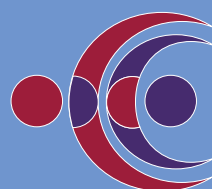


Annual Report 2007



Office of the Director
of Corporate Enforcement

*Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach*

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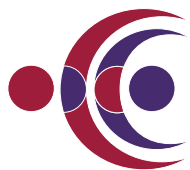
Contents

Foreword by the Director of Corporate Enforcement	3
Introduction	5
Goal 1: Encouraging Compliance with the Companies Acts	6
Goal 2: Uncovering Suspected Breaches of Company Law	15
Goal 3: Prosecuting Detected Breaches of the Companies Acts	21
Goal 4: Sanctioning Improper Conduct with respect to Insolvent Companies	26
Goal 5: Providing Quality Services to Internal and External Customers	33
Conclusion	38
Appendices	39

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Office of the Director of Corporate Enforcement

*Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach*

Foreword



Pursuant to section 16(1) of the Company Law Enforcement Act 2001, I am pleased to present Mr Micheál Martin, T.D., the Minister for Enterprise Trade and Employment, with my Office's Annual Report for 2007.

Highlights for the ODCE in 2007 by primary activity include:

Compliance

- participation by Office staff at more than 50 conferences, seminars and exhibitions promoting compliance with company law obligations;
- the broadcasting for the first time of a series of national radio advertisements highlighting common company law issues that arise for company directors and shareholders;

Detection

- a significant increase (146%) in the number of complaints received about the governance of property management companies. The Office will publish a Governance Handbook for these companies in 2008 to help address the deficiencies being experienced in the area;

Enforcement

- the conviction of 28 companies, directors and others for breaches of company law obligations;
- the disqualification of 14 persons following ODCE proceedings in the High Court;

Insolvency

- the continuing focus on phoenix-type and other unliquidated insolvent company activity. Ten of the above disqualifications related to this area, and one director was disqualified for 12 years, the longest period yet obtained in any ODCE proceeding;

- the restriction of 144 directors of insolvent companies. Most of those were restricted by the High Court on the application of liquidators pursuant to their company law obligations;

Customer Services

- the launch of the Office's new website which attracted about 150,000 visitors.

Office expenditure in 2007 amounted to €4.38 million (a 30% increase on the previous year's outturn of €3.36 million). Most of this increase was due to higher legal and other professional costs relating to Office investigations and enforcement activity.

I am grateful that the Department of Enterprise Trade and Employment assigned four additional staff to the Office in 2007, and these are now working to enhance our capacity to pursue the Office's compliance, insolvency and enforcement work.

I am also pleased with the results of new market research (summarised in this Report) which reported much improved levels of compliance with company law in recent years and a favourable view of the overall effectiveness of the Office.

These good results are primarily due to the commitment and hard work of ODCE staff who have made a major contribution to improving the quality of the environment for enterprise development over the last five years. Auditors, liquidators and other professional interests also continue to contribute to this objective. Over time, more people are becoming aware of this useful work, and our compliance and enforcement message is now reaching a wider constituency.

I want to acknowledge the continuing assistance and support being given to the Office's work by the Oireachtas, the Government, the Courts and the Ministers and staff in the Department of Enterprise Trade and Employment. I hope that this will continue and that we will succeed in further enhancing standards of legal compliance with the Companies Acts in the overall public interest.

Paul Appleby

Director of Corporate Enforcement

31 March 2008

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 2007 by reference to each of these goals and sub-goals.

Goal 1: Encouraging Compliance with the Companies Acts

Introduction

The activities of the Office of the Director of Corporate Enforcement (ODCE) in 2007 in promoting compliance were guided by the actions outlined in our Communications Strategy which was finalised early in the year. Much of the focus of our compliance work was directed at the small and medium sized enterprises sector where poorer awareness of their company law responsibilities tends to be more prevalent. The Compliance Unit benefited from a small increase in staff during 2007 which allowed it to expand its work as well as improve the Office's capacity to deal with company law queries from members of the public.

Sub-Goal 1.1: Publishing Accessible Company Law Information

During the year, the Office published five reports, notices and other documents. These are identified in **Appendix 1.1.1** to this Report.

Information Notices

Two of the five documents published by the Office in 2007 were Information Notices.

The first Information Notice¹ detailed the companies for which a report under Section 56 of the Company Law Enforcement Act 2001 was received by the ODCE and in respect of which a decision to grant full relief or relief "at this time" issued in 2006. The purpose of this Notice is to provide information to creditors and other company stakeholders so as to allow them to better assess the risks of doing business with persons who may have been involved with failed companies in the past. Details of cases where no relief or "partial" relief decisions are published in ODCE Annual Reports following the determination of such cases by the High Court.²

The second Information Notice³ dealt in detail with the new legal requirements for companies in respect of the disclosure of company particulars in their electronic communications and on their websites. A key purpose of the legislation which became effective on 1 April 2007⁴ is to ensure, in the interests of transparency, that consumers receive in communications from companies certain specified particulars denoting the source of the communication. The legislation extended to company electronic communications certain disclosure requirements which already apply to paper-based correspondence. The company particulars which must now be disclosed in electronic communications include:

- (a) the name and legal form of the company;
- (b) the place of registration of the company and the number with which it is registered;
- (c) the address of the registered office of the company;
- (d) in the case of a company exempt from the obligation to use the word 'limited' or 'teoranta' as part of its name, the fact that it is a limited company;
- (e) in the case of a company that is being wound up, the fact that it is being wound up;
- (f) if reference is made in the letter or order form to the share capital of the company, the reference shall be to the capital that is subscribed and paid up.

In order to prepare companies for these changes, the Office commenced a publicity campaign from February 2007. Advertisements were placed in the national press, and the Office contributed to a number of media articles on the new requirements. The results of subsequent work done by the Office in checking company compliance with these requirements are outlined in the following Goal 2 chapter on the detection of company law offences.

¹ Information Notice I/2007/1 – Section 56 Reports. Section 56 of the Company Law Enforcement Act 2001 requires the liquidator of an insolvent company to report to the ODCE on the state of affairs of the company and to apply to the High Court to restrict all of the directors unless relieved by the ODCE.

² The terms full relief, relief 'at this time', 'partial' relief and no relief are explained in Information Notice I/2007/1. See also the following Goal 4 chapter of this Report dealing with corporate insolvency matters. The associated Appendices 4.2.1, 4.2.2 and 4.2.3 contain the results in 2007 of High Court proceedings taken by liquidators against the directors of insolvent companies following an ODCE decision not to relieve the relevant liquidators of their statutory obligation to initiate restriction proceedings pursuant to Section 56.

³ Information Notice I/2007/2 – Disclosure of Company Particulars in E-Communications and on Websites.

⁴ The new requirements are contained in Regulation 9 of the European Communities (Companies) Regulations, 1973 (SI 163 of 1973) as amended by the European Communities (Companies) (Amendment) Regulations 2007 (SI 49 of 2007).

Consultation Paper on Apartment Owners' Management Companies

In late 2006, the Office issued a Consultation Paper and Draft Guidance on the Governance of Apartment Owners' Management Companies (AOMCs).⁵ This comprehensive document, comprising almost 100 pages, sought to inform the directors and members (apartment owners) of these management companies of their duties and obligations in order to improve the sustainability of this form of modern living.

Subsequent to the launch of this Consultation Paper, the Office commenced a publicity campaign which ran throughout the early part of 2007 and was aimed at inviting those associated with management companies to give their views on the content of the Draft Guidance before the deadline of 30 April 2007. In total, the Office received 67 submissions in reply, many of which were from members of the public and professionals involved in the area.

The majority of the submissions expressed support for the ODCE initiative and commented favourably on the quality of the Draft Guidance. One regular suggestion made during the consultation process was the need for the planned final Guidance Handbook to be accompanied by a summary document of the Handbook's key provisions. In addition, many respondents made constructive comments on the proposed amendments to the model Articles of Association which were included in the publication.

At the end of 2007, the Office had made progress in developing its planned Governance Handbook and associated summary document and in preparing an evaluation of the extensive comments received in the consultation process.

"Corporate Compliance Matters"

The ODCE and the Companies Registration Office (CRO) jointly issued a new edition of the "Corporate Compliance Matters" newsletter in March 2007. This publication was mailed directly to the home addresses of every company director on the CRO database, some 230,000 company directors in total. It included four ODCE articles highlighting:

- areas for attention by company directors in the light of the Office's recent compliance and enforcement work;
- the value and purpose of audit committees;

- the Consultation Paper and Draft Guidance on AOMCs; and
- the new disclosure requirements for company e-mails and websites.

Planned Publications

By year end, the Office had commenced work on two new publications. The first initiative involves the production in summary leaflet form of each of our seven Information Books for Company Directors, Shareholders, Creditors, etc. The new publication is intended for use at exhibitions, conferences and other events and will operate in parallel with the present Information Books which will still be available from the Office. The leaflets are being drafted in conjunction with the National Adult Literacy Agency in order to obtain the Plain English mark, and an equivalent version in the Irish Language will also be made available.

In addition, the Office is preparing draft guidance aimed at the directors and investors in companies benefiting from the Business Expansion Scheme (BES). The guidance will focus solely on the main company law issues of which individuals either investing or seeking investment through BES and Seed Capital Schemes should be aware. This document will be issued initially as a Consultation Paper in mid-2008.

Sub-Goal 1.2: Promoting Compliance

Advocacy Work

In early 2007, the Office finalised a two year Communications Strategy aimed at broadening compliance awareness among business and social enterprise and their advisers. During the year, the Office set about implementing several aspects of that Strategy. By way of example, the Office launched its remodelled website in 2007. The new website contains a "Company Law and You" section which targets specific audiences such as company directors, shareholders, auditors and liquidators, in order to improve its accessibility to those market segments. Further information on the attributes and performance of the new website is contained in the following Goal 5 chapter of this Report dealing with corporate services developments.

The Office's primary work in encouraging good corporate governance continued to be the delivery of presentations throughout the country to groups of company directors and associated enterprise interests. In 2007, Office staff gave some 45 presentations to over 3,100 individuals.

⁵ Consultation Paper C/2006/2 – Draft ODCE Guidance on the Governance of Apartment Owners' Management Companies (December 2006).

Appendix 1.2.1 lists these presentations. Particular beneficiaries were directors in the small and medium enterprise sector and business students. Our particular purpose in doing so is to encourage entrepreneurs and potential entrepreneurs to develop their businesses on a solid compliance footing.

During the year, the Office attended seven exhibitions, conferences and open day events. The list of events is at **Appendix 1.2.2**. ODCE staff were available to meet with attendees, distribute our publications and answer questions on company law issues. In this way, thousands of people were given the opportunity to inform themselves about company law issues and to address any compliance issues in the area with our staff. A number of enquiries made subsequently led to formal complaints being made to the Office in respect of suspected company law defaults.

