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Foreword



Pursuant to Section 16(1) of the Company Law Enforcement Act 2001, I am pleased to present Mr Richard Bruton, TD, Minister for Jobs Enterprise and Innovation, with my Office's Annual Report for 2010.

Reflecting a difficult economic situation, 2010 was another tough but rewarding year for the Office. We made good progress with our important Anglo Irish Bank investigations last year and submitted four Anglo files and reports to the Director of Public Prosecutions by year-end.

With some 800 cases already on hands at the start of 2010, we received a further 2,000 issues to deal with during the year (an increase of over 30% on 2009). While these issues included public complaints and auditor reports of alleged misconduct, the major contributor was the 50% increase in new liquidator reports which was primarily caused by the growing level of corporate insolvency rates in the economy.

Notwithstanding the scale of increase and the complexity associated with a number of the cases in question, we succeeded in concluding our evaluations on more than 1,800 issues in 2010 (up 26% on 2009). This additional throughput also supported liquidators in securing the imposition of eight disqualifications and 156 restrictions on defaulting directors (12 disqualifications and 108 restrictions in 2009).

Our extensive programme of 'outreach' events included participation in 71 seminars and exhibitions last year (79 in 2009). This programme was focused on the SME sector, prospective entrepreneurs, professional persons and the community and voluntary sector with the aim of giving stakeholders sufficient information to enable them interact with one another on a fair basis and in the manner required by law.

We also successfully hosted the Annual Conference of the International Association of Insolvency Regulators in Dublin Castle which was attended by over 50 delegates and speakers from over 20 countries around the world.

These headline results were essentially achieved with the same number of staff (50) as we had in 2009. At the same time, Office costs declined by 40% to €3.67 million due mainly to a sharp drop in external legal expenses.

The large increase in work and the restrictions on resources have forced us to assess and prioritise our work. Of necessity, most Office resources have had to be deployed on the Anglo investigations and on evaluating the hundreds of liquidator reports which must be dealt with within a statutory timetable.

In particular, our criminal and civil enforcement activity remained subdued in 2010. Eight criminal convictions and one disqualification were obtained in three cases last year (compared with six convictions and ten disqualifications in nine cases in 2009). Some 17 other cases were ongoing before the Courts at the end of 2010, most of them at either the High Court or Supreme Court.

The outlook for 2011 remains difficult. The focus on the Anglo investigations and on corporate insolvencies will continue, but having taken a number of internal initiatives, I expect to see some increase in enforcement activity this year.

I thank the Ministers and staff of the Department of Enterprise Trade and Innovation in 2010 for their financial and staffing support of the Office at a difficult economic time. I hope that our ongoing work is helping to repay the trust which they have invested in the Office.

My dedicated and hard working staff deserve a large amount of credit for their continuing commitment to our important work. Notwithstanding the pressures which they are bearing, they successfully maintained or increased throughput in many areas of the Office's remit.

I also want to acknowledge the continuing support given to the Office in 2010 by the Oireachtas, the Government, the Courts and those legal and accounting professionals who supported our work during the year.

I hope that this support will continue in the current year and that we will continue, in the public interest, to make a positive difference in upholding the importance of high corporate standards in the economy.

Paul Appleby
Director of Corporate Enforcement
31 March 2011

Introduction

Consistent with the statutory framework set out in the Company Law Enforcement Act 2001, the primary role of the Director of Corporate Enforcement and his staff is to:

- help those who want to comply with their obligations under the Companies Acts to do so;
- discourage misconduct by those who may be tempted not to comply and
- pursue those who may have breached their duties and obligations under the law.

Consistent with this statutory framework, the present strategy of the Director comprises the primary goals and related sub-goals outlined in the following table.

