

Goal 2: Confronting Unlawful Company Law Behaviour

Introduction

The financial health of economic and social enterprises in the State is reflected to some extent in the quantity of insolvent liquidations. Accordingly, the number of liquidator reports received annually by the ODCE in respect of insolvent companies which have been placed in liquidation in the preceding six months offer an overall indication of enterprise performance.

Similarly, the numbers of public complaints and auditor reports sent annually to the Office relating to alleged breaches of company law provide some insight into the ongoing standard of corporate governance in the State.

Statistical Overview of Reports and Complaints Received

In 2009, some 1,519 new report and complaint cases were opened, a 47% increase on the 1,036 cases of 2008. Most of this increase was attributable to a doubling in the number of initial liquidator reports on recently liquidated companies, an increase which reflected the decline in the national economy. Auditor reports also grew by 13.5% from 207 in 2008 to 235 in 2009. **Appendix 2.1** provides further details on these input figures.

Appendix 2.2 provides details of case throughput. The Office handled some 2,284 cases in 2009, a 17% increase on 2008. The number of concluded cases grew by 22% from 1,184 in 2008 to 1,446 in 2009, and cases on hands at end-2009 increased to 838 from 765 at end-2008. The substantial factor underlying these increases was the contribution attributable to the growth in the number of liquidator reports.

Appendix 2.3 provides information on the manner of disposal of the 1,446 concluded cases:

- almost half (715) was accounted for by the making of definitive relief decisions on liquidator reports;
- almost a quarter (351) resulted in the rectification of company law defaults and/or the issue of warnings as to future conduct in instances of detected default;
- there was insufficient evidence of default in 15% of cases (222) to warrant the taking of any definitive action;

- 10% of cases (147) were closed on the basis that it was either not a company law matter or that it was a company law matter that was appropriate for legal action by other company law stakeholders (e.g., company shareholders or creditors or the Registrar of Companies);
- less than 1% of cases (11) in 2009 were closed following the completion by the ODCE of criminal or civil proceedings.

Sectoral Distribution of New Reports and Complaints in 2009

As evidenced by **Appendix 2.4**, the construction, real estate and renting, wholesale and retail and manufacturing sectors constituted almost two-thirds of the 1,500 new reports and complaints made to the ODCE in 2009.

A breakdown by economic sector of insolvent companies in liquidation by reference to the 876 initial reports received from liquidators in 2009 is provided in **Appendix 2.5**. Unsurprisingly, construction accounted for close to a third of all reported insolvent liquidations. However, businesses in three other sectors (wholesale and retail, hotel, bar and catering and manufacturing) constituted a further 45% of all insolvent liquidations in 2009. Clearly, these sectors are being hit hardest by the present difficult economic environment.

By contrast, comparatively few real estate and renting companies are going into liquidation, but yet as a sector, they dominate the other issues being reported to the Office (including from auditors and the general public) as indicated in **Appendix 2.6**.

Solvent and Insolvent Liquidations

The severe economic downturn has presented major challenges to enterprises in the last two years. While many companies have been able to cope with these challenges, a significant increase in company failures has occurred. The most dramatic effect has been a 361% increase in the number of insolvent liquidations from 344 in 2007 to 1,243 in 2009. The following table shows the number of solvent (members' liquidations) and insolvent liquidations (creditors' and Court liquidations) notified to the CRO in recent years.

Liquidations	2005	2006	2007	2008	2009
Creditors' Liquidations	300	323	308	530	1,124
Court Liquidations	49	31	36	83	121
Total Insolvent Companies	349	354	344	613	1,243
Members' Liquidations	868	930	1,057	1,051	1,158
All Liquidations	1,217	1,284	1,401	1,664	2,403

Unliquidated/Dissolved Insolvent Companies

The 1,243 insolvent companies liquidated in 2009 which are identified in the table above constitute the visible consequences of the economic downturn. In addition, there may be several hundred or thousand unidentified insolvent companies on the Register of Companies at any one time which have ceased to trade but which have not been put into liquidation. Many of these will come to be struck off the Register eventually.

While there are no definitive figures that capture the entire population of insolvent companies (both liquidated and

unliquidated), CRO annual figures are available for the number of solvent and insolvent dissolved companies. In interpreting the figures in the following table for the number of struck-off/dissolved companies for the years 2005 to 2009, the following must be borne in mind:

- strike-off figures, particularly for insolvent companies, will lag the economic cycle. It may be two years or so before a dormant insolvent company (as evidenced by a failure to file its annual returns with the CRO) is struck off the Register of Companies;
- the number of strike-offs in any year will be influenced by the activity of the CRO, Revenue and company directors in pursuing the strike-off option.

Type of Dissolved Company	2005	2006	2007	2008	2009
'CRO Strike-off' ²⁰	9,514	5,255	4,085	5,804	5,729
'Revenue Strike-Off' ²¹	794	444	149	223	142
'Voluntary Strike-Off' ²⁰	3,316	3,757	3,975	4,542	5,428
Total	13,624	9,456	8,209	10,569	11,299

These factors probably serve to explain why the same dramatic increases in company insolvent liquidations are not yet evident in this table's figures for recent years.

Sub-Goal 2.1: Identifying Suspected Misconduct

The work of the Office in 2009 was dominated in particular by the growing number of insolvent companies and by one large investigation, namely that related to Anglo Irish Bank Corporation Ltd. ("Anglo").

The Anglo Investigation

This investigation is the largest and most complex that has been undertaken by the ODCE since it was established in late 2001. In close cooperation with the Garda Bureau of Fraud Investigation (GBFI), various matters are being examined including:

- the provision by Anglo in 2008 of financial assistance for the purchase of its shares;
- matters associated with the loans made by Anglo to its directors over a number of years and
- matters relating to the declared level of customer deposits at Anglo in 2008.

The ODCE's involvement is limited to those aspects of the investigation falling within its company law remit.

Acquisition of Relevant Documents

In early January 2009, the ODCE made formal demands of Anglo for certain books and documents under Section 19 of the Companies Act 1990 (as amended). Relevant documents were forwarded to the Office over the succeeding weeks.

²⁰ Section 311 of the Companies Act 1963 (as amended) and section 12 of the Companies (Amendment) Act 1982 (as amended).

²¹ Section 882 of the Taxes Consolidation Act 1997.