The tagline “Get Informed” was adopted in 2007 and was repeated in all relevant Office advertising (see **Illustration 1.2.1** below). The Office is considering expanding its publicity activity on this theme at year-end.

Illustration 1.2.1: Sample ODCE Advertisement used in 2007

If you are a company director,
shareholder or creditor then
Company law is relevant to you

GET INFORMED!

Avoid the risk of breaching it and
protect yourself from those who might.

Contact the ODCE
For free information on company law

www.odce.ie 1890 315 015

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of Corporate Enforcement
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Fhorfheidhmiú Corparáideach

The ODCE - Creating a better environment for enterprise

Also as part of the Office’s Communications Strategy, the Office prepared and broadcast for the first time a series of national radio advertisements aimed at addressing topics that are of relevance to company directors and shareholders in particular. These were initially aired in December 2007

and will be repeated and possibly expanded in 2008. The topics covered included:

- the importance of company directors informing themselves of their duties,
- the legal limitations on the use by company directors of company assets for personal purposes,
- the need for companies to maintain proper company accounting and other records, and
- the right of shareholders to information on the performance of their company, including the right to participate at the company annual general meetings.

Public Enquiries

The Office issued some 23,500 copies of its various publications during 2007. Many of these were distributed through the Companies Registration Office to the directors of new companies. This represented a large increase on the 15,000 copies which were distributed in 2006.

The Office continued to deal with a large number of company law queries received primarily by phone and e-mail to info@odce.ie. During 2007 and helped by the assignment of an extra staff member to the area, the Office consolidated the delivery of this customer service within the Office’s Compliance Unit and put in place systems for measuring and monitoring the significant queries. In the last quarter of the year, some 150 queries received a considered response. A sample of the public enquiries dealt with by the Office in 2007 is contained in the accompanying **Illustration 1.2.2**.

While these enquiries reflected the diverse nature of company law issues which were addressed in the Office in 2007, many of them were centred around AOMCs as well as general disputes between company directors. Unfortunately, we were unable to assist with the majority of AOMC queries as the subject matter did not relate to company law. Those making enquiries were often encouraged in appropriate cases to raise their difficulties with the directors of the management company or with the managing agent who is contracted to service the apartment or housing complex.

While the Office strives to deal with all company law queries it receives by providing copies of its publications or other general information on company law requirements, it cannot and does not dispense legal or other professional advice related to an individual’s difficulty. In circumstances where correspondents seek such advice, the Office always suggests that they consult a solicitor knowledgeable in company law or another relevant professional person.

Illustration 1.2.2: Sample of Public Enquiries dealt with by the Office in 2007

A member of the public wanted to know if a company director who had notified the company of his resignation could file notice of his resignation direct with the CRO, where the company had failed to accept his resignation and notify it to the CRO.	The person was directed to Section 195 (11A) and (11B) of the Companies Act 1963 (as amended by Section 47 of the Companies (Amendment) (No. 2) Act 1999) which outlines the process to be followed by a person wishing to notify his or her resignation as a director with the CRO.
An individual claimed to be aware that a number of the community/voluntary companies were not complying with various company law requirements. She specifically asked if failing to hold an annual general meeting, failing to record minutes of meetings and failing to maintain an accurate and complete register of members were offences under the Companies Acts.	The person was informed that each of the mentioned defaults was a company law offence. The Office arranged for two copies of its seven general Information Books on the duties of company directors, etc. to be issued to the enquirer.
A person enquired if a restricted person could become a director of a management company which was constituted as a company limited by guarantee.	The individual was informed that a person who is restricted is precluded from acting as a director of a company limited by guarantee. This form of company cannot be capitalised to meet the statutory requirements and thereby permit a restricted person to serve as a director.

Press Statements, Briefings and Queries

The Office issued ten press statements during 2007. The full list of press statements is available at **Appendix 1.2.3**. These statements related, for example, to the launch of the Office's Annual Report for 2006, as well as the highlighting a number of compliance projects. Also where necessary or appropriate, the Director commented on significant enforcement results and Court decisions.

Over 100 press queries were dealt with in 2007, and the Office's work was profiled in a wide range of print media on more than 300 occasions. In addition, Office staff also carried out a number of media interviews during the year. The Office also contributed articles to publications on issues such as the new disclosure requirements for company electronic communications, AOMCs and the Office's compliance work.

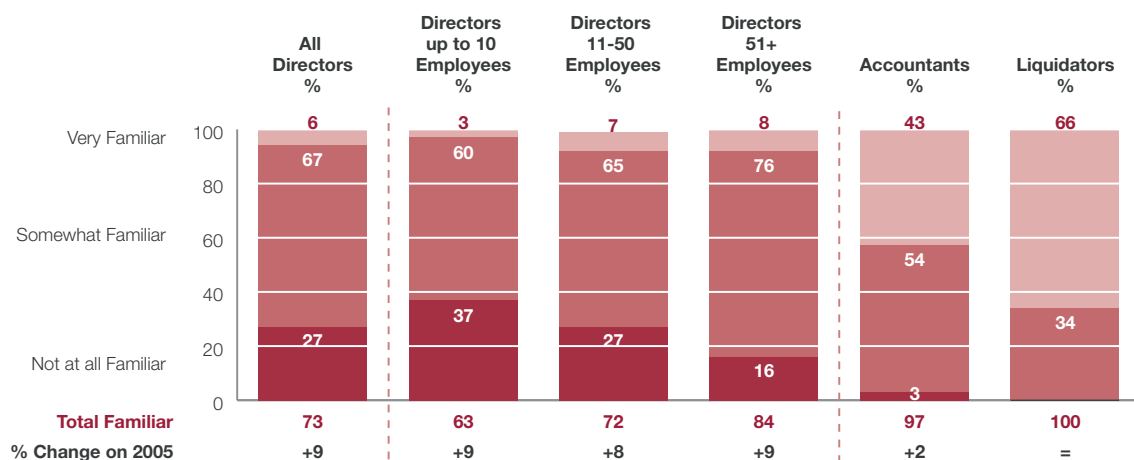
During the year, the Office invested in a part-sponsorship of the "Irish Director" magazine, the quarterly publication of the Institute of Directors in Ireland, in order to maintain an awareness of company law issues among the membership of that organisation. As part of that sponsorship, the magazine carries at least one article on the Office's work in each issue.

Market Research

Towards the end of the year, the Office commissioned further market research to obtain an overview of the company law compliance environment and the performance of the Office in the discharge of its functions. Following a competitive tender process, the Office engaged Millward Brown IMS to carry out the research.

The approach in 2007 followed broadly along the same lines as the last exercise carried out in 2005. In all, some 299 company directors, 100 accountants and 41 liquidators (a total of 440 respondents) were contacted during November/December 2007 and asked a series of questions concerning their understanding of company law and the Office, their opinions on company law compliance generally, and where relevant, their experiences in dealing with the Office. A number of key business professional and media interests were also interviewed on a one to one basis to obtain more detailed feedback on company law compliance and on the work of the Office. Finally, a sample of some 1,000 members of the general public was also asked during October 2007 for their opinions on the quality of corporate compliance with company law and other legal obligations.

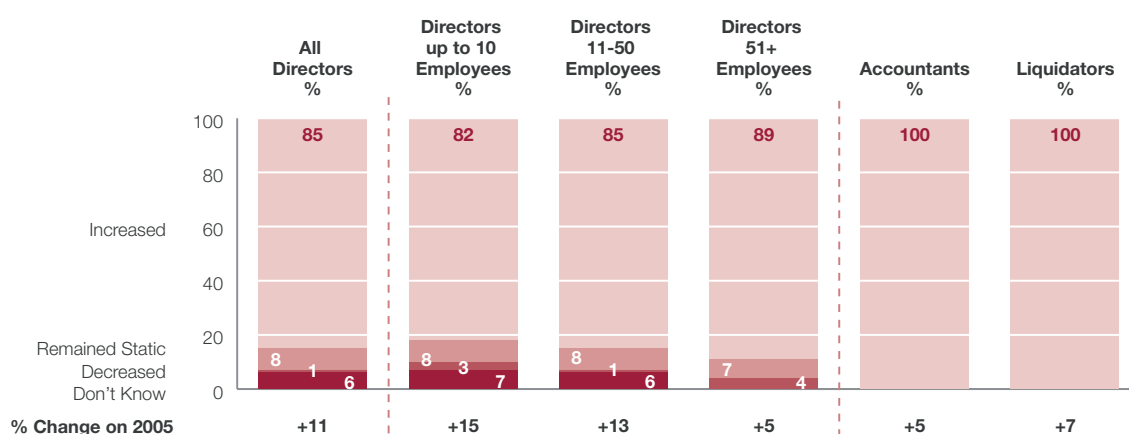
The results of this research were very positive from the Office's perspective. As indicated in the following **Illustration 1.2.3**, awareness of the Office and its functions continues to increase amongst company directors and now stands at 73% on average, rising to 84% for directors of larger companies.

Illustration 1.2.3: ODCE Market Research 2007**Familiarity with ODCE**

Q. How familiar are you with the Office of the Director of Corporate Enforcement, or ODCE, and its functions?

When shown, as part of the research, a selection of possible ODCE functions and asked what was the Office's primary role, 60% of the 299 company directors identified its work in encouraging adherence to company law requirements. In comparison, sanctioning company directors for non-compliance was selected by only 12% as the Office's primary role. The Director is heartened by this result, as it has been his objective in recent years to promote the compliance side of the Office's remit.

As indicated in the following **Illustration 1.2.4**, the 440 respondents were asked for their opinion of the qualitative change in the company law compliance environment over the last five years. 85% of directors were of the opinion that compliance had improved over the last five years, an 11% increase on the result obtained in the last equivalent research in 2005. And all 141 accountants and liquidators expressed the belief that compliance had improved!

Illustration 1.2.4: ODCE Market Research 2007**Movement in Compliance Levels**

Q. In your opinion, have levels of compliance with Company Law in Ireland increased, decreased or remained static over the past five years?

In the poll of some 1,000 members of the public, 52% rated companies as good at fulfilling their obligations under company law. This was also slightly up on the previous result of 50% achieved in the 2005 research.

Sub-Goal 1.3: Improving Company Law and Associated Practices

Policy Submissions and Contributions – General

In 2007, the Office made a number of policy submissions on company law and related issues. These included contributions to:

- the Department of Enterprise Trade and Employment (DETE) in the context of its new Strategy Statement;
- the Company Law Review Group (CLRG) as part of its 2007 Work Programme;
- the Law Reform Commission (LRC) in reply to its Consultation Papers on Multi-Unit Developments and Privity of Contract – Third Party Rights;
- Dublin City Council in respect of its Draft Guidelines on Sustainable New Apartment Homes;
- the European Commission's Consultation Papers on the Simplification of Company Law and Auditor Liability;
- the Financial Reporting Council (FRC) in the UK in response to its Paper on Promoting Audit Quality;
- the International Association of Insolvency Regulators in respect of its ongoing and future programmes of research projects in the insolvency area.