Strategic Goals and Sub-Goals of the Director of Corporate Enforcement

Goal 1: Improving Public Understanding of Company Law Rights and Duties

- Sub-Goal 1.1: Raising Standards of Compliance
- Sub-Goal 1.2: Deepening our Relationship with Stakeholders
- Sub-Goal 1.3: Influencing Policy Development

Goal 2: Confronting Unlawful and Irresponsible Company Law Behaviour

- Sub-Goal 2.1: Identifying Suspected Misconduct
- Sub-Goal 2.2: Enforcing Serious Breaches under the Companies Acts

Goal 3: Providing Quality Services to Internal and External Customers

- Sub-Goal 3.1: Securing and Prudently Managing our Resources
- Sub-Goal 3.2: Developing our Staff
- Sub-Goal 3.3: Improving our Customer Services

This Report reviews progress in 2010 by reference to each of these goals and sub-goals.

Goal 1: Improving Public Understanding of Company Law Rights and Duties

Introduction

The ODCE continues to emphasise the importance of compliance with company law in communicating with company stakeholders. Notwithstanding that financial resources are limited for promoting compliance, the Office has continued to employ economical means to reach its target audience. These activities have included giving speeches, making presentations and maintaining a presence at seminars, exhibitions and events around the country. Other channels of communication for articulating the compliance message continue to be explored.

Sub-Goal 1.1: Raising Standards of Compliance

Publications – Overview

The ODCE issued four separate publications (14 in 2009), including its Annual Report for 2009. The full list is set out in **Appendix 1.1.1**. The Office successfully promoted during 2010 the new ODCE Quick Guides which were issued in 2009 on the duties and responsibilities of companies, directors and other stakeholders. However, the plan to add incrementally to this series of Guides during 2010 was not realised due to resource pressures most particularly in the legal area.

Some 24,000 copies of various Office publications were issued in 2010. These were made available to the public on request and at seminars, exhibitions and other events attended by ODCE staff.

During 2010, the ODCE arranged with the Companies Registration Office (CRO) that the persons registering new companies would in future receive the Quick Guides instead of the more extensive ODCE Information Books which had been issued for some years. It was decided that the accessible Quick Guides would constitute more practical introductory guidance to the roles of various company stakeholders including directors and company secretaries. The more comprehensive Information Books, originally issued as Decision Notice D/2002/1, are still available from the Office and its website.

Information Notices

The Office issued three Information Notices in 2010.

Relief Decisions on Liquidator Reports

The first of these was a list of all cases where liquidators were either permanently or temporarily relieved of their obligation to take restriction proceedings in respect of liquidators' reports submitted to the Office under Section 56 of the Company Law Enforcement Act 2001.¹ The purpose of this Notice was to inform the public that the directors of the named insolvent companies in liquidation would not face restriction proceedings arising from their stewardship of the company or that temporary relief had been granted pending receipt of a further liquidator's report.

Printing Directors' Names on Company Letterhead

In contributing to the Government's policy of reducing the administrative burden on business, the ODCE issued an Information Notice in 2010 clarifying the legal requirements relating to the printing of directors' names on company letterheads.² In particular, the Office identified that the law did not require companies to have directors' names pre-printed on company stationery. The Information Notice pointed out that by using standard software programmes, it was open to companies to arrange for the printing of current directors' names as a footer on company letterheads.

Work by the Department of Enterprise Trade and Innovation (DETI) had indicated a potentially significant cost to business in the frequent re-printing of company stationery which also resulted in the wasteful disposal of existing stationery stocks.³

Companies (Miscellaneous Provisions) Act 2009⁴

In 2010, the Office issued guidance on this new Act which in summary provided for:

- the continued use in Ireland by certain parent companies of US Generally Accepted Accounting Principles for a four year period ending not later than 31 December 2015;

¹ Information Notice I/2010/1 – List of 'Relief' Decisions issued in 2009 for Insolvent Companies in Liquidation.

² Information Notice I/2010/2 – Printing of Directors' Names on Company Letterhead.

