Press Statement by the Director of Corporate Enforcement

Mr Jack Stakelum Disqualified for Five Years by the High Court Today

***"Those facilitating tax evasion run the risk of being disqualified"* - Director**

Mr Paul Appleby, the Director of Corporate Enforcement, has welcomed today's decision of the High Court to disqualify for five years Mr John J. (a.k.a. Jack) Stakelum in consequence of the findings made by High Court Inspectors in their Report on Ansbacher (Cayman) Ltd. The proceedings involving Mr Stakelum represent the third and final disqualification action taken by the Director arising directly from the Ansbacher Inspectors' Report. Previously, Mr Pádraig Collery was disqualified for nine years on 9 March 2006, and Mr Sam Field-Corbett was disqualified for three years on 30 January 2007.

In his judgement this morning, Mr Justice Brian McGovern noted the findings of the Inspectors that there was evidence tending to show that Mr Stakelum may have committed a number of criminal offences such as conspiracy to defraud, breaches of the Taxes Consolidation Act 1997 and breaches of the Central Bank Acts 1971 and 1989 in carrying out a banking business without the requisite licence. In particular, he accepted the submission made on behalf of the ODCE that Mr Stakelum operated a system of client services that was inexplicable on any normal basis and can only have been designed to hide funds from the Revenue Authorities.

In concluding his judgement (the text of which is currently unapproved), Mr Justice McGovern said:

> *"In this case the respondent who is Chartered Accountant engaged in activities which, on any objective view facilitated the evasion of tax. This activity was done in a calculated way and by means of elaborate scheme to conceal monies from the Revenue Authorities. The respondent even went so far as to destroy all records when he retired in 1998. The court cannot ignore these facts...I am quite satisfied that in consequence of the report of the Inspectors appointed by the court there is evidence that the conduct of the respondent makes him unfit to be concerned in the management of a company and accordingly I make a disqualification order in respect of the respondent for a period of five years."*

In commenting on the High Court judgement, Mr Appleby said:

"It is essential that those who are found not to have upheld the requisite standards are precluded from managerial involvement in corporate affairs for a certain period. It is an important protection for all company stakeholders and for the public at large that high standards of corporate governance are encouraged and maintained at all times. Given our profile as an open economy, it is especially desirable that Ireland is seen internationally to have in place a quality regime of commercial laws and practices.

I welcome the High Court's finding that activities facilitating tax evasion constitute misconduct which is sufficient to disqualify a person from acting, on grounds of unfitness, in a company managerial role for an appropriate period. The judgement is also significant in recognising that in certain circumstances, a disqualification may be necessary for deterrent reasons in addition to any justification which may exist for disqualifying a respondent on 'public protection' grounds.

Today's outcome represents the third and final set of disqualification proceedings taken by the ODCE against persons criticised in the Ansbacher Inspectors' Report. I am glad that disqualification orders were made in all three cases which were brought before the High Court. ODCE work on the Ansbacher Report is now essentially completed.

The Companies Acts were successfully used in the public interest to undertake a thorough investigation of the circumstances associated with the business of Ansbacher (Cayman) Ltd. and related entities over a long period. I am pleased that company law has also facilitated the sanctioning of a number of the primary persons who were criticised in the Inspectors' Report as having had significant responsibility for the misconduct exposed in the Report."

31 July 2007

ENDS

Editors' Note

Findings of the Ansbacher Inspectors' Report vis-à-vis Mr Jack Stakelum

High Court Inspectors were appointed to inquire into Ansbacher (Cayman) Ltd. and related matters on 22 September 1999. The Inspectors' Report was published on 6 July 2002 by order of the High Court.

Mr Stakelum is the third person to have been disqualified by the High Court arising from the findings in the Report. Mr Pádraig Collery was disqualified for nine years on 9 March 2006, and Mr Sam Field-Corbett was disqualified for three years on 30 January 2007. In seeking a disqualification order against Mr Stakelum, the Director drew the Court's attention to a number of findings of misconduct made against him in the Inspectors' Report. These findings, together with a number of the Inspectors' more general findings, are summarised in **Appendix 1** to this Note.

