

## **FOR IMMEDIATE RELEASE**

### **Launch of the ODCE Annual Report for 2006**

#### **Statement by the Director of Corporate Enforcement**

#### **“Significant misconduct will be a major focus in 2007” - Director**

Mr Paul Appleby, the Director of Corporate Enforcement, today published his Office's Annual Report for 2006. Highlights from the Report include:

- the conviction of some 28 companies, company directors and other persons on 48 charges (49 in 2005) for breaching various requirements of the Companies Acts. In all, 103 charges were determined in 27 cases, a similar result to last year's outturn of 112 charges in 19 cases;
- the disqualification of 14 persons (including for the first time the directors of multiple companies) and the restriction of two directors. This compared with 21 disqualifications and no restrictions in 2005;
- the development for public consultation of Draft Guidance on the Governance of Property Management Companies and the finalisation of Guidance on Audit Committees and revised Guidance on the duty of auditors to report suspected indictable offences under the Companies Acts to the ODCE.

Other significant results from the Annual Report are:

- the closure of some 1,000 cases denoting possible corporate misconduct, the vast majority on an administrative basis;
- the repayment of over €160 million by directors and connected persons to their companies and the referral of 86 large cases involving some €48 million to the Revenue Commissioners because of possible tax liability concerns;
- the successful prosecution of two new offences for the first time;
- the hearing by the High Court of a second application for disqualification in consequence of the findings in the Inspectors' Report into National Irish Bank;
- the commencement, following a lengthy ODCE inquiry, of disqualification proceedings against two company directors who were criticised by the Tribunal of Inquiry into Certain Planning Matters and Payments;
- the targeting of dissolved insolvent companies. Disqualification actions were launched against a further nine individuals in this area;

- the restriction by the High Court of some 100 directors of insolvent companies. This followed liquidator applications made in compliance with their statutory obligations;
- the 244,000 visitors to the ODCE's website in 2006, a 36% increase on 2005.

In an accompanying statement, Mr Appleby spoke of his Office's hopes and plans for 2007:

*"Our focus in 2007 will continue to be directed towards improving compliance performance and pursuing suspected unlawful or irresponsible conduct under the Companies Acts. Areas earmarked for particular attention in the enforcement area include:*

- *persons acting as officers of companies (directors, auditors, etc.) while not permitted to do so;*
- *persons who falsify or otherwise fail to maintain documentation which properly reflects the company's business;*
- *dissolved insolvent companies which have caused financial loss to other company stakeholders and where the directors are known to have failed to meet their company law obligations and*
- *a selection of cases involving significant misconduct which are individually absorbing considerable staffing and other resources.*

*While work on these important cases is ongoing, it is likely that there will be a shortfall in quantitative terms in some other areas of our enforcement work by the end of 2007.*

*In the general compliance area, the publication in late 2006 of our Consultation Paper and Draft Guidance on Apartment Owners' Management Companies has certainly struck a chord with the public. This year, we have obtained more than 60 submissions in response to our Consultation Paper and Draft Guidance, many from individuals affected by the problems in the area. As well as dealing with hundreds of queries, the number of formal complaints has grown significantly. We have had 33 to the end of May which compares with 26 for the whole of 2006.*

*In recent weeks, the Office has also responded to the Law Reform Commission's related Consultation Paper on Multi-Unit Developments, and we are participating in the deliberations of the High Level Inter-Departmental Committee which is examining, at the request of Government, the Law Reform Commission's provisional recommendations. We will also complete our planned Governance Handbook in the Autumn to help the directors and property owners within management companies to fulfil their company law obligations. This work is therefore a priority in 2007.*

*We will also shortly commence a programme of monitoring compliance by companies with the new disclosure requirements for e-communications which were introduced in April. Next month, we plan to communicate with a selection of non-compliant companies, and we will consider enforcement action against relevant companies later this year.*

*We remain committed to the continuing development of a corporate environment with improved standards of company law compliance, and we look forward to making further progress in this area in 2007.”*

Press queries in relation to the ODCE’s Annual Report for 2006 may be addressed to Paul Appleby at (01) 8585820 or Kevin Prendergast at (01) 8585844.

**Office of the Director of Corporate Enforcement**  
**7 June 2007**

## EDITOR'S NOTE

The Office of the Director of Corporate Enforcement (ODCE) is responsible for:

- encouraging compliance with the Companies Acts; and
- bringing to account those who disregard their obligations under company law.

