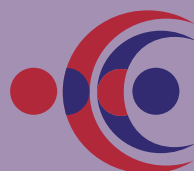


# Annual Report 2008



Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach  
Office of the Director  
of Corporate Enforcement

For further information contact:

**Office of the Director of Corporate Enforcement,**

16 Parnell Square,  
Dublin 1.

Tel: 01 858 5800  
Lo-call: 1890 315 015  
Fax: 01 858 5801  
Email: [info@odce.ie](mailto:info@odce.ie)  
Web: [www.odce.ie](http://www.odce.ie)

© Government of Ireland, 2009

ISBN 978-1-4064-2285-6

DUBLIN:

PRINTED BY THE STATIONERY OFFICE.

---

To be purchased directly from the  
GOVERNMENT PUBLICATIONS SALE OFFICE,  
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,  
or by mail order from  
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,  
51 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 647 6834/35/36/37; Fax: 01 672 5449)  
or through any bookseller.

---

Price: €10.00

ISBN 978-1-4064-2285-6



9 781406 422856

# Contents

Foreword by the Director of Corporate Enforcement	3
Introduction	4
Goal 1 – Encouraging Compliance with the Companies Acts	5
Goal 2 – Uncovering Suspected Breaches of Company Law	11
Goal 3 – Prosecuting Detected Breaches of the Companies Acts	17
Goal 4 – Sanctioning Improper Conduct with respect to Insolvent Companies	22
Goal 5 – Providing Quality Services to Internal and External Customers	29
Conclusion	33
Appendices	34

### **Copyright and Disclaimer Statement**

The contents of this document are the copyright of the Director of Corporate Enforcement. All or part of this publication may be reproduced without further permission, provided the source is acknowledged.

Nothing herein should be construed as a representation by, or on behalf of, the Director of Corporate Enforcement as to his understanding or interpretation of any of the provisions of the Companies Acts or as to the interpretation of any law. Independent legal advice should be sought in relation to the effects of any legal provision. The Director of Corporate Enforcement accepts no responsibility or liability howsoever arising from the contents of this publication or any errors, inaccuracies or omissions in the contents of this document. The Director reserves the right to take action, which may or may not be in accordance with the provisions of this document.

© Director of Corporate Enforcement 2009

# Foreword



Pursuant to section 16(1) of the Company Law Enforcement Act 2001, I am pleased to present Ms Mary Coughlan, T.D., Tánaiste and Minister for Enterprise Trade and Employment, with my Office's Annual Report for 2008.

Throughout 2008, the ODCE continued to pursue its objective of improving compliance with company law. The Office adopts a twin-pronged approach to its role. Firstly, it seeks to encourage and facilitate voluntary compliance by deepening and widening levels of knowledge among relevant company stakeholders about their rights and responsibilities. Secondly, the Office seeks to drive compliance through a range of actions that include encouragement to correct detected breaches through to criminal prosecutions for more serious breaches of law or duty.

Highlights for the ODCE in 2008 by primary activity included:

- the appointment of a High Court Inspector to DCC plc, S&L Investments Ltd. and Lotus Green Ltd. to investigate aspects of various purchases and sales of the shares of Fyffes plc in 1995 and 2000;
- the publication of a detailed Company Law Handbook/ Guidance on Property Management Companies to help improve their governance;
- attendance at some 80 public events where ODCE staff gave presentations to and engaged with the public to urge compliance with the Companies Acts;
- a total of 32 convictions, 20 disqualifications and one restriction. A record amount of €46,600 in fines was also imposed. 12 of the 20 disqualifications arose from the Office's evaluation of dissolved insolvent companies;
- a 42% increase to 406 in the number of initial liquidator reports received. This reflected the declining performance of the national economy, and more than double the number of 2008 liquidations are expected in 2009. The Office also determined about 350 initial liquidator reports, a 22% rise on the 2007 outturn;
- a 15% increase to 584 in the number of cases of alleged breaches of the Companies Acts which were closed by the Office after investigation. In the majority of these cases, closure followed satisfactory rectification of the company law difficulty by administrative means. A further 78 cases were referred for investigation of possible legal action by the Office;
- a fourfold increase to €134 million in the amount of excessive directors' loans reported by auditors, many in construction and property companies. The Office is satisfied that its involvement resulted in compliance being achieved in many cases, while others remained under review at year-end;
- the first conviction of a company director for knowingly using company assets in breach of the legal restrictions on the giving of loans to directors;
- the first case of a company director being handed down a custodial sentence which was not suspended by the Court. However, the company director in question has appealed both the conviction and the sentence. The case involved a person acting as a director in breach of a High Court disqualification order.

I wish to express particular appreciation to the Department of Enterprise Trade and Employment for the four additional staff which were made available in 2008 in line with a Departmental commitment on increased staffing levels for the Office. Some of the increased throughput reported above was made possible by this increase.

Our expenditure outturn in 2008 was €4.34 million, a slight reduction on the €4.37 million spent in 2007. This reduction was achieved notwithstanding the expenditure associated with four additional staff and the initial cost of the DCC Inspection. These additional costs were largely met by curtailing advertising and publicity work in response to Government requests for cutbacks in uncommitted spending.

Our successful results in 2008 were achieved by a dedicated and hard working staff. I want to thank them for their continuing commitment to the work of the Office. Our collective efforts are helping business people, community interests and the general public to engage fairly and equitably with one another through corporate structures.

I also want to acknowledge the continuing support given to the Office by the Oireachtas, the Government and the Courts. Thanks is also due to those legal and accounting professionals who supported our work in 2008. I hope that this will continue for 2009 and that we will keep making a positive difference to improving corporate standards in the overall public interest.

**Paul Appleby**  
**Director of Corporate Enforcement**  
**31 March 2009**

# Introduction

The present Strategy Statement of the Director of Corporate Enforcement identifies the following primary ODCE goals and related sub-goals:

## Goal 1: Encouraging Compliance with the Companies Acts

- Sub-Goal 1.1: Publishing Accessible Company Law Information
- Sub-Goal 1.2: Promoting Compliance
- Sub-Goal 1.3: Improving Company Law and Associated Corporate Practices

## Goal 2: Uncovering Suspected Breaches of Company Law

- Sub-Goal 2.1: Developing Detection and Reporting Arrangements for Suspected Breaches of the Companies Acts
- Sub-Goal 2.2: Identifying Suspected Breaches of the Companies Acts
- Sub-Goal 2.3: Commissioning/Supporting Formal Company Investigations

## Goal 3: Prosecuting Detected Breaches of the Companies Acts

- Sub-Goal 3.1: Developing a Balanced Enforcement Policy
- Sub-Goal 3.2: Upholding the Disclosure Requirements of the Companies Acts
- Sub-Goal 3.3: Sanctioning Parties Disregarding Company or Other Interests
- Sub-Goal 3.4: Acting against Parties Denying Accountability under the Law

## Goal 4: Sanctioning Improper Conduct relating to Insolvent Companies

- Sub-Goal 4.1: Supervising Liquidators in the Proper Discharge of their Duties
- Sub-Goal 4.2: Assessing Directors' Conduct in Insolvent Liquidation Situations
- Sub-Goal 4.3: Sanctioning Fraudulent or Abusive Behaviour

## Goal 5: Providing Quality Services to Internal and External Customers

- Sub-Goal 5.1: Securing and Managing ODCE Resources
- Sub-Goal 5.2: Developing Staff
- Sub-Goal 5.3: Developing and Maintaining Quality Customer Services

This Report reviews progress in 2008 by reference to each of these goals and sub-goals.



# Goal 1: Encouraging Compliance with the Companies Acts

## Introduction

The Office undertook a notable amount of work in 2008 in furthering its compliance remit and achieved record results in a number of areas. Staff supporting the compliance function prepared and issued a number of significant publications, attended over 80 public events and handled over 400 company law compliance issues. The Office's Reception Team also successfully dealt with many more routine queries. In all, it was a very satisfactory year.

## Sub-Goal 1.1: Publishing Accessible Company Law Information

The Office issued nine separate publications in 2008 (five in 2007). The full list is available at **Appendix 1.1.1** to this Report. The more significant of these publications are dealt with below.

In all, the Office circulated some 24,000 copies of its various publications in 2008. All of the newly published documents discussed below are available on the ODCE website at [www.odce.ie](http://www.odce.ie).

### Handbook on Residential Property Owners' Management Companies

The most extensive guidance document issued in 2008 was the Office's Company Law Handbook on Residential Property Owners' Management Companies<sup>1</sup>. This major publication comprises more than 200 pages and was developed in order to improve the future performance of these companies. This form of company and the wider issue of multi-unit developments with which those companies have been associated have been a regular subject of public controversy in recent years. The ODCE Company Law Handbook is the latest in a series of publications by the Law Reform Commission<sup>2</sup>, the National Consumer Agency<sup>3</sup> and various other parties which have addressed aspects of the area.

The ODCE Handbook deals with the many and varied company law issues that pertain to property management companies. Among the key topics dealt with are:

- the key phases in the evolution of the management company;
- the voting power of members of the company;
- the predominant role of the company's directors;
- its annual general meetings;
- the legal rights of members to apply for relief to the High Court and
- the role and approach of the ODCE in dealing with management company issues.

The Handbook was developed from an ODCE Consultation Paper<sup>4</sup> which issued in December 2006. Almost 70 submissions were received from various interested parties, and the associated comments and suggestions significantly influenced the preparation of the final Handbook. A commentary on those submissions was also published in conjunction with the Handbook.

### Management Companies Booklet – A Property Owners' Guide to Company Law

As a companion to the lengthy Handbook, the Office also issued a Booklet entitled "Management Companies – A Property Owners' Guide to Company Law." This summary guidance was prepared to give ordinary members of residential management companies (namely the property owners) an overview of their rights in company law. The Booklet was developed as an introduction to the area enabling those interested in learning more to consult the greater level of detail available in the Handbook.

The Booklet explains the concepts of the management company and the managing agent and outlines the respective roles of directors, members and the company secretary. It highlights the importance of the company's financial statements, the audit and the annual return and explains how company law can help members to assert their rights. The Booklet also defines the rather limited role of the ODCE in addressing the many problems which arise with management companies.

<sup>1</sup> Decision Notice D/2008/1. The Handbook is available on request from the Office or at [www.odce.ie](http://www.odce.ie).

<sup>2</sup> See the Law Reform Commission Report on Multi-Unit Developments (June 2008) which is available at [www.lawreform.ie](http://www.lawreform.ie).

<sup>3</sup> See the National Consumer Agency publications (September 2008) on the Conclusions and Outputs of its Multi-Unit Development Stakeholder Forum and on Buying and Living in a Multi-Unit Development Property in Ireland. Both documents are available at [www.consumerproperty.ie](http://www.consumerproperty.ie).

<sup>4</sup> Consultation Notice C/2006/2 – Draft ODCE Guidance on the Governance of Apartment Owners' Management Companies.



### *Handbook and Summary Guide on Residential Property Owners' Management Companies*

Consistent with its intended accessibility, the Booklet was produced in conjunction with the National Adult Literacy Agency and received the Plain English mark. Both the Handbook and the Booklet are available in Irish as well as English on the ODCE website at [www.odce.ie](http://www.odce.ie). The website also contains for ease of reference a chapter-by-chapter version of the Handbook<sup>5</sup>.

Several thousand copies of the Booklet were issued to management companies, libraries, citizens' advice centres and public representatives following publication.

### **Consultation Paper on Whistle-blowing and Company Law**

The Office issued three separate Consultation Papers during 2008. The first of these in June discussed the merits of a whistle-blowing provision in Irish company law<sup>6</sup>. ODCE staff primarily developed this Consultation Paper in late 2007/early 2008 as part of their contribution to the examination by the Company Law Review Group (CLRG) of the desirability of including a whistle-blowing provision in the new Companies Consolidation Bill<sup>7</sup>.

The Paper provides extensive analysis of whistle-blowing both within and beyond the company law context by reference to national and international experience. It contains a modest ODCE legislative proposal which was developed in an effort to establish a consensus on the inclusion of a whistle-blowing provision in Irish company law.

Unfortunately, this proposal failed to attract CLRG support. In reporting in its Annual Report to the Minister in March 2008<sup>8</sup>, the CLRG recommended that no company law-specific whistle-blowing provision should be included in the new Companies Bill. At year-end, it is understood that the Department of Enterprise Trade and Employment had accepted this CLRG recommendation.

Notwithstanding the CLRG recommendation, it was nevertheless decided in 2008 that the ODCE's valuable research and analysis of the topic of whistle-blowing should be published separate from the CLRG's own evaluation. Having regard to the circumstances giving rise to the publication of this Consultation Paper, no specific timeframe was set for receiving feedback on its content<sup>9</sup>.

### **Consultation Paper on the Draft ODCE Statement of Strategy, 2009-2012**

The Office also issued in July a Consultation Paper on a new Statement of ODCE Strategy for the period 2009-2012<sup>10</sup>. The Paper contained a short statement summarising the Office's current strategy and outlined a series of questions to elicit helpful comments on the subject of the Office's medium and long term strategic direction. The consultation period closed on 30 September, and the Office received 13 submissions in total.

The Office also conducted a number of staff workshops and meetings in order to assess the relevance of the current strategy and the extent to which future changes were necessary.

The Director is considering all of the inputs into the new Strategy Statement, and the final document will endeavour to take full account of the significant changes to the external economic and regulatory environment which have occurred in recent months.

### **Consultation Paper for Stakeholders in Business Expansion Scheme Companies**

In September 2008, the Office issued a Consultation Paper for the directors of and investors in companies benefiting from the Business Expansion Scheme and its sister scheme,

<sup>5</sup> Available at [www.odce.ie/en/media\\_general\\_publications\\_article.aspx](http://www.odce.ie/en/media_general_publications_article.aspx).

<sup>6</sup> Consultation Paper C/2008/1 – Discussion Paper entitled 'Whistle-blowing and Irish Company Law'.

<sup>7</sup> Some background to this work is also available in the Office's Annual Report for 2007.

<sup>8</sup> The CLRG Annual Report is available at [www.clrg.org](http://www.clrg.org).

<sup>9</sup> Comments may be made on the Whistle-blowing Consultation Paper to [consultation@odce.ie](mailto:consultation@odce.ie).

<sup>10</sup> Consultation Paper C/2008/2 – New ODCE Statement of Strategy.



the Seed Capital Scheme<sup>11</sup> in order to help mitigate occasional problems arising with these companies. While the primary source of guidance on these schemes is available from the Revenue Commissioners, the ODCE Consultation Paper focussed in particular on the rights and responsibilities of directors and investors under company law. It also explained the important role of auditors in helping to provide assurance to stakeholders.

The Office received eight responses to the Consultation Paper. Final guidance is currently being drafted, and it is intended to publish it in the first half of 2009.

### 'Corporate Compliance Matters'

The Office continued its collaboration with the Companies Registration Office in publishing the newsletter titled 'Corporate Compliance Matters'. The newsletter was issued in March 2008 and was distributed to the home addresses of some 240,000 company directors. The Office contributed three articles on the following subjects:

- areas for attention by company directors. This was based on the recent experience of the Office in dealing with cases of indicated non-compliance;
- practical debt management for company directors, and
- facing up to business difficulties.

### Guidance Leaflets

The Office also published single page guidance leaflets for use as handouts at presentations, exhibitions and conferences attended by ODCE staff. The subjects covered were particularly suited for the present difficult economic conditions:

- rights of creditors;
- the corporate health check, and
- facing up to business difficulties.

### Planned Publications

The Office also substantially completed work in 2008 in developing a number of summary booklets which will serve as companion publications to our more comprehensive Information Books<sup>12</sup> on the duties and powers of company directors, secretaries, shareholders, creditors, etc. These booklets have received the Plain English mark from the National Adult Literacy Agency and will be available shortly. Irish language versions of these publications will also be available.

## Sub-Goal 1.2: Promoting Compliance

### Advocacy Work

With the benefit of an increase in staff, the Office was able to expand its work in informing company directors and other interested parties on key aspects of company law. The Office re-ran its radio advertising campaign in the first half of 2008 focussing on topics of relevance to directors and shareholders. Where relevant, the Office also placed occasional advertisements in various publications highlighting important company law issues as well as reinforcing the "Get Informed" message. However, expenditure on advertising and publicity was necessarily curtailed in the second half of the year in response to Government requests for cutbacks in uncommitted spending.

2008 also saw a significant expansion in the number of presentations given by ODCE staff to directors and other interested parties on company law issues and on the work of the Office. In all, Office staff delivered some 65 presentations to over 3,100 people (45 presentations in 2007). A full list of these presentations is at **Appendix 1.2.1**.



*Minister for Foreign Affairs, Mr Micheál Martin, TD, meets ODCE staff at the BT Small Business Show in Cork on 16/17 May 2008.*

As well as private company directors and professionals such as accountants and solicitors, the Office also focussed on the community and voluntary sector whose members are often constituted in company form in order to avail of public funding. Many of these company directors are unremunerated volunteers who need information on the importance of their role as directors and on their associated legal obligations.