³ This Departmental report is available at http://www.deti.ie/commerce/businessregulation/final_report_measuring_administrative_burden_15dec2009.pdf.

⁴ No 45 of 2009 which was signed into law on 23 December 2009.

- the disclosure and other requirements pertaining to the purchase by a company of its own shares in overseas markets;
- the removal of certain financial ceilings with respect to the provision of security and the incurring of costs in connection with High Court investigations of a company's affairs;
- a means by which investment companies may under certain conditions migrate into or out of the State without needing to liquidate in one State and incorporate afresh in the other;
- clarification with respect to the delegation and exercise of the powers and functions of the Irish Auditing and Accounting Supervisory Authority (IAASA) under the Companies (Auditing and Accounting) Act 2003.

At end-2010, further ODCE publications were in preparation.

Communications

In line with the Government's direction on the curtailment of unnecessary spending, the ODCE kept its expenditure in check in 2010, and as a result, it undertook no advertising. This inevitably reduced the visibility of the compliance message.

However, the Office sought to compensate for any adverse effects by developing other communications channels on a selective basis. In an effort to harness the potential of new media, ODCE subscribed in 2010 to both a Facebook page and a Twitter account. It is intended to use these to publicise conferences, talks, exhibitions and other events at which ODCE will be in attendance and to give advance notice of any planned ODCE press statements.



Kevin Prendergast, Corporate Compliance Manager, ODCE, with staff/students from Letterkenny IT

Seminars and Exhibitions

The ODCE continued to attend conferences and seminars throughout the country in 2010. These provide opportunities for meeting directors and other company stakeholders who are interested in learning about the requirements of company law and good corporate governance. It was the Office's experience during the year that the tough economic environment reduced the incidence of these events. Nevertheless, 51 presentations were delivered (67 in 2009) to over 2,200 interested persons on the virtues of compliance. The full list of presentations is at **Appendix 1.1.2**.

The Office expanded its attendance at exhibitions in 2010 to 19 (12 in 2009), the list for which is contained at **Appendix 1.1.3**. The ODCE generally found the events to be popular and well attended, and the ODCE stand at each of these events was busy. Many of these events were aimed at existing and budding business entrepreneurs including the recently unemployed.

It will be evident that in attending events, the ODCE's continued focus is on:

- the SME sector and prospective entrepreneurs,
- professional persons, particularly accountants and solicitors, who play an important role in conveying to their clients the need to comply with the requirements of company law;
- third level and postgraduate business programmes which are educating the next generation of company directors and professional advisers and
- the community and voluntary sector which can lack the necessary professional skills and support to be aware of their legal obligations.

Media

The ODCE's civil and criminal enforcement role with respect to the Companies Acts necessarily places constraints on its ability to discuss ongoing investigations or legal actions. In particular, it is not normal practice for the Office to issue progress reports or other such statements in respect of specific cases. At the same time, the Office recognises the importance of the media in communicating its compliance message to a wider audience.

In 2010, Kevin Prendergast, the Office's designated media contact, dealt with several hundred queries in assisting the media in its work.

The Director also issued three press releases in 2010, the details of which are at **Appendix 1.1.4**.

Illustration 1.1.1: Sample of Public Enquiries dealt with by the Office in 2010

Nature of Query	Response Given
A caller to the Office sought clarification of the legal consequences of a company falling below the minimum number of seven members which applies in the case of many forms of company.	The caller was informed that every effort should be made by the members to rectify promptly any shortfall. All members of a company who are aware that it is operating with less than the legal minimum are severally liable for the company's debts where the deficiency has not been rectified after six months. ⁵
A caller enquired about an aspect of the law dealing with transactions between a company and one of its directors. The caller wished to know if a sole trader was precluded from providing consultancy services to the company of which he or she was a director.	The caller was advised that the director must disclose the relationship to the other directors. ⁶ Once disclosed, it was up to the directors to assess the potential for conflicts of interest (if any) and to take appropriate action.
A member of a property management company enquired about the requirements for changing a company's internal governance rules which are known as the Articles of Association. He stated that at a company general meeting, the matter was only introduced under Any Other Business and was not listed on the agenda itself.	The caller was told that any proposed change to the Articles of Association must be adopted by special resolution at a meeting of the company's members. ⁷ A special resolution means that 21 days' prior written notice must be given to each member of the scheduled meeting together with details of the terms of the intended alterations to the Articles. 75% of the votes cast at the meeting must be in favour before the change can be effective. ⁸

