



Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement

**FOR IMMEDIATE RELEASE**

**Launch of the ODCE Annual Report for 2010**

**“The Anglo Investigation has made substantial progress” – Director**

Mr Paul Appleby, the Director of Corporate Enforcement, today published his Office’s Annual Report for 2010. Highlights from the Report include:

- the submission by the year end of one complete file and a further three reports to the Director of Public Prosecutions (DPP) in relation to our ongoing investigations into Anglo. (Since the year end, a further substantial investigation file which is about 90% complete has been sent to the DPP. In addition, the Garda Bureau of Fraud Investigation submitted papers to him in late 2010.);
- the determination of over 1,800 complaints and reports in 2010, a 26% increase on 2009;
- the volume of reports from liquidators in respect of insolvent companies rose to 1,310 in 2010, a 50% increase on 2009.

The Office also made a major submission to the Department of Justice and Law Reform in response to its Discussion Document on white collar crime.

Other notable results from the year include:

- the restriction of 156 directors (up from 108 in 2009) and the disqualification of eight directors (12 in 2009), on foot of liquidator actions;
- the issue of some 24,000 copies of various Office publications during the year;

- attendance by Office staff at 71 public engagements and events attended by some 2,400 people highlighting the importance of compliance with company law;
- a total of eight criminal convictions (and two further charges taken into account) and one disqualification for various breaches of company law and duty. Some 17 other cases were ongoing before the Courts at the end of 2010;
- the hosting of an International Conference on Insolvency in Dublin Castle, attended by over 50 delegates and speakers from over 20 countries around the world;
- actual financial expenditure of €3.67 million, a 37% decrease on expenditure in 2009, due mainly to a sharp drop in legal expenses.

Commenting on the results, Mr Appleby emphasised the need to maintain focus on its important investigative work:

*“On the investigations of Anglo Irish Bank, I want to make a few general comments this morning.*

*The first point is that this is a large and extensive investigation, certainly the largest by far that this Office has addressed in the ten years of its existence. The Garda Síochána have also indicated that this is one of the largest commercial investigations in which they have ever been involved. The time that this investigation is taking simply reflects its scope and complexity.*

*You will know that the Irish legal system is adversarial. It also rightly contains significant legal safeguards for potential suspects. In these circumstances, every procedural step taken by the Gardaí and the ODCE in these investigations will likely be subjected to intense legal scrutiny in the course of any criminal trials that may take place at a later date. Against this background, investigators must take the greatest possible care in acquiring and securing potential criminal evidence. This also takes time.*

*It is not well known that potential witnesses in criminal investigations are not obliged to assist the authorities. While the Office has received valuable cooperation from more than 200 people who have willingly provided witness statements to the Garda officers seconded to this Office, obtaining statements from reluctant witnesses can be a difficult and time consuming task. In this regard, I welcome the fact that the recently published Criminal Justice Bill proposes that witnesses, who are not suspects in a criminal investigation, may be compelled, in certain circumstances, to give evidence relevant to the investigation.*

*There has also been a lot of media comment about the pace of ‘white collar crime’ investigations here relative in particular to the US. The US legal system is not a good comparator for a number of reasons. It is more relevant to consider what happens in jurisdictions with similar legal frameworks to our own. In the UK, the website of the Serious Fraud Office publicly indicates*

*that cases investigated by it currently take 4 – 6 years on average to complete.<sup>1</sup> The Anglo investigation is well ahead of this benchmark, and I am satisfied that the investigation is proceeding diligently and expeditiously.*

*I make these comments to explain that complex investigations take time to bring to a conclusion. In order to help expedite matters, the Garda Authorities and my Office agreed some time ago a special arrangement with the DPP whereby we could send him ‘not fully completed’ investigation files to facilitate his early consideration of the material involved. Pursuant to that agreement, we sent him one completed investigation file, one substantial ‘not fully complete’ investigation file and three reports late last year and early this year. The Garda Bureau of Fraud Investigation also sent a significant volume of material to the DPP in late 2010. While I fully appreciate that there is some frustration with the length of time it is taking to complete these investigations, it is clear that substantial and tangible progress has been made.*

*Given that we are scheduled to report to the High Court on the progress of the investigation in a few weeks’ time, I do not propose to provide any further information this morning. What I will say is that the investigating officers on our Anglo team are a talented, experienced and committed group who are intent on completing a professional and thorough investigation as soon as possible. Our job is to acquire all relevant evidence to allow the DPP make an appropriate decision on the extent to which charges, if any, may be justified against any party arising from the events which are under investigation.*

*However, I should stress that it is a matter for DPP, and the DPP alone, to decide which charges, if any, should be brought. We will be giving every possible assistance to the DPP in making his decision.*

*I mentioned the new Criminal Justice Bill earlier. This Bill is a product of an extensive public consultation process undertaken by the Department of Justice late last year. I am publishing today the ODCE submission to the Department which has been considered in framing this new legislation. I have little doubt that this Bill, once enacted, will assist in expediting the future investigation of ‘white collar crime’.*”

Going on to deal with the rest of the Office’s work, the Director commented as follows:

*“Inevitably the large increase in our work, allied to the restrictions in available resources, has had an impact on some of our headline figures. We have had to allocate most of our resources to the Anglo investigation and also to dealing with the 50% increase in reports from liquidators.*

---

<sup>1</sup> <http://www.sfo.gov.uk/about-us/common-misconceptions.aspx>.

