

Proportionate, robust, and dissuasive enforcement: the first 18 months of the Irish Corporate Enforcement Authority (CEA)

Insights - 24/06/2024

On Wednesday 19 June 2024, the Irish Corporate Enforcement Authority ("CEA") published its first-ever annual report. The Annual Report covers the 18-month period from July 2022 (when it replaced and assumed the responsibilities of the Office of the Director of Corporate Enforcement) to 31 December 2023.

Supervision of corporate insolvency

The CEA has a statutory role in supervising the liquidation of insolvent companies and taking enforcement actions in respect of struck off insolvent companies.

The liquidator of every insolvent Irish company that is being wound up is required to report to the CEA. Based on its examination of each liquidator's report, and any other information that may be available, the CEA forms a view in respect of each director as to whether the director's behaviour warrants restriction or even disqualification.

In the period covered by the Annual Report, 79 restriction undertakings were offered to directors of insolvent companies (of which 86% were accepted).

A further 15 disqualification undertakings were offered (of which 80% were accepted).

In total, 80 directors were restricted, primarily by undertaking, while 17 directors were disqualified, mostly by undertaking (71%). This indicates a significant reduction in the number of restricted directors over the last five years, whereas the number of disqualified directors remained broadly static.

Sources of information

The CEA's work is primarily in response to indications of wrongdoing by way of: complaints from the public, protected disclosures, statutory reports, referrals from liquidators and referrals from other statutory agencies.

In the period covered by the report, the CEA received:

- 454 complaints (398 of which were from the public and 56 of which were from other public bodies such as the Central Bank of Ireland and the Revenue Commissioners) and
- 22 protected disclosures

Of the 454 complaints, approximately 10% related to liquidation issues and approximately 11% related to reckless trading and/or insolvent trading.

Of the 22 protected disclosures, 18% related to allegations of fraud and 27% related to alleged breaches of directors' duties.

A further 239 Indictable Offence Reports have been received from companies' auditors, the vast majority of which related to accounting standards.

The Annual Report also noted that at the end of December 2023 Small Company Administrative Rescue Process ("SCARP") processes resulted in the formulation of 33 rescue plans, while a further remained ongoing, while there were 11 instances where no rescue plan was agreed. You can read our full briefing on SCARP process [on our website](#).

Proportionate, robust, and dissuasive enforcement

1. Securing compliance through administrative measures

While enforcement is primarily a reactive process, the CEA has recognised that it neither proportionate nor resource-effective to resort to its enforcement powers in response to every complaint or indication of potential wrongdoing. Instead, the CEA, where it is appropriate to do so, has sought in the first instance to address matters coming to its attention in a more resource-effective and proportionate manner.

The Annual Report provides several case summaries, relating to a range of relatively minor contraventions of the Companies Act 2014 including the use of an incorrect registered address, or the failure to hold an AGM, failure to file annual returns and incorrectly claimed audit and group exemptions.

In each of these case studies, the CEA engaged with the companies in question which resulted in

the company taking the necessary steps to bring itself back into compliance. In certain cases, the CEA issued warnings to clarify that a repeat of the same contravention may be dealt with more severely.

2. Civil enforcement measures

Notwithstanding the emphasis on a proportionate approach, there are circumstances in which the CEA finds it necessary to exercise its civil powers of enforcement. The Annual Report highlights a number of interesting case studies, including:

- A company which refused to provide access to its register of members to a member of the public pursuant to the Companies Act. Upon what the CEA terms "unsatisfactory engagement", CEA officers attended the company's registered office to inspect certain documents and ensured the complainant's right to access the information was vindicated.
- A liquidator who failed to comply with its obligation to provide the CEA with a first report within 6 months of their appointment, despite reminders and formal notices. The CEA applied to the High Court for directions and obtained an order for its costs. The CEA notes in its report that it takes "a robust approach towards the recoupment of costs orders".

3. Criminal enforcement measures

The CEA notes that there are instances in which neither an administrative nor a civil enforcement approach will be a proportionate response, particularly where activity could constitute criminal offences under company law.

During the period under review, the CEA took the following steps in furtherance of criminal investigations:

- 107 court orders obtained and executed (including orders compelling the production of documents)
- 5 warrants authorising searches obtained and executed
- 213 witness statements taken
- 9 voluntary cautioned interviews conducted; and
- 12 arrests made

It is also noted that members of the CEA's Digital Investigations & Analytics Directorate received over 4.1 million files for review as part of their investigations.

The Report highlights a number of prosecutions resulting from CEA investigations, including that of:

- Robert Browne, who pleaded guilty to 1 count of Providing False Information contrary to section 876 of the Companies Act 2014. In December 2022, Mr. Browne was sentenced to 2 years' imprisonment, fully suspended on condition that he pay recompense within 6 months to affected clients, a condition that was subsequently complied with. He was also disqualified from acting as a company director for a period of 5 years
- Patricia Kelly, who acted as both a Director of the charity *Console*, pleaded guilty to an offence contrary to section 202 of the Companies Act 1990, of failing to keep proper books of account. The offence spanned a period of over eight years between 6 December 2006 and 31 May 2015. In February 2024, a fine in the sum of €1,500 was imposed on Ms. Kelly and she was disqualified from acting as a company director for a period of 5 years.

| Individual accountability

The growing theme of individual accountability in corporate enforcement shines through in the CEA's Annual Report. For information on the individual accountability framework in the Irish financial services sector, please see our briefing on the incoming IAF and SEAR [here](#).

The CEA notes that its investigative and enforcement work ensures individual accountability through:

- securing voluntary compliance, accompanied by appropriate evidence of rectification having been effected
- requiring compliance, through the use of statutory powers of direction
- requiring compliance, through seeking court Orders to that effect
- initiating summary prosecutions before the District Court, i.e., in the case of less serious suspected wrongdoing and
- in the case of more serious suspected wrongdoing, referring matters to the DPP for consideration as to whether charges should be directed on indictment

The report highlights that there has been a significant reduction in the numbers of directors of insolvent companies who have been restricted over the last five years. The CEA notes that insolvent liquidations are beginning to trend upwards once again and this will undoubtedly lead to a consequential increase in restrictions and other actions against directors.

| Conclusion

The overhaul of Ireland's corporate enforcement regime continues apace and the CEA appears to have had a busy first 18 months.

The increased emphasis on engagement with companies to encourage compliance is welcome. However, it can be expected that the CEA's enforcement powers will be in greater use in the near future: as the CEA itself notes, the number of disqualification and restrictions resulting from insolvent strikes-offs is artificially low, resulting from the Covid-related pausing of the CRO's strike-off programme. As insolvent liquidations increase again there will be a consequential increase in restrictions and other actions against directors.

You can read a full summary of the corporate and financial crime landscape in Ireland on our [website](#). For more information please contact our experts in Ireland via their contact details below.

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Meet the Author



[James McDermott](#)

Senior Associate

[British Virgin Islands](#)

[Ireland](#)

E: james.mcdermott@ogier.com

T: [+353 1 584 6324](tel:+35315846324)

Key Contacts



Ronan McGoldrick

Partner

Ireland

E: ronan.mcgoldrick@ogier.com

T: [+353 1 632 3116](tel:+35316323116)

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