



Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

OPENING STATEMENT

TO THE

**JOINT OIREACHTAS COMMITTEE
ON ENTERPRISE, TRADE AND EMPLOYMENT**

REGARDING

**PRE-LEGISLATIVE SCRUTINY OF THE
GENERAL SCHEME OF THE
COMPANIES (CORPORATE ENFORCEMENT AUTHORITY)
BILL 2018**

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DIRECTOR OF CORPORATE ENFORCEMENT
20 JANUARY 2021**

Chairman, Members of the Joint Committee,

Introduction

Thank you for the invitation to appear before you today and for the opportunity to discuss the General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018 (“**the General Scheme**”).

I am joined today by Ms. Suzanne Gunn, Enforcement Lawyer, Mr. David Hegarty, Enforcement Manager, Mr. David McGill, Digital Forensics Specialist and Mr. Conor O’Mahony, Head of Insolvency & Corporate Services.

As referenced in the Submission furnished to the Committee on 4 December last (“**the Submission**”), given the centrality of the Office of the Director of Corporate Enforcement (“**ODCE**”) to the General Scheme, it is submitted that any assessment of the proposed legislation requires an understanding of the ODCE, i.e., what it does, how it does it, the environment within which it operates, the resources at its disposal and the challenges that it faces.

Principal statutory functions

My principal functions as Director are set out in section 949 of the Companies Act 2014 (“**the Act**”). They include to:

- i. encourage compliance with the Act;
- ii. investigate instances of suspected offences under the Act;

- iii. enforce the Act, including through the prosecution of offences by way of summary proceedings¹;
- iv. refer cases to the Director of Public Prosecutions (“**DPP**”) where there are reasonable grounds for believing that an indictable offence² has been committed; and
- v. exercise a supervisory role over the activities of liquidators and receivers in the discharge of their functions under the Act.

In the context of the foregoing, it is important to note that the ODCE is independent in the discharge of the statutory functions conferred upon it by the Oireachtas.

Principal activities in the furtherance of statutory functions

Flowing from the aforementioned functions, the ODCE has, in broad terms, two remits – that is to say (i) advocacy; and (ii) enforcement.

Across those two broad categorisations, the ODCE engages in, amongst others, the following activities:

- i. encouraging compliance with company law through the provision of information and guidance to stakeholders;

¹ i.e., in the District Court.

² i.e., an offence of sufficient gravity that it is capable of being tried before a jury in the Circuit Court.

- ii. examining complaints and other expressions of concern – be that from members of the public, disclosures under the Protected Disclosures Act 2014, statutory reports (e.g., from auditors, liquidators, professional bodies), referrals from other law enforcement and regulatory bodies or internally generated issues;
- iii. conducting investigations into indications of breaches of company law;
- iv. resolving lower level non-compliance in a cost and resource-effective manner through a range of non-judicial interventions, such as, for example, overseeing remediation and issuing warnings and statutory directions;
- v. examining, and adjudicating upon, insolvent companies' liquidators' reports;
- vi. operating a statutory Restrictions and Disqualifications Undertakings regime in respect of directors of insolvent companies;
- vii. taking disqualification proceedings against directors of unliquidated insolvent companies;
- viii. prosecuting cases summarily in my own name and referring files to the DPP for consideration as to whether charges should be directed on indictment; and

- ix. engaging in the full range of litigation associated with the foregoing categories of activities as necessary or otherwise appropriate.

Outputs and outcomes

Over the last three years, the aforementioned activities have given rise to, amongst others, the following:

- i. the publication of a suite of information and guidance documents aimed at assisting those involved in companies, e.g., shareholders/members, directors and creditors, to understand their duties, obligations, and rights respectively;
- ii. in excess of 100 Production Orders and Requirements being issued to companies and individuals;
- iii. 18 search warrants being executed by ODCE officers;
- iv. voluntary cautioned interviews being conducted with 25 individuals;
- v. 18 individuals being arrested;
- vi. on the application of the ODCE, the appointment by the President of the High Court of Inspectors to Independent News & Media;
- vii. 290 directors of insolvent companies being restricted³;

³ 37 by way of liquidator applications to Court, and 253 by way of Undertakings issued by the ODCE.

- viii. 88 directors of insolvent companies being disqualified⁴;
- ix. almost 100 statutory directions being issued requiring liquidators to comply with their statutory obligations (relating to reporting and Court applications respectively);
- x. in over 40 cases in which suspected directors' loan infringements had been reported by auditors, or had otherwise come to attention, the ODCE's actions have resulted in rectifications (including the repayment/reduction of loans) totalling €37.6 million;
- xi. directions to charge summarily or otherwise in respect of 5 separate investigations (relating to breaches of company law, e.g., provision of false information, offences concerning breaches of restriction orders and acting under the directions of restricted persons);
- xii. directions being received from the DPP to charge (on indictment or otherwise) in respect of 7 separate investigations (involving 77 separate criminal charges being preferred as against 8 separate individuals (relating to breaches of company law, e.g., fraudulent trading and provision of false information and to breaches of criminal justice legislation, e.g., theft, deception and money laundering));
- xiii. facts proved in the District Court as against 2 individuals relating to breaches of company law, e.g., providing false information and contravening a restriction order;

⁴ 14 by way of liquidator applications to Court, and 74 by way of Undertakings issued by the ODCE.

xiv. convictions being secured in the Circuit Court as against 4 individuals (for breaches of company law, e.g., fraudulent trading and criminal justice legislation offences, e.g., theft and money laundering); and

xv. as of today:

- High Court Inspectors continuing to investigate the affairs of Independent News & Media;
- a number of criminal trials before the Courts; and
- a number of investigations ongoing in respect of possible civil breaches of company law and/or criminal offences.

The General Scheme

Part 2 of the General Scheme is of most relevance to the ODCE, in that it provides for the establishment of the Corporate Enforcement Authority (“**CEA**”) and for the transfer of the ODCE’s statutory functions and powers to the CEA. As stated in the Submission, the ODCE’s assessment is that the General Scheme as drafted meets its stated objective in that regard. The ODCE further welcomes the provisions of Heads 38⁵, 41⁶, 43⁷, 45⁸ and 46⁹.

⁵ Introduces a new ground for restriction.

⁶ Introduces a power to require production of evidence of a liquidator’s qualification to act.

⁷ Introduces a requirement to furnish the Registrar of Companies with a PPSN.

⁸ Introduces a statutory exemption from the hearsay rule in certain circumstances.

⁹ Reflects technological advances by amending search and seizure provisions to facilitate the collection of electronic evidence.

Legislative amendments that would enhance the effectiveness of the CEA

The General Scheme has been in gestation for some time and, as such, it is understandably a priority for Government that it be enacted as soon as practicable. The ODCE fully supports timely enactment but would recommend that, immediately following enactment, consideration be given to a number of important emerging issues in order that, where practicable, the CEA's effectiveness might further be enhanced.

Specifically, and as outlined in the Submission, early consideration should, it is recommended, be given – within company law and elsewhere as applicable - to legislating to address certain:

- i. evolving legal issues in respect of which greater legislative clarity is desirable for investigators;
- ii. technological advances in the law applying to search and seizure;
- iii. complexities associated with “*white collar*” investigations; and
- iv. existing legal processes, where scope for further streamlining exists.

The legislative amendments proposed by the ODCE would, in addition to further enhancing the CEA's effectiveness, also serve (to the extent practicable) to futureproof the CEA.

Concluding remarks

I trust that these opening remarks, when read in conjunction with the Submission, are of assistance to the Joint Committee. My colleagues and I look forward to discussing the General Scheme further with you over the course of the meeting.

Thank you.