



☐ **Meet the Regulators - Sharing Perspectives**

A Conference for all Chartered Accountants

23rd/24th November 2007



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IN IRELAND



The ODCE's Perspective

New Challenges – New Focus

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Remit of the ODCE

- **Encourage compliance with the Companies Acts**
- **Bring to account those who disregard the law**



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Current Focus - Compliance

- **Helping people to comply (and/or assert their rights)**
 - Information Books for Directors, Shareholders, Creditors, etc.
 - Specific issue guidance
 - Auditor Reporting to the ODCE
 - Directors' 'Loans'
 - Audit Committees
 - Governance of Property Management Companies
 - Communicating the message
 - Talks to Business, Social Enterprise and Professional Bodies
 - Attendance at Major Events and Seminars
 - Securing Rectification of Defaults
 - Publicity on enforcement work reinforces compliance



Current Focus - Compliance

- **Deepening the Compliance Message**

- ODCE Communications Strategy
- Reformulating our Information Books in plain English (and Irish)
- Radio advertising focusing on common issues and defaults
- Attending more mass events throughout the country
- Participating in educational and professional development seminars
- Finalising audit committee/property management company guidance
- Developing new guidance on BES Companies
- Preparing for the new Companies Consolidated Bill
- Market Research on the current Compliance Environment



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Current Focus - Enforcement

- **Evaluating Possible Company Law Defaults**
 - Public Complaints
 - Auditor and Accounting Body Reports
 - Liquidator Reports
 - Inter-Agency Cooperation
 - ODCE Detections from Public Sources
- **Overall Approach to Detected Defaults**
 - Administrative rectification accepted in many cases
 - Look to prosecute certain offence types for public interest reasons
 - Unqualified/disqualified persons acting as auditors and directors
 - Knowing breach of the law, e.g., falsified documents, directors' 'loans'
 - Failure to keep proper books of account
 - Permit/pursue restriction and disqualification applications where appropriate



Current Focus - Enforcement

- **Secure a good balance of case types**
 - small, medium and large companies
 - good range of prosecuted offences
 - use of civil and criminal sanctions
- **Current Strategy**
 - broaden the sources of reports of misconduct to the Office
 - attack the ‘phoenix company’ phenomenon
 - invest more resources in investigating the difficult case type
- **Future Effect**
 - rebalancing of some of our enforcement results



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What happens Auditor Reports in the ODCE?

- Auditor Reports go straight to our enforcement staff for evaluation
- Initial ODCE contact with Auditors will usually be by phone or letter
- Contact will usually be from either an ODCE executive or accountant
- Parallel enquiries will also be made by us of other relevant parties
- Appointment for any meeting with an Auditor will be made in advance
- If convenient, any meeting will usually be in the Auditor's office
- ODCE attendee(s) will depend on the purpose of the meeting
- If we are considering Court action, we will seek a formal statement
- Garda colleagues will usually be involved at that stage
- Decision to prosecute (or not) will follow completion of investigation
- Court attendance by Auditor may be necessary in due course



Update on Auditor Reports to the ODCE

- **Incidence of Auditor Reporting**

- Jan/Oct 2006: 268 reports
- Jan/Oct 2007: 166 reports

- **Character of Auditor Reports**

- Jan/Oct 2006: 76% of offences were directors' 'loans', 10% were 202s
- Jan/Oct 2007: 74% of offences were directors' 'loans', 17% were 202s
- other reports were spread thinly over a further 12/14 offences

- **Comment**

- decline may be due in part to improved compliance which is welcome
- narrow character of auditor reporting continues to disappoint however



Feedback on Auditor Reports to the ODCE

- **CARB: some auditors are not applying section 202 properly**
- **ODCE agrees and extends that to the related sections 193/194**
- **in 2007, two auditors were reported for failing to send a 194 report**
- **one auditor didn't give the 7 day notice to directors required by s.194**
- **some auditor reports do not comply with s.193 requirements**
- **we regularly have to encourage auditors to file H4s and 194 reports**



Feedback on Auditor Reports to the ODCF

- **A Good Report (H4 and Section 194 Report filed)**

“...the evidence available to us was limited because of the fundamental uncertainty detailed below and because all of the company’s recorded turnover comprises cash sales and the company does not have a developed system of internal control as it is dependent upon the close involvement of the directors who are major shareholders...

Note 15 to these accounts details current values of assets omitted from prior year accounts and adjustments are now made to these accounts to account for these assets. Provision has been made for €2,000,000 tax paid since year end but we are unable at this stage to quantify the full tax liability, interest and penalties relating thereto...

Because of the underprovided tax liabilities, interest and penalties in our opinion the financial statements do not give a true and fair view of the companies affairs...”



Feedback on Auditor Reports to the ODCE

- **A Report which was not accompanied by a H4 or Section 194 report:**

“We have not obtained all the information and explanations we consider necessary for the purposes of our audit. In our opinion, proper books of account have not been kept by the company. The company’s financial statements are not in agreement with the books of account.”



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Feedback on Auditor Reports to the ODCE

- **A Report which led to the filing of a H4 but not of a Section 194 report:**

“The financial statements have been prepared on a going concern basis. This may not be appropriate because the company...had net current liabilities of €173,483...

In respect alone of the limitation on our work relating to stock:

- we have not obtained all the information and explanations that we consider necessary for the purpose of our audit; and
- we were unable to determine whether proper accounting records have been maintained.

With the exception of the above, in our opinion the financial statements give a true and fair view of the state of the company's affairs...

We have obtained all other information and explanations we consider necessary for the purposes of our audit. In our opinion proper books of account have been kept by the company. The financial statements are in agreement with the books of account.”

[Stock valued at €157,560 constituted over 96% of fixed and current assets].
(Revised Audit Opinion also filed after ODCE/Auditor contact)



ODCE Contacts with Accounting Bodies

- **Nature of Engagement**

- formal bilateral meeting at Chief Executive level twice yearly
- in early November, we advised bodies of current compliance plans
- formal quarterly meetings at technical level
- these meetings are considering:
 - 194/202 issues,
 - protocol for ODCE/auditor interactions,
 - directors' 'loans' and related matters
- other regular contacts at the Company Law Review Group, etc.



Conclusion

- **Since the last ‘Meet the Regulators’ Conference –**
 - Useful developments in company law compliance/enforcement
 - Need for more ODCE/auditor interaction
 - Has been significant cooperation in many areas
 - Further work has been identified and this work is ongoing
 - Want to deepen further our engagement with bodies and IAASA
 - Hope that this will be possible in 2008 and beyond





Conclusion

Thank you for your attention

Questions?