In late February 2009, three Garda officers seconded to the ODCE obtained search warrants from Dublin District Court under Section 20 of the 1990 Act (as amended) in respect of three business premises of Anglo. In undertaking these searches, the Gardaí and other ODCE staff were supported by officers from the GBFI. Three other search warrants and a number of further orders were secured and executed later in 2009. The Office only employed the new extended power of seizure²² on one occasion during the year, and this arose in its execution of one of these search warrants.

During the year, the ODCE also sourced documentation and information from the Financial Regulator, the Irish Auditing and Accounting Supervisory Authority and various other parties. Additional material continues to be gathered as necessary.

In all, the ODCE acquired in 2009 several million hard copy and electronic documents which have presented challenges in preserving, evaluating and managing the material. Enhanced IT tools have been acquired as necessary. The Computer Crime Unit in the GBFI, together with the ODCE's own IT experts, have been a substantial support in overcoming these challenges.

Certain aspects of this process of acquiring relevant documentation are being supervised by the High Court. When last before the Court in December 2009, the ODCE referred to the fact that its evaluation of several million electronic documents from Anglo was ongoing. The Court proceeded to approve the Office's retention of certain computer media for a further six months under Section 20(2G)(a) of the 1990 Act²³ so as to permit a determination to be made as to whether what had been seized was 'material information' within the meaning of Section 20. The Court acknowledged that this evaluation constituted a 'daunting task'.

In consequence of the fact that certain of the documentation seized from Anglo was subject to claims of legal professional privilege (LPP), the ODCE had cause in both March and October 2009²⁴ to address the High Court on this issue. With the acquiescence of the Court, arrangements were made by the ODCE and Anglo to appoint an Independent Assessor to adjudicate on a discrete number of LPP documents which the ODCE did not accept to be privileged. The High Court indicated that there would be no need to revert to it if the parties were satisfied with the Assessor's report. At year-end, confirmation of the Assessor's findings was awaited.

Interviews

Interviews of Anglo staff and other relevant persons by ODCE officers commenced in 2009 and were continuing at the end of the year.

Staffing Resources

Significant staffing resources were assigned during the year to meet the challenges posed by the Anglo investigations. This entailed firstly some reorganisation of the Office's own work programme. In early 2009, some Departmental staff were temporarily assigned to the ODCE to help with its management of the seized Anglo documentation. The Department of Enterprise Trade and Employment later made available an additional four administrative staff to support the Anglo work.

For much of 2009, some 16 full-time equivalent staff (or one-third of available personnel) were permanently deployed on the Anglo investigations within the ODCE. These staff included Gardaí and staff with accounting, administrative, IT and legal expertise. In addition, the Garda Commissioner has made available a further five Gardaí to support the related Garda and ODCE enquiries.

Overall, the investigations were progressing well at year-end. Ultimately, the Director of Public Prosecutions will decide in due course if there is a basis for launching criminal proceedings.

Inquiry into Events at DCC plc, S&L Investments Ltd and Lotus Green Ltd

Fyffes plc initiated a civil insider dealing claim against DCC plc, S&L Investments Ltd, Lotus Green Ltd and Mr James Flavin in early 2002. This lengthy action culminated in a unanimous Supreme Court decision in 2007 to the effect that Mr Flavin dealt in the shares of Fyffes in February 2000 when he was in possession of price-sensitive information in relation to that company by virtue of his membership of its board of directors at that time. The settlement of the civil claim in 2008 cost the DCC Group some €42 million (including legal costs).

After the civil action ended, the ODCE applied to the High Court for the appointment of an Inspector to DCC plc, S&L Investments Ltd and Lotus Green Ltd in order to establish the facts relating to the relevant transactions in Fyffes's shares not only in February 2000 but also in 1995 when other related transactions took place. On foot of this application, the High Court decided to appoint Mr Bill Shipsey SC in July 2008 as Inspector to the three companies. The purpose of this inquiry was to clarify the prevailing uncertainties in relation to aspects of the various purchases and sales of the shares of Fyffes in 1995 and 2000 and to attribute appropriate responsibility and culpability to any person who may have contributed to a detected default.

²² Permitted by Section 20 of the 1990 Act (as amended by Section 5 of the Companies (Amendment) Act 2009).

²³ As inserted by Section 5(b) of the Companies (Amendment) Act 2009.

²⁴ The March and October applications were made under Section 23(1) of the Companies Act 1990 and Section 23(1C) of the 1990 Act (as inserted by Section 6 of the Companies (Amendment) Act 2009) respectively.

Towards the end of 2009, the Inspector presented his completed Report to the High Court which subsequently ordered its publication on 19 January 2010. On its publication, the Director of Corporate Enforcement indicated that he did not intend taking any action as a result of the Report's findings. Copies of the extensive Report and the Director's press statement are available at www.odce.ie. **Illustration 2.1.1** summarises the main conclusions of the Inspector.

Illustration 2.1.1: Main Conclusions of the Inspector to DCC plc, S&L Investments Ltd and Lotus Green Ltd

"...the companies took their corporate responsibilities very seriously." and "the directors, officers and employees, from the then Chief Executive down, placed a high value on legal and regulatory compliance..." (paragraph 12.1.6)

"...the decision of DCC and S&L to transfer the beneficial interest in the Fyffes shares to Lotus Green, and Lotus Green's acquisition of that interest in 1995, does not give rise to facts or circumstances suggesting a breach of Section 108 of the Companies Act, 1990 [dealing with insider dealing]..." (paragraph 12.1.9)

"...[in 2000] Mr Flavin did not communicate the Fyffes' price sensitive information in his possession to anyone in the companies other than to the DCC Group Compliance Officer...as part of a compliance procedure and the companies' legal adviser...for the purpose of seeking legal advice. Therefore, although several persons within DCC... facilitated the 'dealing' in the shares in a technical sense, I am satisfied that no one involved in effecting the share sales within DCC knew that Jim Flavin had any information of a price sensitive nature in his possession which could make the dealing unlawful." (paragraph 12.1.15)

"The error was a costly one for DCC and its former Executive Chairman and founder. It was costly for DCC in terms of the money it was required to pay to Fyffes, but it was, arguably, more costly in terms of the reputational damage to both DCC and Jim Flavin. No finding of mine can repair the reputational damage inflicted in this matter. At least, however, the suggestion that the dealing was intentionally wrongful, or that it was evidence of dishonesty on the part of Jim Flavin and of a culture of disrespect for the companies code in DCC can be dispelled." (paragraph 12.1.18)

"The actions of Jim Flavin were not undertaken recklessly or with an absence of care. He was ultimately found to have misjudged the information he had in his possession when he was approached by the stockbrokers with a view to buying the shares, but he did not 'deal' without considering whether he or DCC were free to sell the shares. With hindsight, he placed far too much reliance on the actions of Fyffes. His familiarity with such guidance as existed from the Stock Exchange in Ireland and the U.K. as to what constituted 'insider dealing' or 'price sensitive information', did not protect or assist him." (paragraph 12.1.19)

"At a time however when 'Ireland Inc' is taking a beating internationally from a perception of low standards in high corporate places the message from this report is that the actions and behaviour of DCC, S&L and Lotus Green between 1995 and 2000 in connection with the transactions under investigation measured up to the standards required by law notwithstanding Mr. Flavin's error of judgment." (paragraph 12.1.20).

