

Office of the Director
of Corporate Enforcement

*Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach*

An Introduction

Introduction

Introduction to the Office of the Director of Corporate Enforcement



The purpose of this

Introduction is to outline the key functions of the ODCE and to indicate what services will be offered by the ODCE in pursuance of its mandate.



Preface

The Minister for Enterprise, Trade and Employment formally appointed Mr Paul Appleby as Director of Corporate Enforcement with effect from 28th November 2001. The functions of the Director are outlined in detail in the Company Law Enforcement Act 2001. The primary mandate of the Director and his staff in the Office of the Director of Corporate Enforcement (ODCE) is to improve the compliance environment for corporate activity in the Irish economy by:

- encouraging adherence to the requirements of the Companies Acts and
- bringing to account those who disregard the law.

The impact of the ODCE's work will have positive economic and social benefits in reducing business and personal risks in the economy and in improving standards of corporate compliance. In many cases therefore, the ODCE will be performing its functions in the general public interest, rather than acting to remedy individual grievances in the company law area.

The ODCE will have a budget of about €3.68 million (£2.9 million) over each of the years 2002 to 2004.

The Office comprises a multi-disciplined team of some thirty persons, including accountants, administrators and lawyers, and seven members of the Garda Síochána are also seconded to the Office to support its work.

Contents

The Introduction is divided into the following parts for ease of reference:

- **Page 2** General Duties of the Director of Corporate Enforcement
- **Page 4** Functions of the Director of Corporate Enforcement
- **Page 6** Services offered by the ODCE
- **Page 8** Appendix: Further information on the Director's enforcement functions

General Duties

General Duties of the Director of Corporate Enforcement



The Director and his staff are legally required to discharge their duties on an independent basis and to handle confidential information in a responsible manner.

General Duties of the Director of Corporate Enforcement

The Director of Corporate Enforcement is required under the Company Law Enforcement Act 2001 to be independent in discharging his compliance and enforcement role.

The Director and his staff also operate under a legal obligation to keep confidential any information obtained by them in the performance of the Director's functions, unless disclosure is required, in the opinion of the Director, for the performance of one or more of his functions or the functions of other competent authorities. In making decisions in this area, the Director will be particularly anxious not to compromise the ODCE's ability to gather sufficient evidence to support and prosecute criminal or other Court proceedings.

These obligations of independence and confidentiality are also required to encourage the general public, companies, company officers, professional organisations, State agencies and other authorities to provide to the Office information suggesting corporate malpractice. It is vital that the Office receives a good flow of such information if it is to be successful in remedying such behaviour and in bringing before the Courts those who are suspected of breaching company law.

The Director is required to report annually to the Minister for Enterprise, Trade and Employment on the performance of the Office and to provide from time to time other information as the Minister may require. The Director is also obliged to account to an appropriately established Committee of either House of the Oireachtas when requested to do so. However, the Director may decline to provide any information to the Minister or the Oireachtas which, in his opinion, would be likely to prejudice the performance of his functions.

Under the Company Law Enforcement Act 2001, the Registrar of Companies continues to be responsible for:

- collecting and making publicly available up-to-date information on companies registered in Ireland;
- encouraging adherence to the filing and registration requirements of the Companies Acts and
- where necessary, bringing non-compliant companies and officers to Court.

The Director of Corporate Enforcement, the Registrar of Companies and their staff co-operate closely with one another in carrying out their respective duties under the Companies Acts.

Functions

Functions of the Director of Corporate Enforcement

Compliance Role of the Director

The Director and his staff discharge this mandate by communicating publicly the benefits of compliance with the law and the consequences of non-compliance.

The strategies employed include:

- public presentations on, for example, the ODCE, its powers and functions;
- the publication of information, via the printed and electronic media, on the legal duties and powers of companies and individuals under company law;
- consultations with professional bodies and interests to secure the conformity of their members with the requirements of the law;
- discussions with Government and other parties as required to facilitate and support the compliance and enforcement role of the Director.