*The Office has continued to review its own processes in order to seek out additional efficiencies, and although the outlook for 2011 also remains difficult, we will see an increase in our enforcement activity this year. To date, we have successfully prosecuted 13 criminal charges and secured 8 disqualifications in 8 enforcement cases determined by the Courts.*

*Finally, I want to thank all my staff for their contributions to the success of the Office in progressing its work at a challenging time.”*

Press queries in relation to the ODCE’s Annual Report for 2010 may be addressed to Kevin Prendergast at (01) 8585844.

**Office of the Director of Corporate Enforcement**  
**2 June 2011**

## **Editor's Note**

The following offers a selection of the ODCE's activities in 2010.

### **ODCE Submission on White Collar Crime**

The ODCE made a substantial submission to the Department of Justice and Law Reform in late 2010 in response to a Departmental Discussion Document on white collar crime. The following is a summary of the key points that we raised in the submission:

The ODCE's main comments included the following:

- extending criminal liability in the areas of reckless trading, fraudulent trading and the misuse of a false or misleading identity;
- raising the penalties for potentially serious white collar crime offences;
- extending the periods for investigating/prosecuting particular 'white collar crimes' where these periods are unrealistically short;
- requiring potential witnesses to give evidence which may be of use in seeking to determine whether a crime has been committed;
- clarifying the precise form of a corporation's criminal liability and the duties of its officers to prevent malpractice;
- clarifying the extent to which those accused can defend themselves on the basis of erroneous legal advice;
- improving the ability of An Garda Síochána and regulatory bodies to work together to fight white collar crime;
- introducing a more widespread use of administrative sanctions as an option in addition to criminal sanction and, in some cases, decriminalising minor regulatory obligations which are subject to administrative sanction;
- improving the investigation and prosecution of white collar crime by the use (or greater use), in appropriate cases, of immunity programmes, plea bargaining, deferred prosecution agreements, certificate evidence and hearsay evidence in criminal investigations and
- alleviating, where appropriate, the inhibiting impact of legal professional privilege and the exclusionary rule of evidence in white collar crime investigations and prosecutions.

### **Anglo Investigation**

Significant ODCE resources were again deployed in 2010 to progress the Anglo Irish Bank investigation, and by year-end, the ODCE had sent one completed investigation

file and three reports to the DPP on aspects of its investigations. The following illustration provides a representation of the main aspects:

Main Aspects of the Anglo Investigations		
Aspect 1	GBFI	Short-term back-to-back deposits of about €7.4 billion received by Anglo in late September 2008
Aspect 2	ODCE	Regular transfer of certain Anglo directors' loans to another institution close to Anglo's end-year reporting date and related issues
Aspect 3A	ODCE	Provision by Anglo of funds for the purchase of its shares in July 2008 (possible breach of Section 60 of the Companies Act 1963)
Aspect 3B	GBFI	Provision by Anglo of funds for the purchase of its shares in July 2008 (possible market abuse aspect)
Aspect 4	ODCE	Content of Anglo financial and other public statements in 2008
Aspect 5	ODCE	Provision by Anglo in 2008 of a loan to one of its directors

### **Company Law Remit of the Director of Corporate Enforcement**

The three main functions of the Director of Corporate Enforcement, as set out in the Company Law Enforcement Act 2001, are:

- to encourage compliance with the Companies Acts;
- to investigate instances of suspected offences under the Acts and
- to take enforcement proceedings for breaches of company law or duty.

The Office sets out to achieve these goals through its varied activities as evidenced in the Annual Report. The press pack includes illustrations of the following examples of our work.

### **Raising Standards of Compliance**

The Office issues thousands of guidance documents, as well as speaking to thousands of individuals, on the subject of company law. The Office's Compliance Unit also deals with hundreds of queries on company law issues from members of the public. A sample of some of the queries received and dealt with in 2010 is included at **Illustration 1.1.1** in the Annual Report.

On occasion, the Office also sees fit to raise concerns about the current standards of company law compliance. In response to an European Commission paper on audit quality in 2010, we commented on our experience with auditors in fulfilling their legislative reporting obligations. An extract from our submission is included at **Illustration 2.1.2** in the Report.

### **Identifying Suspected Misconduct**

The Office evaluates very many public complaints and professional reports suggesting possible breaches of company law or duty. In 2010, some 2,000 new issues were received. The vast majority of cases on hands were concluded during the year.

**Illustrations 2.1.3** and **2.1.4** in the Report give examples of two matters that were resolved in an administrative manner.

The value of a good audit in contributing to effective corporate governance should not be underestimated. In 2010, the Office concluded its assessment of a case which resulted in the company being subjected to an audit as a consequence of the Office's intervention. The subsequent audit revealed a very different state of financial affairs at the company. **Illustration 2.1.5** in the Report provides the details.

### **Enforcing Serious Breaches**

On occasion, serious misconduct does necessitate the taking of legal enforcement action. Office decisions gave rise, either directly or indirectly, to the taking of over 50 enforcement actions in 2010.

**Illustration 2.2.3** in the Report outlines one case prosecuted by the Office in 2010 and dealing with a person who audited company accounts while not qualified to do so.

The law also allows for the imposition of appropriate civil sanctions including restriction and disqualification. For example in reporting to the ODCE, liquidators may choose to take disqualification proceedings against the directors of insolvent companies rather than seeking restriction where serious misconduct has been discovered. **Illustration 2.2.5** in the Report outlines summary details of the six cases which gave rise to eight disqualifications in 2010.

### **Conclusion**

The ODCE's Annual Report for 2010 is available from its website at [www.odce.ie](http://www.odce.ie).

**Office of the Director of Corporate Enforcement**  
**2 June 2011**