Other Formal Investigations

Apart from DCC and Anglo, the Office had two ongoing formal examinations of company books and documents in hand at the start of 2009. In one case, significant progress was made in advancing consideration of the complex events in question, and this may give rise to ODCE enforcement action in 2010.

Previous Annual Reports have referred to the Office's examination of Cologne Reinsurance Company (Dublin) Ltd. It is understood that some related legal proceedings in the USA involving a number of parties concluded in 2009, and the Office was awaiting confirmation of the outcome of these proceedings at year-end prior to considering what ODCE action, if any, may be appropriate in the case.

The Liquidator Reporting Regime

The process and scope of liquidator reporting are outlined in two main ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1²⁵. In summary, the liquidator of a company in insolvent liquidation is required by law²⁶ to report to the ODCE on its demise and on the conduct of any person who was a director of the company during the twelve months preceding its liquidation.

25 These documents are available at www.odce.ie/en/media_decision_notices.aspx.

26 Section 56 of the Company Law Enforcement Act 2001.

The liquidator must also proceed to apply to the High Court for the restriction²⁷ of each of the directors, unless relieved of that obligation by the ODCE. The Office considers relief where the liquidator advances a coherent justification in support of a claim that the director has acted honestly and responsibly in conducting the company's affairs.

Faced with a large and growing number of new reports from liquidators and having regard to its finite resources, the Office implemented in 2009 its decision to drop the requirement on liquidators to produce further and final reports once the Office has made a definitive decision to grant or not to grant relief. This policy decision which was announced in Information Notice I/2009/1²⁸ has allowed more resources to be focused on the more important initial reports of liquidators.

Liquidator Reports in 2009

Details of the number of liquidator reports in 2009 are contained in **Appendix 2.1.1**. 876 initial reports²⁹ (406 in 2008) were received in respect of recently liquidated companies. A further 247 further³⁰ or final³¹ reports (768 in 2008) were also submitted. The sharp drop in these reports was due to the ODCE's decision to reduce the requirement for the submission of these reports. In all, 1,123 liquidator reports were received in 2009 (1,174 in 2008).

The compliance rate for the timely production by liquidators of their first reports was 95% during the year, the same as in 2008. The Office also monitored liquidators'

submission of their further and final reports. In respect of all reports due, the Office corresponded formally with 60 liquidators on 172 occasions (110 occasions in 2008) indicating that they were in default with regard to their statutory reporting obligations.

In preparing their reports, the ODCE encourages liquidators to make an appropriate recommendation with respect to relief by reference to the results of their investigations. The Office considered the standard of liquidator reports received in 2009 to be mostly satisfactory. Office staff regularly engaged with liquidators during the year to clarify elements of their reports. This area is subject to ongoing review in order to maintain reporting quality.

ODCE Relief Decisions

The ODCE made decisions on 962 liquidator reports in 2009 of which 625 constituted initial reports and 337 were further or final reports. The equivalent figures for 2008 were 1,098, 351 and 747 respectively. While the large increase in initial reports substantially offset the decline in further and final reports, most staff time is deployed on evaluating a liquidator's initial report. Accordingly, the increase from 351 to 625 in the throughput of initial liquidator reports represented a significant increase in activity in this area.

The relief decisions on initial reports in 2009 (versus 2008) were of the following type:

Decision Type	2008	%	2009	%
Full relief ³²	251	71%	426	68%
No relief ³³	23	7%	41	7%
Relief 'at this time' ³⁴	70	20%	149	24%
Partial relief ³⁵	6	2%	9	1%
Other decisions	1	0%	0	0%
Total	351	100%	625	100%

27 Where an individual is restricted, s/he may only act as the director or secretary of a company for a period of five years thereafter if that company meets certain minimum capitalisation requirements. In the case of a private company, a minimum called up share capital of €63,487 is required. In the case of a public limited company, the corresponding figure is €317,435. Moreover, the called up share capital must be fully paid for in cash. Restriction permits individuals to continue to avail of the benefits of limited liability. However if a restricted person breaches the capitalisation conditions, s/he may potentially be convicted of an indictable offence, fined and disqualified for five years.

28 This document is available at http://www.odce.ie/en/media_information_notices.aspx.

29 An initial report is the first report received from a liquidator within six months of his appointment, and in the majority of cases, the decision to grant relief or not is made based on this report. In some cases 'relief at this time' is granted to facilitate further investigations by the liquidator.

30 A further report is received from a liquidator usually after six months if 'relief at this time' was granted and after twelve months if a decision to grant relief or not has been made. In this way the ODCE monitors progress on an insolvent liquidation. As the principal decision on whether or not to relieve a liquidator of their obligation to take restriction proceedings will have been made based on the initial report the majority of decisions for further reports will be 'relief'. The exception to this is when 'relief at this time' has previously been granted to facilitate further investigations by the liquidator.

31 A final report is received from a liquidator four weeks prior to final meetings or final dissolution if the liquidation is a Court liquidation. This is a final monitoring exercise for the ODCE prior to dissolution of an insolvent company.

32 Full relief was granted in cases where the ODCE was satisfied, on the basis of information provided by the liquidator or otherwise, that all of the directors of the insolvent company had satisfactorily demonstrated that they had acted honestly and responsibly in the conduct of the company's affairs.

33 Relief was not granted in cases where the ODCE was satisfied, on the basis of information provided by the liquidator or otherwise, that none of the directors of the insolvent company had satisfactorily demonstrated that they had acted honestly and responsibly in the conduct of the company's affairs.

34 Relief 'at this time' was granted in cases where the ODCE was satisfied that the liquidator needed more time to investigate properly the circumstances giving rise to the company's demise. The ODCE requires such liquidators to submit a second report, after which a fresh relief decision is made.