<sup>11</sup> Consultation Paper C/2008/3 – Draft Guidance for Investors and Directors in Companies availing of the Business Expansion and Seed Capital Schemes.

<sup>12</sup> Decision Notice D/2002/1.

Office staff attended sixteen exhibitions, conferences and events (seven in 2007). The list of events attended is at **Appendix 1.2.2**. Staff provided information on company law as well as copies of guidance booklets to the many thousands of people who attended these events. Where relevant, complaints were received for investigation.

## Public Enquiries

Throughout the year, the Office continued to deal with company law queries of a general and specific nature. ODCE reception staff dealt with general queries such as requests for copies of guidance or questions concerning the remit of the Office.

Where a more considered response was considered necessary, relevant staff responded to the queries. In total,

the Office dealt with some 400 queries in this fashion. A sample of these queries is at **Illustration 1.2.2**. While those contacting the Office had questions covering a wide range of company law topics, the issues which regularly arose included director disputes and how to resolve issues such as board deadlock, the rights of members and directors in residential property management companies and the extent to which specific company law enactments had yet been commenced by Statutory Instrument.

2008 was also notable for an increase in the number of callers with questions concerning insolvency and the non-payment of debts. As indicated above, the Office responded to the upsurge in these queries by developing articles and guidance leaflets containing some helpful information for company directors in particular.

**Illustration 1.2.2: Sample of Public Enquiries dealt with by the Office in 2008**

A person called in relation to an unsatisfied debt by a company that ceased trading. The director subsequently transferred the company's assets to a new business and continued to trade as a sole trader.	The caller was informed that debt recovery is a civil matter between the parties and that independent legal advice should be sought. He was also directed to the ODCE website to view recent guidance on the "Rights of Creditors".
A member of a management company complained that the company was not being managed properly. The complex was poorly maintained even though high service charges were imposed. The management company members were not aware of company annual general meetings (AGMs) having been held, and therefore they had no say in the election of directors. They had never received copies of company financial statements. In addition, they complained about the poor performance of the managing agent.	The caller was told that the company must hold an AGM every calendar year and that each AGM must not be more than 15 months apart. Members have a right to 21 days' notice of the meeting and its agenda as well as copies of its financial statements. The caller was referred to the ODCE website to view information guides on the duties of companies and directors. He was also invited to submit a complaint form on the failure of the company to hold AGMs. He was advised that the performance of the managing agent was ordinarily a contractual matter between the management company and its agent.
A member of a company indicated that a Company Secretary had refused a request for a copy of the register of members on the basis that the company was not allowed under the Data Protection Acts to release the details without the members' prior consent.	The person was informed that they have a right to a copy of the register under Section 119 of the Companies Act 1963. If the company fails to comply with the request, a complaint should be submitted to the ODCE.
A company director sought assistance in relation to an internal dispute between two directors who were also shareholders. One director had assumed the role of decision maker and had totally excluded the other from any aspect of company management. What can the director do?	The caller was informed that the responsibility for resolving the dispute lies with both directors. If necessary, independent legal advice should be sought. Ultimately, the High Court could direct the winding up of the company.

## Media Contacts

The Director issued five formal press statements in 2008 as outlined in **Appendix 1.2.3**. The Office also dealt with well in excess of 100 media queries.

The Director undertook from time to time a number of media interviews to promote the Office's compliance work. The publication of the guidance on management companies was a case in point.

In addition, ODCE staff wrote or contributed to a number of media articles, dealing with issues such as the ongoing work of the Office and the company law implications of the current economic difficulties. In all, the Office featured in almost 500 press and media articles with particular reference to the Office's enforcement work.

## Sub-Goal 1.3: Improving Company Law and Associated Practices

The Office made two formal responses to consultation papers in 2008.

The first of these was made to the Director of Public Prosecutions (DPP) relating to their Discussion Paper on Prosecution Policy on the Giving of Reasons for Decisions<sup>13</sup>. In its submission, the Office concurred in general with the DPP's proposal to give reasons in certain circumstances to affected parties where a decision was made not to prosecute a case. In terms of detail, the Office stated that where appropriate a full statement of the reasons supporting a decision not to prosecute should be supplied, unless such disclosure would compromise a person's right to their good name or to the presumption of innocence.

The Office's second policy submission was in response to a Consultation Paper issued by the Department of Enterprise Trade and Employment (DETE) in relation to the transposition of Directive 2006/46/EC of the European Parliament and Council<sup>14</sup>. The Directive provides for new requirements with regard to, for instance, disclosures about corporate governance, clarification of board responsibility for financial statements and key non-financial information, transparency in intra-group relations and transactions with related parties. The DETE Paper asked a series of questions relating to national implementation of the Directive. Broadly, the Office was supportive of enhanced disclosure requirements and argued against the introduction of any increase of thresholds that would allow companies to limit such disclosures.

The Office also made some comments to DETE in regard to the response of the Institute of Directors in Ireland to the Draft Criminal Justice (Money Laundering) Bill 2008<sup>15</sup>. The Office indicated its support for the retention of the current powers of the Garda Síochána in this area, as well as outlining the difficulties occasionally encountered in obtaining certainty regarding the identity of rogue directors under the law as it stands.

## Company Law Review Group

The Director is a member of the Company Law Review Group, and in that position, he attended a number of meetings of the Group during 2008 which began consideration of its new two year work programme up to the end of 2009.

Late in 2008, the CLRG published its Annual Report for 2007 which outlined the thinking behind its recommendations with respect to the issues arising under its 2006/2007 work programme. A copy of the CLRG Report is on its website at [www.clrg.org](http://www.clrg.org). Further information on the proposals in which the ODCE had an interest is contained in the ODCE's Annual Report for 2007.

## NSAI – ISO 26000 on Corporate Social Responsibility

The International Standards Organisation (ISO) made significant strides in developing a global standard in the area of Corporate Social Responsibility in 2008. The ODCE continued to contribute in an appropriate manner to developments as a member of the Irish 'Mirror Committee' which is managed by the National Standards Authority of Ireland (NSAI) and is tasked with reviewing the work of the ISO on behalf of the State. As the standard is currently at a preliminary Committee Draft stage, it is not available for public inspection.

## Irish Auditing and Accounting Supervisory Authority (IAASA)

The Director is a director of the board of IAASA as well as being a member of its Remuneration Committee, and he continued in 2008 to work with his fellow directors in developing the remit of the Authority. At year-end, he was appointed as a member of an IAASA Enquiry Committee which will investigate in 2009 allegations which were made against the Institute of Chartered Accountants in Ireland in a newspaper article some time ago. A copy of IAASA's Annual Report will be available from its website at [www.iaasa.ie](http://www.iaasa.ie) in mid-2009.

<sup>13</sup> More information on the DPP Discussion Paper and on the results of the consultation exercise is available at [www.dppireland.ie/publications/reasons\\_project/](http://www.dppireland.ie/publications/reasons_project/).

<sup>14</sup> The full text of the Directive is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0046:EN:HTML>.

<sup>15</sup> More information on this Bill is available at [www.justice.ie/en/JELR/Pages/PB08000277](http://www.justice.ie/en/JELR/Pages/PB08000277).

## International Association of Insolvency Regulators (IAIR)

The ODCE is a member of the IAIR and actively participates in its annual work programme. At its Annual Conference in St Petersburg in June, ODCE staff introduced the results of two research studies which the ODCE had undertaken on behalf of the Association.

One study dealt with the value of information-sharing among national insolvency regulators in a world where commerce increasingly extended beyond national borders. The research provided in particular a directory of information sources for IAIR members by which they could seek to cooperate with one another in dealing with transnational insolvencies or domestic insolvencies that have an international dimension. This research was undertaken in cooperation with the Office of the Superintendent of Bankruptcy in Canada.

The second study explored the extent to which sanctions imposed on individuals for past misconduct in insolvency situations are mutually recognised in IAIR jurisdictions. The study suggested that further work would be beneficial in strengthening our respective regulatory frameworks. The reports of both studies are available in the publications section of the IAIR website at [www.insolvencyreg.org](http://www.insolvencyreg.org).

At the invitation of the IAIR, the ODCE undertook to host its 2010 Conference in Dublin.

## OECD Peer Review of Bribery Convention

In the ODCE's Annual Reports for 2006 and 2007, reference was made to the Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (1997).<sup>16</sup> In connection with Ireland's implementation of its obligations under this Convention of the Organisation for Economic Cooperation and Development (OECD), the Government established a Senior Officials' Compliance Committee during 2007, and a staff member of the ODCE serves on this Committee.

In June 2008, an examination team (composed of lead examiners from Estonia and New Zealand, as well as officials from the OECD Secretariat) visited Dublin to enquire into Ireland's progress with the implementation of its obligations under the Convention. The examiners had discussions with a large number of relevant bodies, including with officials of the ODCE. The resulting OECD evaluation report on Ireland's implementation of the Convention was published in December 2008.<sup>17</sup>

## Engagement with the Law Reform Commission (LRC)

As noted in our 2007 Annual Report, the ODCE responded to the LRC's Consultation Paper on Multi-Unit Developments. During the first half of 2008, the ODCE had further engagement with the Commission concerning property management companies.

Following on from the Consultation Paper, the LRC published a Report entitled 'Multi-Unit Developments'<sup>18</sup> in June 2008. This Report made inter alia various recommendations for legal change, and **Appendix 2** to the Report contains a draft Multi-Unit Developments Bill intended to implement the Report's recommendations. The ODCE was gratified by the favourable comments in the Commission's Report concerning the ODCE's guidance work with respect to property management companies.

## High Level Inter-Departmental Committee on Multi-Unit Developments

Following publication of the LRC's Consultation Paper on Multi-Unit Developments, the Government decided in 2007 to establish a High Level Inter-Departmental Committee comprising representatives of relevant Departments and Offices to assist in the development of a coherent and comprehensive legislative response to the Commission's analysis and recommendations. An ODCE official served as a member of this Committee throughout the period of its activities.

In August 2008, the Committee concluded its deliberations and delivered its Report to the Cabinet Committee on Multi-Unit Developments (following publication of the June 2008 LRC Report referred to above).

## Conclusion

The Office's compliance work is a primary driver in its attempts to support a growing culture of compliance in the State. However to be effective, this important work must be supported by a credible regime of balanced but effective actions which encourage the correction of defaults or sanction wrongdoing where appropriate. The following sections of this Report set out how the Office carried out this work in 2008.

<sup>16</sup> Information on the Convention is available at [www.oecd.org](http://www.oecd.org) and at [www.anticorruption.ie](http://www.anticorruption.ie).

<sup>17</sup> [www.oecd.org/dataoecd/33/6/41869600.pdf](http://www.oecd.org/dataoecd/33/6/41869600.pdf)

<sup>18</sup> LRC 90 – 2008, available at [www.lawreform.ie](http://www.lawreform.ie).



## Goal 2: Uncovering Suspected Breaches of Company Law

### Introduction

In its assessment of suspected company law breaches, the ODCE is anxious to improve corporate conduct and foster a culture of compliance with the Companies Acts. The Office is particularly motivated to secure the correction of unlawful behaviour where that results in those who are culpable for the defaults actually or potentially deriving an unfair competitive or other advantage over other company stakeholders. On occasion of course, the conduct in question may merit legal action in which case a formal investigation is undertaken.

### Sub-Goal 2.1: Developing Detection and Reporting Arrangements for Suspected Breaches of the Companies Acts

In 2008, the Office again received a large number of auditor reports and public complaints alleging breaches to the Companies Acts. However, a feature of 2008 was the incidence of financial statement defaults which were detected following the ODCE's decision to focus some attention on the financial statements of companies limited by guarantee in particular.

The cases which emerged in 2008 derived from the following main business sectors.

Complaints/Reports by Business Sector in 2008	% of Complaints/Reports
Real Estate, Renting and Associated Business Activities	26%
Community and Personal Services	17%
Construction	9%
Wholesale, Retail and Motor Trades	7%
Transport and Communications	6%
Manufacturing	6%
Financial Intermediation	3%
Hotels and Restaurants	3%
Other Business Sector	9%
Unknown Business Sector	9%
Not a company	5%
<b>Total</b>	<b>100%</b>

### Number/Sources of Issues Examined

In all, some 627 cases were opened in 2008, a 7% decline on the 674 cases for 2007. **Appendix 2.1.1** contains further details on these figures.

Most of this reduction was attributable to an 11% decline in public complaints which dropped to 295 cases from 331 in 2007. However, an 8% rise from 204 in 2007 to 221 in 2008 was also evident in the number of reports received from auditors, recognised accountancy bodies and others who are required to report suspected breaches of the Companies Acts to the ODCE. This increase in cases was primarily due to auditor reports which grew by 11%.

Much of the balance was due to an ODCE 'campaign item' which in 2008 focused attention on the detection of deficiencies in the financial statements of companies limited by guarantee in particular. The corresponding 'campaign item' in late 2007 was an examination of compliance with new disclosure obligations in the European Communities (Companies) (Amendment) Regulations 2007.

### Cooperation between Regulatory Authorities

In the face of limited company document and premises inspection powers, the Office must rely to a large extent on public information and on third parties to identify possible misconduct. It is important therefore that its information sources for possible company law breaches should be wide-ranging, and that is why the Office seeks on an ongoing basis to encourage other regulators to report possible non-compliance with the Companies Acts. These mutually supportive information-sharing arrangements are sometimes formalised in bilateral Memoranda of Understanding (MOUs).

### ODCE/Accountancy Body Contacts

The ODCE enjoys a constructive relationship with the professional accountancy bodies, and there were regular meetings in 2008 at plenary and technical levels to review the reporting arrangements from auditors and the bodies themselves to the ODCE and from the ODCE to the bodies in turn. Work commenced on developing revised guidance for auditors to assist them in reporting suspected indictable offences under the Companies Acts. The Director has expressed his concern on a number of occasions at the relatively narrow range of offences that are typically reported by auditors, and it is hoped that the guidance, when finalised, will lead to a wider variety of detected defaults from the profession.



In November 2008, new protocols were also put in place regarding the referral of issues from the ODCE to the bodies relating to individual members of the accountancy profession. The spur for these protocols was a sequence of referrals made by the ODCE to the bodies and to the Irish Auditing and Accounting Supervisory Authority (IAASA) arising from the ODCE's detection of financial statement defaults primarily in companies limited by guarantee in particular. The ODCE welcomes the fact that the bodies in question have reminded their members that companies limited by guarantee are ineligible for audit exemption. Hopefully, this will serve to improve compliance with this statutory obligation in the future.

Work was also undertaken during the year in reviewing the wording of the obligation in Section 202 of the Companies Act 1990 under which companies and directors must keep proper books of account. The purpose of this review is to clarify the intent and scope of the obligation in the current commercial environment. It is intended that any revised wording will be forwarded for consideration as part of the proposed Companies Consolidation and Reform Bill in due course.

#### **ODCE/IAASA Contacts**

Regular contacts took place at staff level between both bodies in 2008. In addition to the financial statement default issues identified above, cases involving unqualified persons acting as auditors was also a cause of regular contact.

#### **ODCE/Revenue Contacts**

There were extensive contacts during the year with the Revenue Commissioners on company law related issues. The contacts focused in particular with respect to the Office's work in addressing the area of unliquidated insolvent companies where Revenue would often be a substantial creditor. In all, information on some 80 companies and former companies was shared.

#### **ODCE/Financial Regulator Contacts**

The relationship between the ODCE and the Financial Regulator developed during the year as contacts became more frequent. Late in 2008, the Director and the Chief Executive of the Financial Regulator met to agree revisions to their existing Memorandum of Understanding (MOU), and a revised MOU was signed.

#### **ODCE/Pensions Board Contacts**

A preliminary meeting took place between the ODCE and the Chief Executive of the Pensions Board to formalise cooperation with respect to cases involving insolvent

companies which had deducted pension contributions from employees but had failed to remit them to the pensions provider. The ODCE forwarded a draft MOU to the Pensions Board for consideration, and its finalisation will be pursued in 2009.

#### **ODCE/Garda Bureau of Fraud Investigation (GBFI) Contacts**

Regular contacts also took place between in particular the Garda members seconded to the ODCE and their colleagues in GBFI and elsewhere in the Force.

At the invitation of GBFI, the Director attended in late 2008 a presentation given in Dublin by members of the Federal Bureau of Investigation from the United States of America. Other regulators and financial entities were also represented.

#### **ODCE/Companies Registration Office (CRO) Contacts**

The staff of the CRO again provided valuable assistance to the Office in 2008, particularly in retrieving and certifying filed original documentation for use by the ODCE in Court enforcement proceedings.

## **Sub-Goal 2.2: Identifying Suspected Breaches of the Companies Acts**

In general, it was readily apparent from auditor reports and from the Office's own detection work what were the issues of detected non-compliance. Where it was necessary to establish if the issues raised actually concerned breaches of company law, ODCE staff engaged with the relevant complainants.

### **Nature of Issues identified in Auditor and Other Mandatory Reports**

The 221 mandatory reports received in 2008 contained seven main suspected offences. **Appendix 2.2.1** to this Report identifies the types of offences reported.