Public Enquiries

As part of its role to raise levels of compliance, Office staff are on hand to answer any general questions on company law that the public may have. While it is Office policy not to give legal advice, the Office regularly addresses questions of fact as to the requirements of the Companies Acts. Where appropriate, Office staff encourage callers to obtain independent legal advice to help address their particular grievances.

ODCE reception staff deal with many of the routine questions received by the Office over the phone or on email. In addition, the Office website, www.odce.ie, has a Frequently Asked Questions section which provides answers to many of the common questions received by staff. This was kept under review and updated in 2010.

Where more considered responses are required to individual questions, Compliance Unit staff prepare the replies. In total, the Office dealt with 226 such queries by phone and email in 2010. A sample of these is set out in **Illustration 1.1.1** above.

Sub-Goal 1.2: Deepening Our Relationship with Stakeholders

To be effective in discharging the Office's compliance and enforcement remit, the Director of Corporate Enforcement and his staff require the cooperation of many parties. The Oireachtas, the Government and the Department of Enterprise Trade and Innovation (DETI) provide the financial, legal and other resources which support the Office's endeavour. The ODCE's performance also depends to a great extent on the quality of its interaction with counterpart bodies and other stakeholders. In 2010, the Office continued to work constructively with all of its key stakeholders.

Joint Oireachtas Committee on Enterprise Trade and Employment

The Director and members of his senior management team appeared before the Joint Oireachtas Committee on 19 January 2010. The matters discussed with the Committee included the Office's work in the area of multi-unit developments, whistle-blowing in the context of company law, so-called 'phoenix companies' and the investigations initiated by the Office into Anglo Irish Bank and DCC⁹.

⁵ Section 36 (as amended) of the Companies Act 1963.

⁶ Section 194 (as amended) of the Companies Act 1963.

⁷ Section 15 of the Companies Act 1963.

⁸ Section 141 of the Companies Act 1963.

⁹ A transcript of the Committee meeting is at <http://debates.oireachtas.ie/BUJ/2010/01/19/00003.asp>.

Ministerial Meeting

The Director met with Mr Batt O’Keeffe TD, the Minister for Enterprise Trade and Innovation, in April 2010 and briefed him on the general activities of the Office, including both its compliance and enforcement functions.

Department of Enterprise Trade and Innovation

The Office is fortunate to have the strong support of the Department in the discharge of its functions. During the year, there was a formal meeting between the Director and his senior management team and senior officers from DETI to discuss operational and strategic matters. Senior managers from the Office also regularly participated in management meetings in the Department’s Company Law Division. As will be evident from the matters discussed in the following paragraphs, Office staff engaged with the Department on a weekly basis on policy and operational issues.

DETI Working Group on reducing Administrative Burdens for Business

The Government has set the ambitious target of reducing the administrative burdens on business by 25% by the end of 2011. Under the auspices of this Group, there were a number of simplification workshops and related follow-up meetings during the year which discussed possible measures to meet this challenging target. Although it is the Group’s view that the more onerous business burdens lie outside the area of company law, the ODCE has adopted a constructive approach in supporting the removal of any unnecessary regulation, whether within or beyond company law.