35 Partial relief was granted in circumstances where the ODCE was satisfied, on the basis of information provided by the liquidator or otherwise, that some but not all of the directors of the insolvent company had satisfactorily demonstrated that they had acted honestly and responsibly in the conduct of the company's affairs.

The small decrease from 71% to 68% in the proportion of 'full relief' decisions between 2008 and 2009 respectively was matched by a small increase from 20% to 24% in 'relief at this time' decisions. The Office has noticed an increase in the liquidators seeking additional time to complete their investigative work. This is likely to be due to work pressures in liquidator practices arising from the large increase in the number of companies going into liquidation. However, the Office is anxious to maintain full and timely reporting and will expect liquidators in 2010 to limit to 20% the proportion of requests for additional time which will be made to the Office.

In making its decisions with respect to relief, the Office is also anxious to ensure that no director needlessly bears the burden of a High Court hearing where he or she has clearly demonstrated that they behaved honestly and responsibly in the conduct of the affairs of the failed enterprise.

Of course, ODCE decisions of 'no relief' or 'partial relief' do not constitute a finding in relation to the honesty or responsibility of the directors concerned, and it would be improper for any such inference or imputation to be drawn. It is a matter for the High Court (having heard the liquidator's evidence and the explanations of company directors) to determine if a restriction declaration should be made in respect of any particular company director.

Complete lists of the companies in respect of which full relief and relief 'at this time' were granted in 2009 are available in ODCE Information Notice No. I/2010/1 on the ODCE website at www.odce.ie.

The Auditor and Accountancy Body Reporting Regime

There is a statutory requirement on auditors to report to the ODCE suspected indictable offences under the Companies Acts which are detected in the course of audit³⁶. The ODCE has produced important guidance in conjunction with the recognised accountancy bodies on this important reporting obligation³⁷. As indicated earlier in this Report, a new ODCE Information Notice³⁸ was published jointly with the recognised accountancy bodies in 2009 with the aim of broadening the limited scope of the offences which have historically been reported to the Office.

A similar reporting obligation applies to professional accountancy bodies in the discharge of their disciplinary functions³⁹.

Auditor and Accountancy Body Reports in 2009

Some 237 such reports (210 in 2008) were received in 2009, all but two of them (three in 2008) from auditors.

Appendix 2.1.2 to this Report identifies the primary suspected offences reported in 2009. Consistent with previous years, the following two issues represented about 92% of the reported defaults:

- some 185 cases involved directors' transactions which involved an improper use of company assets⁴⁰. This figure represented an increase of over 25% on the 146 defaults received in 2008;
- 33 instances of a suspected failure to keep proper books of account⁴¹ were received (32 cases in 2008).

Directors' Transactions

Previous Annual Reports have highlighted the phenomenon of directors' loans and other transactions, and unfortunately, events in 2009 kept this issue in the public eye. The 185 reported cases of excessive directors' transactions in 2009 constituted an increase of 20% over the volume of 2008 cases. This particular offence accounted for almost 80% of the auditor reports received. With regard to the reported cases, the associated monetary amounts were €162 million in 2009, up from the 2008 figure of €134 million – an increase of 21%.

The Office continued in 2009 in appropriate cases to encourage directors to rectify the detected offensive transactions by repaying monies to the company in order to bring the outstanding amounts back within the limits permitted by company law. Other acceptable methods included appropriate corporate restructuring so that a group of companies as defined by the Companies Acts is formed between the lending and borrowing companies. Directors were warned of the possible consequences for them and their companies should such defaults be repeated in the future.

³⁶ Under Section 194(5) of the Companies Act 1990 as inserted by Section 74 of the 2001 Act and subsequently amended by Section 37 of the Companies (Auditing and Accounting) Act 2003 and Section 73 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

³⁷ Decision Notice D/2006/2 – Revised Guidance on the Duty of Auditors to report Suspected Indictable Offences to the Director of Corporate Enforcement.

³⁸ Information Notice I/2009/4 – Reporting Company Law Offences: Information for Auditors.

³⁹ Section 58 of the Company Law Enforcement Act 2001 (in respect of liquidators and receivers) and Section 192(6) of the Companies Act 1990 (as amended by Section 73 of the Company Law Enforcement Act 2001) (in respect of members of the body in general) relating primarily to suspected indictable offences committed under the Companies Acts.

⁴⁰ Contrary to the restrictions in Part III of the Companies Act 1990 (as amended).

⁴¹ Contrary to Section 202 of the Companies Act 1990.

In all, company directors brought some €94 million in transactions back within the requirements of law including the major case identified in **Illustration 2.1.2** below. As a consequence of the declining economic environment, there was increasing evidence in 2009 of an inability to repay some of the loans and other transactions which directors and connected persons had secured from their companies. Overall, the Office cautioned about 360 directors during the year. The reduction of the burden of proof with respect to the associated offence provision⁴² will offer a viable means of sanctioning defaulting directors in the future in appropriate cases.

At year-end, some 55 cases remained on hands with a combined reported transaction value of €68 million.

Illustration 2.1.2: Rectification of a Breach of the Restrictions Governing Directors' Transactions by means of Corporate Restructuring

In 2009, the Office received an indictable offence report from the auditor of a large company ("Company A") regarding a transaction in excess of the amount permitted by law. This involved Company A making loans of over €70 million to companies which were not part of a group of companies which included Company A. However, the directors of Company A did separately control the beneficiary companies.

The matter was rectified by way of a corporate restructuring which created a group of companies within the meaning of Section 155 of the Companies Act 1963. Internal group transactions are permitted in Part III of the Companies Act 1990 (as amended).

In addition to restricting the use of company assets for purposes other than the benefit of the company or other group companies, the law⁴³ requires that specified information involving transactions between companies and their directors or between companies and other parties connected to the directors must be disclosed in the notes to company financial statements. This continued to be an area of scrutiny by ODCE staff during 2009.

Public Complaints and Other Detections – A Voluntary Process

Unlike liquidators, auditors and accountancy bodies where reporting to the ODCE is required in the circumstances specified by law, the making of complaints by the public and other entities is entirely a voluntary process. In the case of other regulators, this reporting may be facilitated by legal

information-sharing provisions which exempt the bodies from their usual secrecy obligations.

The ODCE itself also detects issues of a possible company law character during the course of its work and in its monitoring of media and other published reports.

Public Complaints and Other Detections in 2009

There was a small 3% decline (from 416 to 405) in the number of public complaints and other detections which came to attention in 2009.