Consistent with previous years, the following two issues represented 87% of the reported defaults:

- 161 cases involved excessive directors' transactions where directors used company funds contrary to the restrictions in Section 31 of the Companies Act 1990. This figure represented a 17% increase on the 138 reports received in 2007;
- 32 instances of a suspected failure to keep proper books of account contrary to Section 202 of the Companies Act 1990 were received in 2008. This was a welcome decrease on the 40 reports received in 2007.

## Directors' Loans

Previous ODCE Annual Reports have highlighted the phenomenon of directors' transactions, and unfortunately, events in 2008 kept this issue in the public eye.

With regard to 161 reported cases of excessive directors' transactions, the associated loan amounts grew to €134 million in 2008, a fourfold increase on the €33.7 million reported by auditors in 2007. A particular feature was the incidence of loans taken by directors from companies in the construction and property development sectors where some 47 auditor reports were received involving about €98 million in loans. This figure represents approximately 73% of all transactions reported by auditors in 2008.

Having regard to the high burden of proof required for the prosecution of these defaults, the Office continued in 2008 with its established policy of encouraging directors to return the loans in question to the company and warning them of the future consequences of repeating this default. In all, company directors repaid some €164 million, and the Office cautioned 423 directors during the year, the vast bulk of which were cases notified to us by auditors. At year-end, 43 cases including one quite significant case remained on hands.

A new feature to emerge in late 2008 was an apparent failure to make adequate disclosure of the amount of directors' transactions in company financial statements. This issue particularly surfaced in Anglo Irish Bank Corporation plc ("Anglo") and directly led to the resignation of its chairman and another director who had been beneficiaries of these loans. This issue was the subject of detailed scrutiny by ODCE staff at year-end.

Sections 41 to 46 of the Companies Act 1990 set down the disclosure obligations which were the subject of previous ODCE Guidance<sup>19</sup>. In essence, 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. Special disclosure provisions in Sections 43 and 44 in particular apply to licensed banks. Having regard to the developments in Anglo, the ODCE decided in late December to write to some 40 licensed banks in the State to assess the extent to which they were compliant with their obligations under Sections 43 and 44.

## Nature of Issues Identified in Voluntary Reports and Other Detections

Appendix 2.2.2 outlines in summary form the character of the various public complaints and other detected issues which came to attention in 2008.

## Property Management Companies

A further 61 complaints about management companies were made to the ODCE in 2008. As in previous years, some of these complaints dealt with issues which fell outside the remit of the Office (such as the level of service charges and the non-assignment of the common areas to the management company). 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.

Illustration 2.2.1 provides an example of a management company case in an apartment block in Dublin City which was the subject of recurring problems but which was satisfactorily resolved by the Office on an administrative basis.

### Illustration 2.2.1: Residential Property Management Company Case

In 2008, the ODCE received a number of complaints from the members of a property management company whose concerns centred on the failure to convene its AGM and to supply members with unabridged audited company accounts. The complainants satisfied the Office that they were indeed members of the company and that they had engaged in extensive correspondence with the company secretary over some time seeking to have their concerns addressed. The company secretary had apparently promised on more than one occasion to rectify the identified deficiencies.

The ODCE proceeded to write to the company's directors seeking certain information with respect to the fulfilment of their statutory duties, and it transpired that the directors had entrusted the running of the company to the company secretary and the managing agents. In response to the ODCE's intervention, the directors then:

- convened an AGM in accordance with the Companies Acts;
- confirmed that the company's auditor was in place and
- undertook to grant the members access to the company's books and records.

The members subsequently participated at the AGM and received copies of the company's audited financial statements in advance.

<sup>19</sup> The Guide to Transactions Involving Directors (November 2003) is available at [www.odce.ie](http://www.odce.ie). Section 9 of the Guide deals with the applicable disclosure obligations.

## Financial Statement Defaults

In its investigations of complaints in recent years, the ODCE had occasionally detected in its examination of the financial statements of companies limited by guarantee incorrect claims for filing and audit exemption and other financial statement defaults. Companies limited by guarantee are usually 'not-for-profit' companies that are formed for some charitable, community or social purpose. By virtue of their character, the law requires that the assets managed by them must be subject to the assurance of an independent audit.

In a focused campaign in 2008, the ODCE examined the financial statements of 264 companies. In 68 cases (some 25% of the companies examined), it was evident from the company financial statements that there was non-compliance with the Companies Acts to a greater or lesser extent. In all, over 100 deficiencies were detected, and the primary defaults were the following:

- on 64 occasions, the auditors certified that they were satisfied that the directors were entitled to lodge abridged accounts and the companies then filed abridged accounts, notwithstanding the fact that companies limited by guarantee are not entitled to file abridged accounts<sup>20</sup>;
- in 30 cases, the auditors reported a deficiency of capital notwithstanding the fact that companies limited by guarantee have no issued share capital<sup>21</sup>;
- on eight occasions, the auditors failed to provide a complete audit opinion in accordance with the statutory requirement<sup>22</sup>, and
- in a small number of other cases, no audit was undertaken.

Following ODCE contact with the company auditors and/or directors concerned, all of the defaults in question were rectified. As indicated earlier, the auditors' professional bodies and IAASA were advised of the professional lapses in question so that they could take appropriate remedial action. **Illustration 2.2.2** provides an example of a company which had improperly claimed audit exemption for many years.

### Illustration 2.2.2: West of Ireland Community-Based Company

A community-based company had owned and managed property for many years. It had been inappropriately claiming audit exemption for some time. Having recently disposed of assets, it had received substantial funds as a result.

Following ODCE contact with the company, the directors took steps to appoint an auditor, to prepare audited financial statements and to file them in the CRO.

## Outstanding Debts

In 2008, a significant number of complaints alleged a failure on the part of companies to pay outstanding debts was also received. In the absence of any evident breach of company law, the ODCE suggested to the complainants that they explore their own legal remedies to recover any monies due to them.

## Throughput of Cases

**Appendix 2.2.3** provides details of case throughput. Of the 950 or so cases on hands in 2008, some 584 cases were closed. This represents a 15% increase on the 507 cases closed in 2007. This result was due in part to a concerted effort on the part of Office staff in 2008 to clear a large number of the Office's outstanding cases.

**Appendix 2.2.4** provides information on the manner of disposal of these 584 cases:

- 56% of the cases were closed having secured a remedy of the company law default and/or having adopted a compliance approach to the default. In many cases, the ODCE issued a caution to the relevant persons warning of the consequences of a repetition of the detected default. Over half of these cases involved excessive directors' transactions;
- 25% of them were concluded on the basis that there was insufficient evidence of default under the Companies Acts to warrant further action. As a general rule, the allegations were considered to be irrelevant or peripheral to the Companies Acts and/or the remit of the ODCE. A typical case type would be a complaint about service charges in a property management company;

<sup>20</sup> Only private companies are entitled to file abridged accounts under the Companies (Amendment) Act 1986 (as amended).

<sup>21</sup> The requirement on auditors to make such a report under Section 40 of the Companies (Amendment) Act 1983 is only relevant to companies which have a share capital.

<sup>22</sup> As required by Section 193 of the Companies Act 1990 (as amended).

- 12% were closed on the basis that it was more appropriate that the complainants pursued their own legal or other remedies to advance their interests. The accompanying **Illustration 2.2.3** involves a case in which a prominent company asked the ODCE in 2008 to consider taking disqualification or restriction proceedings against two of its former directors;
- the remaining cases were generally considered to be a matter for primary evaluation by other authorities, e.g., the Pensions Board in respect of a failure to remit pension contributions to the pensions provider.

#### **Illustration 2.2.3: Request to the ODCE to consider Disqualification Proceedings**

On the instruction of his Board of Directors, a Company Secretary complained to the ODCE in 2008 that there had been a gross dereliction of duty by two former directors. The Company had taken emergency legal action in the form of injunctive relief to protect its interests, and it was said to be considering further unspecified legal action against the former directors and related parties. Acting on legal advice, the Board had formed the opinion that both former directors were not fit persons to be directors of any limited liability company and that they ought to be disqualified or restricted. The ODCE was asked to consider taking appropriate action on foot of the complaint.

In reply, the ODCE sought all relevant documents evidencing the Board's contentions and further information in relation to the legal action already taken and now being contemplated and the timescale for making that decision. The reply also asked the Company to address the following issue:

*"The legal advice made available to your Company will no doubt have pointed out that under Section 160(4) of the Companies Act [1990], it is open to any member or officer of your Company to apply to the High Court for the disqualification of any of its former officers in the indicated circumstances of this case. Accordingly, I have to ask why your Company should be asking this Office to consider exercising its right to make a disqualification application when the same right of action is available to you."*

The Company did not avail of the opportunity to pursue its complaint with the Office, and no information is available to suggest that it launched its own disqualification proceedings against the former directors in question.

In addition to the 584 closed cases, a further 78 cases were deemed appropriate for more detailed investigation. This included a number of auditor reports where the Office considered that legal action may be warranted if relevant evidence of misconduct were obtained and certain property management company cases where the directors had failed to respond positively to ODCE attempts to secure rectification of the identified defaults.

### **Sub-Goal 2.3: Commissioning/ Supporting Formal Company Investigations**

On occasion, it is necessary for the ODCE to consider undertaking a thorough fact-finding investigation of a company's activities in order to identify if misconduct has occurred. In circumstances suggesting fraud, illegality or prejudicial conduct, the Companies Acts permit the ODCE to require the production of specified books and documents of a company for examination.

#### **High Court Inspection**

On foot of an application by the ODCE, the High Court appointed Mr Bill Shipsey SC in July 2008 as Inspector to DCC plc, S&L Investments Ltd and Lotus Green Ltd to investigate aspects of various purchases and sales of the shares of Fyffes plc in 1995 and 2000. This was the first occasion in which the Office had applied to the High Court for the appointment of an inspector to a company.

The ODCE's successful petition to the Court followed:

- the Office's examination of the High Court and Supreme Court Judgments in the civil proceedings with respect to alleged insider dealing in 2000 which were initiated by Fyffes plc against DCC plc, S&L Investments Ltd, Lotus Green Ltd and James Flavin and
- its own investigations which raised questions about the legal validity of certain related share transactions in 1995.

The Inspector commenced work in Autumn 2008, and the known cost of the Inspection was some €180,000 up to the end of 2008.

#### **Ongoing Investigations**

At the start of 2008, the Office had four ongoing examinations of company books and documents in hand. One of these related to DCC plc and related companies, and it concluded following the High Court's decision in July to appoint an Inspector to the companies.



Previous Annual Reports have referred to the ODCE's examination of the books and documents of Cologne Reinsurance Ltd. It is understood that some related legal proceedings in the USA involving a number of parties may have concluded in 2008, and the Office was awaiting confirmation of the details from the US authorities at year-end prior to considering what ODCE action, if any, may be appropriate.

Two further company examinations which had been initiated prior to 2008 remained ongoing at year-end.

### **New Company Investigations**

Other than the Inspection of DCC plc, S&L Investments Ltd and Lotus Green Ltd, no new fact-finding examination of a company's books and documents was initiated in 2008.

### **Departmental Company Examinations**

In 2008, the Department of Enterprise Trade and Employment kept the Director informed of developments in relation to the examinations of the books and documents of College Trustees Limited, Guinness and Mahon (Ireland) Limited and Hamilton Ross Company Limited.

## **Conclusion**

Having regard to the volume of cases examined and closed, 2008 was a very busy year for the Office in evaluating possible company law defaults. As the year ends however, it is clear that the events disclosed at Anglo will dominate Office attention in 2009. This will place a considerable strain on its available resources and will inevitably pose challenges in managing the normal throughput of detection work in parallel. In those circumstances, it is unlikely that a similarly large number of cases will be dealt with in 2009.

The large volume of directors' loans which emerged in the property and construction industry in 2008 in the face of a sharp decline in the sector's performance suggests that creditors may find it difficult to recover some or all of these sums in 2009. If this eventuality arises, then the directors of those property and construction companies will be at risk of sanction from the courts. Every effort should be made by those directors to repay all of the outstanding monies due to their companies so as to minimise the liabilities of creditors, and the ODCE will continue to encourage this.



## Goal 3: Prosecuting Detected Breaches of the Companies Acts

### Introduction

In the preceding section of the Report, reference was made to the successful application made to the High Court to have an Inspector appointed to investigate a number of companies. In this section, we discuss the legal proceedings taken in the enforcement area where a number of important developments also occurred in 2008. Highlights included:

- the first conviction of a company director for knowingly using company assets in breach of the legal restrictions on the giving of loans to directors. The relevant Court imposed significant penalties in the case;
- the first case of a company director being given a custodial sentence which was not suspended by the Court. However, the director has appealed both the conviction and the sentence;
- the useful interpretation by the Supreme Court of the phrase “*persistently in default*” in Section 160(2)(f) of the 1990 Act.

A number of these cases are discussed in greater detail later in this Report.

### Legal Proceedings

In 2008, the ODCE secured a total of 32 convictions, 20 disqualifications and one restriction for breaches of company law duties and obligations. The table below provides the equivalent detail in respect of 2007.

Number/Nature of Successful Enforcement Results	2007	2008
Charges on which convictions were secured	28	32
Charges taken into account on conviction	16	1
Charges thought proven (Probation of Offenders Act 1907)	5	-
Disqualifications	14	20
Orders made in compliance proceedings	2	-
Restrictions	-	1
Other Decisions	3	1
<b>Total</b>	<b>68</b>	<b>55</b>

In all, the Office was involved in some 52 legal proceedings of which 27 were in the Supreme Court or the High Court,

24 in the District Court and one in the Circuit Criminal Court. It is clear from the overview of the status and outcome of these cases in **Appendix 3.1** that the Office was generally successful in its proceedings.

**Appendix 3.2** gives a more detailed breakdown of the type of civil and criminal enforcement proceedings which arose in the various Courts together with a summary of the outcomes of the cases involved.

Details of the parties who were held by the relevant Court to have breached their duties and obligations under the Companies Acts, together with the relevant offences and penalties, are contained in **Appendix 3.3**. In accordance with ODCE practice, a summary of each case result was placed on its website at [www.odce.ie](http://www.odce.ie) during 2008.

### Civil Enforcement Actions

Of the 20 disqualifications and one restriction obtained in 2008, all but five of the disqualifications were the result of civil enforcement actions. Details of these civil proceedings were as follows:

- the High Court disqualified twelve persons for periods ranging from four to seven years in respect of directors whose companies had been struck off the Register of Companies for failing to file outstanding annual returns and who failed to show to the High Court that the companies involved had no outstanding liabilities. The Court also declined to disqualify one individual who was the subject of ODCE proceedings. In the majority of these cases, the persons disqualified were the directors of multiple insolvent struck-off companies. Two of these disqualifications have since been appealed to the Supreme Court;
- a company director who was involved with three struck-off companies was restricted for five years;
- the High Court also disqualified three persons for six, four and three years respectively as a consequence of ODCE applications based on the adverse findings in the High Court Inspectors’ Report on National Irish Bank Ltd (NIB) and National Irish Bank Financial Services Ltd (NIBFS). These disqualification orders were stayed by the Court on certain conditions pending the outcome of appeals which have since been lodged in the Supreme Court. The ODCE was unsuccessful in a disqualification application initiated in respect of a fourth individual, and this is now the subject of an appeal.

The Office failed to secure a positive result in only one set of disqualification proceedings last year. However in this case and as indicated in the Introduction above, the Supreme Court usefully interpreted the phrase “*persistently in default*” in Section 160(2)(f) of the 1990 Act. See **Illustration 3.4.1** below for a summary of this case.

The ODCE had some sixteen proceedings before the High Court and the Supreme Court at year-end. Eight of these cases relate to proceedings deriving from the NIB/NIBFS Report, while another six deal with the directors of insolvent companies which had been struck off the Register of Companies for failing to file outstanding annual returns. The remaining two cases involve other types of disqualification action which are awaiting appeal.

## Criminal Enforcement Actions

Reference was made in the Introduction above to two significant criminal cases, one of which involved a company director receiving a custodial sentence which was not suspended by the Court. This penalty was imposed on an individual for acting as a company director during his period of disqualification. However, the individual in question has since appealed his conviction and the associated penalties which also included a fine of €1,500 and a further disqualification period of five years.

The second significant case involved the first conviction of a company director for knowingly using company assets in breach of the legal restrictions on the giving of loans to directors. The issues in this case are outlined in **Illustration 3.3.1** below.

Other successful criminal enforcement proceedings which concluded in 2008 were taken in respect of the following offences:

- acting as a director while restricted and in breach of the statutory conditions relating to company capitalisation. In 2008, the ODCE prosecuted three cases in this category resulting in five convictions (with one charge taken into account) against the three directors involved. As a consequence of their convictions, these directors are now also disqualified for periods ranging from two years to five years. The Office will continue to monitor compliance by disqualified and restricted persons with the requirements of the law in the interests of protecting company stakeholders and in order to underpin the integrity of the restriction regime;
- acting as auditor while unqualified. In 2008, the ODCE successfully prosecuted one individual in respect of all five charges before the Court. A further similar case was ongoing at year-end. In the view of the ODCE, it is important that the status of a company’s

financial statements does not mislead creditors and other stakeholders particularly in circumstances where the statements are erroneously represented as having been audited by a qualified person. In pursuing unqualified auditors, ODCE actions curb this risk and provide assurance to the users of audited financial statements that those statements are credible;

- failing to keep proper books of account. The ODCE prosecuted four of these cases in 2008 which resulted in seven convictions of companies and directors. The Office places a high priority on the maintenance by companies and directors of adequate accounting and other records, because they help business people to maintain an accurate reflection of the company’s financial standing;
- provision of false information. The Office successfully prosecuted a case in 2008 involving the provision of false information of a material character to the CRO.