DETE Strategy Statement

The Department of Enterprise Trade and Employment developed a new Strategy Statement during 2007, and the Office responded to an invitation to comment on the content of the draft Statement. In its comments, the Office advocated strong recognition within the Strategy Statement of the value of regulation in promoting well-functioning and orderly markets. The ODCE noted its support for the modernisation and consolidation of company law but was anxious that the focus should be on better regulation which did not necessarily mean less regulation. In the company law area for example, improved standards of regulation have been effective in improving legal compliance to the overall benefit of the market. Similar positive results had been achieved in other regulatory areas. DETE took on board these views in finalising its Strategy Statement.

Company Law Review Group

As a member of the CLRG, the Director, supported by five ODCE colleagues, participated in its heavy work programme in 2007. The Director chaired the Committee on Criminal and Enforcement Issues with assistance from three colleagues, while three staff represented the Office on three other Committees dealing respectively with matters under the Registration and Incorporation, Auditors and Financial Statements and Modernisation for Competition headings.

While the ODCE had an interest in over half of the 25 items on the CLRG work programme, four were ODCE proposals for legislative change. These had originally been recommended to the Department in 2006 for possible inclusion in the Bill which came to be enacted as the Investment Funds Companies and Miscellaneous Provisions Act 2006. The four ODCE proposals dealt with:

- the introduction of a framework of consent undertakings for uncontested restriction and disqualification proceedings⁶;
- the consolidation, within a single set of proceedings, of multiple prosecutions of companies, directors and/or other persons where they are based on the same set of facts⁷;
- the inclusion of a rebuttable presumption in the offence provision with respect to excessive directors' transactions (Section 40 of the Companies Act 1990), in order to mitigate the associated very high burden of proof;
- the verification of a company's entitlement to avail of audit exemption as provided for in Section 32 of the Companies (Amendment) (No. 2) Act 1999.

Regrettably, only the first two of the above proposals received positive CLRG recommendations at the conclusion of its 2007 work. The CLRG Report for 2007 is available on its website at www.clrg.org.

The Committee on Criminal and Enforcement Issues also addressed the desirability of including a provision on good faith reporting (otherwise known as "whistle-blowing") in Irish company law. This suggestion emanated from the Irish Congress of Trade Unions following the Government's formal decision in 2006 that Ministers would examine on a sectoral basis if such a provision should be included in forthcoming Government legislation. Notwithstanding

⁶ The ODCE proposal constituted an amendment of the new provision included at Head 51 of Part A13 of the published Companies Consolidation and Reform Bill, a copy of which is at www.clrg.org.

⁷ The ODCE proposal constituted an amendment of Section 240A of the Companies Act 1990 (as inserted by Section 105 of the Company Law Enforcement Act 2001) and of Head 53 of Part A13 of the published Companies Consolidation and Reform Bill, a copy of which is at www.clrg.org.

the Committee's substantial national and international research work and the subsequent development of a detailed ODCE Discussion Paper on the topic, the CLRG decided in its 2007 Report not to recommend the inclusion of a good faith reporting provision in Irish company law.

Nevertheless, the CLRG decided that the ODCE Discussion Paper which included the Committee's research work was an extensive and valuable document which merited publication on its own website as it would be of interest to other Government Departments in considering the introduction of good faith reporting provisions in planned legislation under their aegis. A copy of the ODCE Discussion Paper which advocated a limited good faith reporting provision in Irish company law is also published as a companion document to this Annual Report on the ODCE website at www.odce.ie.

Law Reform Commission Consultation Papers

In November 2006, the LRC issued a Consultation Paper on Privity of Contract: Third Party Rights⁸. In 2007, the ODCE made a submission to the LRC in which it expressed concern that the present legal framework for corporate and other insolvencies would be unlikely to sustain a universal conferral of third party rights. Where, for instance, a company in liquidation owed money to a contractor, the conferral of a right of third party enforcement to unpaid sub-contractors could result in the liquidator facing multiple proceedings in circumstances where it was desirable both for economic and public policy reasons to avoid the cost associated with such proceedings. Accordingly, the ODCE suggested inter alia that the LRC consider exempting insolvencies and rescue procedures like examinership from any general recommendations which it might make in the area. The issue is still under consideration by the LRC.

In December 2006, the LRC issued a detailed Consultation Paper on Multi-Unit Developments⁹. In its response to the Paper, the ODCE offered various comments and suggestions on the current legal and operating structures of AOMCs and similar developments. These included the following:

- the case for a dedicated regulator in the area was not persuasive from the ODCE's perspective, but if one were to be created, it should operate at a high level only;
- a comprehensive review of the current legal agreements and standard provisions was needed, as these did not reflect in many cases the actual operation of AOMCs subsequent to the sale of apartments;
- rescue provisions were urgently needed to deal with the dissolution of AOMCs and other serious problems arising from the inadequate maintenance of apartment developments;
- residents and potential residents of AOMCs should receive more financial and other information on AOMC governance and performance to facilitate their decision-making;
- each new AOMC should be funded at the outset by the allocation to the company of 10% of the purchase price of each apartment. This would ultimately be paid to the developer when and in consideration of the vesting of the apartment development's common areas to the AOMC. This would also allow the AOMC to fund any legal or other costs that it may face prior to the transfer of the common areas and act as an incentive to developers to expedite the transfer.

Following the publication of the LRC Consultation Paper, the Government established 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 identified issues. The ODCE was invited to serve on this Committee which is being chaired by the Department of Justice Equality and Law Reform, and an ODCE representative participated in the Committee's deliberations during 2007.

Dublin City Council Draft Guidelines on Sustainable New Apartment Homes

The ODCE made a short submission to Dublin City Council in respect of its Draft Guidelines on Sustainable New Apartment Homes. We commented solely in respect of the structure of AOMCs and suggested in the interests of sustainability that planning authorities might give some consideration to the proposed governance structures for apartment developments when planning permission was sought.

⁸ A copy of LRC Consultation Paper 40-2006 is available at www.lawreform.ie.

⁹ A copy of LRC Consultation Paper 42-2006 is available at www.lawreform.ie.

European Commission Consultation Papers

The ODCE submitted through the CLRG a response to the European Commission's Consultation Paper on the Simplification of Company Law. In our submission, the Office commented that proposals to reduce or eliminate reporting obligations for small businesses would have a major impact in Ireland due to the very large proportion of our companies that would fall into that sector. The Office stated that the information filed by companies in the CRO constitutes an important resource for business and consumers in evaluating the risks of entering into transactions with companies. Any reduction in the quantity or quality of this information would not be conducive to informed and competitive market decision-making. In certain instances such as the option of filing abridged accounts for certain small companies, availing of the option already entailed additional cost for business.

The European Commission also issued a paper on auditors' liability and its impact on European Capital Markets. The Office expressed support for the concept of limiting auditor liability but commented on the difficulties in achieving this in practice. It gave guarded support for the concept of negotiated limited liability with a degree of court oversight but counselled that such an approach may meet constitutional challenges.

Financial Reporting Council Paper on Promoting Audit Quality

In response to the FRC Paper on Promoting Audit Quality, the ODCE expressed some concerns, notwithstanding the overall satisfactory performance of the profession, about the quality of some audit reports and the inadequate knowledge possessed by a minority of auditors of the associated company law provisions. In its experience, this applied particularly to smaller practices which suggested that there were deficiencies in continuing professional education which required to be addressed.

With respect to audit committees, the Office drew attention to the recent Irish legislation and suggested that it might assist the development of future FRC guidance.

International Association of Insolvency Regulators (IAIR)

As part of the ODCE's continuing membership of the IAIR, the Office contributed in 2007 to two research projects on employee rights in corporate insolvencies and on the fees and costs charged by insolvency regulators. These projects were led respectively by the members from

the Russian Federation and Canada. All research papers which the IAIR decides to publish are available on its website at www.insolvencyreg.org.

The Director participated in the IAIR's Annual Conference in Bangkok in September 2007. The Conference agreed, in advance of its 2008 Conference, to undertake two ODCE proposals for research projects dealing with:

- improving information-sharing among the IAIR's members with respect to their regulation of personal and corporate insolvency matters, and
- the mutual recognition of sanctions imposed in IAIR member jurisdictions.

The former research project will be undertaken in conjunction with the Office of the Superintendent of Bankruptcy in Canada which has a particular interest in establishing the policies of IAIR member jurisdictions with respect to the disclosure of insolvency data collected as part of their supervisory remits.

OECD Peer Review of Bribery Convention

In the ODCE's Annual Report for 2006, reference was made to the Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (1997). As a party to that Convention, Ireland's compliance with its terms is regularly monitored by the Organisation for Economic Cooperation and Development (OECD)¹⁰. In March 2007, the latest OECD evaluation report on Ireland's implementation of the Convention was published following consideration of its contents at a plenary meeting of the OECD Working Group on Bribery in International Business Transactions at which the ODCE was represented. In connection with Ireland's implementation of its obligations under this Convention, the Government established a Senior Officials' Compliance Committee during 2007, and a staff member of the ODCE serves on this Committee.

The Working Group's report is available on the OECD's website.¹¹ Although the criminal offence of bribery is not directly relevant to company law enforcement, the ODCE was nevertheless pleased that the OECD Report welcomed the creation of the Office and its action in effectively enforcing accounting offences under company law. The Report also acknowledged that recent reforms in the area of company law strengthen accounting and auditing standards and should allow for more effective enforcement of fraudulent accounting offences ancillary to foreign bribery.

¹⁰ Information on the Convention is available at www.oecd.org.

¹¹ See www.oecd.org/dataoecd/27/45/38322693.pdf.

ECJ Case on the Transfer of a Company's Registered Office

Reference was made in the ODCE's Annual Report for 2006 to our contribution to the preparation by the Offices of the Attorney General and the Chief State Solicitor of Ireland's Written Observations to the European Court of Justice (ECJ) in Case C-210/06 Cartesio Oktató és Szolgáltató Betéti Társaság. The ECJ heard the case in July 2007, and the opinion of the Court's Advocate General (which is a step preliminary to the delivery of the Court's ultimate judgment) was still awaited at the end of the year.

Visit by the Estonian Justice Ministry

At the request of the Justiits Ministerium in Estonia which has responsibility for the regulation of corporate and personal insolvencies, the ODCE hosted a meeting in Dublin in May 2007 at which an Estonian delegation was briefed on the ODCE and on Irish legislation and regulation of insolvency matters.