Section 160(2) of the Companies Act 1990 (as amended) permits applications for disqualification to be made on various grounds. A copy of section 160(2) is attached as **Appendix 2** to this Note. The relevant ground on which the proceedings were taken against Mr Stakelum was paragraph (e) of section 160(2).

The nature and effect of a disqualification order is dealt with in section 159 of the 1990 Act - see **Appendix 3**.

If you wish to clarify any aspect of this Press Statement, please contact Paul Appleby at (01) 8585800.

Office of the Director of Corporate Enforcement
31 July 2007

Appendix 1

Findings of the High Court Inspectors' Report into Ansbacher (Cayman) Ltd.

SUMMARY

1. The Inspectors' Report (pages 489-491) concluded that Ansbacher (Cayman) Ltd. knowingly engaged in business in the State over a prolonged period without conforming to specific requirements in the Companies and Central Bank Acts. The Inspectors also concluded that there was evidence tending to show that Ansbacher breached tax law and the general criminal law and facilitated widespread tax evasion by their clients. The Inspectors made similar findings in respect of Hamilton Ross Company Limited (pages 500 and 501).

2. Insofar as the Mr Stakelum is concerned, the Inspectors concluded in their Report (paragraph 29.15) that based on the evidence before them:

> *"1. Mr Jack Stakelum assisted Ansbacher in the carrying out of its Irish business, but that this assistance was unknowing.*
>
> *2. There is evidence tending to show that Mr Stakelum, in undertaking knowingly his deposit taking activities, may have committed a number of criminal offences as follows:*
>
> *a) The common law offence of conspiracy to defraud;*
>
> *b) The offence of knowingly aiding, abetting, assisting, inciting, or inducing another person to make or deliver knowingly or wilfully any incorrect return, statement or account in connection with their tax, contrary to the provisions of the relevant tax legislation now consolidated in Sections 1056 and 1078(2) of the Taxes Consolidation Act, 1997;*
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> *c) That in accepting deposits from and affecting withdrawals on behalf of his clients, Mr Stakelum may have carried on a banking business within the meaning of the provisions of the Central Bank and that he did so without the requisite licence."*

Inspectors' Report

3. In their Report, the Inspectors summarised their conclusions in respect of Ansbacher's Irish business in Ireland from its incorporation in 1971 to the mid-1990s as follows:

"1. *The 'memorandum account' system was operated by Guinness and Mahon and GMCT* (i.e., Guinness Mahon Cayman Trust Limited, the company subsequently renamed Ansbacher) *in a deliberately complex and secretive manner which concealed the names of the clients involved while allowing them to lodge and withdraw funds to and from accounts held nominally for GMCT.*

2. *Loans were obtained from Guinness and Mahon for GMCT clients on the security of their GMCT deposit, while the existence of this deposit was deliberately omitted from the loan agreement documentation and therefore the general regulatory system of Guinness and Mahon where it would have been seen by bank and Revenue auditors.*

3. *Ansbacher had established places of business within the State, being at first the premises of Guinness and Mahon and later the premises of CRH plc.*

4. *Ansbacher knowingly breached Sections 352, 353, 355 and 357 of Part XI of the Companies Act, 1963.*

5. *Ansbacher carried on banking business in Ireland without holding a licence to do so, which conclusion leads the Inspectors to further conclude that there is evidence tending to show that Ansbacher breached Section 7 of the Central Bank Act, 1971 (as amended).*"

(Pages 489 and 490 of the Report.)