**Illustration 3.2.1** below deals with the circumstances of the case.

## Other Enforcement Proceedings

The ODCE was involved in four other proceedings, two of which were of some significance. One intervention respectfully invited the High Court to consider of its own motion the possible disqualification of one or more persons arising from the civil insider dealing action successfully taken by Fyffes plc against DCC plc and a number of other parties. However, the Court did not adopt such a course of action before these insider dealing proceedings concluded. Subsequently, the Director initiated his successful application for a High Court Inspection of certain share dealings in DCC plc and two other companies.

The second case dealt with the issue of costs in a successful appeal brought by the director of an insolvent company against a restriction imposed on him in the High Court. See the **Illustration 4.1.1** in the next section of the Report.

## Enforcement Cases

**Appendix 3.4** provides statistical information on the throughput of criminal cases in 2008. In taking concerted action during the year to close almost 260 cases which had no viable prosecution merit, the ODCE is now potentially better able to focus its attention on a smaller number of priority investigations. Some 125 cases were on hands at year-end, the majority of which comprised the 75 new cases received in 2008.

**Appendix 3.5** sets out the broad offence categories of the 75 new cases. Most of these cases related to persons who had allegedly acted as auditor or director while precluded

from doing so and companies which were suspected of failing to keep proper books of account.

### Sub-Goal 3.1: Developing a Balanced Enforcement Policy

The Office continued in 2008:

- to help the majority of people who want to comply with company law to do so and
- to discourage misconduct by those who may be tempted not to comply.

Depending on the nature of the offence and the seriousness of the indicated misconduct, the ODCE's graduated approach to its regulatory responsibilities ranges from:

- securing rectification of a default, to
- taking direct ODCE enforcement action of some character, to
- referring an indictable offence case to the Director of Public Prosecutions for a decision as to whether the matter should be tried before a judge and jury.

The result of this tiered regulatory approach is that only a minority of cases result in formal legal action. The Director envisages that this broad approach will continue for the foreseeable future with such refinements as are necessary in response to case developments over time.

### Sub-Goal 3.2: Upholding Disclosure Requirements

Persons benefiting from incorporation and the privilege of limited liability under the Companies Acts are required to adhere to certain consequential duties and obligations. These include the requirements:

- that companies trading in the State be registered,
- that certain company particulars, (e.g., location of registered office, identity of directors, etc.) be kept up to date and
- that information on the company's financial and operating performance be maintained accurately and promptly.

A purpose of these requirements is market transparency so that members, creditors and other stakeholders can make an informed decision on the risks of engaging with the entity by examining the filed information made available in the CRO.

Disclosure defaults in the form of the failure by companies and company directors to keep proper books of account once again featured on the ODCE's work programme in

2008 when four cases were successfully prosecuted resulting in the conviction of four companies and two directors.

A potentially more serious offence is that of the falsification of company books and records. **Illustration 3.2.1** records the background to a conviction secured in April 2008 against a person who sought to remove his co-director from a small company by having a false return filed in the CRO.

#### Illustration 3.2.1: Furnishing of False Information to the Registrar of Companies

The background to this case was that the ODCE received a complaint from the director of a company called Gortlee Stores Limited in which it was alleged that a 'B10' form filed in the CRO had falsely indicated her resignation as a director of the company.

Following investigation, the ODCE successfully proved to the relevant Court that the CRO filing was predicated on what was purported to have been a letter of resignation addressed to the company's professional advisers by the complainant director. However, the Court was satisfied that the defendant, Mr Patrick McFadden, had forged the complainant's signature in order to secure the illegal removal of his business partner as a director.

Having pleaded guilty to a single charge, the Court convicted Mr McFadden and imposed a fine of €500.

### Sub-Goal 3.3: Sanctioning Parties Disregarding Company and Other Interests

For reasons of public protection, the Companies Acts contain a number of provisions, which preclude unqualified or disqualified persons from acting as a company auditor, director or liquidator either generally or in certain defined circumstances. As indicated earlier, the ODCE successfully prosecuted five persons under this general heading in 2008.

In the interests of company creditors and other stakeholders, company directors must also preserve the assets of their companies, and the law specifically precludes the excessive lending of those assets to the directors and to connected persons. Previous Annual Reports have consistently highlighted the significant work done by the ODCE in this area over the years. A detailed ODCE Guide to Transactions Involving Directors remains available at [www.odce.ie](http://www.odce.ie).

As indicated earlier, 2008 saw the first conviction on indictment of a company director for knowingly using company assets in breach of the applicable legal restrictions. The following **Illustration 3.3.1** discusses the circumstances associated with the relevant Circuit Court conviction.

### Illustration 3.3.1: Conviction on Indictment of a Director for knowingly availing of Excessive Loans from his Company

In July 2003, Mr Stuart Fogarty, a director of Aubrey Fogarty Associates Ltd (“AFA”), pleaded guilty to 16 separate charges of having authorised or permitted the company to lend him sums while he knew or had reasonable cause to believe that the company was thereby contravening the law. Having thought the charges proven, the Court gave the defendant the benefit of the Probation of Offenders Act 1907 and dismissed the charges having noted his contribution of €3,000 to charity.

In December 2005, the auditors of AFA reported to the ODCE that Mr Fogarty had again benefited from significant company loans in breach of the applicable law.

Following investigation, the ODCE initiated summary proceedings against Mr Fogarty in mid-2007. The proceedings involved 13 charges relating to separate transactions totalling €426,338 between September 2003 and December 2005. The Director took the view that summary proceedings were appropriate because the loans were refunded to the company, there were no outstanding tax liabilities and no loss was sustained by any party arising from the breach of law.

In the event, the District Judge declined jurisdiction, and the matter was dealt with on indictment. The ODCE prepared the book of evidence, and the Director of Public Prosecutions prosecuted the case. In May 2008 on a plea of guilty, Mr Fogarty was convicted in the Circuit Criminal Court on all 13 charges, and fines totalling €34,000 were imposed. The Court also imposed a two year suspended sentence in relation to one of the offences, and in relation to another two offences, the Court subsequently ordered him to do 240 hours of Community Service.

As Mr Fogarty was convicted on indictment of an offence in relation to a company, he would be deemed to be disqualified under Section 160(1) of the 1990 Act for a period of five years unless that period was, on the application of the prosecutor, varied by the Court. On the application of the DPP made with the support of the ODCE, the Court disqualified Mr Fogarty for six months from 28 May to 27 November 2008. Mr Fogarty resigned his directorship of some 20 companies for the period in question as a result of this case.

## Sub-Goal 3.4: Acting against Parties Denying Accountability under the Law

The Director continues to pursue cases where company directors persistently act in disregard of the law. The following **Illustration 3.4.1** deals with one such case which the ODCE initiated in 2003. While the ODCE appeal

failed in May 2008, the Supreme Court Judgment is significant in interpreting the phrase “*persistently in default in relation to the relevant requirements*” in Section 160(2)(f) of the 1990 Act and in endorsing the ODCE view that deterrence is a legitimate element to be taken into account when a Court exercises its discretion in a disqualification application.

### Illustration 3.4.1: Disqualification Proceedings against Directors who were “persistently in default”

The case circumstances were that by 2003, the directors of Wood Products (Longford) Limited, Mr Patrick McGowan and Ms Patricia McGowan, had failed since 1991 to file their company annual returns with the Registrar of Companies. This persistent failure led to the company being struck off the Register and dissolved in 1999.

In May 2001, the company was restored to the Register by Order of the High Court. That Order required the directors to deliver all outstanding annual returns as well as certain outstanding tax returns. The directors failed to comply with that Order.

In November 2003, the ODCE initiated disqualification proceedings against both directors under inter alia Section 160(2)(f) on the grounds that they had been “*persistently in default in relation to the relevant requirements*”.

Subsequently, the Respondents filed the outstanding annual and tax returns; Ms McGowan resigned as a director, and a replacement director was appointed.

In February 2005, the High Court took the view that the Respondents could not be held to be persistently in default as their inaction had not occurred in the teeth of intervention on the part of the Courts on more than one occasion. Accordingly, the Court concluded that the Respondents should not be disqualified.

On appeal, the Supreme Court also decided in May 2008 not to disqualify the Respondents on the basis of its view that disqualification would not at that stage serve any useful purpose and would probably disrupt the company’s business. However, the Court held inter alia that:

- the Respondents had failed annually for 13 years to comply with their legal obligations to file prescribed returns with the Registrar. Each failure constituted the commission of a criminal offence. They had repeatedly breached a mandatory obligation which lay upon them as company directors, and they had committed criminal offences by doing so. Moreover, they had failed to comply with a High Court Order. That amply met the requirement of “*persistently in default*” under the Act;
- while the principal purpose of disqualification is not to punish but to protect the public, there should be an element of deterrence in the exercise by a Court of its discretion. It is part of the policy of Section 160 to improve corporate governance. Courts have become increasingly vigilant and less tolerant in relation to lax standards and disregard of the law.



## Conclusion

The ODCE secured an increase in the numbers of convictions and disqualifications in 2008, and a number of the Court decisions broke new ground in company law enforcement proceedings.

At year-end, the Office had a number of significant cases underway or in hand, and it is clear that the forthcoming year will be a particularly busy one in pursuing detected corporate misconduct. We will continue to pursue any priority issues in the company law area which impede transparency, threaten the fair and equitable conduct of commercial relations among company stakeholders and undermine market confidence.



## Goal 4 – Sanctioning Improper Conduct with respect to Insolvent Companies

### Introduction

With more companies facing financial difficulties in the present economic downturn, it is particularly important that company directors ensure that they act responsibly with respect to the interests of other company stakeholders and especially to those who may suffer financial losses in the event of an insolvent failure of the company. Directors would be well advised to take appropriate advice, including professional advice, on their options in order to act responsibly and on a timely basis to help save the company or, if this is not possible, to take steps to wind up the insolvent company in an orderly and appropriate manner.

Directors who fail to act responsibly may face Court sanctions in the future.

This part of the Report will outline in turn the ODCE's work in 2008 with respect to:

- insolvent companies in liquidation and
- unliquidated or dissolved insolvent companies.

### Liquidation Trends

The following table shows the number of liquidations notified to the CRO in recent years.

Liquidations	2004	2005	2006	2007	2008
Creditors' Liquidations	321	300	323	308	530
Court Liquidations	40	49	31	36	83
<b>Total Insolvent Companies</b>	<b>361</b>	<b>349</b>	<b>354</b>	<b>344</b>	<b>613</b>
Members' Liquidations	827	868	930	1,057	1,051
<b>All Liquidations</b>	<b>1,118</b>	<b>1,217</b>	<b>1,284</b>	<b>1,401</b>	<b>1,664</b>

The number of solvent liquidations stayed relatively constant between 2007 and 2008. However, there was a 78% rise to 613 in the number of insolvent companies placed in liquidation, and this large increase reflects the sharp decline in the national economy.

Many companies are facing significant challenges at present. The average number of insolvent liquidations rose from some 33 per month in the first quarter of 2008 to 60 per month in the final quarter. However, this level is expected to rise further in 2009.

### Insolvent Companies in Liquidation by Economic Sector

A breakdown by economic sector of insolvent companies in liquidation by reference to the first reports received from liquidators in 2008 is provided in **Appendix 4.1**.

Unsurprisingly, construction accounted for over a third of all reported insolvent liquidations. Overall, there was an 81% increase from 78 to 141 in the number of such companies going into liquidation in 2008 relative to 2007 in the context of a general 42% increase across all sectors. Other comparable increases were recorded off smaller bases

in marketing and promotion (+138%), recruitment and security (+86%) and, less understandably perhaps, in the community and social sector (+79%).

### Unliquidated/Dissolved Insolvent Companies

As indicated in previous Annual Reports, there are no definitive figures that capture the entire population of unliquidated and dissolved insolvent companies. At any one time, there may be several hundred unidentified insolvent companies on the Register of Companies that have ceased to trade and which have not been put into liquidation. However, many of these will come to be struck off the Register eventually.

CRO figures are available for the number of dissolved companies, but these comprise both solvent and insolvent companies. The number of companies dissolved in any year is also dependent on the activity of the relevant parties in pursuing strike-off. Bearing in mind these caveats, the following table summarises the number of struck-off companies for the years 2004 to 2008.

Type of Dissolved Company	2004	2005	2006	2007	2008
'CRO Strike-off' <sup>23</sup>	1,401	9,514	5,255	4,085	5,804
'Revenue Strike-Off' <sup>24</sup>	1,599	794	444	149	223
'Voluntary Strike-Off' <sup>25</sup>	3,595	3,316	3,757	3,975	4,542
Total	6,595	13,624	9,456	8,209	10,569

## Sub-Goal 4.1: Supervising Liquidators in the Proper Discharge of their Duties

### Reporting under Section 56 of the Company Law Enforcement Act 2001

The process and scope of liquidator reporting are outlined in two ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1<sup>25</sup>. In summary, the liquidator of a company in insolvent liquidation is required by law to report to the ODCE on its demise and on the conduct of any person who was a director of the company during the 12 months preceding its liquidation. The liquidator must also proceed to apply to the High Court for the restriction<sup>26</sup> 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.

Details of the number of liquidator reports in 2008 are contained in **Appendix 4.1.1**. In all, 1,174 liquidator reports were received (1,007 in 2006). Of these, 406 were initial reports<sup>27</sup> (286 in 2007) from 102 liquidators, while the balance of 768 (721 in 2007) constituted further<sup>28</sup> or final<sup>29</sup> reports on company liquidations.

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

24 Section 882 of the Taxes Consolidation Act 1997.

25 These documents are available at [www.odce.ie/en/media\\_decision\\_notices.aspx](http://www.odce.ie/en/media_decision_notices.aspx).

26 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.

27 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.

28 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.

29 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.

In 2008, the compliance rate for the timely production by liquidators of their first reports was 95% (96% in 2007). The Office also monitored liquidators' submission of their further and final reports. In respect of all reports due, the Office had cause to correspond formally with 54 liquidators on 110 occasions (121 occasions in 2007) indicating that they were in default with regard to their statutory reporting obligations.

The standard of liquidator reports received was again mostly satisfactory in 2008. This area is subject to ongoing review in order to maintain reporting quality.

### Other Liquidator and Receiver Issues

The ODCE received four reports from two liquidators in 2008 under Section 299 of the Companies Act 1963 (as amended). No receiver made a Section 299 report. Such reports, when made, indicate a view that a past or present officer or member may be guilty of an offence in relation to the company for which he/she is criminally liable. In the case of one of these reports, restriction proceedings by the liquidator involved will arise in 2009. The three remaining cases are under consideration at year-end.

The ODCE received no reports in 2008 from prescribed professional bodies in respect of suspected liquidator or receiver misconduct pursuant to Section 58 of the 2001 Act.

The ODCE did not seek access to the records of a liquidator<sup>30</sup> or receiver<sup>31</sup> in 2008.

### ODCE Review of its Practices arising from a Recent Supreme Court Judgment

A Supreme Court Judgment in 2008 required the Director to review Office procedures in the small minority of cases where it decides not to accept a liquidator's recommendation that relief be given to the taking of restriction proceedings against one or more directors. The Judgment related to an appeal by a director of Tralee Beef and Lamb Ltd. (In Liquidation) against his restriction. The following **Illustration 4.1.1** provides more details about the case and the Supreme Court Judgment.

30 Under Section 57 of the Company Law Enforcement Act 2001.

31 Under Section 323A of the Companies Act 1963 (as inserted by Section 53 of the 2001 Act).

**Illustration 4.1.1: Tralee Beef & Lamb Limited  
(In Liquidation)**

Tralee Beef and Lamb Ltd. was a company with one executive director and three non-executive directors. After the company went into liquidation in 2002, the liquidator, Mr Tom Kavanagh, reported to the ODCE that the executive director and two of the three non-executive directors should be the subject of restriction proceedings. However, he recommended that the third non-executive director (Mr Simon Coyle who was appointed by the Business Expansion Scheme investors) should not face proceedings. Having considered the liquidator's report, the ODCE took the view that all of the directors should account to the High Court for their conduct.

Subsequently, the High Court restricted all of the company's directors. However, Mr Coyle proceeded to appeal the Court's decision.