DETI Risk Based Enforcement and Inspection Discussion Group

The Office also participated in the work of this Group which is coordinating a cross-Departmental approach to information sharing among regulators and to the adoption by them of more risk-based inspection and enforcement regimes. Although the Office responds to allegations of corporate wrongdoing and does not, unlike other regulators, carry out routine inspections in discharging its statutory role, it has continued to contribute to the Group’s work which is expected to conclude in 2011.

Company Law Review Group (CLRG)

The Director is a statutory member of the CLRG. The Group published its report on its 2008-2009 work programme in early 2010.¹⁰

In the context of modernising company law, the CLRG considered extending audit exemption to small companies limited by guarantee and to dormant subsidiaries in groups. In its conclusions, the Group ultimately supported an extension in both areas, albeit with certain qualifications and on terms acceptable to the ODCE.

The CLRG Report also made a number of recommendations on issues relating to certain company law registration issues, partnership law, company distributions and capital maintenance.

The Group commenced work on a new work programme in late 2010¹¹. ODCE staff will continue to contribute to relevant parts of this programme in the coming year.

Irish Auditing and Accounting Supervisory Authority

The Director is a member of the board of IAASA and attended nine of its ten board meetings during the year. The Director’s principal commitment on board committees was as a member of an Enquiry Committee which examined compliance by Chartered Accountants Ireland with its Disciplinary Bye-Laws in considering a particular complaint against a member firm. The outcome of the Enquiry Committee’s work which lasted some 18 months was published by IAASA in March 2011. A copy of IAASA’s Annual Report for 2010 will be available at www.iaasa.ie in mid-2011.

IAASA and the ODCE continued to consult each other regularly at an operational level during the year. Although each is bound to maintain confidentiality in respect of the information in its possession, the bodies nevertheless shared information in accordance with law on a number of occasions during 2010. This is permitted where the information is relevant to the statutory functions of the other body.

Companies Registration Office (CRO)

The CRO is a valuable source of information for the Office in evaluating complaints and reports with respect to companies, directors and others. Where necessary, CRO staff certify documents and swear affidavits in ODCE proceedings.

The Office continued to work constructively with the CRO during 2010. The two bodies also engaged with the Department and the professional accountancy bodies during the year in attempting to find an acceptable technology-based solution to the identification of qualified auditors, and it is hoped that this will give rise to a successful outcome in 2011.

¹⁰ The report is available at <http://www.clrg.org/Annual-Report-2009.aspx>.

¹¹ The new work programme for the CLRG is available at [http://www.clrg.org/cuuploads/editor/file/CLRG Work Programme 2010-2012.pdf](http://www.clrg.org/cuuploads/editor/file/CLRG%20Work%20Programme%202010-2012.pdf).

Accountancy Bodies

The Director and his staff met the senior management of the major accountancy bodies twice in 2010 to discuss matters of mutual interest. The discussions covered the rise in insolvency reports to the Office and related matters, the potential future regulation of liquidators, the issue of unregistered auditors and the future of audit.

The Office also worked with the accountancy profession through a technical liaison group which meets as necessary in furtherance of an agreed work programme. Work continued in 2010 on the preparation of a document that will outline what is expected of the Office and auditors following the making to the ODCE by auditors of reports on suspected indictable offences under the Companies Acts.

Garda Bureau of Fraud Investigation (GBFI)

The Office's investigative and enforcement work is greatly assisted by the permanent presence of some eight seconded Detective Gardaí. In particular, the ODCE and the GBFI continued to work closely together in 2010 on their joint investigation of events at Anglo Irish Bank. The ODCE also consulted with GBFI and other senior members of An Garda Síochána before responding to the initiative of the Minister for Justice and Law Reform with respect to the problem of white collar crime (see below).

Central Bank/Financial Regulator

Throughout 2010, the ODCE was in regular communication with the Financial Regulator and the Central Bank. The main focus of engagement was the ODCE investigation of Anglo Irish Bank, but the Office and the Bank also liaised on a number of other matters relevant to each other's statutory remit.

