

Collection Manual

Guidelines for the Exchange of Information between the Office of the Director of Corporate Enforcement (ODCE) and the Revenue Commissioners in accordance with the Companies Act, 2014

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1. Introduction

- 1.1 This instruction concerns the Office of the Director of Corporate Enforcement (ODCE) and the operational arrangements for the exchange of information between that office and the Revenue Commissioners, in accordance with the Companies Act, 2014.
- 1.2 The exchange of information is done through designated Liaison Officers in each Division and information is disclosed by either party in line with the terms of the 2016 Memorandum of Understanding (MOU), agreed between the parties [Appendix 1](#)
- 1.3 This instruction is issued in line with paragraph 10 Part B of that MOU which requires both parties to ensure that relevant staff are made aware of the offences that may arise under the other authority's code of legislation.

2. Office of the Director of Corporate Enforcement

The ODCE was established under the Company Law Enforcement Act, 2001, which has now been consolidated into the Companies Act 2014. Under that Act, the ODCE is responsible for:

- Encouraging compliance with company law; and
- Investigating and enforcing suspected breaches of that legislation. The investigation and enforcement role of the ODCE relates mainly to the following areas:
 - The initiation of fact-finding company investigations
 - The prosecution of persons for suspected breaches of the Companies Acts
 - The supervision of companies in liquidation and unliquidated insolvent companies
 - The restriction and disqualification of directors and other company officers
 - The supervision of liquidators and receivers; and
 - Ensuring ineligible persons, such as undischarged bankrupts, do not act as company officers.

3. Registrar of Companies

Under the Companies Act, 2014, the Registrar of Companies remains responsible for:

- Collecting and making publicly available up-to-date information on companies registered in Ireland; and
- Encouraging adherence to the filing and registration requirements of the Companies Acts and where necessary, bringing non-compliant companies and officers to Court.

4. Exchange of Information between the ODCE and Revenue

- 4.1 Section 956 of the Company Law Enforcement Act, 2001, allows the ODCE to provide the Revenue Commissioners with information if, in the opinion of the Director of Corporate Enforcement, that information may be required for the performance of the functions of Revenue. This would include information for the investigation or prosecution of Revenue offences or for the assessing or collection of tax or duty in a case.
- 4.2 Section 957 of that Act allows an officer of the Revenue Commissioners to provide information to the ODCE relating to an offence, which, in the opinion of the officer, may have been committed under the Companies Acts. Information can also be provided where there is evidence of non-compliance and their officers are subject, under that Act.

5. Memorandum of Understanding

Under the terms of the Memorandum of Understanding between the Director of Corporate Enforcement and the Revenue Commissioners, both sides are committed to the exchange with each other of relevant information in accordance with Section 956 and Section 957 of the Company Law Enforcement Act, 2001. In line with Part B of the Memorandum of Understanding, information requests from either party will be made in writing and processed through designated Liaison Officers.

6. Exchange of Information with the ODCE (by Revenue)

Context:

6.1 Two examples of exchange of information by Revenue to the ODCE

The first may be termed spontaneous exchange by Revenue to the ODCE, where a Revenue officer forms the opinion that certain information in his/her possession may relate to the commission of a serious offence under the Companies Acts. Though no request for such information has been made by the ODCE, the information may be exchanged via the designated Divisional Liaison Officer. In such circumstances, the following is the type of information that should be provided to the Divisional Liaison Officer:

- (a) Name and address of the company
- (b) Trading address
- (c) Names and addresses of the directors
- (d) Description of the matters giving rise to the report (including details of the suspected indictable offence)
- (e) Evidence to support the view that an offence may have been committed (Copy of relevant documentation should be attached, where appropriate)
- (f) Any other relevant information.

The second type of situation is where the ODCE is investigating a suspected offence under the Companies Act, non-compliance with the Companies Act or with the duties and obligations to which companies and their officers are subject under the Act and requests Revenue to provide certain information in relation to the matter, which Revenue may have in its possession. The ODCE will give a summary of the facts, indicate the suspected offence(s) or non-compliance issues arising under the Companies Act, which it is investigating, will attach a copy of the relevant provision(s), and detail the information required. Where such information is sought from Revenue, the ODCE will, in the first instance, write to the Central Liaison Officer who will, in turn, pass the request to the relevant Divisional Liaison Officer. The Liaison Officer may request an officer in the Division dealing with the company or its directors to gather the information sought. The application of Section 957 of the Companies Act, 2014 is not confined to information that came into Revenue's possession after the section became law. Additionally, disclosures under Section 957 may apply to offences that occurred before the Act was passed.

