

## **End-2011 Statement by the Director of Corporate Enforcement**

### **FOR IMMEDIATE RELEASE**

#### ***“Notable Progress was made in a Challenging 2011” – Director***

Mr Paul Appleby, the Director of Corporate Enforcement, today published a Review of ODCE Activity in 2011 (copy attached). In an accompanying statement, he said:

*“Last year can certainly be described as ‘challenging’ for the ODCE and its staff, but notable progress was made in many areas.*

*We received 1,960 new reports and complaints last year which was almost as high as the record of 1,993 in 2010. We also determined over 1,900 cases in 2011, our highest ever total.*

*Our enforcement work saw the High Court imposing 20 disqualifications and two restrictions for misconduct or irresponsibility by directors in the management of company affairs. In addition, Office staff helped to secure convictions on 20 charges against five defendants for criminal breaches of the Companies Acts. This represented a significant improvement on the result of one disqualification and eight convictions achieved in 2010.*

*We also maintained an active information programme for company directors and other professionals with a view to improving standards of corporate governance in the company law field. We participated at 69 conferences, seminars and other events (71 in 2010) to provide information on good practice in this area.*

*Importantly, we sent substantive investigation files on two strands of our Anglo investigations to the DPP last year. Two weeks ago, we provided the DPP with three supplementary files which complement the material which is already in her possession. We are now focusing our attention on two remaining strands of the investigation, and I intend that further papers will go to the DPP in a matter of weeks. We will be providing the High Court with a detailed progress report on these investigations in late January.*

*Office expenditure last year amounted to €3.35 million, a 9% reduction on 2010. Every effort continues to be made to limit ODCE spending and liabilities.”*

#### **Editors’ Note**

The attached Summary Review of ODCE Activity provides information on the main developments with respect to the work of the Office in 2011. For further information on this Review, please contact Kevin Prendergast at (087) 2296828.

**ENDS/**

## **Summary Review of ODCE Activity in 2011 by Goal**

### **Goal 1: ‘Encouraging Compliance with the Companies Acts’**

The ODCE continued in 2011 with its work in informing company directors and other stakeholders about their duties and responsibilities in company law and in improving corporate governance standards in general. Highlights were:

- 11 new or updated publications, including ODCE Quick Guides on audit committees and company lending to their directors;
- 54 presentations given on corporate governance issues to over 2,570 directors and others involved in enterprise;
- attendance at 15 exhibitions and events to discuss company law issues;
- the distribution of 20,000 copies of various Office publications to the public;
- a number of policy submissions, including on the following topics:
  - the Criminal Justice Act 2011 before its enactment;
  - the Central Bank (Supervision and Enforcement) Bill;
  - the future legal structures for auditing and corporate governance in the EU;
  - the proposed Central Bank framework for fitness and probity.

### **Goal 2: ‘Confronting Suspected Unlawful Company Law Behaviour’**

At the start of 2011, the ODCE had some 1,000 cases on hands. During the year, the Office received 1,960 new issues for evaluation, a slight decrease on 2010. In broad terms, the composition of these cases was as follows:

- 1,289 liquidator reports on newly insolvent companies;
- 70 other insolvent company cases which warranted Office scrutiny;
- 422 public and other complaints alleging misconduct in company affairs and
- 179 auditor reports on suspected company law breaches.

The ODCE made decisions on some 1,906 cases in 2011, a 5% increase on the previous year and the highest ever.

It is estimated that the High Court restricted or disqualified over 130 directors on foot of applications by liquidators in 2011. The ODCE itself secured 20 disqualifications, two restrictions and convictions on 20 charges against five defendants for criminal breaches of the Companies Acts. A minority of these decisions are being appealed.

In one criminal case which involved both fraud and company law issues, the Circuit Court imposed concurrent sentences of three years’ imprisonment on each of two

charges with the last year suspended in both cases. One of these charges related to the making of a false statement in a company's financial statements, contrary to Section 242 of the Companies Act 1990.

By end-2011, the Office had initiated another five criminal and civil enforcement cases. Overall, the ODCE has some 15 cases before the Courts at this time, the majority at Supreme Court or High Court level.

Most ODCE decisions in 2011 did not give rise to the taking of enforcement action in the Courts. Where an issue of non-compliance was identified, we often successfully secured the correction of the defaults voluntarily or on occasion through the use of statutory powers.

A major preoccupation in 2011 was our continuing investigations of Anglo Irish Bank on which substantial progress was made. During the year, we transmitted to the Director of Public Prosecutions ("DPP") two lengthy investigation files on:

- the provision of financial assistance by Anglo to a number of persons in 2008 for the purchase of the Bank's shares and
- the failure to maintain a register of the transactions between Anglo and its directors prior to 2009.

Late last year, we also sent supplementary files to the DPP on the above issues and a further supplementary file on the provision by Anglo of a loan to a director of the Bank in late September 2008. The DPP had received an initial investigation file on this issue in late 2010.

Intensive work on other aspects of these investigations is ongoing, and further documentation will be sent to the DPP in the coming months.

### **Goal 3: 'Providing Quality Customer Services'**

The ODCE maintained a good level of service to its external and internal customers in 2011 having regard to the large workload which it is managing.

Overall expenditure was approximately €3.35 million in 2011, a 9% reduction on the amount spent in 2010. Every effort continues to be made to limit ODCE spending and liabilities.

The Office's staffing complement at end-2011 was 49, including ten seconded Gardaí. Staff continued to be deployed on a flexible basis to cover the defined work priorities.

### **Conclusion**

A detailed ODCE Annual Report for 2011 will be published next May. Pending completion of the Report, the statistics and related information contained in this Summary Review are subject to change.

**Office of the Director of Corporate Enforcement**  
**6 January 2012**