On 1 February 2008, the Supreme Court set aside the High Court Order restricting Mr Coyle. In the course of his Judgment, Mr Justice Hardiman was quite critical of:

- the legislative framework for the restriction of directors, aspects of which were described as "*draconian*". Specific concerns were raised about the obligation in Section 56 on the liquidators of insolvent companies to seek restriction where the ODCE does not grant relief notwithstanding a recommendation for relief by the liquidator, the imposition in Section 150 of a reverse burden of proof on company directors to satisfy the Court as to their honesty and responsibility and the reputational consequence of restriction for "*a professional man*" like Mr Coyle relative to a "*cowboy* director";
- the High Court's handling of the case. The restriction of Mr Coyle was considered to be unsafe, because the Court amplified existing law in order to restrict him without having discussed the proposed amplification or its terms at the hearing. There was also concern that the case against Mr Coyle was not well defined in the High Court in the absence of any criticism of him by the liquidator and any statement by the ODCE of the reasons for declining relief;
- the manner in which the ODCE discharged its role. The denial of the liquidator's request to relieve Mr Coyle, the failure to give reasons and non-attendance at both the High Court and Supreme Court hearings were criticised. (It would appear that the Supreme Court was not informed by the liquidator's legal advisers prior to the hearing that the ODCE was willing to take part in the hearing of the Supreme Court appeal.)

Following the Judgment and on foot of an application by Mr Coyle for his costs (in circumstances where there was insufficient funds in the liquidation to meet any such award of costs), the ODCE was invited to appear before a hearing of the Supreme Court in relation to this application. Following discussions between the various parties and in recognition of the particular circumstances of the case, the ODCE agreed to make a contribution towards the costs of Mr Coyle's appeal to the Supreme Court. On this basis, the Supreme Court made no order as to costs.

The Supreme Court Judgment is clearly an important one, but its significance for the operation of the regime for the supervision of liquidated insolvent companies generally has yet to be determined. The ODCE was nevertheless surprised at the Court's comment in this area as the relevant provision providing for the restriction of directors of insolvent companies would have been examined from a constitutionality perspective by the Attorney General's Office before its enactment. Moreover, restriction was specifically conceived as an appropriate sanction for moderate corporate misconduct. In allowing a restricted person to continue to act in a responsible position in a company once it was moderately capitalised, restriction was deemed to be consistent with the individual's general right to earn a living. At the same time, the rules of company capitalisation gave some protection to creditors and the general public if a failure of the restricted person's business occurred later.

In the implementation of the Section 56 regime, it is the case that about five out of six directors are not required to account for their conduct in the High Court due to the decisions of the ODCE to grant relief to the relevant liquidators on the basis of their reports. There has also been a high correlation for some years between the ODCE's relief decisions and the High Court's ultimate decisions on the merits of restriction. Accordingly, the ODCE is of the view that the operation of Section 56 is imposing no unwarranted burden on the directors of insolvent companies in liquidation.

Arising from the comments of the Supreme Court in relation to this case, the ODCE now outlines the reasons why it does not grant relief in the small number of cases where the Office does not accept a liquidator's recommendation to grant relief to a particular director (as was the position in relation to Mr Coyle). Notwithstanding the comments made by the Supreme Court, the Director is satisfied that his Office discharges its responsibilities in the area in accordance with both the letter and spirit of the law.

## ODCE Review of its Practices with respect to Liquidator Reports

Having regard to its finite resources, the Office also undertook a review in 2008 to identify what procedural changes could be introduced to help manage the substantial and continuing rise in insolvent liquidations. At year-end, it was decided 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 in relation to their statutory obligation to seek the restriction of the relevant directors. This decision should enable the Office to better deal with the large volume of initial liquidator reports expected in 2009. It will also reduce the future administrative burden on liquidators.

## Sub-Goal 4.2: Assessing Directors' Conduct in Insolvent Liquidation Situations

The ODCE made decisions on 1,098 liquidator reports in 2008 of which 351 constituted initial reports and 747 were further or final reports.

### ODCE Relief Decisions

In respect of the 351 initial reports, there was a material increase in the proportion of 'full relief' cases (from 65% to 71%) between 2007 and 2008 respectively and a significant decline in the proportion of 'no relief' cases (from 10% to 7%). The increasing number of 'full relief' decisions continues a trend that has been evident over recent years. The relief decisions in 2008 (relative to 2007) were of the following character:

Decision Type	2007	%	2008	%
Full relief <sup>32</sup>	189	65%	251	71%
No relief <sup>33</sup>	30	10%	23	7%
Relief 'at this time' <sup>34</sup>	63	22%	70	20%
Partial relief <sup>35</sup>	7	3%	6	2%
Other decisions	0	0%	1	0%
Total	289	100%	351	100%

Where decisions of 'no relief' or 'partial relief' are made by the ODCE, they do not of course 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 2008 are available in ODCE Information Notice No. I/2009/2 on the ODCE website at [www.odce.ie](http://www.odce.ie).

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. For its part, the Office is anxious to ensure that in making its decisions with respect to relief, 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.

### Tracking Court Decisions on the Restriction Applications

During 2008, the High Court reached decisions in 54 cases (78 in 2007) where no relief or partial relief had previously been decided by the ODCE. In those cases, the High Court restricted or disqualified one or more directors in 49 cases (75 in 2007), representing 91% (96% in 2007) of the total. No restriction orders were made in respect of the remaining five cases (three in 2007). These outcomes suggest that the ODCE is successfully identifying the cases meriting consideration by the High Court.

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.



In terms of individual directors, there were 76 directors restricted (69 in 2007), six directors disqualified<sup>36</sup> (seven in 2007) and two directors restricted and disqualified in 2008 (one in 2007). This represents 90% of the 92 directors that were the subject of restriction or disqualification proceedings during 2008.

A total of 81 new persons were restricted by the High Court in 2008, 78 of whom were restricted as a result of proceedings pursuant to Section 56. Of the remaining three individuals, one involved the director of an insolvent struck-off company while two were restricted arising from a longstanding liquidation which predated the ODCE's establishment.

Overall, there was a net decrease in the CRO's Register of Restricted Persons from 791 to 624 as some earlier restricted persons were removed from the Register in 2008 on the completion of their five-year restriction period. The following table indicates the number of persons on the Register of Restricted Persons at the end of each year since 2004.

**Number of Directors standing restricted at end-2004 to end-2008 inclusive**

End-2004	End-2005	End-2006	End-2007	End-2008
487	600	685	791	624

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](http://www.cro.ie).

In relation to restriction proceedings that concluded before the High Court in 2008, **Appendix 4.2.1** to this Report outlines the outcome of the cases where restrictions were made and the identity of the persons in question.

**Appendix 4.2.2** identifies the five companies where the High Court concluded in 2008 that a restriction 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 2008, successful proceedings were brought against eight directors of insolvent companies (eight in 2007). **Appendix 4.2.3** identifies the persons in question and their periods of disqualification. The accompanying **Illustration 4.2.1**

provides some information on these cases. The Director hopes that further similar cases will be taken in 2009.

#### **Illustration 4.2.1: Insolvent Companies: Liquidator Disqualifications in 2008**

An eight-year disqualification was imposed on Mr Colm Griffin, a director of Rosmuc Developments Ltd, a construction company. There was evidence of a failure to maintain proper books and records, a failure to prepare audited accounts, a disregard for compliance with tax obligations and statutory returns to the CRO and a fraudulent use of invoices to avoid payment of Relevant Contracts Tax (RCT).

A seven-year disqualification was imposed on Mr David Kavanagh, a director of freight transport companies Kamar Transport Ltd and Kamar Transport (Kilkenny) Ltd. The Court heard evidence of deliberate preferential payments and failures to maintain proper books and records, to remit taxes due and to separate the affairs of these and other associated companies.

Two directors of Devey Enterprises Ltd which provided plastering services to the residential construction sector were each disqualified for six years. There was evidence that the directors, Mr Mark Devey and Ms Jacinta Devey, had taken unlawful loans totalling €2.8 million from the company for personal purposes which were not repaid, had engaged in preferential payments prior to liquidation, had failed to maintain proper books and records and had failed to submit tax returns and statutory returns to the CRO over a number of years. Revenue liabilities on liquidation exceeded €1 million.

Mr Simon Bermingham, a director of Bermingham Construction Ltd, was disqualified for five years. The Court heard evidence that proper books and records had not been maintained, that audited accounts had not been prepared and that minimal efforts had been made to comply with tax obligations and statutory returns to the CRO. The Revenue tax liabilities were estimated at €500,000.

Mr Conor Govern and Ms Eimear Govern, the directors of Oakley Formwork Ltd which was engaged in the construction of various concrete formworks, were each disqualified for five years. There was evidence that proper books and records had not been maintained, that audited accounts had not been prepared, that incorrect and understated tax returns were filed with Revenue, that preferential payments were made to reduce personal guarantees and that statutory returns to the CRO were not filed for a number of years.

Mr Gary Keating, a director of Keating Interiors Ltd, was disqualified for four years and restricted for five years. There was evidence that the signature of other directors had been forged on the company's financial statements and that Revenue indebtedness was in excess of €900,000.

<sup>36</sup> 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.



## Relief from Restriction

A restricted director may apply to the High Court for relief, in whole or in part, from a restriction within a period of one year from the making of the restriction declaration. The High Court may, if it deems it just and equitable to do so, grant such relief on whatever terms and conditions it sees fit<sup>37</sup>.

The ODCE monitors planned relief applications and seeks to intervene in appropriate cases in order to maintain as far as possible the coherence of the present statutory restriction regime. Insofar as the Office is aware, no applications for relief were made in 2008. However, three restrictions are known to be under appeal to the Supreme Court.

## Tracking Directors in breach of their Disqualification or Restriction Terms

As indicated earlier in this Report, ODCE investigations have suggested from time to time that a number of disqualified and restricted individuals continue to act in companies in breach of the law. The Office will continue to pursue such persons in order to help alleviate the business risks for genuine corporate activity.

## Deemed Disqualifications

The law<sup>38</sup> provides that where a person is convicted on indictment of any indictable offence in relation to a company, or involving fraud or dishonesty, s/he is deemed to be disqualified for a period of five years from the date of the conviction or for such other period as the court, on the application of the prosecutor, may order. **Illustration 3.3** in the preceding section of this Report is a case of one director who was disqualified under this provision in 2008.

Up to 2,700 persons (2,200 at end 2007) are now listed on the Register of Disqualified persons although some duplication of entries would appear to exist. Some 2,444 of these are deemed to be disqualified; 163 stand disqualified by Order of the High Court; 36 have been disqualified arising from their failure to notify their disqualification in another jurisdiction, and 12 were disqualified on the basis of their having acted as a director while restricted.

## Sub-Goal 4.3: Sanctioning Fraudulent or Abusive Behaviour

### Introduction

In its previous Annual Reports, the ODCE has indicated that it is particularly anxious to investigate 'phoenix' or

other 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 has the potential to achieve 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.

## 'Struck-off' Companies

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 2008. It is open to the Director to apply to the High Court for the disqualification of the directors of such struck-off companies<sup>39</sup>. However, the law<sup>40</sup> 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, 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.

By way of example, the directors of four associated companies that had been struck off made payments of approximately €50,000 in 2008 in settlement of the companies' liabilities to the Revenue Commissioners. The

<sup>37</sup> Section 152 of the Companies Act 1990.

<sup>38</sup> Section 160(1) of the Companies Act 1990.

<sup>39</sup> Section 160(2)(h) of the Companies Act 1990.

<sup>40</sup> Section 160(3A) of the Companies Act 1990.

Director did not proceed with disqualification proceedings in these cases.

In a small number of the 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 by more than one year.

As indicated in the preceding section of this Report, the Office secured in 2008 the disqualification of 12 directors of struck-off companies (12 in 2007 also) for periods ranging from four years to seven years and the restriction of one director for the mandatory five-year period. **Appendix 3.3** to this Report details the 12 disqualifications and one restriction achieved. At the end of 2008, five more cases were awaiting hearing in the High Court. Many additional cases remain open at year-end, and it is anticipated that several more cases will be initiated in 2009.

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 Acts. It is the 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.

## Conclusion

As a result of ODCE supervision of insolvent companies in 2008, some 96 directors were either restricted or disqualified in 2008. The ODCE will continue in 2009 to address this area in collaboration with liquidators and the Courts in order to deter irresponsible or unlawful conduct in this area.

# Goal 5 – Providing Quality Services to Internal and External Customers

## Introduction

The ODCE continued to prioritise the provision of quality services for all its customers in 2008. The Office's customers include both the public and Office staff, and one object of this Goal is to enable the effective and efficient execution of the functions of the Office. The main developments with respect to ODCE operations and services during the year are outlined below.

## Sub-Goal 5.1: Securing and Managing ODCE Resources

### Staffing

The ODCE's staffing level improved from 40.6 to 44.8 full-time staff during 2008. This increase represented the second and final phase of a commitment made by the Department of Enterprise Trade and Employment in 2007 to provide an extra eight staff to the Office. **Appendix 5.1.1** provides a breakdown of the Office's staff at year-end. As will be clear from earlier chapters of the Report, this increase in staffing enabled the Office to increase its activity in various areas during 2008.

The Director wishes to acknowledge the valuable contributions made by Michael Cumiskey, Joan Howley, Barry Harte, Jean Kelly and Deirdre Mitchell to the work of the Office during their times here. All five left the Office in 2008 to take on new challenges, some having been involved in the Office since its inception.

### Financial Resources

The Office's administrative costs in 2008 were funded through Subhead A09 of Vote 34 (Minister for Enterprise Trade and Employment). A summary of the allocated and expended amounts for the main Pay and Non-Pay headings is provided in the following table. A more detailed breakdown of the 2008 figures is contained in **Appendix 5.1.2**.

Subhead A09, Vote 34	2008 Allocation (€000s)	2008 Actual Expenditure (€000s)
Pay	2,681	2,411
Non-Pay	2,276	1,932
Total	4,957	4,343

The outturn of just over €4.343 million in 2008 was a slight decrease on the €4.378 million spent in 2007. The 2008 outturn represented just 88% of the initial allocation of €4.957 million for the year. In accordance with public accounting procedures, the surplus of €0.613m was surrendered to the Exchequer.

The slight reduction in expenditure was achieved notwithstanding a 10% increase in staff and the cost of the High Court's appointment in July 2008 of an Inspector to investigate certain share transactions in DCC plc and two related companies. On the other hand, expenditure on certain initiatives such as advertising and publicity was curtailed in response to Government requests for cutbacks in uncommitted spending.

While some programmes of ODCE work will continue to be curtailed in 2009 due to Government cutbacks, the overall level of expenditure is expected to rise because the ODCE budget in 2009 will bear a substantial portion of the cost of the DCC Inspection.

### Accommodation

The Office occupied additional accommodation in its building in early 2008 which catered for the higher staff numbers assigned in 2007 and 2008.

### Organisational Development

In 2008, the ODCE again engaged external expertise to assist in undertaking its investigative and enforcement work in particular. The ODCE maintained and once again canvassed interest in its Legal and Accounting Panels by way of public advertisement. These Panels contain the names of persons or firms wishing to be considered for appropriate expert assignments. These Panels remain open at all times to applicants who wish to provide such services to the Office.

### Risk Management Action Plan

The ODCE again co-operated with the Department of Enterprise Trade and Employment during 2008 in reviewing and further updating the Office's risk management plans. This was originally put in place as a result of the recommendations of the Mullarkey Report which dealt with accountability issues in the areas of internal financial controls, internal audit arrangements and risk management.

## Green Agenda

In 2008, the Office formally initiated a number of environmentally friendly policies in order to use the resources assigned to it in the most effective and cost-efficient way possible. All staff participated in information sessions on the topic and are actively following guidelines to reduce the Office's consumption of energy, materials and water and to better manage Office waste. Certain operational changes have been implemented that is reducing the Office's carbon footprint as well as reducing associated costs.

## Sub-Goal 5.2: Developing Staff

### Performance Management

The Performance Management and Development System which applies across all Government Departments and Offices continued to be implemented in 2008 by the ODCE. It is directly related to the annual Business Plan of the Office, and it serves to clarify staff members' roles and contributions to the Business Plan as well as identifying staff training requirements.

Over 140 training and information days were availed of by ODCE staff during 2008, 88 of which were provided from ODCE resources. The Department of Enterprise Trade and Employment provided a further 47 days of training to twelve ODCE staff. The Companies Registration Office also allowed four ODCE staff to participate in its own staff training programmes covering a total of eight training days.

The training undertaken in 2008 included the following:

- management staff participation in the Department's Leadership Programme;
- continuing professional development training;
- information technology training and
- Irish language training for the Office's reception staff in particular.

The information days and in-house seminars covered various topics relating to the work of the Department, the Office and the public service generally. An ODCE-specific induction programme was provided for all of the new staff who joined the Office in 2008. Information sessions were also made available for all staff on the Official Languages Act and the Green Agenda initiative as a result of their application to the Office in 2008.

## Team-Based Working

Multi-disciplinary teams continued to operate within the ODCE in order to handle the Office's extensive volume of casework in the detection, enforcement and insolvency areas.



The Office Management Committee, chaired by the Director and representative of all staff, met quarterly in 2008 to deal with policy and organisational issues affecting the Office's continuing development and direction.

During the year, the Director made fourteen new or amended instruments delegating his powers to certain staff under section 13 of the Company Law Enforcement Act 2001. The affected individuals included three new members of staff.

