

FOR IMMEDIATE RELEASE

Launch of the ODCE Annual Report for 2008

“Economic downturn placing increased pressures on company directors” – Director

Mr Paul Appleby, the Director of Corporate Enforcement, today published his Office’s Annual Report for 2008. Highlights from the Report include:

- the appointment of a High Court Inspector to DCC plc, S&L Investments Ltd., and Lotus Green Ltd. to investigate aspects of various purchases and sales of the shares of Fyffes plc in 1995 and 2000;
- the publication of a detailed Company Law Handbook and Guidance on Property Management Companies to help improve their governance;
- a total of 32 convictions, 20 disqualifications and one restriction. A record amount of €46,600 in fines was also imposed. 12 of the 20 disqualification arose from the Office’s evaluation of dissolved insolvent companies;
- a 42% increase to 406 in the number of initial liquidators’ reports received. This reflected the declining performance of the national economy;
- a fourfold increase to €134 million in the amount of excessive directors’ loans reported by auditors, many in construction and property companies.

Other significant results from the Report include:

- attendance at some 80 public events where ODCE staff gave presentations to and engaged with the public to urge compliance with the Companies Acts;
- the first conviction of a company director for knowingly using company assets in breach of the legal restrictions on the giving of loans to directors;
- expenditure of €4.34 million in 2008, representing a slight decrease compared to 2007. This reduction was achieved notwithstanding the cost associated with four additional staff and the initial cost of the DCC Inspection. It was largely achieved by curtailing advertising and publicity work in response to Government requests for cutbacks in uncommitted spending. The ODCE budget for 2009 has been increased by Government to €5.47 million in order to cover the anticipated cost of the DCC Inspection.

Commenting on the results, Mr Appleby warned of the threats to compliance caused by the current economic difficulties.

“Current economic difficulties are posing significant challenges for many firms, particularly those related to or dependent on construction activity. We have seen in 2008 more than a 40% increase in first-time liquidator reports with respect to some 400 newly insolvent companies. We forecast that in 2009 we will receive over 800 first-time liquidator reports, more than double last year’s total and three times the 2007 level.

It is clear that companies and company directors are coming under pressure as they deal with the current downturn. I wish to urge directors who are dealing with financial difficulties to remain compliant with the law. Unfortunately but not unexpectedly, we have received a number of complaints to the Office in the past year relating to insolvent companies or companies in financial distress. The source of some of these complaints are company creditors who are out of pocket, simply because there is no money available in the company to pay them.

However, a particular concern has been the fourfold increase in the reported amount of company funds being used by directors for personal purposes. At a time when some companies are failing to pay their creditors, it is difficult to conceive of any valid justification for decisions which result in the depletion of company assets, even on a short-term basis. These types of action increase the risk of companies not meeting their debts to company creditors and other stakeholders.

I would encourage company directors to obtain early professional advice to help them face their company’s business difficulties. Generally speaking, taking such a step is indicative of a responsible attitude by directors to the needs of company stakeholders in general. We have no wish or desire to see directors sanctioned for ordinary business failure, but we will wish to see directors who act illegally or who do not act honestly or responsibly face the full rigour of the law.”

The Director also made a brief comment about his Office’s investigation of certain events at Anglo Irish Bank Corporation Ltd:

“The ODCE is currently engaged in a complex investigation into certain activities in Anglo Irish Bank. The investigation is progressing satisfactorily, and the Office continues to work constructively with the Bank, the Financial Regulator and other relevant parties in this matter. I am also grateful to the Tánaiste and Minister for Enterprise Trade and Employment and her Department for the allocation of additional staff to the Office to assist in this work and for the introduction in the Oireachtas of a new Companies Bill to support our general investigative work.”

Press queries in relation to the ODCE's Annual Report for 2008 may be addressed to Kevin Prendergast at (01) 8585844.

Office of the Director of Corporate Enforcement
29 May 2009

Editor's Note

The Office of the Director of Corporate Enforcement (ODCE) is responsible for:

- encouraging compliance with the Companies Acts; and
- bringing to account those who disregard their obligations under company law.

The ODCE acts in the public interest to ensure that the balanced legal framework of rights and duties operates in practice among company stakeholders (i.e., directors, investors, creditors and others) in their engagement with companies. Included in the press pack are some case studies from the 2008 Annual Report that illustrate the range of ODCE efforts to:

- secure voluntary compliance;
- empower stakeholders;
- inform stakeholders of their rights;
- seek enforcement sanctions;
- encourage future compliance;
- seek remedial orders from the Courts.

Voluntary Compliance

In 2008, the ODCE attended some 80 public events where ODCE staff gave presentations to and engaged with the public. Members of the Office also regularly respond to public enquiries by phone and email, and **Illustration 1.2.2** includes some examples of questions received and the responses provided by Office staff. Company law information and guidance is regularly updated on the ODCE website at www.odce.ie.

Empowering Stakeholders

The Office continues to deal with queries and complaints in respect of Apartment Owners' Management Companies. **Illustration 2.2.1** gives an indication of the typical nature of the issues raised by complainants.

Stakeholders' Rights

The Office closed 12% of cases submitted on the basis that it was more appropriate that the complainants pursued their own legal or other remedies to advance their interests.

Illustration 2.2.3 involves a case in which a company asked the ODCE in 2008 to consider taking disqualification or restriction proceedings against two of its former directors.

Enforcement Sanctions

Where appropriate the Office takes enforcement actions of a civil and criminal nature in order to protect the public and to act as a deterrent to others who may be tempted to behave injudiciously. **Illustration 3.3.1** outlines an example of where the Office has taken action where a company director was knowingly using company assets in breach of the applicable legal restrictions.

The Office also plays an important role in monitoring the behaviour of company directors in insolvency situations. During 2008, 81 directors were restricted in the High Court on foot of actions taken by company liquidators. However in a small number of cases, the actions of company directors were such that more serious action was warranted. **Illustration 4.2.1** provides some information on cases where liquidators secured disqualification orders against company directors in 2008.

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