



ODCE PUBLISHES 2020 ANNUAL REPORT

The Director of Corporate Enforcement has today published the ODCE's Annual Report in respect of 2020¹.

COVID-19

This year's Report covers a period most of which was the subject of an unprecedented public health emergency. Notwithstanding the measures that it was necessary for Government to introduce in response to the COVID-19 pandemic, the ODCE remained fully operational throughout. While, in accordance with public health guidance, ODCE staff for the most part engaged in remote work practices, certain activities, such as criminal investigative operations, required an ongoing physical presence throughout.

In June 2020, the Director issued a detailed Statement² setting out the ODCE's likely approach to its insolvency-related functions including, in particular, the Restriction of directors of insolvent companies. This was designed to allay concerns regarding how the ODCE might approach assessing the behaviour of directors of companies subsequently entering insolvent liquidation as a result of the effects of COVID-19. That Statement has been widely welcomed and acknowledged as having provided the appropriate level of reassurance to those company directors whose business may become insolvent for legitimate reasons.

In addition, the ODCE, through its membership of the Company Law Review Group ("CLRG"), participated in the development of a number of amendments to company law that were introduced to ameliorate some of the challenges facing companies and their directors in the current environment. These include the proposed SCARP³ mechanism, currently in the process of being advanced by Government.

ENFORCEMENT

The ODCE pursues a strategy under which its enforcement resources are primarily directed towards investigating suspected wrongdoing at the more serious end of the spectrum. Accordingly, the ODCE's criminal investigative resources tend to be concentrated on larger, more complex investigations. These, typically, result in files being submitted to the DPP for consideration as to whether charges should be directed on indictment. However, the Director does also, when it is considered appropriate, direct the summary prosecution of alleged offences. Set out hereunder is an outline of criminal enforcement activity during 2020:

- files were submitted to the DPP in respect of 4 separate investigations;
- the Director issued directions to charge, or otherwise, in respect of 3 separate investigations;
- directions were received from the DPP to charge, or otherwise, in respect of 3 separate investigations;
- arising from the above, a total of 45 criminal charges were preferred against 5 separate individuals, i.e., in respect of alleged offences of:

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

³ Small Company Administrative Rescue Process

- fraudulent trading³;
- money laundering⁴;
- theft⁵;
- providing false information⁶;
- contravening a Restriction Order⁷; and
- acting under directions of a restricted person⁹.

The foregoing resulted in 12 criminal convictions, all of which were secured on the basis of pleas of guilty having been entered by the accused persons.

A number of other large-scale investigations were progressed with a view to submitting files to the Director of Public Prosecutions.

In the realm of civil enforcement, during 2020:

- following the ODCE's examination of almost 700 liquidators' statutory reports, 61 company directors were either restricted or disqualified as a consequence of their behavior as directors of insolvent companies (56 by way of statutory undertakings provided to the ODCE and a further 5 on foot of liquidators' applications to the High Court);
- a further 18 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 almost €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 28 companies and their directors.

INVESTIGATIONS IN THE PUBLIC DOMAIN

Football Association of Ireland ("FAI")

The ODCE investigation of matters relating to the FAI continued during the year. Several High Court applications and appearances were made during the year relating to documents seized on foot of warrant and over which assertions of legal professional privilege have been advanced. Resolution of that matter, which involved some 270,000 documents in total, is at an advanced stage before the High Court and the investigation is continuing.

Independent News & Media ("INM")

Following an application made by the Director, 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 a second Interim Report to the High Court on 27 April 2020.

Separately, in a ruling delivered earlier this year, the High Court dismissed an application made by Mr. Leslie Buckley, former INM chairman, for the recusal of the Inspectors on the grounds of objective bias.

³ Contrary to s. 297 Companies Act 1963 as amended and s. 722 Companies Act 2014.

⁴ Contrary to ss.7(1)(a)(ii), 7(1)(b) & 7(3) Criminal Justice (Money Laundering & Terrorist Financing) Act 2010

⁵ Contrary to s. 4 Criminal Justice (Theft & Fraud Offences Act) 2001

⁶ Contrary to s. 876 Companies Act 2014

⁷ Contrary to ss. 161 and 240 of the Companies Act 1990 as amended and s. 855 Companies Act 2014

⁹ Contrary to s. 856 Companies Act 2014

CORPORATE ENFORCEMENT AUTHORITY “(CEA)”

The Companies (Corporate Enforcement Authority) Bill was included in the Government's Summer Legislative Programme and is listed as a priority item for the current legislative session. The Joint Oireachtas Committee on Enterprise, Trade & Employment issued its Report following pre-legislative scrutiny of the Bill on 20 April 2020. With that stage complete, the Bill is expected to be published in the near future.

In preparation for the establishment of the CEA, the ODCE continues to liaise with the Tánaiste, Minister Troy their officials.

OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT

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Queries regarding the foregoing should be directed to:

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