## Sub-Goal 5.3: Developing and Maintaining Quality Customer Services

### Services Offered

The ODCE continued in 2008 to commit considerable resources to the development and use of technology to provide information to its customers, to receive input from customers and to enhance efficiencies in work practices. The services offered by the Office to the public and professionals include:

- information on company law and related matters via the Office's website, publications, etc. In this context, some 817 customers were registered at end-2008 with a view to being notified of new information being placed on the website. 48 of these were newly registered in 2008;



- talks, seminars and other compliance initiatives provided by Office staff. For instance, the Office took a trade stand at the BT Small Business Show in Cork for the first time;
- the facility permitting the public to make complaints of suspected corporate misconduct;
- statute-based services whereby auditors, liquidators and other interests are required to report suspected company law offences to the Office;
- general assistance offered to Office clients by phone, correspondence, e-mail, etc. For instance, some 468 requests to the [info@odce.ie](mailto:info@odce.ie) account were promptly answered during the year.

### Official Languages Act 2003

During the year, the Office finalised with the Department of Community Rural and Gaeltacht Affairs its Draft Scheme of commitments to the provision of English and Irish language services under the Act. The Scheme was launched in July and is available on the ODCE website at [www.odce.ie](http://www.odce.ie).



In addition to the staff training undertaken in 2008, the Office compiled a glossary of useful terms and expressions to help staff deal with citizens who wish to conduct their business with the Office through Irish. Further language training is planned in 2009 to help improve the Office's capacity to offer services of comparable quality through both Irish and English.

### Publications

Nine formal publications were prepared and published during 2008 as indicated in **Appendix 1.1.1** to this Report. In accordance with our commitments made pursuant to the Official Languages Act, four of these were published bilingually. In addition to the agreed Scheme under the Official Languages Act, the publications in question were the ODCE's Annual Report for 2007, the Company Law Handbook on Residential Property Owners' Management Companies and a companion Guidance Booklet on Management Companies.

As indicated earlier, the Director also issued a number of press statements, and several ODCE staff contributed papers and presentations to the national and professional media and to business and other groups. Staff also participated in national and local media interviews on request.

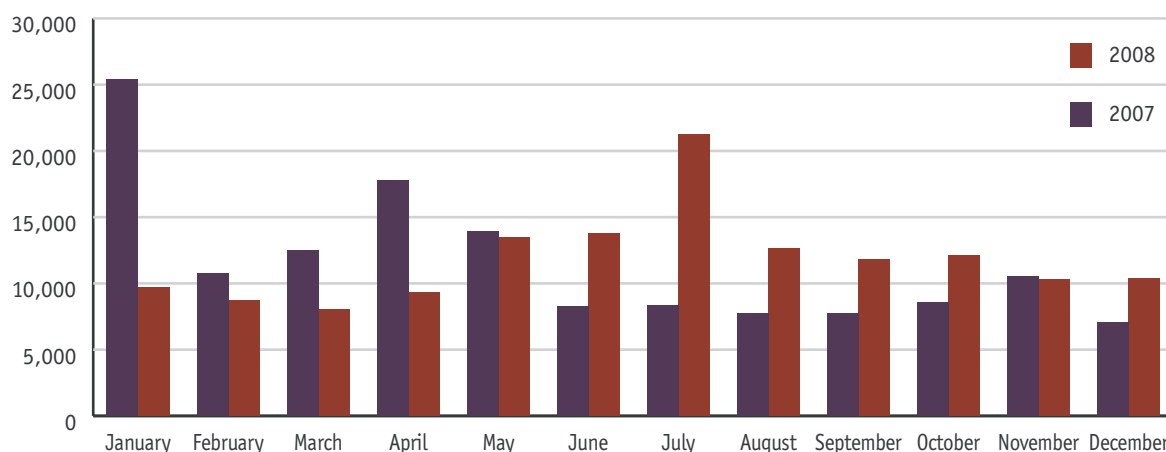
### Website

The ODCE website at [www.odce.ie](http://www.odce.ie) was continually updated during 2008 with new information on the ODCE's work and associated corporate governance developments. All new publications, press statements, articles, etc. were made available on the site as were the results of Court enforcement proceedings in which the Director was involved and other Court decisions of relevance in a company law context.

The website once again attracted large numbers of people interested in corporate governance matters. During the year, some 141,557 visits were made, up by 2% on the figure of 138,604 for 2007. The chart shows that while numbers remained similar to 2007, the number of visits to the site was down on 2007 from January to May, increasing over the following seven months. There was a particularly busy period in July, coinciding with the appointment by the High Court of the Inspector to DCC plc, S&L Investments Ltd. and Lotus Green Ltd., the launch of the Scheme under the Official Languages Act and the Consultation Paper on the ODCE Strategy Statement for 2009-2012.

In early 2008, the Office put in place an on-line survey of website users to help ascertain their satisfaction with the services offered. While the response rate to the survey was low, the feedback given was positive.





### Freedom of Information (FOI) Acts

The FOI Acts permit the disclosure of records concerning the general administration of the Office only. During 2008, the ODCE received no requests under the Acts for records. The Office updated its FOI Manual and made it available (in both Irish and English) on its website.

### Data Protection Acts

The ODCE is registered with the Office of the Data Protection Commissioner as a Data Controller. The Data Protection Acts 1988 and 2003 protect against the improper use or disclosure of any information held about an individual. In 2008, the ODCE updated its registration with the Data Protection Commissioner and continued to comply with its own strict confidentiality duties as outlined in the Company Law Enforcement Act 2001.

During 2008, with the assistance of the Department of Enterprise Trade and Employment, data security was further enhanced by encrypting data held on mobile devices used by Office staff such as laptops and memory sticks.

### Prompt Payment of Accounts Act 1997

The Prompt Payments of Accounts Act provides for the payment of interest to suppliers whose invoices are unpaid at the prescribed date. Despite the Office's policy of arranging that all invoices are settled in a timely manner, the ODCE incurred one interest surcharge on payments in 2008. The amount charged was €351.06.

### Compliance with Agreed Customer Service Standards

The ODCE is committed to providing a quality customer service to all members of the public who have dealings with it as well as to its own staff, and during 2008, the Office kept its service standards under regular review. A small number of formal complaints were received and dealt with during the year. The Feedback Form on the ODCE website provides a permanent opportunity for the public to comment to us on the information available on our website and on our services more generally.

Every effort is made to assist persons who contact the Office even when the issue at hand is not directly related to the work of the Office. We regularly refer matters to other authorities where we feel that the issue in question is more appropriately dealt with by them. For instance in late March, the High Court concluded a case in which the Pensions Board successfully prosecuted a company for failing to remit workers' pension contributions to the relevant pensions scheme. The ODCE had previously informed the Pensions Board of a complaint it received in the matter.

Within the constraints of a demanding workload, the Director considers that his Office achieved satisfactory compliance with our Customer Service Standards during 2008.

# Conclusion

As we start 2009, we can look back on a good year of achievement in 2008 with satisfactory results achieved under all of our goals. As the Report indicates, we broke new ground in quite a number of areas.

The challenges ahead look to be quite demanding. The serious downturn in the economy will pose difficulties for the budgets of all public service organisations. While additional State funds have been provided to us in 2009 to meet the cost of the DCC High Court Inspection, the ODCE's general budget will be tight particularly if any significant costs award were to be made against us in Court proceedings.

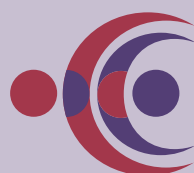
The Office has a number of major cases on its hands. This is already giving rise to new and unique difficulties which we are continuing to address with the assistance of the Department where resource issues arise.

The deteriorating economic conditions are also seeing a significant and unwelcome increase in the number of businesses failing. Given our statutory role with respect to insolvent companies, we are expecting a further significant increase in liquidator reports to the Office in the short term. New reports are likely to exceed 900 in 2009 which compares with 406 and 286 in 2008 and 2007 respectively. While some compensatory measures have been taken to make room for this doubling of work in 2009, it will represent a serious challenge to the staff and resources of the Office.

With more businesses under pressure, there is also a risk that standards of compliance with company law and other legislative requirements will decline as company directors give attention to more immediate business concerns. We will have to redouble our efforts to maintain a coherent and credible message with respect to compliance with the Companies Acts. The limitations placed on ODCE expenditure for advertising and similar publicity will mean that alternative communications channels will have to be identified and deployed to reach our business, community and professional audiences.

However, the Office has faced difficult challenges before and has successfully overcome them, and we can do so again. The reputation of Ireland has suffered as a result of recent events, and it is important that we demonstrate a commitment to the maintenance of a stable and reliable legal environment for companies in the State. If we continue to play our part, it will greatly assist entrepreneurship and competitiveness at company level which will be important in creating jobs and restoring confidence. Our aim is to continue to create a better environment for business and community enterprise in the State.

# Appendices



Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach  
Office of the Director  
of Corporate Enforcement

## Appendix 1.1.1

### Publications issued by the ODCE in 2008

Title	Subject	Date of Issue
ODCE Review of 2007	Summary of ODCE Activity in 2007	January 2008
Corporate Compliance Matters	Joint CRO/ODCE Publication on Topical Company Law Issues	Spring 2008
ODCE Annual Report 2007	Detailed Report on ODCE Activity in 2007	May 2008
Consultation Paper C/2008/1	Whistle-blowing and Irish Company Law	June 2008
Scheme under the Official Languages Act 2003	ODCE Commitments for the Provision of English and Irish Language Services for the period 2008-2011	July 2008
Consultation Paper C/2008/2	Draft ODCE Statement of Strategy	July 2008
Consultation Paper C/2008/3	Business Expansion and Seed Capital Schemes	September 2008
Decision Notice D/2008/1	Company Law Handbook on Residential Property Owners' Management Companies	December 2008
Summary Guide	Management Companies – A Property Owner's Guide to Company Law	December 2008



## Appendix 1.2.1

### List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
15/01/08	Dublin City Council	Presentation	Corporate Governance and Directors' Responsibilities	Dublin City Council Offices, Wood Quay	14	Kevin Prendergast and Adrian Brennan
25/01/08	NetWorks	Presentation	Corporate Health Check for Company Directors	Lusty Beg Island, Fermanagh	16	Kevin Prendergast
11/02/08	Waterford SEEPP	Presentation	Corporate Health Check for Company Directors	Waterford IT, Carriganore Campus	18	Kevin Prendergast
11/02/08	Garda Bureau of Fraud Investigation	GBFI Fraud Course	ODCE Role and Functions	Harcourt Square	20	Mick Prendergast
15/02/08	Smurfit School of Business	Presentation	ODCE – What is it and what does it do?	Smurfit Business School, Blackrock	15	Paul Appleby
26/02/08	Dublin City Council Housing Department	Presentation	Corporate Governance and Directors' Responsibilities	Civic Offices, Wood Quay, Dublin	15	Kevin Prendergast
04/03/08	University of Limerick	Presentation	ODCE – What is it and what does it do?	University of Limerick Campus	130	Kevin Prendergast
11/03/08	Jordan Publishing Ltd.	Conference	Update on ODCE's Compliance and Enforcement Work	Clontarf Castle, Dublin	80	Paul Appleby
12/03/08	West Training and Development Ltd	Presentation	Corporate Health Check for Company Directors	Mayoralty House, Merchants Road, Galway	10	Kevin Prendergast
13/03/08	Nova UCD	Presentation	Corporate Health Check for Directors of Private Limited Companies	UCD, Dublin	30	Kevin Prendergast
19/03/08	A & L Goodbody	Presentation	ODCE – Insolvency, Restriction and Disqualification	A & L Goodbody Offices, IFSC	60	Kevin Prendergast
01/04/08	Payback Solutions	Presentations	Corporate Health Check for Company Directors	Muckross Park Hotel, Killarney	16	Kevin Prendergast
09/04/08	Dundalk IT	Presentation	Role of the ODCE	CRO Offices	9	Kevin Prendergast

## Appendix 1.2.1 (continued)

### List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
09/04/08	Plato	Presentation	Corporate Health Check for Company Directors	Shamrock Foods, Ballymount, Dublin	9	Kevin Prendergast
14/04/08	Enviro Skillnet	Presentation	Corporate Health Check for Company Directors	Cork	12	Kevin Prendergast
15/04/08	Fingal County Childcare	Presentation	Corporate Governance and Directors' Responsibilities	Swords Business Park, Dublin	8	Kevin Prendergast
16/04/08	CRO	Presentation	The Role of the ODCE	Dublin	40	Kevin Prendergast
16-18/04/08	Institute of Internal Auditors	Conference	Company Law Compliance and Enforcement – where do we stand?	Knightsbrook Hotel, Trim, Co. Meath	150	Paul Appleby
17/04/08	Centre for Independent Living	Presentation	Corporate Health Check for Company Directors	Letterkenny, Co. Donegal	5	Kevin Prendergast
17/04/08	Abbey Arts Centre	Presentation	Corporate Health Check for Company Directors	Ballyshannon, Donegal	15	Kevin Prendergast
23/04/08	Institute of Chartered Secretaries and Administrators	Conference	Update on the ODCE's Compliance and Enforcement Work	National College of Ireland	60	Paul Appleby
28/04/08	Irish Institute of Continuing Professional Development	Presentation	The ODCE – Civil and Criminal Aspects of Company Law	Metropole Hotel, Cork	21	Kevin Prendergast
28/04/08	South and Mid West Community Development Support Agency	Presentation	Corporate Health Check for Company Directors	Mahon Community Centre, Cork	18	Kevin Prendergast
06/05/08	South and Mid West Community Development Support Agency	Presentation	Corporate Health Check for Company Directors	Ashbourne Business Park, Limerick	14	Kevin Prendergast

## Appendix 1.2.1 (continued)

### List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
07/05/08	South and Mid West Community Development Support Agency	Presentation	Corporate Health Check for Company Directors	Tralee CDP, Tralee	18	Kevin Prendergast
07/05/08	CLRG	Presentation	Offences and Enforcement	Buswells Hotel, Dublin	30	Adrian Brennan
05/06/08	Thursday Network Group	Presentation	Current Work of the ODCE	O'Brien Hartnett Offices, Haddington Road, Dublin	12	Kevin Prendergast
06/06/08	Governance Forum Event	Presentation	Duties of the Company Secretary	IPA, Lansdowne Road, Dublin	40	Kevin Prendergast
20-26/06/08	International Association of Insolvency Regulation	Conference	Company Liquidation Trends in Ireland	St. Petersburg	60	Paul Appleby
08/07/08	Irish Institute of Continuing Professional Development	Presentation	The ODCE – Civil and Criminal Aspects of Company Law	Royal College of Physicians, Kildare Street, Dublin	35	Kevin Prendergast
11/07/08	UCD Masters in Management Studies	Presentation	The ODCE – Setting the Standard	Smurfit Business School, Carysfort, Co. Dublin	55	Kevin Prendergast
18/07/08	UCD Masters in Management Studies	Presentation	The ODCE – Setting the Standard	Smurfit Business School, Carysfort, Co. Dublin	75	Kevin Prendergast
12/09/08	Laois County Enterprise Board	Presentation	Corporate Health Check for Company Directors	Laois Enterprise Centre	8	Eileen McManus
16/09/08	Department of Community Rural and Gaeltacht Affairs	Presentation	Corporate Governance and Directors' Responsibilities	Croke Park	180	Kevin Prendergast
17/09/08	Irish Times Training	Presentation	Encouraging Compliance, Enforcing the Law	Morgan Hotel, Dublin	16	Kevin Prendergast

## Appendix 1.2.1 (continued)

### List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
24/09/08	Law Society of Ireland	Launch of Law Society's Diploma in Company Law	Value of the Diploma Course	Law Society, Blackhall Place	50	Paul Appleby
25/09/08	Small Firms Association	Conference	Company Regulation	Dublin Castle	200	Paul Appleby
29/09/08	Garda Bureau of Fraud Investigation	GBFI Fraud Course	ODCE Role and Functions	Harcourt Square	20	Mick Prendergast
03/10/08	Irish Small and Medium Enterprise	Conference	Regulation or Strangulation	Jury's Hotel, Croke Park	250	Paul Appleby
07/10/08	ACCA CPD	Presentation	Duties and Responsibilities of Company Directors and Secretaries	Radisson SAS, Dublin	60	Dermot Madden
16/10/08	Corporate Governance Association of Ireland	Presentation	Future Direction of ODCE	The Kildare Street and University Club, Dublin	60	Paul Appleby
16/10/08	Law Society of Ireland	Presentation	Company Law Compliance	Law Society, Dublin	100	Adrian Brennan
22/10/08	UCD Commercial Law Centre	Seminar	Restriction and Disqualification – A View from the ODCE	UCD, Belfield	30	Paul Appleby
28/10/08	Dublin City University	Presentation	The Role of the ODCE	DCU, Glasnevin	50	Kevin Prendergast
03/11/08	Law Society of Ireland	Presentation	Corporate Law Compliance	Law Society, Cork	95	Adrian Brennan
03/11/08	ICAI	Presentation	Certificate in Directors' Responsibilities	ICAI Offices, Burlington House	32	Kevin Prendergast
04/11/09	Carlow CEB	Presentation	Corporate Health Check for Company Directors	Seven Oaks Hotel	20	Adrian Brennan
05/11/08	Leader Chair Conference	Presentation	Corporate Governance and Directors' Responsibilities	Europe Hotel, Killarney	50	Kevin Prendergast