6.2 Role of Divisional Liaison Officers

It is the responsibility of the Divisional Liaison Officer to evaluate all material and to form an opinion as to its suitability for exchange with the ODCE. As such, all information to be provided to the ODCE should be presented in a format which will allow the designated Divisional Liaison Officer to evaluate its content and to form an opinion as to whether the information may relate to the commission of an offence or non-compliance with the duties and obligations of company officers under the Companies Acts. This requires the originating officer to forward all material information to the appropriate Divisional Liaison Officer to allow him or her to reach an informed opinion. While wishing to support the ODCE through the exchange of information, it should be noted that Section 957 allows for discretion on the part of the Revenue officer forming the opinion (i.e. the Divisional Liaison Officer) on whether or not to forward the information. The ultimate arbiter in cases of doubt will be the Collector-General.

Where the Divisional Liaison Officer is satisfied that information should be exchanged with the ODCE, he or she should route this information through the Central Liaison Officer who will maintain a record of information provided by Revenue to the ODCE.

6.3 Role of the Central Liaison Officer

The Central Liaison Officer is the first point of contact between Revenue and the ODCE. All requests received from the ODCE and information provided by Revenue to the ODCE will be channeled via Revenue's Central Liaison Officer. This is solely for the purpose of recording and monitoring the extent and timeliness of engagement with ODCE. The Central Liaison Officer has no decision-making role in relation to information exchange – this is the responsibility of the relevant Divisional Liaison Officer.

6.4 Timeframe and Format

Revenue will normally seek to comply with the request for information within one month, but if that is not possible it should be forwarded by an agreed alternative date.

Urgent written requests will be marked accordingly. Either authority may request a meeting with the other to discuss one or more information requests.

If an officer has any doubt in relation to a particular matter that might be considered appropriate for disclosure to the ODCE he or she should, in the first instance, contact his or her designated Divisional Liaison Officer.

6.5 ODCE requests related to the subject of a qualifying disclosure

Where a request is made to Revenue by the ODCE in relation to information that has been provided through a qualifying disclosure by a taxpayer for tax purposes, while complying with the request for information, Revenue will make the ODCE aware that the matter has been the subject of a qualifying disclosure. It has been agreed that the ODCE will have regard to that fact in considering the appropriate action to be taken in the case. (In accordance with the provisions of the Code of Practice for Revenue Auditors, Revenue's policy is not to initiate an investigation with a view to prosecution of a taxpayer for tax offences, where a qualifying disclosure is made. Where information regarding potentially a serious offence under the Companies Acts comes to Revenue's attention, including through a qualifying disclosure, Revenue will refer this information to the ODCE.)

7. Offences under the Companies Acts

There are many provisions relating to indictable offences in the Companies Act 2014. These provisions are wide-ranging and relate to share dealings, filing of reports and maintenance of registers, obligations of auditors and directors, failure to keep proper books of account, fraudulent trading, falsification of company documents, etc. The ODCE is particularly keen to receive reports of certain suspected offences under the Companies Act in order to mitigate risks in company trading and improve future conduct in the market.

7.1 Failing to Keep Proper Company Records:

Under Sections 281 and 282 of the Companies Act, 2014, a company is required to keep proper books of account that:

- (a) correctly record and explain its transactions
- (b) enable its financial position at any time to be determined with reasonable accuracy
- (c) enable its directors to ensure that any annual accounts comply with the Companies Acts, and
- (d) enable the accounts to be readily prepared and audited.

In general, it is a criminal offence for a company and its directors to breach these requirements.

7.2 Falsification etc. of Company Documents:

Under Section 877 of the Companies Act 2014, it is an offence to destroy, mutilate or falsify company documents. It is also an offence under Section 876 to provide false information in purported compliance with a company law obligation (e.g., by knowingly or recklessly filing falsified accounts in the Companies Registration Office).

