<b>-22%</b>

<b>Other Insolvency-Related Cases on hands at the end of the Reporting Period</b>	<b>214</b>	<b>185</b>	<b>-14%</b>

<sup>13</sup> All figures are provisional outturns at this time.

## Appendix 3

### Throughput of Enforcement Proceedings relating to Suspected Breaches of the Companies Acts<sup>14</sup>

Character of Enforcement Cases	Type of Legal Action	No. of 2007 Cases	Outcome
Breach of duty and unfitness to act as a company officer	Application for Disqualification	5	Three disqualifications were secured for three, five and nine years. The latter has been stayed conditionally pending a Supreme Court appeal by the person involved. The ODCE also appealed to the Supreme Court the dismissal of two of its disqualification applications.
Failing as a company director to remedy a serious default in complying with company annual return obligations resulting in its dissolution	Application for Disqualification	7	Disqualifications were secured in respect of ten directors. Terms of two years were imposed on each of two directors; five years on three directors; seven years on two directors, and six, eight and twelve years on three single directors respectively.
Failure of a liquidator of an insolvent company to submit a report to the ODCE	Application for Compliance Order	2	Compliance order secured and costs awarded to the ODCE in one case; a costs order was secured in favour of the ODCE in the second case.
Acting as a company director while restricted and in breach of the statutory conditions	Prosecution	3	In one case, a conviction was secured on one charge in respect of one individual with a second charge taken into account. A fine of €500 and a five year disqualification was also imposed.  In a second case, the Probation Act was applied to one person in respect of five charges thought to be proven, subject to the making of a €2,500

<sup>14</sup> All figures are provisional at this stage. The information in the Table excludes enforcement cases where proceedings have concluded but where no judgement is yet available and cases where initiated proceedings have not concluded. It also excludes Court proceedings of an investigative or preliminary character, e.g., applications for search warrants. In addition, it disregards other third party proceedings where the Director decided to intervene.

			<p>charitable donation.</p> <p>In the third case, three charges against one person and a single charge against a second person were dismissed.</p>
Acting as an Auditor while unqualified	Prosecution	3	<p>In one case, convictions were secured on four charges in respect of one person; another two charges were taken into consideration, and fines totalling €1,000 were imposed.</p> <p>In a second case, convictions were secured on three charges in respect of one person with a further thirteen charges taken into consideration, and fines totalling €2,500 were imposed.</p> <p>In a third case, convictions were secured on sixteen charges in respect of one person, and fines totalling €3,200 were imposed.</p>
Failure to keep proper books of account	Prosecution	3	<p>In one case, a conviction was secured on one charge in respect of one company with a fine of €1,200 imposed.</p> <p>In a second case, a conviction was secured on one charge in respect of one company with a fine of €750 imposed.</p> <p>In the third case, convictions were secured on two charges in respect of one company with a fine of €200 imposed.</p>
<b>Totals</b>		<b>23</b>	<p><b>14 Disqualifications (D/Q)</b>  <b>2 D/Q Applications Dismissed</b>  <b>28 Convictions</b>  <b>16 Charges Taken into Consideration</b>  <b>5 Charges Thought Proven</b>  <b>4 Charges Dismissed</b>  <b>1 Compliance and Costs Order</b>  <b>1 Costs Order</b>  <b>Some €9,350 in fines</b></p>