4. The Inspectors also found that there was evidence tending to show that:

"6. *The discretionary trust structure as operated by GMCT in conjunction with Guinness and Mahon – through its policy of concealing the true object of the trust, the retention of control by the prime mover over the assets of the trust and the access to the funds provided to the prime mover who could withdraw funds in Dublin – amounted to a sham trust structure. There is also evidence to show that the discretionary trust scheme facilitated widespread tax evasion.*

7. *That the affairs of Ansbacher were conducted with intent to defraud a creditor of some of its clients, that is the Revenue authorities.*

8. *That Ansbacher may have committed a number of criminal offences, namely:*

a) *the common law offence of conspiracy (with, inter alia, some of its clients) to defraud, and*

b) *the offence of knowingly aiding, abetting, assisting, inciting or inducing another person to make or deliver knowingly or wilfully any incorrect return, statements or accounts in connection with their tax contrary to the provisions of the appropriate tax legislation, now consolidated in Sections 1056 and 1078(2) of the Taxes Consolidation Act, 1997.*

9. *That Ansbacher breached Section 5 of the Finances (Miscellaneous Provisions) Act, 1968 by failing to deliver to the Revenue Commissioners a statement in writing containing the particulars set out therein.*

10. *That Ansbacher breached Sections 141 and 142 of the Corporation Tax Act, 1976.*

11. *That Ansbacher failed to pay Corporation Tax lawfully due.*

12. *That Ansbacher breached Section 31 of the Finance Act, 1974.*

13. *That Ansbacher failed to make deductions from payments to employees, contrary to Section 126 of the Income Tax Act, 1967 (now Section 985 of the Taxes Consolidation Act, 1997).*

14. *That Ansbacher may have been in breach of Section 10(a) of the Cayman Islands Banks and Trust Companies Law, 1989 (as amended).*"

(Pages 490 and 491 of the Report).

Inspectors' Detailed Findings with respect to Mr Stakelum

5. As appears from the Report (paragraphs 20.1 to 20.3), Mr Stakelum was a Chartered Accountant who worked very closely with Mr Desmond Traynor in Haughey Boland during the 1960s. Mr Stakelum became a partner of the firm in 1967, and he continued to work there until 1975. As a close personal friend of Mr Traynor, Mr Stakelum was aware that Mr Traynor was involved with a bank in Cayman that dealt with offshore deposits for Irish residents. In December 1975, Mr Stakelum set up Business Enterprises Limited, a company through which he offered a range of consultancy services until his retirement in 1998. In essence, this business dispensed a mixture of commercial and finance-raising advice to Mr Stakelum's clients. Mr Stakelum also acted in this period as a non-executive director to a substantial number of companies controlled by his clients.

6. The Inspectors report that shortly after establishing Business Enterprises Limited, Mr Stakelum was asked by some of his clients to look after funds they were holding outside Ireland. The Report describes the arrangements put in place by Mr Stakelum in the following terms:

> *"Initially, the client funds were abroad, and he made arrangements with Mr Traynor to enable his clients to transfer their overseas funds through the banking system to, for example, Guinness and Mahon's account in Guinness Mahon London for sterling deposits, and Guinness Mahon & Co in New York for US dollar deposits, where they would be given a coded reference. A reference number supplied by Mr Traynor identified the ownership of the funds transferred to Guinness and Mahon. Thereafter, they would be routed on to their final offshore banking destination by Mr Traynor.*
>
> *The money deposited through Mr Traynor by Mr Stakelum was accounted for by Mr Stakelum in what he described as 'hotchpotch' accounts and into this account he accumulated all the funds given to him by his clients. To properly account for these funds, he maintained a manual memorandum record for each client's money under his personal control, and he performed a monthly reconciliation of the total of the memorandum records with the sum of funds deposited with Guinness and Mahon and any float balances (described below). It became evident to Mr Stakelum that other clients, who had funds available in Ireland for deposit, could avail of the offshore arrangements. He explained to them that their monies would be deposited in an offshore account associated with Guinness and Mahon. He did not recommend the arrangement with Guinness and Mahon, but rather advised clients:*
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> > *'.....Guinness Mahon have an offshore operation. That is the only place that I can handle the funds through and it would be up to them [the clients] to decide whether or not they transferred there. I wasn't aware of other options or presenting them with options.' (see transcript of Mr Stakelum's evidence of 6 December 2000 attached at Appendix XII(b)).*
>
> *In many ways, Mr Stakelum was acting in a capacity similar to what is now described as a tied agent in that he only introduced his clients to a single destination for their deposits. Since Mr Traynor and Guinness and Mahon did not know the names of the individuals whose combined funds made up the total of the hotchpotch accounts, it follows that the accounts were operated by Mr Traynor as being under the control and legal ownership of Mr Stakelum. The beneficial ownership of the funds, according to Mr Stakelum, remained pro rata with his individual clients.*
>
> ***20.5 Practical Arrangements***
> *Once he decided to accept funds in Ireland, Mr Stakelum had to create a system for handling receipts from and facilitating payments to clients.*