NSAI – ISO 26000 on Social Responsibility

The International Standards Organisation (ISO) continued its work in developing a global standard in the area of Corporate Social Responsibility in 2007. This large and complex project has proceeded more slowly than originally envisaged. As a member of the Irish Mirror Committee tasked with reviewing the work of the ISO on behalf of the State, the ODCE has maintained a watching brief on developments. The Mirror Committee, managed by the National Standards Authority of Ireland (NSAI), met once during 2007.

Irish Auditing and Accounting Supervisory Authority (IAASA)

The Director is a member of the Board of IAASA, and he also serves on the Board's Remuneration Committee. The Director contributed to the Authority's work during the year in both capacities. A copy of IAASA's Annual Report for 2007 will be available from mid-2008 on its website at www.iaasa.ie.

Conclusion

The results of the recent market research have clearly indicated that the ODCE's efforts are successfully securing an ongoing market improvement in the quality of compliance with the provisions of the Companies Acts. The Office will continue to implement its current Communications Strategy with a view to reaching in particular the large constituency of people who are involved in business and social enterprises and who need to know the basic requirements of company law in order to help build sustainable businesses.

Goal 2: Uncovering Suspected Breaches of Company Law

Introduction

The provisions contained in the Companies Acts are designed to facilitate the creation of sound business and social enterprises and to secure in that context an equitable balance in the duties of company stakeholders (company directors, shareholders, creditors, etc.) to one another. Where one or more company stakeholders are dissatisfied with the performance of the company or other stakeholders, they may use the law to call the stakeholders in question to account. Where a breach of law is at issue and a complaint or report is made to this Office, it is important that the alleged default is investigated and if appropriate, rectified or sanctioned in order to maintain public confidence and credibility in the existing framework of rights and obligations.

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

Public complaints and reports from auditors and liquidators continued to be the main source of information with respect to potential defaults vis-à-vis the Companies Acts. This section of the Report deals with all alleged and detected misconduct, other than that contained in regular liquidator reports which are part of the later Goal 4 chapter.

Number/Sources of Suspected Breaches

As will be apparent from the breakdown of detected non-compliance by source which is outlined in **Appendix 2.1.1** to the Report, the number of reports in 2007 declined marginally by about 4% on the 2006 outturn. The primary reason for this reduction was the 30% drop from 268 to 186 in the number of auditor reports received.

On the other hand, the number of public complaints and other detections increased by 16% from 406 to 470 cases. Much of this increase was the result of the ODCE's own efforts in 2007 in monitoring compliance with the new legal requirements for the disclosure by limited companies of certain particulars on their websites. See the previous Goal 1 chapter for details of these requirements.

Cooperation between Regulatory Authorities

Like other regulators, the ODCE is required by law to keep confidential commercially sensitive information which it receives as part of its work. However generally speaking, the law also permits one regulator to share information of relevance to the remit of another. In recent years, the ODCE has developed Memoranda of Understanding (MOUs) with a number of other regulators to help define the standards of mutual cooperation which should operate with respect to information-sharing.

Pursuant to the cooperation which is permitted by law, the Director and his staff had formal meetings during the year with the Revenue Commissioners, the Financial Regulator, the Irish Auditing and Accounting Supervisory Authority, the Garda Bureau of Fraud Investigation (GBFI) and the recognised accountancy bodies. Given a mutual interest in property management companies, the ODCE also met with the Chief Executive Designate of the National Property Services Regulatory Authority in 2007.

There were extensive contacts with the Revenue Commissioners in particular with respect to the Office's work in addressing the area of unliquidated insolvent companies where Revenue would often be a significant creditor. Regular contacts also took place between the Garda members of the ODCE and their counterparts in GBFI and in other areas of the force on specific case issues.

As part of their continuing co-operation, the ODCE and the recognised accountancy bodies decided in 2007 to establish a technical liaison group to address issues of interpretation with respect to particular accounting and auditing obligations in the Companies Acts. It is envisaged that this technical liaison group will meet quarterly, and its work will be kept under review by the Director and Chief Executives of the accountancy bodies who will continue to meet every six months or so.

The staff of the Companies Registration Office (CRO) also continued to be of substantial assistance to the work of the Office, especially in retrieving and certifying filed original documentation for use by the ODCE in Court proceedings.

The ODCE developed in 2007 a draft MOU on information-sharing with the Private Security Authority, and progress in finalising its terms was well advanced at year-end.

A small number of contacts on individual case issues also took place during the year with a variety of Government Departments and regulatory and other agencies.

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

The ODCE continued in 2007 to evaluate issues of suspected default reported to or detected by it in order to identify relevant breaches of company law. It is in the nature of many public complaints in particular that alleged misconduct may be quite general, and when examined, some will be found not to be relevant to the Office's remit.

The following main business sectors were the subject of the 674 complaints and reports received in 2007:

Complaints/Reports by Business Sector in 2007	% of Complaints/Reports
Real estate, renting and associated business activities	32.0%
Construction	11.5%
Wholesale, retail and motor trades	8.5%
Manufacturing	7.0%
Community and personal services	6.7%
Financial intermediation	5.0%
Transport and communications	4.5%
Hotels and restaurants	2.8%
Other Business Sector	1.7%
Unknown Business Sector	11.0%
Not a company	9.3%
Total	100.0%

Nature of Issues identified in Mandatory Reports

The 204 mandatory reports which were primarily received from auditors in 2007 disclosed six main suspected offences under the Companies Acts. **Appendix 2.2.1** to this Report outlines the nature of the main offences reported to the Office in 2007 relative to the previous year's outturn.

The following two offences represented almost 87% of those reports:

- 138 instances of infringements of the directors' transactions provisions contained in Part III of the Companies Act 1990 were reported. This suspected default was contained in about 68% of auditor reports. The associated loan amounts were valued at €33.7 million;

- 40 instances of a suspected failure to keep proper books of account in companies as required by Section 202 of the Companies Act 1990 were received. This default was apparent in about 19% of auditor reports. This failure can denote serious misconduct on the part of a company and/or its directors.

The 138 instances of directors' transactions infringements constituted about half the reported 268 infringements of 2006, and this reduction was the most notable feature of the mandatory reports received in 2007. This decreasing trend which has been evident since 2005 is partially explained by the success of the ODCE's efforts since 2003 in informing company directors in particular of the legal limitations which apply to the personal use of company assets. However, it may also be the case that part of this decrease is attributable to a differing interpretation now being placed by some auditors on their reporting obligation in this area.

At the 'Meet the Regulators' Conference in November 2007 which was organised by the Institute of Chartered Accountants in Ireland, the Director reiterated his disappointment that so few indictable offences under the Companies Acts were coming to the attention of auditors during their audit. Arising from these comments, the ODCE and representatives of the recognised accountancy bodies have agreed to discuss in 2008 at technical level the extent to which this constitutes an underreporting of company law offences by auditors and if this were found to be the case, the means by which better reporting might take place in the future.

At the Conference, the Director also adverted to the occasional enquiries which his Office's accountants have had to make of auditors in respect of the validity of audit reports attached to the financial statements of companies. The following **Illustration 2.2.1** identifies one such instance in 2007 where the relevant audit firm felt it necessary to alter its audit opinion following contact from the ODCE. The company in question was one where the financial statements had been prepared on a going concern basis but where the auditor had not been able to verify the valuation of over €150,000 which the company's directors had placed on its stock. It is the view of the ODCE that the absence of adequate stock records is a clear breach of Section 202(3)(c) of the Companies Act 1990 where, as in this case, the related provision was material in the context of that company's financial statements.

Illustration 2.2.1: Original and Revised Audit Opinions filed with the CRO
(Differences in text between the two Reports are underlined below)

Original Auditors' Report	Revised Auditor's Report
<p>"Basis of Opinion</p> <p>We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board.</p> <p>...</p> <p>We planned <u>and performed</u> our audit so as to obtain all of the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error.</p> <p><u>We did not observe a stock count at the year end and there were no other satisfactory audit procedures that we could adopt to confirm that the stock was properly counted and valued.</u></p> <p>...</p>	<p>"Basis of Opinion</p> <p>We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board, <u>except that our scope was limited as explained below.</u></p> <p>...</p> <p>We planned our audit so as to obtain all of the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error.</p> <p>However, the evidence available to us was limited as <u>we were unable to observe the counting of physical stock which the directors have valued at €157,560 due to limitations placed on the scope of our work by the company. As a result of this we have been unable to obtain sufficient appropriate audit evidence concerning stock.</u> Because of the significance of this item, we have been unable to form a view on the financial statements.</p> <p>...</p>
<p><u>Qualified opinion arising from limitation of scope</u></p> <p><u>Except for any adjustments that might have been found necessary had we been able to obtain sufficient evidence concerning stock, in our opinion the financial statements give a true and fair view of the state of the Company's affairs as at the 31 October 2005 and of its results for the year then ended and have been properly prepared in accordance with the Companies Acts 1963 to 2005.</u></p> <p>In respect <u>alone</u> of the limitation on our work relating to stock:</p> <ul style="list-style-type: none"> ■ we have not obtained all the information and explanations that we consider necessary for the purpose of our audit; and ■ <u>we were unable to determine whether proper accounting records have been maintained.</u> <p><u>With the exception of the above, in our opinion the financial statements give a true and fair view of the state of the company's affairs as at the 31 October 2005 and of its loss for the year then ended and have been properly prepared in accordance with the Companies Acts 1963 to 2005.</u></p> <p><u>We have obtained all other information and explanations we consider necessary for the purposes of our audit. In our opinion proper books of account have been kept by the company.</u> The financial statements are in agreement with the books of account.</p> <p>..."</p>	<p><u>Opinion: disclaimer on view given by financial statements</u></p> <p><u>Because of the possible effect of the limitation in evidence available to us, we are unable to form an opinion as to whether the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland, of the state of the Company's affairs as at and of its results for the year then ended.</u></p> <p>In respect <u>solely</u> of the limitation of our work relating to stock, we have not obtained all the information and explanations that we consider necessary for the purpose of our audit <u>and proper accounting records were not maintained.</u></p> <p><u>In October 2006, we issued a special report expressing our opinion that the Company had failed to maintain proper books of account in respect of stock. The directors since the Balance Sheet date have taken the necessary steps to ensure proper books of account are kept by the Company.</u></p> <p>The financial statements are in agreement with the books of account.</p> <p>..."</p>

Nature of Issues identified in Voluntary and Other Reports

The character of non-compliance denoted in the 470 public complaints and other cases detected in 2007 is outlined in **Appendix 2.2.2** to this Report. Relative to 2006, there were two notable features of the year's cases.

Firstly, the number of complaints received in 2007 in respect of property management companies was 64 cases, a 146% increase on the previous year's figure of 26. The company law issues which provoked the complaints in 2007 in respect of apartment owners' management companies (AOMCs) primarily related to the non-convening of annual general meetings, the failure to inform members in good time of the holding of these meetings, the failure to disclose to members the company's latest financial accounts and the dissolution of a number of these companies.