Appendix 2.1.3 outlines in summary form the character of the various public complaints and other detected issues which came to attention in 2009. It will be immediately apparent that there is a greater variation in the issues reported from this source relative to those emanating from auditors.

Perhaps the most dramatic change in the character of issues coming to attention was the rise from eight to 53 in the number of detected auditing deficiencies between 2008 and 2009. Contributing factors to this large increase included increased detections of:

- the non-disclosure by directors or auditors in company financial statements of details of certain types of transactions and arrangements made by directors and others with their companies and their companies' subsidiaries;
- the so-called 'auditing' of companies by persons who are not qualified to act as auditors.

Corporate Governance Failures in Public Bodies

Although not particularly evident from the classification outlined in **Appendix 2.1.3**, the Office is increasingly subject to calls to involve itself in investigating corporate governance failures in public sector bodies. On occasion, the entities involved are not even companies formed and registered under the Companies Acts. In one recent case for instance, the public body in question was a statutory corporation which had been established under its own code of law. As a result, no intervention by the ODCE was possible as the body in question was beyond the Office's statutory remit.

⁴² Section 40 of the Companies Act 1990 (as amended by Section 7 of the Companies (Amendment) Act 2009).

⁴³ Sections 41 to 46 of the Companies Act 1990 (as amended in particular by Sections 8 and 9 of the Companies (Amendment) Act 2009).

Where the public body in question has been formed and registered under the Companies Acts, it is standard practice for the ODCE to treat every such case in the same fashion as it would any private sector company report or complaint. In a particular case in 2009, the Office engaged with a Government Department and public representatives in respect of general claims of misconduct in a public body which had been the subject of professional forensic examination. The ODCE concluded from the information at its disposal that no evident breach of company law had occurred in the case. The claims of misconduct had also been referred to An Garda Síochána. The following **Illustration 2.1.3** provides some further information on the nature of the conclusion reached by the ODCE in the matter.

Illustration 2.1.3: ODCE Conclusion with respect to a Corporate Governance Failure in a Public Body

The ODCE determined in 2009 that it did not have a role in investigating issues in a particular public body which had been the subject of complaint. In a concluding reply to a correspondent on this decision, the Director indicated as follows:

“As you will know, my remit is to encourage compliance with the Companies Acts and to bring to account those who are suspected of breaching the obligations in those Acts. We have examined the information available to us in relation to [the] Company and have concluded our enquiries on the basis that no evident breach of the Companies Acts is indicated.

As I explained in a previous reply, companies and company directors have legal obligations under various codes of law. Moreover, companies... which are wholly owned by the State have additional corporate governance responsibilities.

We note that the... Report specifically addressed the following regulatory and corporate governance requirements pertaining to [the] Company:

- [a named primary Act];
- *Guidelines for the appraisal and management of capital expenditure proposals in the public sector (July 1994);*
- *Code of Practice for the Governance of State Bodies 2001;*
- *Public Procurement Guidelines 1994 and 2004 and relevant EU Procurement Directives and*
- *Ethics in Public Procurement (June 2005).*

It will be evident that none of these matters are within the statutory remit of this Office.

Any breaches of general criminal law are a matter for An Garda Síochána. It is, I believe, a matter of public record that they have been involved in examining the circumstances associated with this case. I am generally aware that one or more statements of complaint have been made to the Gardai..., but I have no information on the status of any resultant investigation.”

Directors Prohibited from Acting as Directors in the State

The ODCE continued in 2009 to give priority in the public interest to the detection of persons acting improperly as directors of Irish-registered companies where they still stood disqualified in the State⁴⁴ or in other jurisdictions. It also maintained its efforts to try to identify restricted persons who may be continuing to act contrary to law.

Insofar as persons disqualified elsewhere are concerned, they stand automatically disqualified from holding directorships and other leading positions in Irish-registered companies unless their disqualification has been declared to the Registrar of Companies on their appointment to the newly incorporated company or to the existing company as the case may be⁴⁵. It is also an offence for them to act while so disqualified. The purpose of the disclosure provision is to alert people doing business with the company in question to the fact that the director was disqualified in another jurisdiction.

It is open to the ODCE to prosecute any such disqualified persons, and it considers doing so in all suitable cases. In 2009, the Office dealt with six individuals who had been detected as having been disqualified in Northern Ireland or Britain. Notices were served on them requiring *inter alia* their resignation from all of their directorships and their relinquishing of any management positions in Irish-registered companies. Alternatively, they were advised that they could apply to the High Court for relief from their disqualification. All six acted to comply with the notice, resigned from all of their directorships and undertook to disengage in the required manner from all other companies until the term of their foreign disqualifications had expired.

Property Management Companies

ODCE received 82 complaints specifically about property management companies in 2009 which represented an increase of 32% on the 2008 outturn. As in previous years, many of these complaints dealt with issues which fell outside the remit of the Office. Typically, these complaints dealt with the level of service charges and the non-assignment of the common areas to the management company.

⁴⁴ If disqualified by the High Court, a person is prohibited from being appointed or acting as an auditor, director or other officer, receiver, liquidator or examiner and from being in any way, whether directly or indirectly, concerned in or part of the promotion, formation or management of any company or any society registered under the Industrial and Provident Societies Acts. A disqualified person who breaches the Court order is liable to be convicted and disqualified for ten years.

⁴⁵ Section 195(8) of the Companies Act 1963 (as amended by Section 91(a) of the Company Law Enforcement Act 2001) and by Section 3A of the Companies (Amendment) Act 1982 (as amended by Section 101 of the 2001 Act).

The relevant company law issues in these complaints primarily related to failures to:

- convene annual general meetings (AGMs);
- inform members in good time of the holding of these meetings;
- disclose to members the companies' latest financial accounts and
- permit the inspection of company registers.

Some of these complaints involve protracted engagement initially with the complainants who may need to provide the Office with copies of the legal agreements which they signed on purchase of the property. This information is often needed in order to be clear as to the nature of the contractual or other commitments which exist with respect to the property management company.

When it is clear that there is a basis for the ODCE to involve itself with the complaint, extensive correspondence can ensue with the developers of the property or with those persons who may be in effective control of the management company. The following **Illustration 2.1.4** provides an example of one case in 2009 which entailed prolonged and ultimately successful engagement with a property developer.