7.3 Unsuitable Persons acting as Directors, etc

The ODCE is interested to receive information in relation to:

- persons acting as directors while disqualified (either here or elsewhere), or
- persons acting as directors while restricted and in breach of the minimum company capitalisation requirements (e.g., €63,000 in cash for a private company limited by shares prior to 1 June 2015 and €100,000 post 1 June 2015), or
- persons acting as directors while undischarged bankrupts, or
- persons acting as auditors while not qualified, or
- persons acting as auditors or liquidators while disqualified (e.g., auditing a company with which they have or have had a close business or family connection).

7.4 Companies continuing to trade following strike off:

It is an offence under Sections 27 and 875 of the Companies Act 2014 to trade or carry on a business under any name or title of which "limited" or "teoranta" is the last word when in reality the entity no longer exists following strike off. The ODCE is particularly interested in such cases where the company has been struck off for longer than a year and there may be evidence of other company law offences.

7.5 Phoenix-type cases:

The ODCE is interested in receiving good quality information where the company law regime is being abused by directors [e.g., the use of new companies to take over the continuing business of companies, which they have allowed become insolvent by running up large unpaid debts (mainly tax debts)]. Where the company with the debt is subsequently involuntarily struck off the Companies Register for failure to file Annual Returns and for longer than 12 months, the ODCE can endeavour to have its directors disqualified under Section 842(h) of the Companies Act 2014. The ODCE is particularly interested in receiving notice of individual cases with debts exceeding €70,000 or cases involving serial 'strike-offs' with outstanding debts. The website of the ODCE is at www.odce.ie and further information on the work of the office and on company law offences can be found there, if required. A list of indictable offences under the Companies Acts 1963 to 2001 is included in the ODCE Publication entitled Decision Notice D/2006/2 - Revised Guidance on the Duty of Auditors to Report Suspected Indictable Offences to the Director of Corporate Enforcement. An updated list of indictable offences under the Companies Act 2014 has yet to be published by ODCE.

7.6 Exchange of Information with Revenue by the ODCE

Where the ODCE provides information to Revenue in accordance with Section 957 of the Companies Act 2014, which may relate to Revenue offences, it will be provided in the first place to Revenue's Central Liaison Officer who will forward the information, as appropriate, to the relevant Divisional Liaison Officer.

Additionally, Sections 791 to 792 of the Companies Act 2014 allows the ODCE to provide Revenue with information for the purpose of assessing the liability of a person to tax or duties or for the purpose of collecting such a tax or duty. Such information

will be similarly furnished in the first instance to the Central Liaison Officer who will forward it, as appropriate, to the relevant Divisional Liaison Officer.

If a Revenue Officer wishes to request information from the ODCE in relation to a specific case or investigation, he or she should contact their Divisional Liaison Officer in the first instance. The Divisional Liaison Officer will then consult with the Central Liaison Officer with a view to requesting the information required from the ODCE.

8. Conclusion

The Revenue Commissioners and the Director of Corporate Enforcement are committed to ensuring that the procedures for the exchange of information are working to the satisfaction of both parties. Issues arising are regularly discussed by Liaison Officers in Revenue with their counterparts in the ODCE. Overall responsibility for the exchange of information rests with the Collector-General.

Appendix 1 - Memorandum of Understanding between Revenue and Office of the Director of Corporate Enforcement (ODCE)

Part A: Exchange of Information

1. The ODCE and the Revenue Commissioners agree to the exchange of information as permitted by law and in accordance with the terms of this Memorandum of Understanding.
2. Any information disclosed by the ODCE must be in accordance with Section 956 of the Companies Act, 2014.
3. Any information disclosed by the Revenue Commissioners must be in accordance with Section 957 of the Companies Act, 2014.

Part B: Request for information

1. Any request for information shall be made in writing in the agreed manner and through the designated liaison officers of the ODCE and the Revenue Commissioners.
2. Each individual request must contain a short summary of the facts, the suspected offence(s) and the information required.
3. In general, the requested authority will comply with the request for information within one month. If compliance within this time frame is not possible, the requested authority will notify the requesting authority of this fact as soon as possible and will undertake to provide the requested information by an agreed alternative date.
4. The requested authority must endeavor to provide the information requested in a format and in a medium appropriate to the requirements of the requesting authority.
5. The requesting authority will not disclose to a third party any information which it has received from the requested authority, without the latter's prior approval.
6. Any request for information required urgently must be marked accordingly.
7. Each authority must bear its own costs, fees and expenses in relation to complying with a request from the other authority.
8. The authorities agree to review the operation of this agreement on a quarterly basis for the first year of its existence and every six months thereafter.
9. An authority may request a meeting with the other authority to discuss one or more information requests or any issue. Such a meeting should be arranged within two weeks of the request.
10. Each authority agrees to take steps to ensure that their relevant staff are aware of the principal offences that can arise under the other authority's code of legislation. Inter authority training and presentations will be undertaken for that purpose, with further training arranged in the event that new legislation is enacted or as occasion demands.

