

Headhunted - but by the FBI



The long arm of US law is extending its reach to Ireland - maybe into your boardroom. Many executives are getting worried, says Dearbhail McDonald.

earing all the marks of a Hollywood blockbuster, the Enron trial currently unfolding in Houston, Texas, promises to be one of the most thrilling corporate trials in living memory. The five-year saga of the disgraced energy trader whose sudden descent into bankruptcy shattered investor confidence, devastated corporate morale and left markets reeling, resembles a gripping plot from a John Grisham novel.

Enron's collapse was cataclysmic for corporate America, but its effects are being felt here in Ireland, where a number of high-flying Irish executives who blazed trails in American multinationals in Ireland and overseas, are now facing the prospect of languishing for decades in US federal prisons. To make things worse, the Securities and Exchange Commission (SEC) is moving investigation into Ireland proper.

Fist up is Jerry Shanahan, a Cork-born logistics guru who goes on trial in Concord, New Hampshire, this summer. Shanahan is accused of fixing share prices as part of an alleged conspiracy to defraud company investors of almost \$1.3bn (£1.07bn). The trial of Shanahan (41), former chief operations officer for leading American software company Entrasis Networks, was due to commence earlier this month, but was postponed following allegations of professional misconduct against William Moore, the federal attorney seeking to imprison him for at least 20 years.

Shanahan, headhunted to America from his position as managing director of Cableron in Limerick, is the first Irish executive to be tried by an American court since the collapse of Enron. The Cork-born industry star, whose rise and appointment to Entrasis was hailed in an *Entreprise* Ireland press release, denies six charges of conspiracy, mail and wire fraud. Shanahan, a father of two, stands accused of scheming with four other senior executives to inflate the company's revenue and shore up its stock price. Living in Cork, he has waived

his extradition rights in an attempt to clear his name, despite repeated concerns raised with the Government about aspects of his trial and indictment.

Shanahan has been indicted, along with former executives - some of whom have pleaded guilty and are now US government witnesses - of improperly booking nearly \$7m in revenue by repeatedly investing in third-party companies in exchange for their agreeing to buy Entrasis' products. Entrasis supplied computer-networking equipment at the height of the technology bubble, and when some of its customers fell

Up to 20 Irish executives have sought legal advice, following requests by the SEC which is investigating revenue

elites of the corporate world, including Enron, Arthur Andersen, Jyco and WorldCom. The relentless flow of lawsuits over stock market losses and corporate fraud may finally be easing: the number of new securities fraud lawsuits filed last year (2005) hit its lowest mark in years. However, although the courtroom fallout from the market collapse may finally be ending in America, it is only beginning to take effect in Britain and Ireland.

Last month, three former Nat West investment bankers lost an appeal against extradition to Texas, where prosecutors want them to face Enron-related fraud charges. Then Ian Norris, former chief executive of engineering group Morgan Crucible, lost the first round in his High Court battle to avoid extradition to Pennsylvania on charges of price-fixing.

Other Irish high-fliers could also follow Shanahan into American courts. Senior lawyers with a number of leading corporate law firms in Ireland have conservatively estimated that as many as 20 Irish executives have sought legal advice in the last year

months into his new role - and shortly after Cableron was "spun off" - the SEC began to investigate the company's affairs. Their investigation morphed into a criminal investigation, led by the FBI and President George Bush's corporate fraud task force, resulting in the indictment of numerous Entrasis executives and officers including Enrique "Henry" Fiallo, the former chief executive of Entrasis. Last year, Fiallo pleaded guilty to criminal conspiracy charges relating to alleged accounting fraud. Fiallo is the fourth former Entrasis executive, and the highest-ranking one, to plead guilty. Shanahan maintains his innocence.

American corporate governance frauds in recent years have torn apart the boardrooms of some of the iconic

following requests from the SEC, which is travelling to Ireland to investigate a wide range of revenue recognition issues. The SEC has confirmed to Business & Finance it has come to Ireland to interview Irish executives working with American and other multinational companies.

"We are visiting foreign jurisdictions, including Ireland," said John Esther of the SEC. "It happens all the time during investigations, but a lot depends on the cooperation of the regulatory authorities in the foreign jurisdiction." Often arriving unannounced, SEC officials are seeking interviews and depositions from Irish directors, company officers and executives. Irish corporate lawyers have reported an increasing sense of vulnerability among Irish directors based in Irish subsidiaries of American firms and directors in America. "The good times are catching up," said Greg Glynn, a litigation partner at Arthur Cox solicitors, who advises directors and officers of corporations. Glynn, who previously worked with a leading Boston law firm, says the shadow of Enron and America's perennial accounting scandals has

commented its slow march into Irish boardrooms. Shanahan is not alone. John Houldsworth, an English national living and working in Dublin, is another high-profile "Irish" victim of America's crackdown on accounting fraud. Houldsworth, who lives in Killiney, was chief executive of Cologne Re Dublin, a subsidiary of General Re, a large American insurer. Having pleaded guilty to violation of US securities law last June, Houldsworth will be sentenced later this month.

The global pursuit represents an expansion of America's corporate cleansing crusade, prompted by the Enron and WorldCom scandals. The FBI is investigating more than 400 cases of corporate fraud, but the relentless hunt is not confined to American soil. Many firms used overseas subsidiaries to hide transactions or book "phantom sales". The light is now shining on countries such as Ireland, Britain and Italy (home to the Parmalat fraud, which saw the unravelling of Italy's eighth-largest industrial empire). Other white-collar cases are looming, and

Jerry Shanahan: he waived his extradition rights business leaders are growing increasingly worried. Privately, they fear the new regime could deter Irish executives from doing business in America.

"A lot of people don't realise what is happening in Europe and increasingly in Ireland in relation to criminal investigations conducted by the US Department of Justice," said Glynn. "Money crime is seamless and affects many jurisdictions. The SEC can get you here: they can reach you if you work for the patent company in America and especially if the patent company blames the subsidiary and the subsidiary is based in Ireland."

Glynn adds that it "doesn't matter if you are based in Ireland, Germany or Italy, the long arm of the US department of justice can reach you". Another partner with a leading Dublin law firm said several Irish executives had recently hired lawyers following requests by the SEC for interviews.

Shanahan faces a number of challenges as he prepares for his trial. Legal proceedings are hushier in America than in Ireland. With plea-bargaining, defendants are under huge pressure to plead guilty, but Shanahan rejected any offers to submit a guilty or partially guilty plea. Sentences tend to be more severe and defendants, even if acquitted, pay their own costs.

The exertion of American law is also giving foreign directors and executives yet another headache: extradition. The Nat West case sparked widespread debate over the fairness of Britain's new extradition regime, which allows the US - and about 40 other countries - to seek the right to try people from Britain without presenting prima facie evidence.

The Government has been alerted to a number of concerns regarding Shanahan's trial. David Barry, consul-general at the Irish embassy in Boston, will attend Shanahan's trial as a Government observer. Shanahan has also held talks with Enterprise Minister Michael Martin and Senator Michael McCarthy, Labour representative for Cork South-West.

The American drive to clean up its corporate malfeasance may be in decline, but could claim several Irish executives who dared to chase the American dream. ■

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