Illustration 2.1.4: Successful Resolution of an Intractable Problem relating to a Property Management Company

Complaints were received from members of a management company in the northern suburbs of Dublin comprising a mix of private and social affordable housing. The complainants alleged that there had never been an AGM of the company, that they wished to put themselves forward for election to the board of directors and that they had encountered disinterest on the part of the company's directors in responding to their concerns and to their company law obligations.

Initially, the ODCE corresponded with the directors of the management company without success. In the absence of progress, the Director elected to direct the convening of an AGM⁴⁶. This successfully resulted in the convening of the company's AGM. The then most recent audited accounts were laid before the meeting, and some of the members who offered themselves for election were successful in being appointed to the board.

It is worth noting that it took over six months to resolve what was a relatively simple issue due mainly to the failure of the directors in question to engage meaningfully with the Office. The company is now believed to be compliant with provisions of the Companies Acts and is up-to-date with its filings at the CRO.

Unliquidated Insolvent Companies including 'Struck-off' Companies

In previous Annual Reports, the ODCE has indicated that it is particularly anxious to investigate 'phoenix' companies and other delinquent practices that typically result in a new company assuming the assets and business (but not the liabilities) of a failed company such that:

- competition in the applicable business market is distorted, because the company enjoys lower-than-market costs (for example, through non-payment of creditors and/or the Revenue Commissioners). As a result, this potentially gives the delinquent an unfair competitive advantage in the marketplace;
- creditors suffer financial losses, some of whom may themselves fail in consequence, and
- directors either bear no personal liability for the commercial losses or otherwise escape accountability for the failure of the company.

Insolvent companies which are abandoned by their directors and which subsequently come to be struck off the Register of Companies for a failure to file their annual returns continued to receive ODCE attention in 2009. It is open to the ODCE to apply to the High Court for the disqualification of the directors of such struck-off companies⁴⁷. However, the law⁴⁸ also provides that the High Court cannot impose a disqualification on a person who demonstrates to the Court that the company had no liabilities at the time of strike-off or that those liabilities were discharged before the initiation of the disqualification application. In considering the penalty to be imposed, the Court may instead restrict the directors where it adjudges that disqualification is not warranted.

However, Court actions do not arise in respect of every struck-off company that is investigated by the Office. In some cases investigated by the Office, the former directors have sought to regularise their position by formally restoring the struck-off company to the Register. This procedure involves the preparation and submission of all outstanding annual returns to the CRO, the payment of all late-filing fees and the making of a formal application to the High Court for the restoration of the company, in cases where the company has been struck off for more than one year.

⁴⁶ Section 131(3) of the Companies Act 1963 (as amended by Section 14 of the Company Law Enforcement Act 2001).

⁴⁷ Section 160(2)(h) of the Companies Act 1990 (as amended by Section 42(b)(ii) of the 2001 Act).

⁴⁸ Section 160(3A) of the Companies Act 1990 (as amended by Section 42(c) of the 2001 Act).

In other cases, the former directors are able to satisfy the ODCE that all liabilities had been settled at the time of strike-off or prior to the issue of the intended Court proceedings. This usually requires the preparation and submission of appropriate accounts, often stretching back several years, showing the company's trading since the last set of accounts were submitted to the CRO or since incorporation in cases where accounts were never submitted to the CRO. The former directors are also required to show that all creditors have been paid or those debts settled, and independent verification of this from individual creditors is frequently sought.

As indicated below, the Office secured in 2009 the disqualification of ten directors of struck-off companies (12 in 2008) for periods ranging from four years to six years. At the end of 2009, three more cases were awaiting hearing in the High Court. Some cases remained open at year-end, and it is anticipated that several more cases will be initiated in 2010.

In the light of the potential consequences outlined above for the abandonment of insolvent companies, prudence would suggest that directors should consider formally placing their company into liquidation or arranging for voluntary strike-off. Directors should be aware that in the case of any company that is struck off the Companies Register, its remaining assets are vested in the Minister for Finance in accordance with the provisions of the State Property Act. It is ODCE policy to bring to the attention of the Department of Finance cases where a company is identified to have held significant assets at the time of strike-off.

Sub-Goal 2.2: Enforcing Serious Breaches under the Companies Acts

Introduction

The Office continued in 2009 to pursue a number of suspected serious defaults of law and duty with respect to the Companies Acts. Particular highlights included:

- the determination by the Supreme Court of the first appeal in the various ODCE disqualification cases arising from the adverse findings in the High Court Inspectors' Report into National Irish Bank Limited (NIB) and National Irish Bank Financial Services Limited (NIBFS). The Respondent in question was successful in overturning his High Court disqualification;

- the hearing of appeals by two defendants in the Circuit Criminal Court against convictions imposed on them for specific breaches of the Companies Acts. In both cases, the convictions were upheld. In one case, the penalties imposed by the District Court were confirmed while in the second, the penalties were amended only to the extent that a penalty of six months' imprisonment was suspended for two years;
- the first disqualification of a non-resident director on foot of an ODCE application for disqualification pursuant to Section 160(2)(h) of the 1990 Act;
- the first disqualifications of persons who acted as directors of companies although not registered as directors of the companies in question. Again, the ODCE proceedings in question were initiated under Section 160(2)(h).

ODCE Enforcement Proceedings

In 2009, the ODCE secured six criminal convictions (with a further 12 charges taken into consideration) and ten disqualifications for breaches of company law and duty. The table below summarises the position and provides the equivalent detail for 2008.

Outcome of Successful Legal Enforcement Proceedings	2008	2009
Charges on which convictions were secured	32	6
Charges taken into account on conviction	1	12
Disqualifications	20	10
Restrictions	1	-
Other Decisions	1	1
Total	55	29

In 2009, the Office participated in thirteen separate civil and criminal enforcement proceedings before the Courts, of which one was in the Supreme Court, seven in the High Court, three in the District Court, one in the Circuit Criminal Court and a further one in both the Circuit Criminal Court and the District Court.

The Office also made application for a further fifteen orders and other reliefs during the year of which four were in the High Court and eleven at District Court level.

It is clear from the overview of the status and outcome of these and other legal proceedings in **Appendix 2.2.1** that the Office, as in previous years, was substantially successful in these proceedings. Only one case was lost in 2009.

Appendix 2.2.2 gives a more detailed breakdown of the enforcement proceedings only, with case details included. In accordance with ODCE practice, a summary of each case result was placed on its website at www.odce.ie during 2009.