Enforcement Role of the Director

The investigative and enforcement role of the Director is quite extensive.

His main powers arise in the following areas:

- the initiation of fact-finding company investigations;
- the prosecution of persons for suspected breaches of the Companies Acts;
- the supervision of companies in official and voluntary liquidation and of unliquidated insolvent companies;
- the restriction and disqualification of directors and other company officers;
- the supervision of liquidators and receivers and
- the regulation of undischarged bankrupts acting as company officers.

In support of the Director's functions, the members of the Garda Síochána assigned to the Office may exercise and perform all of their normal powers to gather evidence and take statements.

The Director's powers are being phased in over a number of months, starting with the company investigation and prosecution functions. A more detailed explanation of the Director's powers in each of his functional areas is outlined in the **Appendix**.

Compliance and enforcement
action encourages high legal
standards of corporate practice
and supports sustainable
economic and social
development.



Services

The ODCE offers a number of discrete services in pursuance of its compliance and enforcement remit.

Compliance Information Service

In order to facilitate compliance with key company law provisions, the ODCE will publish from time to time Information Notices on the legal duties and powers of companies, company officers and other parties under the Companies Acts. The initial set of published material outlines the main duties and rights of the principal persons acting within the framework of company law, namely:

- Companies;
- Company Secretaries;
- Auditors;
- Liquidators;
- Examiners.
- Company Directors;
- Members/Shareholders;
- Creditors;
- Receivers;

Copies of this material can be obtained by downloading it from our website, by writing to, phoning or faxing the Office or by e-mailing us at info@odce.ie.

General Information Service

The ODCE will publish, at least on an annual basis, general information in relation to the work of the Office. If in the interim you have a query about the Office, its work or company law in general, we will do our best to help. You may write to, phone or fax the Office, e-mail us at info@odce.ie or complete and submit online the Information Request Form on our website.

However, there are limitations on our ability to deal with such queries. First of all, we will not be in a position for legal reasons to disclose information dealing with the ongoing compliance and enforcement work of the Office. This provision is designed to safeguard our ability to investigate and prosecute suspected company law offences. If we have to refuse or limit the information which we disclose, please understand that there are important reasons for doing so.

We also appreciate that people require from time to time professional information relating to company law issues. While we will endeavour to guide you to the correct source, the staff in the Office are not in a position to offer accounting, legal or other professional advice to members of the public. If you have a personal difficulty in the company law area which does not involve a breach of the Companies Acts, you should consult a professional adviser who will be in a position to recommend a solution which best addresses your particular circumstances.

Company Law Complaints Facility

In order to assist the ODCE exercise its enforcement remit under the Companies Acts, auditors, liquidators and some professional bodies will be required to notify certain suspected breaches of the Companies Acts. However, the public may also make available to the Office information suggesting circumstances of individual or corporate misbehaviour under the Acts. We may need to seek continuing assistance from our correspondents in certain cases. In the light of our evaluation of the information and corroborating material, we will determine what action, if any, on our part is appropriate and what would be the most suitable means of legal redress or sanction.

We have available a Complaint Form which can be used to advise us of your concerns. It sets out the type of information which we require to receive to enable a complaint to be properly evaluated. You may obtain a copy of the Form by writing to, phoning or faxing the Office, by e-mailing us at info@odce.ie or by downloading it from our website. You should complete the Form and forward it to us with the associated documentary evidence supporting your claim of corporate or individual misbehaviour.

Please note that the ODCE will not act on every complaint it receives. Circumstances where we may decide that we should not get involved include:

- where the complainant has a legal right of civil action against the company or other party with whom he/she is in dispute and where this will be a sufficient remedy;
- where no breach of the Companies Acts is indicated. If however a breach of other legislation is suggested, we may refer the complaint to the relevant authorities (e.g., the Garda Síochána in cases of possible fraud, the Revenue Commissioners for suspected tax offences, the Competition Authority if a breach of competition law is indicated, etc.);
- where the indicated breach is proper to the enforcement functions of the Registrar of Companies, or
- where the ODCE lacks the legal powers to intervene effectively.

