



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach
Office of the Director
of Corporate Enforcement

ODCE PUBLISHES ITS 2019 ANNUAL REPORT

The Director of Corporate Enforcement has today published the ODCE's Annual Report in respect of 2019¹.

COVID-19

This year's Annual Report is being published in the midst of an unprecedented public health emergency. Notwithstanding the unprecedented measures that Government has had to introduce in response to the COVID-19 pandemic, the ODCE has been able to remain fully operational throughout. This has been achieved through:

- ODCE staff, for the most part, engaging in remote working and progressing the Office's business through alternate means such as increased use of videoconferencing platforms;
- continuity of criminal investigative operations, including statement taking, gathering of evidence and arrests, through the ongoing physical presence on the part of Gardaí attached to the Office;
- continuity of litigation and related enforcement activities, including attendance in the High Court, through the attendance of legal and other key staff at both physical and virtual hearings;
- initiatives designed to accommodate stakeholders such as auditors and liquidators with the submission of statutory reports.

Unfortunately, it is likely that many businesses will face financial difficulties in the months ahead as the effects of COVID-19 percolate their way through the economy. In that context, and in response to fears expressed by company director representative bodies and other related stakeholder groupings, the Director issued a detailed Statement² setting out the ODCE's likely approach to its insolvency-related functions and, in particular, addressing the issue of the Restriction of directors of insolvent companies. That Statement has been widely welcomed as being comprehensive and as having provided a considerable degree of reassurance to those company directors whose business may become insolvent for entirely legitimate reasons.

¹ The report is available at <http://www.odce.ie/en-gb/publications/corporatestatutory.aspx>

² https://www.odce.ie/Portals/0/Documents/Functions/Covid_Statement_4_June_2020.pdf

In addition, the ODCE has, through its membership of the Company Law Review Group (“CLRG”), participated in a detailed review of those amendments to company law that merit immediate consideration by Government in order to ameliorate some of the challenges facing companies and their directors in the current environment. The resultant Report has been submitted to the Minister in recent weeks.

PRINCIPAL ACTIVITIES, OUTPUTS AND ACHIEVEMENTS DURING 2019

Independent News & Media (“INM”)

Following an application made by the ODCE, Mr. Sean Gillane, SC and Mr. Richard Fleck, CBE, were appointed by the then President of the High Court in September 2018 to inquire into a substantial number of issues of concern relating to INM. The Inspectors delivered their first Interim Report to the High Court on 11 April 2019. Based on an Order of the High Court, redacted copies of this Report were furnished to a number of interested parties.

Since then, the Inspectors have continued their investigations and a second Interim Report was submitted to the High Court on 27 April 2020. Again, the High Court has directed that certain parties affected should be furnished with copies of this Report.

Separately, an application has recently been made by Mr. Leslie Buckley, former INM chairman, for the recusal of the Inspectors on the grounds of objective bias. This application is being opposed by the Inspectors and, pending the determination of the matter by the Courts, the Inspectors are continuing with their work.

Console Suicide Bereavement Counselling Limited (in liquidation) (“Console”)

Having undertaken a complex and large-scale investigation into issues relating to the former charity Console, the ODCE submitted an investigation file on the matter to the Director of Public Prosecutions (“DPP”) for consideration during 2019. Following the subsequent receipt of directions from the DPP, on 6 March 2020, ODCE officers charged Ms. Patricia Kelly, a former Console director, with fraudulent trading and money laundering. The matter is now before the Courts.

Football Association of Ireland (“FAI”)

The ODCE investigation of matters relating to the FAI continued during the year. Several High Court applications were made for the purpose of seeking determinations as to whether legal professional privilege attaches to specific documents produced to the ODCE on foot of statutory demands and seized on foot of warrants.

In recent weeks former FAI Chief Executive, Mr. John Delaney, has consented to an ODCE application to the High Court for the approval of an ODCE protocol governing how material obtained by the ODCE, and over which he might wish to assert legal professional privilege or privacy rights, is to be examined. The ODCE’s investigation into the FAI is ongoing.

Enforcement

Arising from criminal investigations conducted by the ODCE, during 2019:

- the DPP directed charges on 23 counts of theft contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001. In November 2019, the defendant pleaded guilty to theft and was sentenced to 24 months' imprisonment of which the final 19 months were suspended on specified conditions;
- the DPP directed an additional 8 charges contrary to section 26 of the Criminal Justice (Theft and Fraud Offences) Act 2001 on foot of an investigation file submitted during 2017. At the date of writing, a trial date is awaited;
- an individual was charged with one count of an offence contrary to section 876 of the Companies Act 2014, i.e., the unauthorised use of an Auditor Registration Number on financial statements submitted to the Register of Companies. On a plea of guilty, the District Court directed that, on payment of €2,000 to a specified charity, the matter would be struck out;
- a number of other large-scale investigations were progressed with a view to submitting files to the Director of Public Prosecutions for consideration as to whether charges should be directed on indictment.

In the realm of civil enforcement, during 2019:

- following the ODCE's examination of almost 900 liquidators' statutory reports, 106 company directors were either restricted or disqualified as a consequence of their behavior as directors of insolvent companies (91 by way of statutory undertakings provided to the ODCE and a further 15 on foot of liquidators' applications to the High Court);
- a further 22 company directors were disqualified (by way of statutory undertakings to the ODCE) arising from ODCE investigations into companies that had been allowed by their directors to be struck off the Register of Companies for the failure to file statutory returns with the Registrar whilst having significant outstanding debts;
- unlawful directors' loans to the aggregate value of over €27m were rectified on foot of ODCE intervention;
- as a cost-effective and proportionate approach to certain types of indicated contraventions, cautions were issued to a total of 28 companies and their directors.

In the context of investigation and enforcement generally, during 2019, the ODCE:

- reviewed over 1,250 reports, referrals, complaints and other inputs from various sources, including auditors, examiners, liquidators, members of the public, professional bodies and other statutory regulatory/enforcement bodies;
- exercised statutory powers, including those requiring the production of books and documents, on in excess of 170 occasions.

Promotion of compliance with company law

An important aspect of the ODCE's statutory mandate is the promotion of compliance with company law. In that context, ODCE staff delivered 30 presentations during the year to a combined audience of over 2,000. In addition, the ODCE participated in 18 exhibitions, conferences or other events with a view to assisting relevant parties to comply with their obligations and vindicate their rights respectively under company law.

Corporate Enforcement Authority

In November 2017, a proposal for the transition of the ODCE into an independent, standalone Agency was approved as part of a Government package of measures aimed at enhancing Ireland's capacity to address corporate, economic and regulatory crime. The then Government approved the General Scheme of the Companies (Corporate Enforcement Authority) Bill in December 2018 and granted approval for the drafting of a Bill.

During the year, the ODCE continued to work with the Minister for Business, Enterprise & Innovation and her officials in preparing for the establishment of the Corporate Enforcement Authority. This includes consideration of enhanced enforcement provisions as well as the logistical arrangements necessary to facilitate the transition of the ODCE's activities to an independent Agency.

The establishment of the Corporate Enforcement Authority has been carried over into the incoming Government's agreed Programme for Government and, as such, the ODCE will now work with An Tánaiste and his officials in progressing the transition to the new Agency.

OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT

1 JULY 2020

Queries regarding the foregoing should be directed to:

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