Civil Enforcement Actions

The High Court disqualified ten directors for periods of five years in eight cases and periods of four and six years in two different cases. All of these proceedings were undertaken under Section 160(2)(h) of the 1990 Act and involved companies which were struck off the Register of Companies for failing to file outstanding returns where the directors failed to show to the High Court that the companies involved had no outstanding liabilities. In the majority of these cases, the persons disqualified were directors of more than one struck-off company.

As indicated earlier, the ODCE secured for the first time a disqualification order against a non-resident person who was a director of two companies that were struck off. In another case, disqualifications were obtained for the first time against persons who acted as company directors but who were not notified to the Companies Registration Office as being directors.

Considerable work continued to be done by the Office arising from the High Court Inspectors' Report on National Irish Bank Limited (NIB) and National Irish Bank Financial Services Limited (NIBFS) which was published in July 2004. During 2009, one of the cases was heard by the High Court over a three-week period, and judgment was awaited at the year-end.

Also in 2009, the Supreme Court determined the first appeal against a High Court disqualification in the NIB/ NIBFS case, and this resulted in the Respondent successfully overturning a four year disqualification period.⁴⁹

The status of the nine disqualification actions which were originally initiated in 2005 is summarised in the following table. Seven of them are ongoing at end-2009.

Disqualification Proceedings on foot of NIB Report at end-2009	Number
Disqualification granted by the High Court – No Appeal	1
Disqualification granted by the High Court – Respondents' Appeal	3
Disqualification refused by the High Court – ODCE Appeal	2
Disqualification set aside by the Supreme Court on Appeal	1
Proceedings heard by the High Court – Judgment Awaited	1
Proceedings not yet heard by the High Court	1

In all, the ODCE had some 13 proceedings before the High Court and the Supreme Court at year-end. Aside from the seven NIB-related cases, three dealt with the directors of insolvent companies which had been struck off the Register of Companies for failing to file outstanding annual returns, two involved other types of disqualification action which are awaiting appeal before the Supreme Court and one related to the DCC Inspectors' Report.

Criminal Enforcement Actions

2009 was a relatively quiet year for ODCE criminal prosecutions. The main reason for this was the need to reconfigure staffing resources (both Garda officers and administrative staff) to take account of the scale and complexity of the investigation of certain matters at Anglo.

As indicated earlier, the year was notable for the fact that the appeals of two persons convicted in the District Court were heard in the Circuit Criminal Court. Both appeals were successfully defended. **Illustration 2.2.1** below provides information on one of those cases.

⁴⁹ Although granted by the High Court, the disqualification never actually came into effect as the Court Order was stayed pending appeal on the basis of an undertaking given by the Respondent.

Illustration 2.2.1: Person Auditing the Accounts of a Company while Not Qualified to do so and/or while Disqualified

The most common method of qualification for appointment as auditor to a company is for a person to be a member of one of six recognised accountancy bodies and to hold a valid audit practising certificate from one of those bodies. Generally, the body ensures that an auditor in practice meets certain annual criteria which includes their recorded attendance at continuing professional development courses.

Toward the end of 2008, the ODCE instituted criminal proceedings against Mr Noel O'Gara, Athlone, Co Westmeath, alleging breaches of Section 187 of the Companies Act 1990. This Section prohibits a person from acting as an auditor of a company either while unqualified to do so or while disqualified by virtue of a defined close association with the company being audited. The disqualification provision protects the independence of the auditing function.

The case was heard in Athlone District Court on 16 January 2009 when Mr O'Gara was charged with nine counts of providing audit services for four companies contrary to Section 187. In relation to eight of the nine charges, the Court accepted ODCE evidence that Mr O'Gara acted as an auditor when he was both unqualified to do so and disqualified by virtue of his being an officer of the company at all material times. In relation to the remaining offence, the Court was satisfied that Mr O'Gara was not qualified to act as auditor. As a result, the Court proceeded to convict Mr O'Gara on four of the charges, imposed fines totalling €3,200 and directed that he pay €1,500 towards the costs of his prosecution. The remaining five charges were taken into account.

Mr O'Gara then appealed both the convictions and the penalties imposed to the Circuit Criminal Court. This appeal was heard on 24 February 2009 when the Court dismissed the appeal and affirmed the District Court convictions and order in relation to the fine and costs. Mr O'Gara was also directed to pay a further €1,500 towards the costs of his failed appeal.

Mr O'Gara, representing himself, contested the charges during lengthy hearings in both Courts. He attempted to persuade the Courts that as a professional accountant and a former member of one of the bodies, he was competent to carry out the relevant audit work. In making their determinations, the Courts accepted evidence from each of the recognised accountancy bodies that Mr O'Gara did not possess a current audit practising certificate. During the proceedings, witnesses from the Department of Enterprise Trade and Employment and the Irish Auditing and Accounting Supervisory Authority gave evidence in relation to the legislation. Witness evidence was also given by two investigating ODCE officers, one of whom was a Detective Garda. The case proved to be a robust test of the legislation and the associated Court proofs.

Mr O'Gara has since stated that the Circuit Court's determination has been appealed to the High Court.

Liquidator Restriction and Disqualification Applications

Reference has been made earlier to the role of the ODCE in relieving liquidators from their statutory duty to take restriction proceedings against the directors of insolvent companies in liquidation. In a minority of the cases considered by the ODCE, liquidators must proceed to initiate restriction proceedings in the High Court.

During 2009, the High Court reached decisions in 68 cases (54 in 2008), and one or more directors were restricted or disqualified in 62 cases (49 in 2008) representing 91% of the total (91% also in 2008). No restriction orders were made in respect of the remaining six cases (five in 2008). These outcomes suggest that the ODCE continues to successfully identify the cases meriting consideration by the High Court.

In terms of individual directors, there were 108 directors restricted (76 in 2008), twelve directors disqualified (six in 2008), eleven directors against whom no orders were made (eight in 2008), and there were no occasions where a director was both restricted and disqualified in 2009 (two in 2008). This means that the Court made orders against 92% of the 131 directors (91% in 2008) that were the subject of restriction or disqualification proceedings during 2009.

In relation to restriction proceedings that concluded before the High Court in 2009, **Appendix 2.2.3** to this Report outlines the outcome of the cases where restrictions were made and the identity of the persons in question.

Appendix 2.2.4 identifies the six companies where the High Court concluded in 2009 that a restriction order should not be made against any of their directors.