This increase is likely to have been prompted by the publication of the ODCE's Consultation Paper on the Governance of AOMCs in December 2006 and the attendant publicity giving rise to an awareness that the ODCE may be in a position to offer some relief to the grievances felt by many apartment owners.

The second notable difference vis-à-vis the 2006 outturn arose from the ODCE's decision to monitor in mid-2007 compliance with the new obligations in the European Communities (Companies) (Amendment) Regulations 2007 which came into effect from the preceding 1 April. As indicated earlier, these Regulations require the disclosure by limited liability companies of certain particulars in their electronic communications and on their websites. A specimen list of 100 Irish companies, based on size and website usage, were examined, and 80 were found to be companies which were required to have websites which were subject to the Regulations. Initially, only one of the 80 companies was found to be fully compliant necessitating contact by the Office with the remaining 79 companies. The accompanying **Illustration 2.2.2** discusses the most frequent instances of non-compliance which were detected.

Throughput of Cases

Some highlights of concluded cases by case type in 2007 are as follows:

- with respect to complaints about AOMCs, the ODCE successfully rectified difficulties in 43 of these cases by contacting the directors in question. Legal action is being considered in two cases at the end of the year following the failure of the directors involved to act to remedy the defaults administratively. 19 other cases are continuing to be assessed at year-end;
- in dealing with detected non-compliance vis-à-vis the disclosure of company particulars on websites, 73 companies achieved compliance by the end of year following ODCE contact with them. The Office was continuing to engage with six defaulting companies at year-end;
- in relation to excessive directors' transactions, 179 cases involving amounts to the value of €63 million were examined in detail. Some 122 cases were successfully resolved. Of those, seven cases involved loan amounts in excess of €1 million in each case, and over €10 million of company assets was repaid by directors to their companies. In all, some 368 directors were cautioned. At the end of the year, 57 cases remained on hand.

Illustration 2.2.2: Issues arising from ODCE Monitoring of Compliance with the European Communities (Companies) (Amendment) Regulations 2007

A typically compliant website and any electronic or written correspondence emanating from a limited liability company should have at least the following:

XY Limited a private company limited by shares registered in the Republic of Ireland No. 99990900 with a registered office at 16 Parnell Square, Dublin 1.

The Regulations are aimed at consumer protection insofar as they require disclosure of the identity of the vendor of the goods or the provider of the services. It was therefore a concern that the primary failure to disclose the relevant details was evident on retail trade websites which were selling to consumers.

Some Irish-registered trading companies operate multiple websites (i.e. one for each commercial premises), and frequently, each of these websites was found not to be compliant with the Regulations. Companies should disclose the required details on each and every website which it operates; it is not sufficient that one company website has the required particulars.

Another detected problem was the failure by groups of companies to comply with the provisions. Certain Irish-registered companies have a web presence as part of a parent or sister company website, but the required details were not disclosed on the website.

If any group company registered in an EU Member State is operating through a website, the details of that company, together with the details of any other sister companies registered in EU Member States which are operating through the same site, must be included on the website.

As will be apparent from **Appendix 2.2.3**, over 500 cases were disposed of in 2007 compared with more than 900 in 2006. The latter result was exceptional in that the cases in question predominantly involved excessive directors' transactions which were capable of being dealt with on a relatively expeditious basis. Although the issue of directors' transactions continued to form a part, albeit a reducing part, of the overall caseload, many other case types addressed in 2007 were more complex which militated against an early resolution of the matters at issue.

An example of case complexity is provided in the accompanying **Illustration 2.2.3** where the ODCE had to review extensive documentation relating to an AOMC and engage in a series of contacts with the complainant, the management company, the auditor of the company and representatives of the developer in question. The case confirms the need for the development of the ODCE Governance Handbook which is in preparation as it illustrates the confusion which is present in this area among both professionals and less qualified persons. It also indicates that the Office cannot always successfully resolve a complainant's problems even where, as here, significant non-compliance was detected and rectified.

Illustration 2.2.3: Evidence of Confusion in regard to AOMC Governance and Financial Statements

In 2007, an apartment owner complained that she and other members of the associated management company had been denied representation at its annual general meeting (AGM).

As a result, the ODCE wrote to the company secretary requesting clarification of a number of matters, including the attendees at the last AGM and the legal ownership of the common areas of the apartment development. The ODCE letter also drew attention to the fact that as it was a company limited by guarantee, the management company was not entitled under Section 18 of the Companies (Amendment) Act 1986 to file abridged accounts with the CRO. The associated opinion from the company's auditors stating that the company was so entitled was not therefore correct.

The solicitors to the management company responded in June 2007 indicating that the common areas had not been vested by the developer in the management company, that abridged accounts had been lodged and that insufficient notification of the holding of the company's 2006 AGM had been provided to the subscriber shareholders resulting in the Meeting being inquorate. The solicitors also stated that arrangements would be made to properly reconvene the company's 2006 AGM.

Having considered this response, the ODCE engaged with the auditors to the company. It transpired that:

- they were auditors to both the developer and the management company;
- the income derived from the apartment owners' service charges (which is used to meet the costs of maintaining the development as a whole) constituted income of the developer and not the management company pending the transfer of the common areas from the developer to the management company;
- this income had been incorrectly included as income of the management company in the company's financial statements;
- they had incorrectly filed abridged accounts for the management company.

The auditors subsequently took steps to file with the CRO revised unabridged accounts on behalf of their clients which constituted the developer, the management company in question and all other relevant management companies where the common areas had not yet been transferred to the ownership of the companies.

The ODCE advised the complainant that as the common areas of the apartment development remained in the legal ownership of the developer, it was the developer, not the management company, who was responsible for the maintenance of the development, and it was he who should be called to account for the use of service charge monies collected from her and her fellow apartment owners. Although the management company would be relatively inactive pending transfer of the common areas, she was advised to consult her apartment purchase contract to ascertain her entitlement to membership of the company and to attendance at the company's rescheduled AGM.

Manner of Disposal

Appendix 2.2.4 to the Report summarises how the 507 cases were concluded in 2007 distinguishing between mandatory and voluntary and other reports. A further 111 cases were referred for consideration of possible enforcement or insolvency action.

Of the 507 cases concluded, almost 50% were closed having secured a remedy of the default and/or issued a caution to the relevant persons. Most of these related to cases involving excessive directors' transactions. The following **Illustration 2.2.4** deals with another case type where the detected default of non-registration was remedied in 2007 following ODCE intervention.

Illustration 2.2.4: Rectification of the Non-Registration of an External Company

Separate complaints were received in 2006 and 2007 in relation to a trading entity which represented itself as a company. Both complainants drew attention to the fact that the entity was not registered in the State.

On investigation, it transpired that the entity had two business premises in Dublin and Galway and had been operating in the State for some years. While it had been incorporated in the UK in 2003, the entity was not registered with the CRO as an Irish company nor was it registered as a branch or as an external company under the European Communities (Branch Disclosures) Regulations 1993 (S.I. 395 of 1993) or Part XI of the Companies Act 1963 (as amended) respectively.

The ODCE requested the entity to comply with the relevant legislation. Initial contacts did not secure the necessary remedial action. After some months, the Office was poised to take legal action when arrangements were made in 2007 to register the entity as an external company.

In another 32% of cases, no action was warranted following assessment by the Office because of the absence of (or insufficient evidence of) any obvious company law default. Typically, the complainant will have a concern about possible misconduct which is not directly relevant to the requirements of the Companies Acts.

In about 11% of cases, the ODCE decided not to intervene as the complainant had available legal remedies to address his or her concerns. Generally, there will be debts owing to a complainant, and in this situation, the ODCE will decline to involve itself in a pure inter-party commercial dispute.

The small balance of cases included complaints which were found, on examination, to be clearly a matter for investigation by another authority.

Sub-Goal 2.3: Commissioning/ Supporting Formal Company Investigations

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. To date, the Office has used these powers infrequently.

Ongoing Investigations

The ODCE Annual Reports for 2005 and 2006 previously dealt with the investigation of Cologne Reinsurance (Dublin) Limited. During 2007, the Office monitored developments with respect to the related legal proceedings taking place against a number of parties in the USA. The Director will consider in due course what action, if any, is called for in the State as a result of these ongoing developments.

At the start of 2007, there were two further investigations on hands where the ODCE had used its legal powers under Section 19 of the Companies Act 1990 (as amended). Further documentation relating to these companies was acquired during the year, and both investigations remained open at year-end.

New Company Investigation

The Director initiated a new examination of a company's books and documents in 2007 and acquired relevant materials for evaluation. This examination was also ongoing at the end of the year.

Departmental Company Examinations

In 2007, the Department of Enterprise Trade and Employment kept the Director informed of developments in relation to its outstanding examinations of the books and documents of College Trustees Limited, Guinness and Mahon (Ireland) Limited and Hamilton Ross Company Limited.

Conclusion

The Office continued in 2007 to tackle as effectively as possible the issues of apparent misconduct which were brought to its attention. It is clear that a large number of individual instances of company law non-compliance were rectified or otherwise addressed as a result of the ODCE's work and that this was of public benefit.

The decline in auditor reports experienced in 2007 is expected to continue further in 2008 as a result of the introduction of the more generous criteria for audit exemption which became available in late 2006 following the commencement of Section 9 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006.

However, the ODCE expects the level of public complaints to be maintained at current levels, and the Office intends to continue in 2008 to identify instances of default through its own efforts and in cooperation with other regulatory authorities.

Goal 3: Prosecuting Detected Breaches of the Companies Acts

Introduction

In 2007, the Office demonstrated that it was reorienting more of its enforcement activity towards the more difficult issue and case.

The existing disqualification proceedings arising from the Inspectors' Reports into Ansbacher (Cayman) Ltd. and National Irish Bank Ltd./National Irish Bank Financial Services Ltd. (NIB/NIBFS) continued to absorb a good proportion of the Office's prosecution resources in 2007. However, other novel case initiatives were successfully progressed (e.g. the intervention in the Fyffes plc v. DCC plc and Others civil insider dealing case and the emergence of new cases of abusive behaviour by the directors of unliquidated insolvent companies). In addition, the Office investigated a number of other significant issues and cases on which decisions with respect to possible legal action will be made in due course.

At the same time, the Office continued to prosecute individual offences which are regarded as important company law obligations and which, if left unchecked, could have a damaging effect on the business environment and on the quality of decision-making at company level.

Legal Proceedings

Overall, the Office was involved in 2007 in 64 separate legal proceedings of which 35 were in the Supreme Court or High Court and 29 were in the Circuit Court or District Court. An overview of the status and outcome of these proceedings is at **Appendix 3.1** from which it will be evident that in 2007 the Office was again substantially successful in the cases which it decided to pursue.

