

Comment on ODCE Strategy Statement 2009 - 2012

Submission by ACCA Ireland

September 2008

ACCA

ACCA is the largest and fastest-growing international accountancy body. 325,000 students and 122,000 members in over 170 countries are served by more than 80 staffed offices and other centres world wide. Over 8,000 members and 10,000 students live in Ireland.

ACCA's mission is to work in the public interest to provide quality professional opportunities to people of ability and application, to promote the highest ethical and governance standards and to be a leader in the development of the accountancy profession.

Further information on ACCA is available on ACCA's website, www.accaglobal.com

Executive Summary

ACCA welcomes the opportunity to comment on the ODCE Strategy Statement 2009 – 2012. We believe the overarching aim of the ODCE should be to encourage compliance with the Companies' Acts. ACCA recommends that the ODCE should consider the following in the development of its future strategy:

- Ensure that action taken is in proportion to the offence committed;
- Provide greater emphasis on the provision of information on company law to compensate for the increased use of audit exemption;
- Work with the judiciary and legislators to make non-compliance with company law a more serious matter than currently;
- Work with the judiciary and legislators to bring in a fixed fine regime for breaches of company law;
- Work with CRO to put in place a filed accounts inspection regime and have incomplete or incorrect financial statement rejected by CRO;
- Publish an ODCE code of practice so that directors, auditors and member of the public will have certainty over how they will be treated;
- Fund the liquidation of insolvent but un-liquidated companies where there is a suspicion of fraud or reckless trading.
- Improve the transparency in the reporting of cases.

ACCA Proposal

1. Ensure that action taken is in proportion to the offence committed.

Corporate and company law crime can range in spectrum from minor infringements by small businesses to major fraud and dishonesty by directors of large companies. Minor infringements by small companies are often inadvertent, with no effect on third parties; such infringements are often easy for the ODCE to prosecute. In such cases, small fines will be imposed by the courts, large fees will be paid by the small entity for legal and accounting advice, there will be considerable business disruption but little real benefit has resulted. Therefore, a warning might achieve a better public good than prosecution. In contrast, large cases are difficult to prosecute, are usually time consuming and are not always successfully prosecuted. A focus on prosecuting minor cases would leave the ODCE open to criticism of “low hanging fruit syndrome”, while failure to prosecute more serious corporate crime may undermine the ODCE’s mandate. Therefore, it is important that the action taken by the ODCE is in proportion to the offence committed.

2. Provision of Information

We commend the ODCE on the dissemination of information on company law and we believe that the radio advertisements and publications have in general worked well. However, we see a need to further increase the resources in this area. As fewer companies will be appointing auditors due to the increased use of audit exemption, there will no longer be a regulatory presence in many companies and the ODCE will need to fill this void through increased marketing & communications.

Booklets issued by the ODCE in the past tended to be comprehensive but were often overly technical and long. We would like to see these documents continue to be produced but they could be supplemented by shorter, simpler documents outlining the principal issues, referring the reader to the full document for more detail where necessary.

ACCA would also welcome another radio advertisement campaign as we believe this to be an effective means of reaching the ODCE’s target audience. In addition, ACCA would also be happy to continue to work with the ODCE to bring company law matters to the attention of our members through articles in our publications and guest lectures by ODCE staff.

3. Working with the judiciary and legislators to make non-compliance with company law a more serious matter than currently.

With some notable exceptions, most company law prosecutions result in very minor fines being imposed. The cost of taking the prosecutions is usually a multiple of the fine and the cost of compliance with company law in many cases would far exceed the fine imposed for non-compliance. Multiple and blatant non-compliance with company law seems to be only attracting minimal sanction. We believe that the ODCE should have a role in working with the judiciary and legislators on this issue, to ensure the punishment better fits the crime.

4. Work with the judiciary and legislators to bring in a fixed fine regime for breaches of company law

ACCA believes that a system of voluntary restrictions and fixed administrative fines for minor company law breaches would streamline the operations of the ODCE and allow more effective allocation of scarce resources. In the case of genuine business failure, there should be a simple and inexpensive method of winding up a company. Currently it will cost in excess of €20,000 to liquidate an insolvent company, much of this cost could be removed if a director were able to accept a voluntary restriction.

5. Work with CRO to put in place a filed accounts inspection regime and have incomplete or incorrect financial statements rejected by CRO.

If the quality of information on the public record is to be improved, an inspection process for financial statements being filed in CRO needs to be established. The quality of abridged accounts in particular is very poor and with many more companies dispensing with an auditor and accountant, the quality is likely to fall further. Given that many of the disclosure requirements derive from company law and non-disclosure is a breach of company law, it would seem appropriate for the ODCE to take on this task of inspection. We believe it would be sufficient to simply return or reject non-compliant financial statements and to refuse to file the accounts until they are compliant with company law. The act of returning the financial statements would serve as a warning to most directors that compliance with company law is important.

6. Publish an ODCE code of practice so that directors, auditors and members of the public will have certainty over how they will be treated

ACCA has been calling for some time for the ODCE to publish a code of practice. ACCA members are unlikely to come into contact with ODCE often and even members in practice will have very infrequent and possibly no contact with ODCE. It can therefore be quite intimidating for members to have to make a report to ODCE about the actions of a client. Some have reported that they felt like the “criminal” even though they were the ones making the report. Some members have reported inconsistent treatment by ODCE for similar offences. Once a code of practice is in place, members would have certainty about how they will be treated and what their clients can expect. In this respect, the Revenue “Code of Practice for Revenue Auditors” is a useful template.

7. Fund the liquidation of insolvent but un-liquidated companies where there is a suspicion of fraud or reckless trading

4,000 companies were struck off the company register in 2007. 30 to 40 of these have a liquidator appointed by Revenue and the rest escape any investigation or inspection. It is inconceivable that many more do not have both liabilities and incidences of Companies’ Acts offences that the directors will not have to answer for. If even a random sample of these were investigated through the appointment of a liquidator, it would act as a deterrent to others. As the body responsible for compliance with Company Law, we believe that the ODCE should set aside a budget to undertake this work, publicise that this budget is there and use this to appoint liquidators to properly liquidate and investigate a sample of the companies concerned.

8. Improve the transparency in the reporting of cases

To improve the transparency in the reporting of cases, the ODCE website should include full details of all cases taken, whether successful or not. Details of the quantum of funds involved or the gravity of the offence committed should also be listed.