Office of the Revenue Commissioners

The Revenue Commissioners continue to be an important partner for the Office in discharging its functions. In total, the two Offices shared information on some 92 companies and former companies (91 in 2009). While the majority of these constituted requests for information, 22 cases were sent on their own initiative by one Office to the other for possible further action.

There was also a useful meeting between ODCE and Revenue staff in November 2010 in relation to issues arising from the activities of both Offices in dealing with unliquidated insolvent companies.

International Association of Insolvency Regulators (IAIR)

The ODCE which has been an IAIR member since 2003 was honoured to host its Annual Conference in Dublin Castle in September 2010. IAIR membership comprises some 30 bodies involved in the regulation of personal



The delegates attending the 2010 IAIR Conference in Dublin Castle



From left: Paul Appleby, the Director of Corporate Enforcement, Mr Justice Frank Clarke of the High Court and Chris Lehane, the Official Assignee, Courts Service, at the 2010 IAIR Conference in Dublin

bankruptcies and corporate insolvencies throughout the world and is a valuable forum for sharing information and problem solving. 47 delegates from 21 countries attended the 2010 Conference whose theme was 'Insolvency – an Instrument for Recovery'.

Mr Sean Gorman, the Secretary General of DETI, opened the Conference. The ODCE was pleased that the eminent speakers who addressed delegates included:

- Mr Justice Frank Clarke who spoke about the High Court's supervision of corporate recovery (examinership) provisions in the Irish Companies Acts;
- Ms Patricia T Rickard-Clarke, Commissioner, Law Reform Commission, who dealt with its recent proposals on personal debt management and enforcement;
- Mr Inigo Urresti, Enterprise and Industry Entrepreneurship Unit, European Commission, who addressed the role of insolvency systems in fostering entrepreneurship in Europe;
- Mr Gordon Stewart, Head of the Global Restructuring Group at Allen & Overy, who compared the US and UK approaches to corporate workouts;
- Mr Mike Norris, Executive Director, Globalised Securitised Products, Max Recovery, a JP Morgan subsidiary, who discussed the recent experience of creditors particularly in the aftermath of the 2009 financial crisis, and

- Ms Sue Aspinall, UK Office of Fair Trading (OFT), who spoke about the OFT's recent study of the market for insolvency practitioners in the UK.

Together with the contributions made by national delegates and representatives from the World Bank and the European Bank for Reconstruction and Development, it made for a lively and stimulating Conference. A major part of the Conference success was its superb organisation for which particular thanks is due to the ODCE staff involved led by Conor O'Mahony.

NSAI/ISO Social Responsibility Standard

ISO26000 on Social Responsibility was formally launched on 1 November 2010¹². The international guidance took some five years to develop, and contributors came from almost 100 countries. The ODCE was a member of the Irish Mirror Committee which was chaired by the National Standards Authority of Ireland. The Office contribution to the development of the standard focused particularly on compliance with law and quality corporate governance.

¹² More information on ISO26000 is available at www.iso.org/iso/catalogue/management_and_leadership_standards/social_responsibility.htm.

Sub-Goal 1.3: Influencing Policy Development

As the primary body tasked with investigating and enforcing company law issues, the ODCE gains practical experience which is of value for policy formation. In 2010, the Office again sought to respond constructively to developing policy proposals.

ODCE Submissions on the Proposed Companies Consolidation and Reform Bill¹³

The ODCE continued to offer comments in 2010 on specific parts of the proposed Bill on which it was consulted by the Department of Enterprise Trade and Innovation (DETI). The mammoth Bill which will ultimately create a single modern Companies Act will likely be presented to the Oireachtas in 2012.

In 2010, the Office provided comments on the following:

- draft Part 5 (Duties of Directors and Other Officers). Here, the ODCE comments were short and relatively minor in character;
- draft Part 13 (Investigations). The ODCE's extensive series of comments included suggestions of a substantive nature to help improve the Part;
- the draft section replacing Section 56 of the Company Law Enforcement Act 2001 under which the liquidators of insolvent companies report to the ODCE. Here, the Office proposed an extensive reworking of the draft section proposed for inclusion in the Bill.