## Appendix 1.2.1 (continued)

### List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
06/11/08	UCD Master of Accounting	Presentation	The Role of the ODCE	Smurfit Graduate Business School, Blackrock	140	Kevin Prendergast
10/11/08	Institute of Bankers	Presentation	Corporate Enforcement	Institute of Bankers, Dublin	85	Kevin Prendergast
12/11/08	Local Development Companies	Presentation	Corporate Health Check for Company Directors	Heritage Hotel, Portlaoise	30	Kevin Prendergast
13/11/08	Co-Operation Fingal	Presentation	Corporate Health Check for Company Directors	BeaT Centre, Balbriggan	20	Kevin Prendergast
18/11/08	Law Society of Ireland	Presentation	The Role of the ODCE	Law Society of Ireland, Blackhall Place, Dublin 7	200	Adrian Brennan
19/11/08	Athlone Institute of Technology	Presentation	The ODCE – what is it and what does it do?	Athlone Institute of Technology	30	Paul Appleby
19/11/08	Dublin Business Innovation Centre	Presentation	Corporate Health Check for Company Directors	Guinness Enterprise Centre, Dublin	8	Kevin Prendergast
19/11/08	Local Development Companies	Presentation	Corporate Health Check for Company Directors	Downhill Hotel, Ballina	35	Kevin Prendergast
20/11/08	Local Development Companies	Presentation	Corporate Health Check for Company Directors	Clayton Hotel, Galway	40	Kevin Prendergast
26/11/08	Local Development Companies	Presentation	Corporate Health Check for Company Directors	Seven Oaks Hotel, Carlow	32	Kevin Prendergast
28/11/08	ACCA, Athlone Members Network	Presentation	Role and Responsibilities of Company Directors and Secretaries	Shamrock Lodge, Athlone	15	Dermot Madden
29/11/08	South and East Cork Area Development	Presentation	Community Groups – Your Legal Responsibilities	Douglas/ Carrigaline/ Ballincollig	50	Kevin Prendergast
01/12/08	Fingal Citizens Information Service	Presentation	The Role of Company Directors	Carnegie Court Hotel, Swords	14	Eileen McManus

## Appendix 1.2.1 (continued)

### List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
03/12/08	William Fry Solicitors	Presentation	Disqualification and Restriction under the Companies Acts	Office of William Fry Solicitors, Dublin	25	Adrian Brennan
05/12/08	Local Authority Solicitors Bar Association	Presentation	Directors' Responsibilities and the Work of the ODCE	Dublin City Hall	35	Kevin Prendergast and Dermot Morahan
09/12/08	Coláiste Dhúlaigh	Presentation	Role of the ODCE	ODCE offices	20	Kevin Prendergast
11/12/08	ACCA Ireland (Drogheda Members Network)	Presentation	Role and Responsibilities of Company Directors and Secretaries	Boyne Valley Hotel, Drogheda	10	Dermot Madden

## Appendix 1.2.2

### List of Exhibitions/Events attended by the ODCE in 2008

Date	Event	Venue
31/01/08	Dun Laoghaire Enterprise Expo	Dun Laoghaire
12/03/08	Extreme Business Makeover	The Osprey Hotel, Naas
23/04/08	ICSA Annual Conference	IFSC, Dublin
07/05/08	Skillnets	Croke Park Conference Centre, Dublin
9-10/05/08	BT Small Business Show	RDS, Dublin
13/05/08	National Business Forum	Druids Glen, Wicklow
16-17/05/08	BT Small Business Show	Silver Springs Hotel, Cork
20/06/08	Farmfest Exhibition	Teagasc Centre, Athenry, Galway
23-25/09/08	National Ploughing Championship	Cuffes Grange, Kilkenny
25/09/08	Fingal Day of Enterprise	Swords, Co. Dublin
03/10/08	ISME National Conference	Croke Park Conference Centre, Dublin
09/10/08	National Construction Conference	Croke Park Conference Centre, Dublin
10/10/08	Limerick City Business Event	Marriott Hotel, Limerick
16/10/08	South East Spirit of Enterprise	Hotel Kilkenny, Kilkenny
21-22/11/08	The Irish Franchise Exhibition	RDS, Dublin
26/11/08	Women's Enterprise Day	Mullingar Park Hotel, Mullingar

## Appendix 1.2.3

### List of ODCE Press Statements – 2008

Date	Subject
07/01/08	End-of-Year Review of ODCE Activity in 2007
28/05/08	ODCE Application to appoint a High Court Inspector to investigate a discrete issue relating to the affairs of DCC plc and two associated companies
28/05/08	Launch of the ODCE Annual Report for 2007
11/09/08	Draft Guidance for Directors and Investors in Companies availing of the Business Expansion and Seed Capital Schemes
17/12/08	New Guidance on Property Management Companies



## Appendix 2.1.1

### Breakdown of New Investigation Cases in 2008 by Source (v. 2007)

Source of New Investigation Cases	2007	2008
<b>Voluntary Reports and Detections</b>		
- Public Complaints	331	295
- Reports from Public Authorities in the State <sup>41</sup>	19	3
- Reports from Public Authorities outside the State	3	5
- ODCE Campaign Items	86	71
- Other Detections	31	32
<b>Total Voluntary Reports and Detections</b>	<b>470</b>	<b>406</b>
<b>Mandatory Reports</b>		
- Indictable Reports from Auditors	186	207
- Reports from the CRO	10	7
- Indictable Reports from Professional Bodies	7	3
- Reports from Liquidators	1	4
<b>Total Mandatory Reports</b>	<b>204</b>	<b>221</b>
<b>Total Reports and Detections</b>	<b>674</b>	<b>627</b>

<sup>41</sup> Typically, the ODCE receives these reports from a variety of sources including the Department of Social and Family Affairs, the CRO, the Garda Síochána, the Revenue Commissioners and other Departments and regulatory agencies.

## Appendix 2.2.1

### Mandatory Reports in 2008 – Character of Possible Company Law Defaults (v. 2007)

Types of Indicated Default	Total 2007	Total 2008
Directors' Loan Infringements	138	161
Failure to Keep Proper Books of Account	40	32
No Director Resident in the State	3	7
False Statements to Auditors	1	6
Falsification of Documents	2	6
Non-Qualification for Appointment as Auditor	4	2
Non-holding of Extraordinary General Meetings	2	1
Other	15	21
Total Defaults in Mandatory Reports	205	236

## Appendix 2.2.2

### Voluntary Reports and Other Detections in 2008 – Character of Issues Involved (v. 2007)

Types of Indicated Issues	2007	2008
Financial Statement Deficiencies	-	68
Reckless/Fraudulent/Insolvent Trading	52	49
Annual/Extraordinary General Meetings	45	48
Debt Issues	38	35
Shareholder Issues	65	29
Director Issues	23	27
Trading while struck off the Companies Register	29	18
Forgery/False Information	27	15
Auditor Issues	11	8
Communications Regulations	86	3
Unclear/Other Issues	94	106
Total	470	406

## Appendix 2.2.3

### Throughput of Cases at Detection Stage in 2008 (v. 2007)

Assessment of Cases	2007	2008
Cases on hands at 1 January	267	323
New Cases	674	627
Cases Closed	507	584
Cases for Further Consideration by the ODCE	111	78
Cases on hands at 31 December	323	288

## Appendix 2.2.4

### Cases Concluded at Detection Stage by Primary Manner of Disposal in 2008

Character of Decisions	Voluntary Reports	Mandatory Reports	Total 2008
Insufficient Evidence of Default	148	6	154
Default Appropriate for Civil Action	67	-	67
Cases Concluded by Remedy of Default/Warning	160	169	329
Matters not directly relevant to the ODCE	24	7	31
Other	3	-	3
<b>Total Cases Closed</b>	<b>402</b>	<b>182</b>	<b>584</b>
Cases Referred for Possible Enforcement	16	47	63
Cases Referred for Insolvency Examination	11	4	15
Total Cases Referred for Further Consideration	27	51	78



## Appendix 3.1

### Overview of ODCE Proceedings in 2008 (v. 2007)

Proceedings by Case Type	2007	2008
<b>Investigative</b>		
■ Successful	13	13
■ Unsuccessful	-	-
■ Ongoing	-	-
<b>Sub-Total</b>	<b>13</b>	<b>13</b>
<b>Civil Enforcement</b>		
■ Successful	11	4
■ Unsuccessful	-	1
■ Ongoing	15	16
<b>Sub-Total</b>	<b>26</b>	<b>21</b>
<b>Criminal Enforcement</b>		
■ Successful	8	9
■ Unsuccessful	1	-
■ Withdrawn	-	1
■ Ongoing	7	3
<b>Sub-Total</b>	<b>16</b>	<b>13</b>
<b>Judicial Review and Others</b>		
■ Successful	3	1
■ Unsuccessful	-	1
■ Settled	3	2
■ Ongoing	3	1
<b>Sub-Total</b>	<b>9</b>	<b>5</b>
<b>All Proceedings</b>		
■ Successful	35	27
■ Unsuccessful	1	2
■ Settled	3	2
■ Withdrawn	-	1
■ Ongoing	25	20
<b>Total</b>	<b>64</b>	<b>52</b>

## Appendix 3.2

### Breakdown of Legal Proceedings in 2008 involving the Director

Type	Subject Matter	Section/Act involved <sup>42</sup>	Case Nos.	Case Status/Result
<b>Superior Courts</b>				
Application by ODCE	Appointment of Inspector to three companies	S. 8(1), 1990	1	Granted
Appeal by Respondents/ Cross-Appeal by ODCE	Disqualification on foot of a company investigation – preliminary issues	S. 160(2)(a), (b) and/or (d), 1990	1	Ongoing
Appeal by ODCE	Disqualification for misconduct	S. 160(2)(b) and/or (d), 1990	1	Ongoing
Appeal by ODCE	Disqualification on foot of Inspectors' Report	S. 160(2)(b), (d) and/or (e), 1990	1	Ongoing
Appeal by Respondent	Disqualification on foot of Inspectors' Report	S. 160(2)(b), (d) and/or (e), 1990	1	Ongoing
Application by ODCE	Disqualification on foot of Inspectors' Report	S. 160(2)(b), (d) and/or (e), 1990	6	Four cases decided (all since appealed) leading to three disqualification decisions and one refused application; two cases ongoing
Application by ODCE	Disqualification on foot of Inspectors' Report - retention of papers	S. 12, 1990	1	Granted
Applications by ODCE and Respondent	Disqualification on foot of Inspectors' Report – preliminary issue re cross-examination	S. 160(2)(b), (d) and/or (e), 1990	1	Settled

<sup>42</sup> The Acts referred to are the Bankers' Books Evidence Act 1879, the Companies Acts 1963 and 1990 and the Criminal Justice (Theft and Fraud Offences) Act 2001.

## Appendix 3.2 (continued)

### Breakdown of Legal Proceedings in 2008 involving the Director

Type	Subject Matter	Section/Act involved	Case Nos.	Case Status/Result
<b>Superior Courts (continued)</b>				
Appeal by ODCE	Disqualification for persistent default	S. 160(2)(f), 1990	1	Refused
Application by ODCE	Disqualification for defaults resulting in company strike-off	S. 160(2)(h), 1990	10	Five cases decided (one since appealed) and one case partially determined leading to 12 disqualifications, one restriction and one refused application; ongoing (six cases)
Intervention by ODCE	Participation in application for costs	S. 150, 1990	1	Settled
Intervention by ODCE	Jurisdiction of Court to make a disqualification order of its own motion	S. 160(2), 1990	1	Noted
<b>Circuit Criminal Court</b>				
Prosecution <sup>43</sup>	Excessive directors' transactions	S. 40, 1990	1	Convictions (13) and Disqualification
<b>District Court</b>				
Application by ODCE	Production of banking and other documents	S. 7A, 1879/ S. 52, 2001	5 <sup>44</sup>	Granted
Application by ODCE	Search Warrant	S. 20, 1990	1 <sup>45</sup>	Granted

<sup>43</sup> This prosecution was taken by the Director of Public Prosecutions following an ODCE investigation.

<sup>44</sup> Ten production orders were secured in these five cases.

<sup>45</sup> Two search warrants were secured in this one case.

## Appendix 3.2 (continued)

### Breakdown of Legal Proceedings in 2008 involving the Director

Type	Subject Matter	Section/Act involved	Case Nos.	Case Status/Result
District Court (continued)				
Prosecution	Acting as an auditor while unqualified	S. 187, 1990	2	One case decided leading to five convictions; one case ongoing
Prosecution	Acting as a director while disqualified	S. 161, 1990	1	Conviction and disqualification (since appealed)
Prosecution	Acting as a director while restricted and in breach of the statutory conditions	S. 161, 1990	3	Two cases decided leading to five convictions and three disqualifications; one prosecution withdrawn
Prosecution	Failure to keep proper books of account	S. 202, 1990	5	Four cases decided leading to seven convictions; one case ongoing
Prosecution	Provision of false information to the CRO	S. 242, 1990	1	Conviction

## Appendix 3.3

### Details of Successful ODCE Enforcement Actions in 2008<sup>46</sup>

Parties Sanctioned/ Reason for Sanction	Company Number	Penalty/Decision	Costs/Expenses
<b>Acting as an auditor while unqualified</b>			
Donal Sweeney	-	Convictions (5), €2,500 in fines	€1,065
<b>Acting as a director while disqualified</b>			
Donal Harrington	407161	Conviction, Custodial sentence of six months, Disqualification for five years, €1,500 fine <sup>47</sup>	€228
<b>Acting as a director while restricted and in breach of the statutory conditions</b>			
Sean Crowe Gary O'Brien	400396	Convictions (2), Disqualifications for two years (2), €1,000 in fines	€228
Brian Keogan Jnr	372308 375424 403679	Convictions (3), TIC (1), Disqualification for close to four years, €750 in fines	€684
<b>Excessive directors' transactions</b>			
Stuart Fogarty	24806	Convictions (13), Custodial sentence of two years (suspended), Disqualification for six months, Community service of 240 hours, €34,000 in fines	-

<sup>46</sup> This Appendix only contains information on enforcement proceedings initiated by the ODCE, where there was a successful result in 2008. It excludes other proceedings with a favourable outcome in which we participated. See Appendix 3.2 for these cases and the relevant text of the Annual Report.

<sup>47</sup> This case is under appeal.



## Appendix 3.3 (continued)

### Details of Successful ODCE Enforcement Actions in 2008

Parties Sanctioned/Reason for Sanction	Company Number	Penalty/Decision	Costs/Expenses
<b>Failure to keep proper books of account</b>			
D & N Joinery Limited	360990	Conviction, €1,500 fine	€228
Georgian Antiques Limited	295671	Conviction, €850 fine	€228
John Nolan Plant Hire (Swinford) Limited, John Joseph Nolan, John Patrick Nolan	300602	Convictions (3), €3,000 in fines	€684
Papswood Limited	284808	Convictions (2), €1,000 in fines	€228
<b>Provision of false information to the CRO</b>			
Patrick McFadden	181430	Conviction, €500 fine	-
<b>Unfitness to act as a company officer due to failure to file annual returns leading to the company being struck off the Register of Companies</b>			
Ronan Barry	257276 311990	Disqualification for five years	To be taxed in default of agreement
Terence Mullen	257276 311990	Disqualification for five years	No Order as to costs
Ruth Phelan	311990	Disqualification for five years	Contribution of €2,000
Anthony Dominic Collins, Patricia O'Connell	222019 320899	Disqualifications for five years (2) <sup>48</sup>	To be taxed in default of agreement
Mathew Collins	310770	Disqualification for five years	To be taxed in default of agreement

<sup>48</sup> This case is under appeal, but no stay was granted.

## Appendix 3.3 (continued)

### Details of Successful ODCE Enforcement Actions in 2008

Parties Sanctioned/Reason for Sanction	Company Number	Penalty/Decision	Costs/Expenses
<b>Unfitness to act as a company officer due to failure to file annual returns leading to the company being struck off the Register of Companies (continued)</b>			
William Collins	304339 310770 364532	Restriction for five years	To be taxed in default of agreement
Nigel Weir	364532	Disqualification for five years	To be taxed in default of agreement
Valerie Cummins	331912	Disqualification for four years	No Order as to costs
William Fitzsimons	342765 376455 389367	Disqualification for six years	Contribution of €1,500
Michelle O'Keeffe	342765 376455	Disqualification for five years	Contribution of €1,500
Liam O'Keeffe	342765	Disqualification for four years	Contribution of €1,500
John Quinn	225238	Disqualification for seven years	Contribution of €10,000
<b>Unfitness to act as a company officer in consequence of an Inspectors' Report</b>			
Frank Brennan	30478 65780	Disqualification for six years <sup>49</sup>	To be taxed in default of agreement
Patrick Byrne	30478 65780	Disqualification for four years <sup>49</sup>	To be taxed in default of agreement
Michael Keane	30478 65780	Disqualification for three years <sup>49</sup>	To be taxed in default of agreement

<sup>49</sup> These cases are under appeal. A stay on each order was granted pending the outcome of the appeal.