Registration Service

We will be regularly updating the content of our published materials via our website as part of our services to the community. If you have a particular interest in the site as a whole or in particular areas of the site and you wish to be advised promptly of new information being included on the site, please register your interest by completing and submitting online the Registration Form on our website.

Freedom of Information (FOI) Service

The ODCE has available an FOI Form which can be used to advise us of your query. You may write to or fax the Office, e-mail us with your request at foi@odce.ie or complete and submit online the FOI Form on our website.

However, please be aware that the only records subject to disclosure are those relating to the general administration of the Office. Many records dealing, for instance, with the ongoing compliance and enforcement work of the Office are outside the scope of the Act, because premature disclosure could compromise the Director's ability to investigate and sanction suspected breaches of company law.

Before making any request, you should satisfy yourself that it falls within the above criteria. If a qualifying FOI request involves the deployment of significant staff and other resources to fulfil the request, you will be asked to pay a fee to cover administration costs.

Consultation Service

The ODCE will from time to time engage in a public consultation exercise, before introducing new services or reforming existing services. We see this as a valuable means of making our services relevant to the needs of our customers.

In this context, we will publish Consultation Notices and invite the views of the public. Copies of these Notices can be obtained by writing to, phoning or faxing the Office, e-mailing us at info@odce.ie or completing and submitting online the Information Request Form on our website.

Comment on such Notices may be returned to the ODCE in written form, by fax, by e-mail to consultation@odce.ie or by completing and submitting online the Consultation Form on our website.

Feedback Service

We also welcome on an ongoing basis comment in relation to our services, including that provided by our website. Feel free to advise us of any issue of concern to you which we will take into account in any future development of our services. You may write to or fax the Office, e-mail us with your views at feedback@odce.ie or complete and submit online the Feedback Form on our website.

Appendix

Further Information on the Enforcement Functions of the Director of Corporate Enforcement

Fact-Finding Company Investigations

The Director of Corporate Enforcement has the power to initiate, or seek to have initiated a fact-finding company investigation in certain circumstances suggesting fraud or other illegality. Such an investigation may take various forms, viz:

- it may be undertaken, at his request, by an Inspector or Inspectors appointed by the High Court to conduct a wide-ranging inquiry of a company's affairs;
- the Director may directly appoint an Inspector or Inspectors to establish the beneficial ownership of a company or of shares in or debentures of a company, or
- he may undertake a private examination of a company's books and documents.

While the powers of Inspectors are extensive, the limited powers available to the Director to conduct a private examination of a company's books include the powers to:

- demand that company books and documents be produced for examination;
- require directors and other persons to explain the company's books;
- obtain relevant documents from certain third party sources, such as other companies.

Company Law Prosecutions

In the case of suspected breaches of the Companies Acts, the Director has three main options available to him. He may:

- invite the persons in default to pay an administrative fine in lieu of facing a summary prosecution before the courts;
- initiate a summary prosecution for a suspected breach of the Companies Acts, or
- refer a case to the Director of Public Prosecutions for decision as to whether a prosecution on indictment should be commenced.

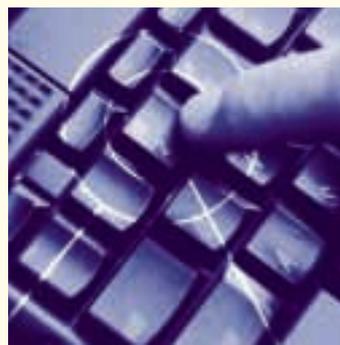
The administrative fine option is expected to be available to the Director during 2002.