The Director welcomes the continuing willingness of a number of liquidators to bring disqualification proceedings in respect of serious detected misconduct. In 2009, successful proceedings were brought against twelve directors of insolvent companies (eight in 2008). **Appendix 2.2.5** identifies the persons in question and their periods of disqualification. The accompanying **Illustration 2.2.2** provides some information on these cases. The Director hopes that further similar cases will be taken in 2010.

Disqualifications and Restrictions Generally

At end-2009, over 3,200 persons were listed on the Register of Disqualified Persons (2,700 at end-2008) although some duplication of entries would appear to exist. Over 3,000 of these are deemed to be disqualified; 190 stand disqualified by High Court Order; 10 have been disqualified arising from their failure to notify their disqualification in another jurisdiction, and 11 were disqualified on the basis of their having acted as a director while restricted.

Overall, there was a net decrease in the CRO's Register of Restricted Persons from 624 to 538 as some earlier restricted persons were removed from the Register in 2009 on the completion of their five year term. The following table indicates the number of persons on the Register at the end of each year since 2005.

Number of Directors standing restricted at end-2005 to end-2009 inclusive

End-2005	End-2006	End-2007	End-2008	End-2009
600	685	791	624	538

The Registrar of Companies maintains up-to-date registers of restricted and disqualified persons, and an on-line public search facility of these registers is available at www.cro.ie.

Illustration 2.2.2: Insolvent Companies - Liquidator Disqualifications in 2009

Mr Jason Davis, a director of Jason Davis Security Management Services Ltd, was disqualified for eight years. The Court heard evidence of the diversion of €67,500 in company funds for use as deposits on two apartments in Spain and the transfer of debtor assets valued at €280,000 and employees to two different 'phoenix' companies in order to obtain new security licences. The Revenue Commissioners who were owed about €1 million in taxes had petitioned for the winding-up of the company.

Mr Peter Killeen and Ms Lorraine Higgins, directors of P.S.K. Construction Ltd, were disqualified for seven and five years respectively. The Court imposed on them personal liability for the company's debts⁵⁰. It also made an order against Mr Killeen under Section 297A⁵¹ of the 1963 Act. The Court heard evidence that he had decided to under-declare and under-pay over €1.6 million on the company's monthly liabilities for PAYE/PRSI and Relevant Contracts Tax (RCT). In all, the company was estimated to owe about €2.6 million in taxes on its liquidation.

Mr Sean Hartigan, a director of Prestige Recycling Co Ltd, was disqualified for seven years. The Court heard evidence that the company had traded while insolvent for a considerable period, had failed to remit taxes when due, had failed to maintain proper books and records and had failed to submit CRO statutory returns over a number of years. Mr Hartigan had also transferred company employees to his sole trader business while leaving liabilities within the company. Company tax liabilities at liquidation were estimated to exceed €310,000.

Mr John Dillon, Mr Anthony Brierton and Mr Glen Kane, directors of Rodaka Ltd, were each disqualified for six years. The Court heard that the company had incurred large trading losses over a three year period, had traded while insolvent for some time, had not properly operated the company's pension scheme which led to arrears being due and had failed to deduct RCT and cooperate fully with the liquidator.

A five year disqualification was imposed on Mr Paul McArthur, a UK-based director of SGCI Ltd, which provided security guard services in the retail sector. He was deemed to be the effective managing director and to be responsible for the company's tax liability increasing from €120,000 to over €800,000 in a 17 month period. A sum of €68,000 was transferred out of the company prior to liquidation, and other amounts totalling €128,000 were moved to bank accounts in the UK and Spain controlled by Mr McArthur. Another two directors were restricted for the required five year period.

Mr Hugh O'Neill was held to be a *de facto* director of Marhug Engineering Services Ltd and disqualified for five years. There was evidence of 'phoenix activity', that the company had failed to keep proper books and records and that Mr O'Neill had applied company funds to meet debts of an earlier company, effected irregular withdrawals from the company for his own benefit, diverted funds from post-liquidation trading to another company and falsely filed CRO returns in naming his daughter as a director and later attempting to reverse this. Company tax liabilities were close to €240,000.

FAI Finance Corporation Ltd was engaged in providing consumer finance and loans predominantly in the UK. The Court heard evidence that Mr Terence Youngman, a director, deliberately masked the true status of the company's loan book by falsifying loan completions involving the advance and immediate repayment of monies and knowingly colluded with others to introduce sub-prime loans to the company that had little prospect of being repaid. The deficit was estimated at €52 million at liquidation due to non-recovery of most of the loans advanced. He was disqualified for five years.

Mr Martin Harran, a shadow director of Etonford Ltd, a company involved in selling laminate and wood flooring, was disqualified for four years. There was evidence that the company had traded while insolvent, had not been placed in liquidation promptly, had earlier been struck off the Register of Companies for failing to file returns and had failed to keep proper books and records. The Revenue liability was about €387,000. Two other directors, the shadow director's sons, were each restricted for five years.

⁵⁰ Section 204 of the 1990 Act: personal liability of company officers where proper books of account are not kept.

⁵¹ Civil liability of persons involved in the fraudulent or reckless trading of a company.

Mr Brian Lattin, a director of Dublin Wholesale Bag Company Ltd, was disqualified for two years. The Court heard evidence that no audited or management accounts had been completed since 1998, that no statutory returns had been made to the CRO since then and that the directors had failed to cooperate with the liquidation. Revenue were owed approximately €320,000 at liquidation, comprising VAT accrued between 2000 and 2008 and PAYE in 2007/2008. The second director was restricted for five years.

Conclusion

The civil and criminal enforcement activity of the Office was necessarily restricted in 2009 as a result of the redeployment of staffing resources to the investigation of certain events at Anglo and to the examination of the large increase in liquidator reports to the Office which must be dealt with within a statutory timetable. In particular, the availability of Garda resources for ODCE criminal investigations was severely reduced.

Notwithstanding these exceptional pressures, the Office adopted a number of measures during 2009 to maintain a reasonable level of throughput in the enforcement area. These included:

- a greater utilisation of general ODCE staff in taking witness statements in criminal investigations. Garda staff will continue to make themselves available for the interview of potential suspects;
- a re-assignment of legal staff to the development and management of cases for possible disqualification actions;
- the enhanced use of the remedial option which is available in Section 371 of the 1963 Act (as amended) to rectify and sanction detected defaults in appropriate cases.

The benefit of these decisions should become apparent in 2010 and help to forestall the decline in enforcement activity which occurred in 2009. However, the overall outlook for enforcement activity will necessarily remain subdued for the duration of the Anglo investigation.