Appendix 3.2 gives a more detailed breakdown of the nature of the ODCE's proceedings in 2007 and a summary of the outcome of these case types.

Details of the parties who were held by the High Court and the District 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**. It is ODCE practice to post these details on its website at www.odce.ie after the conclusion of each case.

The table below summarises the nature of the Court decisions made in the successful proceedings and provides the equivalent detail in respect of 2006.

Number/Nature of Successful Enforcement Results	2006	2007
Charges on which convictions were secured	48	28
Charges taken into account on conviction	13	16
Charges thought proven (Probation of Offenders Act 1907)	36	5
Disqualifications	14	14
Orders made in compliance proceedings	2	2
Restrictions	2	—
Other Decisions	6	3
Total	121	68

While 39 case issues were concluded in 2007, a further 25 remain on hands at year-end. About two thirds of them are before the Supreme and High Courts which is a good indicator of the Office's current focus on the more difficult issue and case.

Civil Enforcement Actions

The ODCE secured a total of 14 disqualifications in 2007 (14 disqualifications and two restrictions in 2006), and 13 of these were the result of civil enforcement actions. In addition, the Office secured two orders arising from High Court compliance proceedings (two orders in 2006). Details of these proceedings were as follows:

- two persons were disqualified for three and five years respectively arising from the findings of the High Court Inspectors into Ansbacher (Cayman) Ltd. The Office's proceedings arising from this Report are now completed;
- one person was disqualified for nine years as a consequence of the findings of the High Court Inspectors into NIB/NIBFS, although the disqualification order was stayed on certain conditions following the person's appeal of the High Court judgment to the Supreme Court;
- ten disqualifications for periods ranging from two to twelve years were obtained in respect of directors whose companies had been struck off the Register of Companies as a result of outstanding annual return

defaults and who failed to show to the Court that the companies had no outstanding liabilities. Three of the disqualification terms of six, eight and twelve years arose from the ODCE proceeding for the first time against three directors of multiple struck-off companies. Twelve years is the longest disqualification term imposed by the High Court in any ODCE proceeding to date;

- the two sets of compliance proceedings were taken against liquidators who had repeatedly failed to report to the ODCE as required by law. Both actions secured the submission of the overdue reports, one following the making of a Court order. Costs were also awarded to the ODCE in both cases.

As indicated above, the ODCE was involved at year-end in many other Supreme Court and High Court proceedings. For instance, the Office appealed in 2007 two unsuccessful applications for disqualification orders to the Supreme Court. High Court judgment is awaited in two further ODCE cases taken as a consequence of the Inspectors' Report into NIB/NIBFS, and four other similar cases are awaiting hearing. The ODCE remains involved in disqualification proceedings taken against two directors of a construction and development company following the High Court's hearing in 2007 of a preliminary application made by the respondents on certain evidential issues. The Office also continues to be interested in a number of disqualification cases involving the directors of companies which were struck off the Register of Companies following a failure to file annual returns.

Criminal Enforcement Actions

In 2007, the ODCE secured 28 convictions against seven individuals and companies for various breaches of the Companies Acts (48 convictions in 2006). In all, some 53 charges were determined in nine cases (103 charges in 2006).

The successful proceedings were taken in respect of the following offences:

- acting as auditor while unqualified¹². This is a priority area for prosecution as company stakeholders may unwittingly be placing reliance on company accounting information which may have been 'audited' by unqualified persons to the possible disadvantage of the stakeholders in question. In 2007, the ODCE

prosecuted three of these cases which involved 38 charges and resulted in 23 convictions and the imposition of fines totalling almost €7,000;

- failing to keep proper books of account¹³. It is important that companies and directors maintain adequate accounting and other records in the interests of company stakeholders who depend on those records providing an accurate reflection of the company's financial standing. The ODCE prosecuted four of these cases in 2007, three of which were determined and resulted in four convictions and the imposition of over €2,000 in fines;
- acting as a director while restricted and in breach of the statutory conditions relating to company capitalisation¹⁴. In the interests of stakeholder protection and in order to underpin the integrity of the restriction regime, the Office monitors compliance by restricted persons with the requirements of law. In 2007, the Office prosecuted three cases in this category resulting, inter alia, in one conviction and a deemed disqualification for five years of one of the directors involved.

At end-2007, a further 30 charges in seven cases are awaiting Court determination (six charges at end-2006). The Director of Public Prosecutions is prosecuting one of these cases following the decision of a District Court judge to decline jurisdiction of the ODCE's prosecution of a case involving excessive directors' transactions¹⁵.

Other Proceedings

In addition to the above ODCE civil and criminal proceedings, the Office was also involved in nine other legal proceedings in 2007. For instance, the ODCE had been monitoring for some time the civil insider dealing case involving Fyffes plc, DCC plc and other parties. On 27 July 2007, the Supreme Court unanimously held that trading in price-sensitive information had occurred.¹⁶

Having taken legal advice, the Director resolved that he would intervene in the proceedings to advert to the entitlement of the Court under Section 160(2) of the Companies Act 1990 to disqualify any person or persons in any proceedings on its own motion. When the Director appeared before the Supreme Court in December 2007, the Supreme Court indicated that the question of any

¹² Contrary to Section 187 of the Companies Act 1990 (as amended).

¹³ In accordance with the requirements of Section 202 of the Companies Act 1990.

¹⁴ Contrary to Section 161 of the Companies Act 1990.

¹⁵ Contrary to Section 40 of the Companies Act 1990.

¹⁶ *Fyffes plc -v- DCC plc & ors* [2007] IESC 36 – see www.odce.ie.

disqualification was a matter for the High Court. The Supreme Court also referred the main proceedings to the High Court in order to assess the quantum of damages appropriate to the case.

Another significant case involved an application launched by two company directors against whom the ODCE have taken disqualification proceedings. The following **Illustration 3.1** briefly outlines the nature of the legal challenge and the present status of the application.

Illustration 3.1: High Court Proceedings by Michael and Thomas Bailey

In August 2006, the ODCE initiated disqualification proceedings in the High Court against the directors of Bovale Developments, Mr Michael Bailey and Mr Thomas Bailey. Prior to this application being heard, the Respondents commenced a legal challenge which was heard in the High Court over four days in June 2007. In essence, the Respondents challenged the admissibility of certain evidence on which the ODCE proposed to rely in the disqualification proceedings. The issues in the proceedings included the following:

- the validity of the means by which certain documents relating to Bovale Developments were acquired;
- the ODCE's reliance on documentation belonging to the auditor of Bovale Developments;
- the ODCE's reliance on certain information obtained from the Revenue Commissioners;
- the basis on which PricewaterhouseCoopers acted on behalf of the ODCE;
- the ODCE's reliance on the Flood Tribunal Reports.

As well as refuting the claims of the Respondents, the ODCE also contended that any challenge of admissibility should be heard within the proceedings.

Subsequently, the Court gave judgment on 1 November 2007¹⁷, a copy of which is available on the ODCE website at www.odce.ie. The Court considered that it was entitled to address as a preliminary matter the admissibility of evidence which was proposed to be heard in the proceedings. It also found in favour of the Respondents on some of the issues which formed part of the basis for their application, but it rejected others. In early 2008, the Respondents served notice of appeal of the High Court Judgment following which the ODCE cross-appealed aspects of the Judgment to the Supreme Court.

Enforcement Cases

Appendix 3.4 provides statistical information on the throughput of criminal cases in 2007. In addition to those that were the focus of criminal proceedings during the year, a further 45 cases were closed following investigation. Priority is now being given to the closure of other suitable cases which remain on hands at year-end.

A further 81 new cases were received for consideration of criminal enforcement action in 2007, and **Appendix 3.5** sets out the broad offence categories identified in these new cases. The pattern is broadly similar to previous years with two offence types dominating, namely a failure to keep proper books of account and restricted persons acting as company directors in breach of the relevant capitalisation and other criteria provided for in law.

Sub-Goal 3.1: Developing a Balanced Enforcement Policy

The ODCE's Annual Report for 2006 outlined how the focus of much of the Office's work was directed towards:

- helping the majority who want to comply to do so and
- discouraging misconduct by those who may be tempted not to comply.

The Report went on to describe the graduated approach which the ODCE takes to its regulatory responsibilities varying, among other options, from:

- securing rectification of a default, to
- taking direct ODCE enforcement action of some character, to
- the referral of 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 statistics in this and in earlier Annual Reports indicate that in accordance with this tiered regulatory approach, 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.

17 In re Bovale Developments Limited and the Companies Acts 1963 – 2005 – The Director of Corporate Enforcement v Michael Bailey and Thomas Bailey [2007] IEHC 365 – see www.odce.ie.

Sub-Goal 3.2: Upholding Disclosure Requirements

Persons benefiting from incorporation and the privilege of limited liability in company law are required to adhere to certain consequential duties and obligations. These include the requirements that:

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

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

As indicated earlier, the Office successfully prosecuted three companies for a failure to keep proper books of account in 2007, and one other similar case was awaiting determination at year-end.

In 2007 also, the ODCE secured two disqualifications in consequence of the findings of High Court Inspectors in their Report on Ansbacher (Cayman) Ltd. This company and a related Cayman Islands company (Hamilton Ross Company Limited) had never been registered under the Companies Acts and had secretly carried on an unlicensed banking business in the State over a combined period of some 20 years. The persons disqualified, Mr Sam Field-Corbett and Mr Jack Stakelum, were disqualified for three and five years respectively; and subsequently, they both appeared on lists of tax defaulters published by the Revenue Commissioners. The published tax settlements made by Mr Field-Corbett and Mr Stakelum were €1.15 million and €0.425 million respectively.

The following **Illustration 3.2.1** deals with the High Court Judgment of 31 July 2007¹⁸ with respect to the disqualification of Mr Stakelum.

Illustration 3.2.1: High Court Judgment with respect to Mr Jack Stakelum

In his Judgment on 31 July 2007, Mr Justice Brian McGovern noted the findings in the High Court Inspectors' Report into Ansbacher (Cayman) Ltd. that there was evidence tending to show that Mr Stakelum may have committed a number of criminal offences such as conspiracy to defraud, breaches of the Taxes Consolidation Act 1997 and breaches of the Central Bank Acts 1971 and 1989 in carrying out a banking business without the requisite licence. In particular, he accepted that Mr Stakelum operated a system of client services that was inexplicable on any normal basis and can only have been designed to hide funds from the Revenue Authorities.