Insolvent Companies

In order to evaluate the conduct of persons associated with the management of these companies, the Director is being given the power in the Act to:

- apply for a Court order seeking permission to inspect the books of a company in official or voluntary liquidation or of an unliquidated insolvent company;
- seek to have persons examined by the Court on the affairs of the company;
- apply for a Court order for payment or delivery of property against a person examined and if necessary to search for and seize money, property, books and documents belonging to the company;
- seek a warrant for the arrest of a person on probable cause that he or she is about to quit the State or otherwise seek to evade due payments or an examination of the company's affairs;
- seek to have the Court assess damages against company directors and other officers where company property has been misapplied or retained or the person involved has been guilty of a breach of duty or trust in relation to the company.

The Director's powers in this area will be available to him from early 2002.



Disqualifications and Restrictions

The remedies of disqualification and restriction are precautionary measures which are designed to prevent persons from abusing the privilege of incorporation in the future. Currently, disqualification automatically applies to a person who has been convicted of an indictable offence involving fraud or dishonesty in relation to a company's affairs. The Director may now petition the High Court to seek the disqualification for five years of a person from acting in any responsible position in, or in support of, a company, where by their actions they have shown themselves not to be suitable persons to be involved in the management or promotion of a company. Qualifying circumstances for disqualification include:

- companies struck off the Register of Companies following the failure of the directors to file all outstanding annual returns;
- three or more convictions for failing to comply with company law over a five year period, or
- two or more offences of failing to keep proper books of account.

The restriction option is intended to ensure that a person who has previously acted as a director of a company which has been wound up leaving substantial debts unpaid cannot subsequently act as a director or secretary or otherwise promote or participate in another company unless it meets certain requirements. These stipulate that the minimum paid up capital of the new company must be:

- €63,487 (£50,000) (in the case of a private limited company) in cash, or
- €317,435 (£250,000) (in the case of a public limited company) in cash.

Liquidators of insolvent companies will be required to apply to the High Court for the restriction of the directors of such companies, unless exempted from doing so by the Director. The requirement to apply to the High Court currently applies in official liquidations only under direction from the High Court.

Directors of unliquidated insolvent companies may also be restricted by application of the Director of Corporate Enforcement to the High Court.

The Director's powers in this area will be exercisable by him from early 2002.

Supervision of Liquidators and Receivers

At present, liquidators and receivers are required to send to the Registrar of Companies notification of their appointment to a company, and the Registrar is now required to copy the Director of Corporate Enforcement with all such notifications.

The Director is also given power to require a liquidator or receiver to produce his or her books and answer any questions on the books or on the conduct of the liquidation or receivership. These provisions are intended to allow the investigation of complaints or allegations of misconduct against a liquidator or receiver.

A receiver will also be required to file a statement with the Registrar of Companies at the end of the receivership as to whether the company is solvent. This statement will be copied to the ODCE, in order to enable such companies to be monitored by the Director.

The Director's powers in this area will be available to him from early 2002.

Regulation of Undischarged Bankrupts

The Companies Acts prohibit an undischarged bankrupt from acting as a director or other officer of a company. Where the Director of Corporate Enforcement has reason to believe that the director of a company is an undischarged bankrupt, he may:

- require the person to furnish the Director with a sworn statement setting out the facts of his or her financial position;
- seek to have such a person examined on oath before the High Court on the contents of that statement;
- seek to have a disqualification order applied against the person on the grounds that he or she is an undischarged bankrupt.

The Director's powers in this area will be exercisable by him from early 2002.

Other Measures

There is also a series of miscellaneous remedial measures which are available to the Director in the Companies Acts. Examples include:

- directing the holding of an annual general meeting;
- seeking a Court order to remedy a default by a company or an officer in complying with the Companies Acts;
- applying for a Court injunction to prevent persons from trading as a limited company when they are not so incorporated.

Many of these remedial measures will be available to the Director from the establishment of his Office.

For further information contact:

 **Office of the Director of Corporate Enforcement**
Regus House
Harcourt Road
Dublin 2

 **(01) 477 3139 or 477 3143**
LoCall 1890 315 015

 **(01) 477 3330**

 **info@odce.ie**
or see the relevant sections for email addresses

 **www.odce.ie**