He did this by operating a current account in an AIB branch in a business name entity, Business Enterprises (replaced later by Clyde Enterprises), in which was maintained a float of funds. This account did not attract interest, so the client monies did not earn interest while they remained in it. When Mr Stakelum received an Irish pounds deposit he lodged it into the Clyde Enterprises account where it was incorporated into the float until some other client wished to withdraw money from the offshore deposit. The withdrawal was funded out of the float. The practical effect of these arrangements was that small withdrawals were likely to be available to clients quickly and without Mr Stakelum needing to contact Guinness and Mahon. Quite obviously larger withdrawals would have needed funds from Ansbacher through Mr Traynor."

(Pages 228 and 229 of the Report)

7. Later, the Inspectors summarise Mr Stakelum's relationship with his clients in these terms:

"In keeping with the principles described earlier, Mr Stakelum never gave his clients written information about where their money was on deposit, never gave them a receipt for their money, and never obtained from them a receipt when he repaid their deposit. Everything was done on trust. The effect of his operation of the hotchpotch accounts was that his clients could withdraw their funds in Ireland, while new clients could effect offshore deposits using Irish pounds.

The bulk of Mr Stakelum's clients operated through the hotchpotch accounts, with only a few exceptions being those who decided to take out back-to-back loans from Guinness and Mahon. In each of these cases, a proportion of the hotchpotch account was separated out and placed in an individual deposit that was hypothecated against the loan account. Mr Stakelum's arrangements with Mr Traynor also enabled his clients to switch their funds between the sterling and US dollar hotchpotch accounts."

(Pages 230 and 231 of the Report)

8. In discussing Mr Stakelum's business and its relationship with the domestic banks, facilitating his clients and their offshore activities, the Inspectors comment as follows:

"Mr Stakelum was the controlling shareholder of Business Enterprises Limited ('BEL') and BEL Secretarial Limited ('BEL Sec'). There is a considerable degree of apparent overlap in the records of Guinness and Mahon between BEL, BEL Sec and Clyde Enterprises, and so for the purposes of this report the Inspectors have taken all three to represent the common interest of Mr Stakelum.

An examination of the records of Guinness and Mahon and IIB in the 1990s shows that they contain many letters from or on behalf of Mr Desmond Traynor with instructions to withdraw sums from Ansbacher and Hamilton Ross accounts and to lodge them to the accounts of BEL and BEL Sec.

According to a minute of a Guinness and Mahon lending committee dated 17 September 1976, BEL had a loan facility that was described as 'suitably secured'. As outlined in Chapter 3, this phrase was used by Guinness and Mahon to describe loans backed by funds deposited with one of its subsidiaries outside the jurisdiction. The Inspectors conclude that, most likely, the backing security for the BEL loan was the hotchpotch deposit account."

(Page 232 of the Report)

9. The Inspectors also find that Mr Stakelum was a client of Ansbacher (pages 382 and 383 of the Report), and they list a number of persons who were clients of Ansbacher as a result of the introductions made by him (pages 414 to 419 of the Report).