The ODCE acts in the public interest to ensure that the balanced legal framework of rights and duties operates in practice among company stakeholders (i.e., directors, investors, creditors and others) in their engagement with companies. Some case studies from the 2006 Annual Report illustrate the range of ODCE efforts to -

- secure voluntary compliance;
- obtain administrative rectification of evident defaults;
- empower stakeholders;
- encourage future compliance;
- seek remedial orders from the Courts;
- seek enforcement sanctions.

### **Voluntary Compliance**

In 2006, the ODCE delivered some 38 presentations on topical company law issues to a combined audience of over 2,700. Company law information and guidance is regularly updated on the ODCE website at [www.odce.ie](http://www.odce.ie).

### **Administrative Rectification**

**Illustration 2.2.2** is a case of administrative intervention which led to the restoration of a dissolved management company and the correction of outstanding legal defaults.

#### **Illustration 2.2.2: Instance of ODCE Interventions encouraging the Restoration of a Dissolved Management Company to the Companies Register**

Complaints were received in December 2005 indicating that a management company in a town in the West of Ireland had been struck off the Register of Companies for failure to file annual returns. It was also alleged that the directors had failed to disclose all of their directorships in filings to the Companies Registration Office.

On investigation, it transpired that there was substance to these allegations and that the company's registered office was no longer operative.

The ODCE then drew the directors' attention to the fact that the management company had been dissolved, that they were eligible to be disqualified from acting as directors and that personal liability was also a risk in cases of reckless or fraudulent trading. The directors were invited to consider the taking of appropriate measures to remedy the known deficiencies.

Subsequently, representatives of the directors informed the Office that remedial action would be taken. By May 2006, the company's accounts had been audited and filed; the company had been restored to the Companies Register, and members of the management company had replaced the original directors. Subsequently, a new registered office was also notified to the Registrar of Companies.

### **Empowering Company Stakeholders**

The ODCE often assists company stakeholders to assert their own rights under company law. **Illustration 2.2.1** describes a case, also involving a management company, where action by the Office secured the holding of an outstanding annual general meeting and the replacement of the directors by members' representatives.

#### **Illustration 2.2.1: Instance of ODCE Interventions empowering the Members of a Management Company to take charge of the Company's Affairs**

In October 2005, a member of a management company associated with a property in the North West contacted the ODCE indicating that no annual general meetings had been held. Subsequent investigations revealed that the company's annual returns to the Companies Registration Office suggested that the accompanying financial statements had indeed been laid before an annual general meeting. Following contact with the company, it transpired that persons who were not the members attended these meetings although a company director sought to maintain that they were the true members.

Having considered the position, the ODCE was satisfied that no proper annual general meetings had been called in the past. Pursuant to section 131 of the Companies Act 1963 (as amended), it accordingly directed the holding of an early annual general meeting. The direction specified among other things that:

- the members be informed that the meeting was to be held at the specific direction of the ODCE;
- the members be permitted to be accompanied by professional advisers;
- the auditors be notified of the meeting in order to secure their attendance;
- the various statutory registers be made available for inspection for 30 minutes prior and subsequent to the meeting and
- the directors be obliged to have the bank statements and the block insurances available for inspection.

The meeting was held in accordance with the direction, and a significant number of members participated. The business of the meeting led to the appointment of representatives of the members as directors for the first time. The ODCE successfully completed its work on the case in November 2006.

### **Encouraging Future Compliance**

The default most reported by auditors in 2006 involved the personal use by company directors and others of company assets in excess of the legal limits. In the absence of evidence of criminal intent, the ODCE cautioned 896 company directors, and some 93% of directors acknowledged their duties in this area for the future.

### Seeking Remedial Orders from the Courts

Having failed to secure administrative rectification, the ODCE occasionally found it necessary in 2006 to initiate High Court proceedings to compel compliance. One of these cases which concluded satisfactorily involved a liquidator who had failed to report to the Office as required by law.

### Seeking Enforcement Sanctions

An area of ongoing ODCE attention is in ensuring that persons who act as an officer of a company while unqualified, restricted or disqualified are sanctioned. **Illustration 3.2.2** outlines the case of a man who, while disqualified in England and Wales, acted as a director in Ireland without disclosing that disqualification as is required.