Part C: Voluntary Disclosure of Information

1. Where information suggesting serious offences comes to the attention of either authority, such information may be exchanged via the appropriate liaison officer, notwithstanding that a written request for such information has not been made.
2. In accordance with the provisions of the Code of Practice for Revenue Auditors, Revenue policy is not to initiate an investigation with a view to prosecution of a taxpayer where a qualifying disclosure is made. Where a request is made to Revenue by the ODCE in relation to a matter which has been the subject of a qualifying disclosure, Revenue will indicate to the ODCE that a qualifying disclosure has been made and will otherwise comply with the request for information in accordance with Section 957 of the Companies Act, 2014 and this Memorandum. The ODCE shall have regard to this fact in considering the appropriate action to be taken in any such case.

Signed:

Date:

Ian Drennan
Director of Corporate Enforcement
16 Parnell Square
Dublin 1

Signed:

Date:

Michael Gladney
Collector - General
Revenue Commissioners
Sarsfield House
Francis Street
Limerick

Appendix 2 - Section 956 (Confidentiality of information) & Section 957 (Disclosure of information to Director)

Section 956 Companies Act 2014 (Disclosure of information)

- (1) No person shall disclose, except in accordance with law, information that—
 - (a) is obtained in performing the functions of the Director, and
 - (b) has not otherwise come to the notice of members of the public.
- (2) Without limiting subsection (1), the persons to whom that subsection applies include the following:
 - (a) the Director or a former Director
 - (b) an officer of the Director
- (3) Nothing in subsection (1) shall prevent the disclosure of information by or under the authority of the Director if, and to the extent that, the Director considers the information is required—
 - (a) for a purpose or reason specified in section 791 (a) to (m),
 - (b) for the performance by a competent authority (as defined in section 792) of a function or functions by that authority, or
 - (c) for the performance by the Director of a function or functions of the Director.
- (4) Nothing in subsection (1) shall prevent the disclosure of information to any member of the Garda Síochána if that information, in the opinion of the Director or an officer of the Director, may relate to the commission of an offence other than an offence under this Act.
- (5) A person who contravenes this section shall be guilty of a category 2 offence.

Section 957 Companies Act 2014 (Disclosure of information to Director or officer of Director)

- (1) Notwithstanding any other law—
 - (a) the Competition Authority
 - (b) a member of the Garda Síochána
 - (c) an officer of the Revenue Commissioners
 - (d) the Insolvency Service of Ireland
 - (e) the Irish Takeover Panel; or

(f) such other authority or other person as may be prescribed

may disclose to the Director or an officer of the Director information that, in the opinion of the authority or other person disclosing it—

(i) relates to the commission of an offence under this Act or non-compliance otherwise with this Act or with the duties and obligations to which companies and their officers are subject; or

(ii) is information that could materially assist the Director or an officer of the Director in investigating—

(I) whether an offence under this Act has been committed or whether there has been non-compliance otherwise with this Act or with the duties and obligations to which companies and their officers are subject; or

(II) without prejudice to the generality of clause (I), in a case where the making of an application for a disqualification order in relation to a particular person in accordance with section 842 (h) is contemplated, whether and to what extent the matters mentioned in section 843 (3) apply in the circumstances concerned.

- (2) Without prejudice to the generality of subsection (1), an officer of the Revenue Commissioners shall, notwithstanding any other law, be permitted to give or produce evidence relating to taxpayer information (within the meaning of section 851A (inserted by the Finance Act 2011) of the Taxes Consolidation Act 1997) in connection with any proceedings initiated under this Act.
- (3) For the avoidance of doubt, the fact that particular circumstances specified in subsection (1)(i) or (ii) have been invoked by an authority or other person as the basis for disclosure by it or him or her of information under that subsection shall not prevent the Director or an officer of the Director from using the information in relation to other circumstances specified in subsection (1)(i) or (ii).