In concluding his unapproved Judgment, Mr Justice McGovern said:

"In this case the respondent who is [a] Chartered Accountant engaged in activities which, on any objective view facilitated the evasion of tax. This activity was done in a calculated way and by means of [an] elaborate scheme to conceal monies from the Revenue Authorities. The respondent even went so far as to destroy all records when he retired in 1998. The court cannot ignore these facts... I am quite satisfied that in consequence of the report of the Inspectors appointed by the court there is evidence that the conduct of the respondent makes him unfit to be concerned in the management of a company and accordingly I make a disqualification order in respect of the respondent for a period of five years."

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 two offence types under this heading in respect of:

- persons acting in breach of the statutory conditions pertaining to their earlier restriction by the High Court, contrary to Section 161 of the Companies Act 1990, and
- persons acting as an auditor while not qualified to do so, contrary to Section 187 of the Companies Act 1990.

¹⁸ The Director of Corporate Enforcement -v- John J. (aka Jack) Stakelum – Unreported HC McGovern J, 31 July 2007 – see www.odce.ie.

The following **Illustration 3.3.1** discusses the circumstances associated with the conviction by the relevant District Court Judge of one of the latter cases.

Illustration 3.3.1: Acting as Auditor while not Qualified – Mr Patrick Monahan

A public complaint prompted the ODCE to investigate the conduct of Mr Patrick Monahan who was purported to be acting as an auditor without being qualified to do so. Subsequent enquiries revealed that this conduct was more extensive than that notified by the complainant. On completion of the investigation, it was resolved to prosecute Mr Monahan.

On 12 December 2007, the case came before Navan District Court. The 16 charges related to the audit reports of 11 companies which were signed by Mr Monahan over a period of four years.

The ODCE submitted to the Court that Section 187 was an indictable offence and an offence of strict liability. A special audit report is required to be submitted to the CRO in order:

- to validate a claim that a company is a small company (as defined in the Section 18(3) of the Companies (Amendment) Act 1986) and
- to obtain a legal concession that the company's annual return need only be accompanied by an abridged balance sheet.

In the circumstances of this case, Mr Monahan had signed audit reports contrary to Section 187 which, when filed in the CRO, misled the public as to his status and as to the consequential entitlement of each of the companies to obtain the stated legal concession.

The Judge accepted the ODCE's submissions and convicted Mr Monahan on all 16 charges. He fined Mr Monahan a total of €3,200 and awarded costs of €2,000 to the ODCE.

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

In 2007, the ODCE continued its focus on directors who persistently engage in conduct which is contrary to law.

The practice of directors who abandon indebted companies, fail to comply with statutory obligations to file annual returns and thereby allow the companies to be struck off the Register of Companies pursuant to Section 12 of the Companies (Amendment) Act 1982 is dealt with in more detail in the following Goal 4 chapter of the Report. Specifically, **Illustration 4.3.1** in that chapter deals in detail with the circumstances which gave rise to the disqualification of two directors for twelve and eight years respectively arising from serial misconduct in this area.

Conclusion

It is clear that a number of important developments occurred with respect to company law enforcement in 2007. The 12 year disqualification of a company director for his persistent abuse of various stakeholders in unliquidated insolvent companies was a particular highlight. Another important set of cases which successfully concluded this year were those arising from the High Court Inspectors' Report into Ansbacher (Cayman) Ltd. The three disqualification actions which the ODCE initiated on foot of that Report and which concluded in 2006 and 2007 were all successful.

A number of other important cases progressed in 2007, but final Court judgments remain outstanding at the end of the year. The Director and his staff look forward to moving forward with these and other enforcement cases in 2008.

Goal 4: Sanctioning Improper Conduct with respect to Insolvent Companies

Introduction

Company directors have a duty to 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 a future insolvent failure of the company. Directors who fail in their duties face possible restriction, disqualification or even criminal sanction. The Companies Acts contain a number of provisions by which such conduct can be brought to attention and addressed.

This part of the Report will outline in turn the ODCE's work in 2007 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.

Previous ODCE Annual Reports have drawn attention to the reduction in recent years in the number of insolvent companies going into liquidation, and the 2007 figure of 342 constitutes a further reduction on the 2006 figure. This represents an overall drop of 9% between 2003 and 2007. This trend in insolvent liquidations contrasts with a general rise in the number of solvent companies being liquidated. The increase in solvent liquidations amounted to 28% between 2004 and 2007. These trends in both solvent and insolvent liquidations are obviously to be welcomed.

However at end-2007, more uncertain economic conditions prevail than has been the case for some time. It can therefore be expected that an increasing number of companies will face significant challenges in 2008, and some will inevitably fail. Compared with the average for the previous 12 months or so, the ODCE saw a significant increase in the number of insolvent liquidations in the final quarter of 2007. The average number of insolvent liquidations rose to 30 from about 22 per month in the earlier period. While a monthly figure of 30 is still broadly in line with the monthly average which prevailed from 2004 to mid-2006, only time will tell if we are entering a period of increased insolvencies or simply returning to longer-term averages. Preliminary indications suggest that insolvencies will increase in 2008.

As companies face financial difficulties, 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 company in an orderly and appropriate manner. Directors who fail to act responsibly may face Court sanctions in the future.

Insolvent Companies in Liquidation by Economic Sector

Appendix 4.1 provides a breakdown by economic sector of the insolvent companies in liquidation by reference to the first reports received from liquidators in 2007. The construction, wholesale and retail, and manufacturing sectors continued to feature prominently in the companies in insolvent liquidation. In the context of an overall 9.5% drop in the number of initial liquidator reports made to the ODCE in 2007 relative to 2006, there was an 11% increase

Liquidations	2003	2004	2005	2006	2007
Creditors' Liquidations	346	321	300	323	306
Court Liquidations	31	40	49	31	36
Total Insolvent Companies	377	361	349	354	342
Members' Liquidations	941	827	868	930	1,058
All Liquidations	1,318	1,118	1,217	1,284	1,400

from 70 to 78 in the number of construction companies going into insolvent liquidation and a 17.5% decline in the number of wholesale and retail insolvencies from 80 to 66. In contrast, manufacturing numbers increased by 3% from 38 in 2006 to 43 in 2007.

Unliquidated/Dissolved Insolvent Companies

There are no authoritative figures that capture the entire population of unliquidated and dissolved insolvent companies. For instance, there may be at any one time

several hundred 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. Bearing in mind these caveats, the following table summarises the number of struck-off companies for the years 2003 to 2007.

Type of Dissolved Company	2003	2004	2005	2006	2007
'CRO Strike-off' ¹⁹	14,836	1,401	9,514	5,255	4,085
'Revenue Strike-Off' ²⁰	—	1,599	794	444	149
'Voluntary Strike-Off' ²¹	5,483	3,595	3,316	3,757	3,975
Total	20,319	6,595	13,624	9,456	8,209

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

Liquidator Reporting under Section 56

The liquidator of a company in insolvent liquidation is required by law to report to the ODCE²¹ 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 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.

The process of liquidator reporting and its scope is outlined in detail in two ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice

D/2003/1. These documents were prepared following public consultation and are available on the ODCE website at www.odce.ie/en/media_decision_notices.aspx.

Appendix 4.1.1 provides statistical information on the volume of liquidator reporting in 2006. 1,007 liquidator reports²² were received (971 in 2006). Of these, 286 were initial reports (316 in 2006) from 85 liquidators, while the balance of 721 (655 in 2006) constituted further²³ or final²⁴ reports on company liquidations.

The compliance rate for the timely production by liquidators of their first reports was unchanged at 96 % between 2006 and 2007. The Office also monitored the liquidators' submission of their further and final reports. In respect of all reports due in 2007, the Office had cause to correspond formally with 68 liquidators on 121 occasions (167 occasions in 2006) indicating that they were in default with regard to their statutory reporting obligations.

¹⁹ Section 311 of the Companies Act 1963 (as amended) and section 12 of the Companies (Amendment) Act 1982 (as amended).

²⁰ Section 882 of the Taxes Consolidation Act 1997.

²¹ Section 56 of the Company Law Enforcement Act 2001.

²² 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.

²³ 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.

²⁴ 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.

The ODCE also corresponded with liquidators on 15 occasions in 2007 (44 in 2006) in respect of their failure to advise the Office that restriction applications had been taken where relief was not granted. Six liquidators (13 in 2006) were issued with formal warnings during the year that legal proceedings would be initiated against them should they continue to fail to take the necessary restriction applications. No proceedings were commenced in any of these cases at year-end.

The standard of liquidator reports received was again mostly satisfactory in 2007. This area continues to be reviewed in order to maintain the effectiveness of liquidator reporting.

Legal Developments on Costs

In April 2007, the Director was notified of a Court Order joining him as a Notice Party to High Court proceedings in relation to Business & Finance Media Limited (in liquidation). In his report to the ODCE under Section 56, the liquidator had sought relief in respect of three of the company's seven directors. However having considered the information available to it, the Office determined that relief should not be given in respect of any of the directors. Accordingly, the liquidator instituted High Court restriction proceedings against all of the directors as he was obliged to do by Section 56.

The Court determined those proceedings by deciding not to restrict any of the company's directors. The Court then made an Order that the Director be joined to the proceedings as a Notice Party in respect of the issue of costs, and it adjourned the matter generally with liberty to re-enter. After substantial correspondence and discussions with the legal advisers to the liquidator and the respondent directors, the relevant parties agreed that they would not seek their costs from the ODCE.

The Director does not consider that it is appropriate that he should be joined to failed restriction proceedings for the purpose of his bearing the associated costs, and he will continue to resist the imposition of a costs order in any such cases.

Other Liquidator and Receiver Issues

One report was received from a liquidator in 2007 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 the report received in 2007, restriction proceedings by the liquidator under Section 150 of the Companies Act 1990 will arise in 2008, and no further action was considered necessary.

The ODCE received no reports in 2007 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 books and documents of a liquidator²⁵ or receiver²⁶ in 2007.

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

The ODCE issued decisions in 2007 in the case of 1,063 liquidator reports (954 in 2006) of which 289 (319 in 2006) constituted initial reports from liquidators and 774 (635 in 2006) were further or final reports.

ODCE Relief Decisions

Of the 289 initial reports determined, the relief decisions in 2007 (relative to 2006) were of the following character:

Decision Type	2006	%	2007	%
Full relief ²⁷	190	60%	189	65%
No relief ²⁸	40	13%	30	10%
Relief 'at this time' ²⁹	78	24%	63	22%
Partial relief ³⁰	10	3%	7	3%
Other decisions	1	0%	0	0%
Total	319	100%	289	100%

²⁵ Under Section 57 of the Company Law Enforcement Act 2001.

²⁶ Under Section 323A of the Companies Act 1963 (as inserted by Section 53 of the 2001 Act).

²⁷ 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.

²⁸ 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.

²⁹ 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.

³⁰ Partial relief was granted in circumstances where the ODCE was satisfied, on the basis of information provided by the liquidator or otherwise, that some but not all of the directors of the insolvent company had satisfactorily demonstrated that they had acted honestly and responsibly in the conduct of the company's affairs.

