



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

## **ODCE PUBLISHES ITS 2018 ANNUAL REPORT**

The Director of Corporate Enforcement has today published the ODCE's Annual Report in respect of 2018<sup>1</sup>. The ODCE's principal activities, outputs and achievements during the year included the following.

### **Independent News & Media plc ("INM")**

Following an application made by the ODCE, in September 2018 Mr. Sean Gillane, SC and Mr. Richard Fleck, CBE, were appointed by the High Court to inquire into a substantial number of issues of concern relating to INM. These issues were identified by the ODCE following an investigation into allegations made by INM's former Chief Executive Officer. The ODCE's investigation was conducted over a period of approximately 15 months and involved the issuing of a total of 33 statutory requirements for the provision of documents, explanations and assistance to INM as well as to a range of other relevant parties.

The Application for the appointment of Inspectors was made by the ODCE having determined that the further progression of the investigation necessitated the deployment of the more powerful investigative tools reserved by law to Court-appointed Inspectors. Specifically, the powers available to Inspectors, but not to the ODCE, include the powers of compellability and examination of relevant persons on oath.

INM sought to have the ODCE's decision to seek the appointment of Inspectors quashed by way of Judicial Review proceedings. In a judgement delivered on 1 June 2018, Mr. Justice Seamus Noonan rejected INM's arguments and dismissed the company's application.

The Inspectors delivered their first Interim Report to the High Court on 11 April 2019 and, at the time of writing, are continuing their investigations. The President of the High Court is, at the time of writing, considering whether any parties other than the ODCE should receive a copy of the Interim Report.

### **Joint Oireachtas Committee on Business, Enterprise & Innovation**

During 2018, the ODCE continued to engage with, and assist, the Committee on matters of interest to it, including the matter of *DPP v FitzPatrick*. For the purpose of assisting the Committee in the discharge of its functions, the ODCE prepared a detailed Submission on the factors that contributed to the outcome of that case. At this time, the Committee is considering the most appropriate mechanism for obtaining a copy of the Submission from the ODCE.

The Committee's consideration of these matters is taking place as part of an ongoing process of pre-legislative scrutiny of the Companies (Corporate Enforcement Authority) Bill 2018.

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

## **Enforcement**

Arising from criminal investigations conducted by the ODCE, during 2018:

- an individual was convicted of the offence of Fraudulent Trading contrary to section 297 of the Companies Act 1963 and sentenced to 18 months' imprisonment (with the final 6 months suspended);
- the Director of Public Prosecutions directed a number of charges against an individual under the Companies Act 1963, the Criminal Justice (Theft and Fraud Offences) Act 2001 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 respectively. At the date of writing, a trial date before the Circuit Criminal Court is awaited;
- 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 2018:

- following ODCE examination of approximately 1,000 liquidators' statutory reports, 160 company directors were either restricted or disqualified as a consequence of their behavior as directors of insolvent companies (130 by way of statutory undertakings provided to the ODCE and a further 30 on foot of liquidators' applications to the High Court);
- a further 21 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 €6m 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 63 companies and their directors

In the context of investigation and enforcement generally, during 2018, the ODCE:

- reviewed over 1,300 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 160 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 22 presentations during the year to a combined audience of approximately 1,100. In addition, the ODCE participated in 17 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.

## **Review Group on Anti-Fraud and Anti-Corruption Structures**

The ODCE is a member of the Review Group, which was established by the Government and is Chaired by former Director of Public Prosecutions, Mr. James Hamilton. Issues in respect of which the ODCE has shared its views with the Group include the Law Reform Commission's Report of October 2018 entitled "*Report on Regulatory Powers and Corporate Offences*".

## **Corporate Enforcement Authority**

In November 2017, the Government adopted a package of measures aimed at enhancing Ireland's capacity to address corporate, economic and regulatory crime. This package of measures included a proposal for the transition of the ODCE into a Corporate Enforcement Agency. The 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.

**OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT**  
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