10. With regard to the assessment of responsibility of Mr Stakelum for the wrongdoing of Ansbacher, the Inspectors found, inter alia, that:

> "*What is very evident from the method of operation of Mr Stakelum's deposit- monitoring service was his concern for secrecy, the minimal information he provided to his clients, the fact that people took all of this on trust and finally the use of the Clyde Enterprises Irish Pounds Account as a conduit to the Ansbacher offshore account. In many respects, this mirrored the characteristics of Mr Traynor's modus operandi, including the use of the Amiens accounts in Guinness and Mahon to launder Irish pounds into Sterling or other currencies.*
>
> *The Inspectors conclude that the aforementioned activities of Mr Stakelum constitute assistance to Ansbacher in the carrying out of its Irish business. As Mr Stakelum's detailed knowledge of Ansbacher's Irish business was sparse, the Inspectors are of the view that such assistance was not knowing assistance".*
>
> (Page 233 of the Report)

11. Regarding the services offered by Mr Stakelum, the Inspectors further conclude:

> "*For the reasons set out in this section of the report, including their close connection to Ansbacher's Irish business, the Inspectors consider that the deposit taking and 'monitoring' activities of Mr Stakelum were themselves matters in respect of which the Inspectors should express a*

view, as being a related matter under their terms of reference. Specifically, the Inspectors have based their conclusions on the following factual matters arising from the evidence:

1. *The finding that Mr Stakelum provided a deposit taking service;*

2. *The finding that the deposits were held offshore;*

3. *The finding that by Mr Stakelum provided a withdrawal service in Ireland;*

4. *The finding that Mr Stakelum made use of a non-interest bearing account for the purposes of hiding the business in question from the Revenue authorities,*

5. *The secrecy with which the service was carried out;*

6. *The experience of Mr Stakelum as a chartered accountant and business advisor.*

The Inspectors have concluded as a related matter that there is evidence tending to show that Mr Stakelum, acting through Clyde Enterprises:

(a) *Carried out banking business in Ireland by facilitating the lodgement of funds of Irish Residents to overseas accounts in Ansbacher.*

(b) *Provided a mechanism whereby Irish residents could withdraw their offshore funds in Ireland.*

(c) *Carried out his business with intent to defraud creditors (that is, the Revenue authorities) of the depositors".*

(Pages 233 and 234 of the Report)

Appendix 2

Text of Section 160(2) (as amended) of the Companies Act 1990

"(2) Where the court is satisfied in any proceedings or as a result of an application under this section that—

(a) a person has been guilty, while a promoter, officer, auditor, receiver, liquidator or examiner of a company, of any fraud in relation to the company, its members or creditors; or

(b) a person has been guilty, while a promoter, officer, auditor, receiver, liquidator or examiner of a company, of any breach of his duty as such promoter, officer, auditor, receiver, liquidator or examiner; or

(c) a declaration has been granted under section 297A of the Principal Act (inserted by section 138 of this Act) in respect of a person; or

(d) the conduct of any person as promoter, officer, auditor, receiver, liquidator or examiner of a company, makes him unfit to be concerned in the management of a company; or

(e) in consequence of a report of inspectors appointed by the court or the Minister under the Companies Acts, the conduct of any person makes him unfit to be concerned in the management of a company; or

(f) a person has been persistently in default in relation to the relevant requirements; or

(g) a person has been guilty of 2 or more offences under section 202(10); or

(h) a person was a director of a company at the time of the sending, after the commencement of section 42 of the Company Law Enforcement Act, 2001, of a letter under subsection (1) of section 12 of the Companies (Amendment) Act, 1982, to the company and the name of which, following the taking of the other steps under that section consequent on the sending of that letter, was struck off the register under subsection (3) of that section; or

(i) a person is disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking and the court is satisfied that, if the conduct of person or the circumstances otherwise affecting him that gave rise to the said order being made against him had occurred or arisen in the State, it would have been proper to make a disqualification order otherwise under this subsection against him;

the court may, of its own motion, or as a result of the application, make a disqualification order against such a person for such period as it sees fit."

Appendix 3

Extract from Text of Section 159 of the Companies Act 1990

" 'Disqualification Order' means—

> an order under this Part that the person against whom the order is made shall not be appointed or act as an auditor, director or other officer, receiver, liquidator or examiner or be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of any company, or any society registered under the Industrial and Provident Societies Acts, 1893 to 1978 ..."