At the end of the year, the ODCE was also reviewing draft Part 11 (Winding Up).

European Commission Green Paper on Audit Policy¹⁴

In responding to the economic downturn, the European Commission has focussed inter alia on the role of audit in failing to deter imprudent corporate behaviour. To that end, the Commission issued for consultation late in 2010 a Green Paper which incorporated 38 separate questions on current and potential future EU audit policy. The ODCE submission answered many of the questions posed by the Commission and made a number of comments on the current performance of audit and how it might be improved. The main ODCE comments are set out in

Illustration 1.3.1.

Illustration 1.3.1: ODCE Submission to the European Commission on Audit Policy

The ODCE's main comments included the following:

- there are grounds for questioning the consistency and quality of audit work within the profession;
- the current approach of a standard audit report template may no longer be appropriate in circumstances where other narrative elements of the annual report of a company are required to be more expressive;
- providing more evidence of the exercise of auditors' professional scepticism would help to provide assurance that independent and robust audits are being undertaken. This could be achieved by extending the content of the annual transparency report imposed on certain audit firms to give, for instance, statistical information on the numbers of audit reports which were qualified and which were the subject of adverse opinions;
- audit needs to consolidate its focus on providing assurance that past events and some present and future risks have been accurately represented in company financial statements;
- it would be of assistance if there were more active shareholders which sought to influence the choice of the appointed company auditor. Perhaps the audit committee should consult more frequently with the company's major stakeholders in preparing its recommendation;
- a maximum period of eight years should apply to an audit engagement for most public interest entities. This could be extended to ten years for very large public interest entities in recognition of the additional complexity of the business;
- audit partner rotation should take place at least every five years;
- auditors should communicate directly and openly with regulators where the regulator may either be uninformed in relation to certain matters or to emphasise to the regulator the matters which the auditor considers need to be addressed in respect of the company.

The ODCE sent a copy of its audit policy submission to the DETI and IAASA.

¹³ The proposed structure and Heads of the Bill are available from the Company Law Review Group at <http://www.clrg.org/companies-bill.aspx>.

¹⁴ More information on the EC Green Paper is available at http://ec.europa.eu/internal_market/consultations/2010/green_paper_audit_en.htm.

Proposed Transposition of Directive 2009/109/EC – Third and Sixth Directives¹⁵

This Directive amends the Third and Sixth Directives on mergers and divisions by introducing greater simplicity to the process. The Office made a brief submission to DETI on some of the technical matters contained in the proposed transposition.

ODCE Submission on White Collar Crime¹⁶

The policy area of white collar crime was the subject of much comment during the year. In responding to a Discussion Document on Organised and White Collar Crime published by the Department of Justice and Law Reform (DJLR) in October 2010, the Office made a comprehensive submission in late November. The main suggestions made are summarised in **Illustration 1.3.2**.

Illustration 1.3.2: ODCE Submission to the DJLR on White Collar Crime

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;
- creating new offences in respect of bank fraud, mail fraud, wire fraud and the making of false statements in loan and credit applications;
- 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.

Submission on the DJLR's Proposed Strategy Statement 2011-2013

The Office made a brief submission to DJLR highlighting the need to effectively tackle white collar crime and also suggesting that certain changes to the criminal justice system could streamline the investigation and prosecution processes and potentially save costs.

Multi-Unit Developments Act

By the end of 2010, the Multi-Unit Developments Bill which was sponsored by the DJLR had effectively completed its passage through the Oireachtas. Company law is one area that the Act addresses in seeking to resolve difficulties with the operation of property management companies.

