



Office of the Director
of Corporate Enforcement

*Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach*

FOR IMMEDIATE RELEASE

Launch of the ODCE Annual Report for 2007

Statement by the Director of Corporate Enforcement

“A predictable legal environment assists company competitiveness” – Director

Mr Paul Appleby, the Director of Corporate Enforcement, today published his Office's Annual Report for 2007. Highlights from the Report include:

- market research results in respect of some 300 company directors indicating:
 - a 73% familiarity with the Office, a 9% increase on 2005;
 - a belief by 85% of directors that company law compliance had improved in the last five years, an 11% rise on 2005 and
 - a 75% effectiveness rating for the Office, a 7% increase on 2005;
- the adoption of a new Communications Strategy. Initiatives taken included:
 - the broadcasting for the first time in late 2007 of a series of national radio advertisements highlighting common company law issues that arise for company directors and shareholders;
 - the launch of the Office's new website which attracted about 150,000 visitors;
 - participation by Office staff at more than 50 conferences, seminars and exhibitions promoting compliance with company law obligations;
- a rise at end-2007 in the number of insolvent companies going into liquidation. (This has continued into 2008. The latest figure of some 40 insolvent companies in April compares with 30 per month in late 2007.);
- 14 disqualifications as a result of ODCE enforcement action. One was for 12 years, the longest period of disqualification secured to date;
- 28 convictions of companies, directors and others for breaches of company law obligations;
- 140 restrictions on the application of the liquidators of insolvent companies;

- the closure of some 550 other cases following evaluation or investigation;
- expenditure of €4.37 million in support of Office activity (a 30% increase on the outturn of €3.36 million in 2006). Funding of €4.96 million (up 13%) has been made available for 2008 to meet the Office's anticipated costs;
- the decision by the Department of Enterprise Trade and Employment to commit an extra eight staff to the Office, four of whom were provided at year-end.

Commenting on the results, Mr Appleby said that the continuing focus of his Office was on promoting compliance with the requirements of the Companies Acts, viz:

“Greater certainty with respect to the environment in which business and social enterprises operate provides improved confidence in future economic and social decision-making. At a time of some uncertainty with respect to market conditions generally, a stable and predictable legal environment will assist with the competitiveness of decision-making at company level as well as maintaining the reputation of Ireland as a good place to do business.”

Mr Appleby went on to indicate that the Office's work in 2008 was being helped by the assignment of new staff from the Department of Enterprise Trade and Employment:

“Already in 2008, we have participated in some 30 conferences or other events in order to reach small and medium sized enterprises in particular with our compliance message. We have also secured 10 disqualifications and 10 convictions to date.

As well as improving throughput and activity, we remain anxious to get a good balance of enforcement cases between large, medium and smaller companies. The separate announcement which I am making this morning with respect to DCC plc provides some evidence of our commitment to this objective.

We also have an ambitious programme of compliance work ahead of us this year. We are committed to publishing:

- *a Governance Handbook for Property Management Companies;*
- *new company law guidance leaflets in plain English and Irish;*
- *a Consultation Paper and draft guidance for directors and shareholders of companies availing of the Business Expansion Scheme and similar schemes;*
- *a Discussion Paper on Whistle-blowing (also known as ‘good faith reporting’) in Irish company law.*

The latter initiative derives from research work undertaken by the Office in 2007 as part of our contribution to the work of the Company Law Review Group. I believe that there is a need to create more favourable conditions for the reporting of misconduct or illegality in the company law area. This approach is consistent

with international best practice in corporate governance in bringing potential problems to light for rectification. I would like to see a whistle-blowing provision included in the forthcoming Companies Consolidation and Reform Bill in the same way that similar provisions are increasingly being included in other Government legislation.

My Office will continue to ensure its commitment both to promoting compliance and to investigating and where appropriate sanctioning wrongdoing during 2008.”

Press queries in relation to the ODCE’s Annual Report for 2007 may be addressed to Paul Appleby at (01) 8585820 or Kevin Prendergast at (01) 8585844.

Office of the Director of Corporate Enforcement
28 May 2008

EDITORS' 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 a 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 2007 Annual Report that illustrate the range of ODCE efforts to –

- secure voluntary compliance;
- encourage quality audit reporting;
- monitor compliance with new EU Regulations;
- empower stakeholders;
- seek enforcement sanctions;
- encourage future compliance;
- seek remedial orders from the Courts.

Voluntary Compliance

In 2007, the ODCE delivered some 45 presentations on topical company law issues to a combined audience of over 3,100. Office staff also attended seven exhibitions, conferences and open day events.

While we do not provide company law advice of a personal character, Office staff regularly respond to information requests by phone and email, and examples are included in **Illustration 1.2.2**. Company law information and guidance is regularly updated on the ODCE website at www.odce.ie.

Quality audit reporting

Companies' accounts and the related audit reports are an important source of information for the Office. In this respect the Office is reliant on good quality audit reporting. In some circumstances this may involve interaction between Office staff and auditors in order to clarify their opinions. **Illustration 2.2.1** shows an example of an original audit report as submitted with a set of accounts and the revised report which was submitted following discussions with staff from the ODCE.

Compliance with EU Regulations

During 2007 new disclosure requirements were introduced for company emails and websites. Subsequent to the commencement of the Regulations and an awareness raising campaign on the part of the Office, a number of company websites were reviewed to assess compliance. **Illustration 2.2.2** summarises some of the issues arising from that exercise.

Empowering Stakeholders

The Office continues to deal with an ever increasing number of queries and complaints in respect of Apartment Owners' Management Companies. **Illustration**

2.2.3 gives an indication of the extent and complexity of the work involved in clarifying for stakeholders their rights.

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 3.2.1** is an example of where the Office has taken action on foot of a High Court Inspectors' Report into Ansbacher (Cayman) Limited. The five year disqualification handed down in that case represents the completion of the Office's work on foot of that Report.

The role of audit is central in ensuring that the activities of company directors are reflected correctly in financial statements. To that end the Office regularly takes action against those persons who are not qualified to act as such, and **Illustration 3.3.1** outlines one such case.

The Office also plays an important role in monitoring the behaviour of company directors in insolvency situations. During 2007 140 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 2007.

Some company directors attempt to avoid the liquidation process by allowing their companies to be struck off the Companies Register for failing to file annual returns, in some cases leaving creditors owed significant amounts of money. **Illustration 4.3.1** describes one such situation and highlights the Office's power to have such directors disqualified. The particular case indicates the circumstances which led to the High Court imposing a 12 year disqualification on one of the company directors concerned.

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