## Appendix 3.4

### ODCE Throughput of Possible Criminal Enforcement Cases in 2008 (v. 2007)

Cases for Possible Criminal Prosecution	2007	2008
Cases on hands with ongoing criminal proceedings at 1 January	1	8
Other cases on hands for possible enforcement at 1 January	290	310
New cases received for possible enforcement	81	75
Total Cases	372	393

Treatment of Cases during the Year	2007	2008
Cases where criminal proceedings were withdrawn	-	1
Cases where criminal proceedings were determined	9	10
Cases where criminal proceedings were adjourned	-	-
Other cases closed	45	258
Cases on hands with ongoing legal proceedings at year end	8	3
Cases on hands for possible enforcement at year end	310	121
Total Cases	372	393

## Appendix 3.5

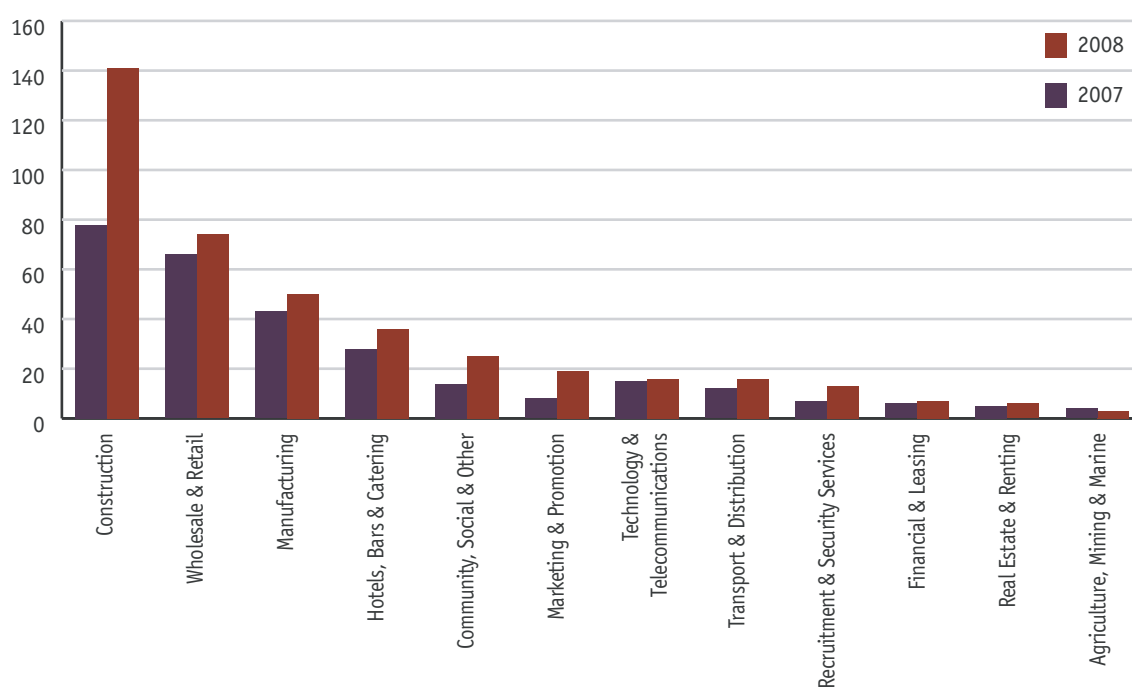
### Breakdown of New Cases for Possible Enforcement by Character in 2008

New Cases by Character	Number
Failure to keep proper books of account	34
Restricted/disqualified Person acting as Director while not permitted	9
Person acting as Auditor while not permitted	9
Failure of company directors to furnish information/explanations required by its auditors	6
Falsification, etc. of company books and documents	4
Excessive Directors' Transactions	4
Other Suspected Offences	9
Total Cases	75

## Appendix 4.1

### Liquidator Reports at 31 December 2008 - Sectoral Analysis

Insolvency by Sector	Section 56 Reports			
	2007		2008	
Construction	78	27%	141	35%
Wholesale & Retail	66	23%	74	18%
Manufacturing	43	15%	50	12%
Hotels, Bars & Catering	28	10%	36	9%
Community, Social & Other	14	5%	25	6%
Marketing & Promotion	8	3%	19	5%
Technology & Telecommunications	15	5%	16	4%
Transport & Distribution	12	4%	16	4%
Recruitment & Security Services	7	2%	13	3%
Financial & Leasing	6	2%	7	2%
Real Estate & Renting	5	2%	6	1%
Agriculture, Mining & Marine	4	1%	3	1%
<b>TOTALS</b>	<b>286</b>	<b>100%</b>	<b>406</b>	<b>100%</b>





# Appendix 4.1.1

## Liquidator Reports at 31 December 2008 – Reports Progressed

Classification	First Reports	Further Reports	Final Reports	Total Reports
<b>Section 56 Reports received</b>				
Reports brought forward from 2007	99	89	74	262
Reports received in 2008	406	479	289	1,174
Reports due and <b>not</b> received in 2008	23	18	1	42
Compliance Rate	95%	96%	N/A <sup>50</sup>	97%
<b>Section 56 Reports determined</b>				
Decisions due in 2008	360	450	307	1,117
Decisions issued in 2008	351	440	307	1,098
Conclusion Rate	98%	98%	100%	98%
Decisions where full relief was granted <sup>51</sup>	251	386	307	944
Decisions where partial relief was granted <sup>52</sup>	6	5	N/A	11
Decisions where relief at this time was granted <sup>53</sup>	70	35	N/A	105
Decisions where relief was not granted <sup>54</sup>	23	14	N/A	37
Other Decision made	1	-	N/A	1
Reports carried forward to 2009	154	128	56	338
No. of Liquidators Involved in Section 56 Reports	102	134	79	194
No. of Directorships Involved in Section 56 Reports	988	1,257	762	2,724

<sup>50</sup> N/A denotes 'not applicable'.

<sup>51</sup> 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.

<sup>52</sup> Cases of Partial Relief are those in which such circumstances apply in respect of some, but not all, of the company's directors.

<sup>53</sup> 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.

<sup>54</sup> 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.

## Appendix 4.2.1

### Cases where Restriction Orders were made against Directors by the High Court in 2008 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction commencing	Court Outcome [See Explanatory Note at end of this Table]
353038	Alden Interiors Limited	Phelan	Denise	23/06/2008	Full Restriction
		Phelan	Alan	23/06/2008	
381231	All Fine Foods Limited	Cassidy	Gavin	17/11/2008	Full Restriction
		Dunne	Jude	17/11/2008	
125166	Alloy Access Limited	Fanning	Joseph	14/01/2008	Full Restriction
		Fanning	Robert	14/01/2008	
373134	Applied Optotech Limited	Bradell	Jules	02/06/2008	Full Restriction
400338	Avondale Tool Hire Limited	Porter	John	10/03/2008	Full Restriction
		Porter	Jason	10/03/2008	
318573	Bilcon Construction Limited	Conway	William	31/03/2008	Full Restriction
384353	Blarney Builders Providers Limited	Barrett	James	21/11/2008	Full Restriction
		O'Sullivan	Paul	21/11/2008	
392589	Bray Scaffolding Services Limited	Currums	Glen	15/12/2008	Full Restriction
		Currums	Michelle	15/12/2008	
387470	Common-Castle Construction Limited	Quinn	Ivan	30/06/2008	Full Restriction
		Quinn	Gerard	30/06/2008	
375654	Computational Analytics Limited	Fitzgerald	Patrick	03/11/2008	Full Restriction
403532	Damal Catering Limited	Sheridan	Damien	14/01/2008	Partial Restriction
227855	First European Textile Group Limited	Hartung	Erwin	20/10/2008	Full Restriction
		Hartung	Dieter	20/10/2008	
233773	Futon Ireland Limited	Mealy	Richard	31/03/2008	Full Restriction
		Mealy	Philip	31/03/2008	
260911	Gorenberg Limited	Gore	Gillian	14/01/2008	Full Restriction
		Gore	Noel	14/01/2008	
375192	Henco Café Limited	Hennessy	Thomas	10/11/2008	Full Restriction

## Appendix 4.2.1 (continued)

### Cases where Restriction Orders were made against Directors by the High Court in 2008 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction commencing	Court Outcome [See Explanatory Note at end of this Table]
291941	Hookless Bar Bistro & Store Limited	Cullen	Pauline	09/06/2008	Full Restriction
		Cullen	Michael	09/06/2008	
236293	J. & H. Burke & Son Builders Limited	Burke	Helen	31/03/2008	Full Restriction
		O'Reilly	Brendan	28/01/2008	
394823	John Porter Development Limited	Porter	John	10/03/2008	Full Restriction
		Porter	Jason	10/03/2008	
375512	Kamar Transport (Kilkenny) Limited	Kavanagh	David	01/07/2008	Full Restriction
370497	Kamar Transport Limited	Kavanagh	David	01/07/2008	Full Restriction
189484	Keating Interiors Limited	Keating	Gary	09/06/2008	Full Restriction
399819	Kitchenworx Limited	Kelly	Vincent Jnr	21/01/2008	Full Restriction
		Kelly	Glenn	21/01/2008	
		McDonnell	Ciaran	21/01/2008	
386269	Langs Consortium Limited	Brady	Peter	28/10/2008	Full Restriction
		Ferns	Francis	28/10/2008	
		Harkins	James	28/10/2008	
		Harkins	Vincent	28/10/2008	
144375	Leo W. Wilson Associates Limited	Clarke	George	03/03/2008	Full Restriction
357453	Loromac Limited	McManus	Pat	28/01/2008	Full Restriction
391980	Maxfern Limited	Costello	Patrick	17/11/2008	Full Restriction
		Costello	Yvonne	17/11/2008	
201798	Moran Office Supplies Limited	Moran	Martin	03/03/2008	Full Restriction
340687	Oberstown Transport Limited	Hughes	Martina	28/07/2008	Full Restriction
		Hughes	Robert	28/07/2008	
357337	Odyssey Internet Portals Limited	Brennan	William	18/11/2008	Full Restriction
		Norris	Michael	18/11/2008	

## Appendix 4.2.1 (continued)

### Cases where Restriction Orders were made against Directors by the High Court in 2008 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction commencing	Court Outcome [See Explanatory Note at end of this Table]
324305	Odyssey Internet Productions Limited	Brennan	William	18/11/2008	Partial Restriction
		Norris	Michael	18/11/2008	
401027	Odyssey Internet Products & Services Limited	Brennan	William	18/11/2008	Full Restriction
		Norris	Michael	18/11/2008	
275182	Optus Telecommunications Limited	Hoey	Graham	20/10/2008	Full Restriction
		Murphy	John	17/11/2008	
384127	P.P Demolition Groundworks and Paving Contractors Limited	Purcell	Margaret	08/12/2008	Full Restriction
		Purcell	Padraig	08/12/2008	
327279	Pat Doody Construction Limited	Doody	Pat	13/10/2008	Full Restriction
		Sweeney	Marcella	13/10/2008	
398420	Peak Telecom Limited	Eipe	John	26/05/2008	Full Restriction
		Eipe	Lene	26/05/2008	
342277	Prestbury Alarms Limited	Casey	Raymond	21/01/2008	Partial Restriction
		Smith	Christopher	21/01/2008	
277699	QED Logistics Limited	Ryan	Christopher	20/10/2008	Full Restriction
		Ryan	Gerard	20/10/2008	
362651	S.P.& T. Developments Limited	Fetherson	Paul	07/04/2008	Full Restriction
		Fetherston	Tommy	07/04/2008	
		Merriman	Susan	07/04/2008	
367431	Security Direct Limited	Caffrey	Sandra	24/01/2008	Full Restriction
		Caffrey	John	24/01/2008	
254964	Southern Fibreglass Products Limited	Lynch	Donal	14/01/2008	Full Restriction
		O'Sullivan	Timothy	14/01/2008	
282858	Southern Scaffolding Company Limited	Trihy - Wight	Ann	13/10/2008	Full Restriction
		Wight	Kenneth	13/10/2008	

## Appendix 4.2.1 (continued)

### Cases where Restriction Orders were made against Directors by the High Court in 2008 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction commencing	Court Outcome [See Explanatory Note at end of this Table]
396025	Strategic Workforce Solutions Limited	Curran	Cian	28/04/2008	Full Restriction
		Curran	Thomas	28/04/2008	
322509	TMS Plant Sales Limited	Thorpe	Olive	24/11/2008	Full Restriction
		Thorpe	Adrian	24/11/2008	
372384	West Link Security Services Limited	Weldon	Paul	28/04/2008	Full Restriction

**Note:** “*Full Restriction*” in the table above indicates an outcome where the Court restricted or disqualified **all** of the directors against whom the liquidator took restriction or disqualification applications pursuant to Section 150 or 160 of the 1990 Act where the ODCE had not relieved the liquidator under Section 56 of the 2001 Act.

“*Partial Restriction*” in the table above indicates an outcome where the Court restricted or disqualified one or more **but not all** of the directors against whom the liquidator took restriction or disqualification applications pursuant to Section 150 or 160 of the 1990 Act where the ODCE had not relieved the liquidator under Section 56 of the 2001 Act. The following **Appendix 4.2.2** lists the persons that were disqualified in all Section 56 cases.



## Appendix 4.2.2

### Cases where Disqualification Orders were made against Directors by the High Court in 2008 as a consequence of a Liquidator's Section 56 Report

Company No.	Company Name	Disqualified Directors		Date Disqualified From	Date Disqualified To
367314	Bermingham Construction Limited	Bermingham	Simon	28/04/2008	27/04/2013
285968	Devey Enterprises Limited	Devey	Mark	02/12/2008	01/12/2014
		Devey	Jacinta	02/12/2008	01/12/2014
370497 375512	Kamar Transport Limited Kamar Transport (Kilkenny) Limited	Kavanagh	David	01/07/2008	30/06/2015
189484	Keating Interiors Limited	Keating	Gary	26/05/2008	25/05/2012
350210	Oakley Formwork Limited	Govern	Conor	11/02/2008	10/02/2013
		Govern	Eimear	11/02/2008	10/02/2013
335674	Rosmuc Developments Limited	Griffin	Colm	25/02/2008	25/02/2016

## Appendix 4.2.3

**Cases where Restriction Declarations or Disqualification Orders were not made against Directors by the High Court in 2008 pursuant to Section 56**

Company Name	Company Number	Date of Court Order
C.M.G. Construction (Limerick) Limited	278910	27/11/2008
Drum Engineering Limited	215249	30/04/2008
Floor Textures Ireland Limited	257280	05/03/2008
Kranks Corner Limited	238480	19/12/2008
Space-Makers Construction Limited	313095	04/02/2008

## Appendix 5.1.1

### Approved versus Actual Staffing Complement by Grade

Year-end	Approved	Actual
2006	37	34.8
2007	46	40.6
2008	46	44.8

### Breakdown by Grade at end-2008

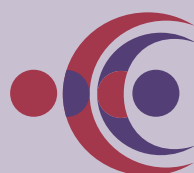
Grade	Approved	Actual
Accountant Grade I	2	2
Accountant Grade III	1	-
Assistant Principal	4	4
Clerical Officer <sup>55</sup>	5	6.1
Corporate Compliance Manager	1	1
Detective Garda	5	5
Detective Inspector	1	1
Detective Sergeant	2	2
Director	1	1
Executive Officer	8	7.7
Higher Executive Officer/Systems Analyst	8	7
Legal Adviser	3	3
Principal Officer	2	2
Principal Solicitor	1	1
Solicitor	2	2
<b>Total</b>	<b>46</b>	<b>44.8</b>

<sup>55</sup> The indicated number includes a Legal Secretary who is employed on a contract basis. The fractional figures here and elsewhere indicate work-sharing patterns.

## Appendix 5.1.2

### Breakdown of Expenditure against Allocation in 2008 and Previous Years

Source of Allocation/Expenditure	2006		2007		2008	
	€000s	€000s	€000s	€000s	€000s	€000s
<b>Allocation</b>						
Exchequer Grant		4,713.0		4,823.0		4,957.0
<b>Expenditure</b>						
Salaries, Wages and Allowances	1,915.3		2,140.2		2,411.6	
Advertising and Publicity	165.8		326.8		304.1	
Office Premises	231.2		286.6		353.2	
Legal Expenses	452.0		913.2		630.4	
Consultancy Services	240.1		268.7		169.3	
Computerisation	53.3		74.1		61.6	
Printing	106.9		157.0		141.9	
Incidental Expenses	15.8		14.8		27.1	
Travel and Subsistence	33.4		31.0		32.0	
Telecommunications	49.6		43.7		88.8	
Postal/Courier Services	18.5		69.6		75.1	
Office Machinery and Photocopying	48.9		33.6		25.0	
Human Resource Development	24.9		18.9		23.0	
<b>Total Expenditure</b>		3,355.7		4,378.2		4,343.1
Amount Surrendered		1,357.3		444.8		613.9



Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach  
Office of the Director  
of Corporate Enforcement