#### **Illustration 3.2.2: Prosecution of a Person who had failed, on appointment as a director in the State, to disclose his continuing disqualification elsewhere**

In 2005, the ODCE initiated prosecution proceedings against a Mr John Francis Xavier O'Brien who was deemed to be disqualified arising from his failure to disclose his continuing disqualification as a director in England and Wales. Mr O'Brien, a former chief executive officer of a gas and exploration company listed on the London Stock Exchange and known as Alliance Resources plc, had been disqualified for seven years by virtue of an Order made by Southwark Crown Court on 11 February 2000 in proceedings entitled "Regina - v - John Francis Xavier O'Brien". The UK disqualification followed convictions for forgery and false accounting offences for which he received a 15 months' custodial sentence.

In the ODCE proceedings, Mr O'Brien was charged with contravening section 161(1) of the Companies Act 1990 in acting as a director of two Irish companies, Barnabrow Cottages Limited and Self Build Planning Services Limited, while subject to a deemed disqualification. As Mr O'Brien pleaded not guilty, the charges were heard in full before Midleton District Court on 2 March 2006.

Having heard the evidence, the Court convicted Mr O'Brien, fined him €1,900 on each charge and ordered him to pay prosecution costs of €1,000. The Court also ordered that his disqualification from acting as a director in the State be extended to 1 January 2008.

It is important for creditor protection reasons that on their appointment as a director in the State, there is full disclosure by persons who stand disqualified from acting as a director in another jurisdiction.

The Office also has an interest in irresponsible and improper conduct being sanctioned in the interests of a sound commercial environment. The supervisory role exercised by the Office with respect to the reports of the liquidators of insolvent companies is an important element of that work. While this work saw the High Court restricting, on the application of liquidators, some 100 directors in 2006, liquidators have also recently determined that the conduct of a minority of directors has warranted a more serious sanction. The accompanying **Illustration 4.2.1** provides some information on the cases where liquidators secured disqualifications in 2006.

#### **Illustration 4.2.1: Insolvent Companies: Liquidator Disqualifications in 2006**

A 15 year disqualification (reduced to 13 years) was imposed on Mr Daniel Jones, a director of Lee View Communications Limited. Mr Jones was engaged in a major UK VAT fraud using related companies. The recorded turnover exceeded Stg£197 million. Certain monies were diverted from the company to the benefit of 'unknown persons'. The term was reduced to 13 years, because he did not object to the disqualification application.

The High Court imposed a ten year disqualification on Mr Michael Kirrane, a director of Dillonbrook Estates Limited, who was found to have diverted the proceeds of asset disposals to himself via directors' loans over a prolonged period. This avoided disclosure of tax liabilities and breached provisions of the Taxes Acts and the Companies Acts. Once all assets had been disposed of, Mr Kirrane claimed an inability to repay the loans which exceeded €1.5 million, and the company was placed in liquidation. A second director was restricted for five years.

The High Court imposed a seven year disqualification on the former managing director of Irish Chrome Industries Limited, Mr Hugh Hannigan. He and a fellow director also received a five year restriction for his involvement in a related company, Status Hydraulics Limited. Restriction proceedings against a third non-Irish director were outstanding at year-end. Evidence suggested that Mr Hannigan was primarily responsible for failing to maintain proper books and records and that there were irregular inter-company and inter-bank transactions undertaken under his close supervision and control. His accountancy firm also completed company audits in one financial period in breach of the independence requirements of the Companies Acts.

Three company directors consented to five year disqualifications in relation to the affairs of their residential homes construction company, Tom Driver & Son (Builders) Limited. No records had been maintained by the company to allow the identification of significant cheque transactions for €443,000 made out to 'cash', and there was no satisfactory explanation from the directors relating to these cheques.

Two directors of Nationwide Transport Limited, Mr Jason Larkin and Mr Gerard Whelan, were each disqualified for five years. There was evidence of repeated, intentional and substantial phoenix activity between this and earlier courier companies. A Revenue audit uncovered a tax liability of €273,000, and there was a failure to keep proper books of account and to file annual returns.

A two and a half year disqualification and a five year restriction were imposed on Mr Donal Harrington, a director of Beta Rose Limited, which operated a restaurant and licensed premises. He had created a second phoenix-type company to continue trading from the premises which was financed by a rent deposit and stock from the original company.

A copy of the ODCE's Annual Report for 2006 may be downloaded from the ODCE website at [www.odce.ie](http://www.odce.ie) or may be requested at [info@odce.ie](mailto:info@odce.ie).