The ODCE has made a number of policy contributions to the area in recent years, and the new Act¹⁷ should help to resolve problems which have been the subject of large numbers of complaints to this Office. Innovations include wide-ranging provisions allowing the High Court to make whatever orders it deems necessary to deal with legal issues arising from the mismanagement of a property management company and a proposed mechanism to re-register companies struck off the Register of Companies within the last six years.

Submission on the Revenue Commissioners' Proposed Strategy Statement 2011-2013

In its submission to the Revenue Commissioners in September 2010, the ODCE highlighted the need to effectively tackle the black economy. The Office also suggested that Revenue continue its important work in the area of insolvent companies and liquidations given its position as a major company creditor in many of these cases. In acknowledging the success of the Revenue's Large Cases Division, the Office suggested that a similar targeted Unit dealing with entities and associated persons regularly engaging in aggressive tax avoidance, tax settlements and corporate behaviour could be set up.

¹⁵ More information on this Directive is available at http://ec.europa.eu/internal_market/company/simplification/index_en.htm.

¹⁶ More information on the White Paper issued by the Department of Justice and Law Reform is available at http://www.justice.ie/en/JELR/Pages/WPOC_Discussion_Doc_3.

¹⁷ No 2 of 2011. A copy of the Bill as passed by Dáil Éireann is available at <http://www.oireachtas.ie/documents/bills28/bills/2009/3209/b32d09s.pdf>.

Central Bank Consultation Paper on Corporate Governance¹⁸

During the year, the Central Bank issued Consultation Paper CP41 on Corporate Governance Requirements for Credit Institutions and Insurance Undertakings. In its response to the Paper in June 2010, the ODCE highlighted a number of issues concerning the roles of the chairman, the board and committees of the board in such companies.

In discussing audit committees in its submission, the Office suggested that the Central Bank's proposals could benefit from reconsidering the comprehensive list of audit committee responsibilities contained in Section 205B of the Companies Act 1990 (as inserted by Section 42 of the Companies (Auditing and Accounting) Act 2003 but not yet commenced) and the shorter Regulation 91 of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010¹⁹.

Central Bank Consultation Paper on Related Party Lending²⁰

The Central Bank also issued Consultation Paper CP43 on the issue of related party lending by certain regulated institutions during the year. In responding in June 2010, the ODCE identified a number of potential weaknesses in the scope of the planned Code. The Office also commented on the particular role of non-executive directors and suggested that there should perhaps be a prohibition on their having any financial relationship with the relevant company.

Submission on the Proposed Central Bank Bill 2011

The ODCE made a relatively detailed submission to the Central Bank in September 2010 on the proposed Bill which is due to be introduced in 2011. Office comments included the following:

- the proposals for whistle-blowing protection and a 'safe harbour' for the waiver of legal privilege were welcome;
- the proposal that the Central Bank should have primacy over other creditors, including a liquidator or examiner, where the Central Bank had extended credit to a bank which was in financial difficulty. It was suggested that there might be difficulty in securing the services of, say, a liquidator if the recovery of the costs of the process was not secure.

Conclusion

The foregoing gives an indication of the ODCE's substantial commitment to fulfilling its compliance remit and to contributing to policy development, both nationally and internationally. Ensuring a clear understanding of company law obligations, together with a commitment to engage with stakeholders, are central elements to the work of the Office.

Allied to Office activity in the compliance area is a balanced and proportionate enforcement strategy to deter and, where necessary, sanction those who may be tempted to disregard their obligations. The next section of this Report sets out the Office's results in implementing that strategy in 2010.

¹⁸ A copy of this consultation paper is available at <http://www.financialregulator.ie/consultation-papers/Documents/CP41 - Corporate Governance Requirements/Corporate Gov Requirements.pdf>.

¹⁹ SI No 220 of 2010.

²⁰ A copy of this consultation paper is available at <http://www.financialregulator.ie/consultation-papers/Documents/CP43 Code on Related Party Lending/CP 43.pdf>.