The indicated figures show a material increase in the proportion of 'full relief' cases (from 60% to 65%) between 2006 and 2007 respectively and a corresponding decline in the proportion of 'no relief' cases (from 13% to 10%). The increasing number of 'full relief' decisions made continues a trend which has been evident over recent years. While this may indicate some improvement in directors' behaviour, it may also be a reflection of a more clearly defined consideration by liquidators and the ODCE of the standards required from directors. The more developed body of case law has contributed to an improvement in everyone's understanding of the standards now being applied by the Courts in restriction proceedings.

In his 2006 Annual Report, the Director indicated his Office's general approach to examining liquidator reports with respect to directors' conduct. While encouraging liquidators on the one hand to make an appropriate recommendation with respect to relief by reference to the results of their investigations, the ODCE is anxious at the same time to ensure that no director needlessly bears the burden of a High Court hearing where he or she has clearly demonstrated that they behaved honestly and responsibly in the conduct of the affairs of the failed enterprise.

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 2007 are available in ODCE Information Notice No. I/2008/1 on the ODCE website at www.odce.ie.

Tracking Court Decisions on the Restriction Applications

During 2007, the High Court reached decisions in 78 cases (80 in 2006) 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 75 cases (66 in 2006), representing 96% (83% in 2006) of the total. No restriction orders were made in respect of the remaining three cases (14 in 2006). These outcomes would appear to indicate that the ODCE is successfully identifying cases that are appropriate for consideration by the High Court.

In terms of individual directors, there were 139 directors restricted,³¹ seven directors disqualified³² and one director restricted and disqualified in 2007. This represents 90% of the 163 directors who were the subject of restriction or disqualification proceedings.

In addition to the 140 persons restricted as a result of proceedings pursuant to Section 56, a further four persons was restricted by the High Court in unrelated proceedings. Thus, a total of 144 new persons were restricted in 2007. However, the net increase in the CRO's Register of Restricted Persons was 106 as some earlier restricted persons were removed from the Register in 2007 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 2003.

Number of Directors standing restricted at end-2003 to end-2007 inclusive

End-2003	End-2004	End-2005	End-2006	End-2007
295	487	600	685	791

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.

In relation to restriction proceedings that concluded before the High Court in 2007, **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.

31 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.

32 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.

Appendix 4.2.2 identifies the three companies where the High Court concluded in 2007 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 2007, successful proceedings were brought against eight directors of insolvent companies (nine in 2006). **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 2008.

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 fit³³.

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. The Director is not aware that any applications for relief were made under Section 152 in 2007.

Tracking Directors not abiding by the Conditions of Restriction

As indicated earlier in this Report, ODCE investigations have confirmed that a number of restricted individuals act in breach of the statutory requirements. The Office successfully pursued some of these cases in 2007.

Deemed Disqualifications

The law³⁴ 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. Close to 2,200 persons (1,780 at end 2005) are now listed on the Register of Disqualified persons. Some 2,050 of these are deemed to be disqualified; 107 stand disqualified by Order of the High Court; 31 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.

Illustration 4.2.1: Insolvent Companies: Liquidator Disqualifications in 2007

Mr Brendan Maguire and Mr Gerard Maguire, directors of BGN Development & Civil Engineering Ltd., were disqualified for seven and six years respectively. The liquidator indicated that the directors had failed to cooperate with him (with a motion for attachment and committal issuing against one of the directors), had failed to ensure that proper books and records were kept by the company and had allowed company assets to be removed by a former director to Northern Ireland.

Mr Edward Nolan, a director of Boherduff Engineering Ltd., received a four-year disqualification and five-year restriction. The liquidator indicated that there had been a significant preferential payment in repaying a bank loan that was under personal guarantee by Mr Nolan, that there was a material discrepancy in the value of assets made available to the liquidator compared with that recorded in the company's books and records and that Mr Nolan had failed to fully cooperate with the liquidation.

Five-year disqualifications were imposed on Mr Michael Kenny and Ms Patricia Kenny, directors of Cornafulla Motor Works Ltd., a long established company. The liquidator indicated there were no management or audited accounts kept in its final four years of trading. The company at liquidation had estimated gross liabilities of more than €1.6 million, including some €700,000 due to the Revenue Commissioners, a bank loan of over €500,000 and a sum of about €170,000 owing to one of the company's unsecured creditors. It also appeared that the directors had breached Section 31 of the Companies Act 1990 as they owed the company in excess of €240,000.

Mr Terence Kinsella, a director of Crime Force Security Services Ltd., was disqualified for seven years. The liquidator indicated that there was evidence of 'phoenix activity' by Mr Kinsella. It also appeared that the company was under-capitalised from the outset and relied on amounts owing to the Revenue Commissioners and other trade creditors to fund the business. While statutory returns had been made, it was estimated that the company owed close to €600,000 to Revenue at liquidation. There was evidence of a selective discharge of debts, and it appeared that over €50,000 in cash was withdrawn from the company in a three-month period prior to liquidation. The liquidator also indicated that Mr Kinsella had failed to fully cooperate with him and had allegedly forged another person's signature to meet the statutory requirement of having a second director.

³³ Section 152 of the Companies Act 1990.

³⁴ Section 160(1) of the Companies Act 1990.

A five-year disqualification was imposed on Mr John McCabe, a director of Dromard Construction Ltd. The liquidator indicated that the company had failed to keep proper books and records and file tax and other statutory returns. The company owed about €225,000 to Revenue at liquidation.

Mr Peter Farrell, a director of Novowood Ltd. which owned a significant property, was disqualified for seven years. The liquidator indicated that Mr Farrell had failed to fully cooperate with him, including by failing to provide him with full books and records. An estimated liability of €260,000 was due to the Revenue Commissioners. Mr Farrell, while a director of Careca Investments Ltd., had been restricted in November 2004 for five years and appeared to be in breach of his restriction order.

Review of the Section 56 Restriction Regime

At the end of 2007, Section 56 was in operation for a little over five years. It is timely therefore to review what has occurred in that period. Some highlights of the overall results for that five year period are:

- the ODCE has relieved liquidators in respect of three out of every four directors of insolvent companies in liquidation;
- of the one in four who were the subject of proceedings, 80% of them came to be restricted or disqualified. As indicated earlier, the 2007 figure was over 90%;
- the ODCE has accepted liquidator recommendations on relief in about 94% of cases – the current figure is closer to 98%;
- in the 6% of cases where the Office refused relief when it was sought, the High Court restricted the directors in two out of every three of those cases;
- relief was also given in another 2% of cases where no relief was sought.

In summary therefore, it is clear that the Office has made the right call most of the time in selecting what cases should be heard by the High Court.

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 which result in:

- competition in the applicable business market being 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 suffering financial losses, some of whom may themselves fail in consequence, and
- directors either bearing no personal liability for the commercial losses or otherwise escaping accountability for the failure.

‘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 2007. Under Section 160 of the Companies Act 1990, the Director may apply to the High Court for the disqualification of the directors of such struck-off companies. However, the law 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 which 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 any 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 settled, and independent verification of this from individual creditors is frequently sought.

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 for more than one year.

During 2007, the Office secured the disqualification of ten directors of struck-off companies for periods ranging from two years to twelve years. **Appendix 3.3** to this Report details the ten disqualifications achieved. At the end of 2007, four more cases were before the courts. Many additional cases remain open at year-end, and it is anticipated that several more cases will be initiated before the High Court in 2008.

The two longest disqualification terms of twelve and eight years arose from the ODCE proceeding for the first time against the common directors of multiple struck-off companies. The following **Illustration 4.3.1** outlines the circumstances which gave rise to the High Court imposing the twelve and eight year disqualification periods on those directors.

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 which 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 2007, some 161 directors were either restricted or disqualified in 2007, a significant increase on the equivalent figure of 125 in 2006. The ODCE will continue in 2008 to address this area in collaboration with liquidators and the Courts in order to deter irresponsible or unlawful conduct in this area.

Illustration 4.3.1: Disqualification of Directors of Multiple Struck-off Companies

In the period March 2005 to January 2006, the ODCE received four complaints against the directors of a call centre operation in Swords, Co. Dublin. The complaints referred to the following matters:

- a judgment obtained by a creditor against International Marketing Solutions (Europe) Ltd. ("IMS") for non-payment of the cost of providing temporary staff. It was also alleged that this former business was now being carried on from the same address for some of the same customers by a new company, European ICT Resource Facilities Ltd. ("EICT"), which shared common directors with IMS;
- 'bounced' salary cheques for an employee of EICT;
- a Rights Commissioner decision and a Circuit Court judgment in favour of another employee of EICT in respect of unpaid salary;
- a final determination of the Pensions Ombudsman that EICT had deducted a personal retirement saving account contribution from a third employee of EICT and had failed to remit it to the pension provider.

Following ODCE investigations, it transpired that Mr Martin Allen, a director of both IMS and EICT, was a director of eight companies which had been struck off the Register of Companies for failure to file annual returns. He was also a director of three other companies which were then in arrears in filing their annual returns. Some of the companies in question owed significant sums to Revenue and other creditors.

It was also apparent that Mr Peter Banks, a director of both IMS and EICT who resigned some time prior to their being struck off the Register of Companies for a failure to file annual returns, was a co-director with Mr Allen of four other companies which had been struck off the Register for this reason. Some of these companies owed the Revenue and other creditors significant sums.

Having heard the evidence against both individuals, the High Court made Orders in 2007 disqualifying Mr Allen and Mr Banks for periods of twelve and eight years respectively. The Court also awarded the Director his legal costs. Neither Mr Allen nor Mr Banks engaged with the ODCE before the proceedings commenced nor did they appear in the proceedings.

Twelve years is the longest disqualification period imposed in any ODCE action to date.

Goal 5: Providing Quality Services to Internal and External Customers

Introduction

The ODCE aims to provide quality services for all its internal and external customers, and this goal continued to be a priority in 2007. 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 was enhanced during 2007 following sanction for an additional eight administrative staff. One extra Detective Garda post was also sanctioned. Four of the new administrative posts were filled by the end of 2007, and in accordance with the thrust of the staffing submission, these staff were deployed to support the Office's compliance, insolvency and investigation and enforcement work. Actual staff numbers at year-end remained below the new approved complement due to delays in the replacement of departing staff. **Appendix 5.1.1** provides a breakdown of the Office's 40 full-time staff equivalents at year-end.

A number of people left the Office in 2007, and the Director wishes to acknowledge the valuable contributions made by Ita Broe, Sheila Farrell, Eamonn McHale, Garrett O'Neill, Kevin Peake, Ellen Reilly, Deirdre Sheehy and Gerry Walsh to the work of the Office during their times here. Many of them had been with the Office virtually from the start, and the Director wishes them all well in the future.

Financial Resources

The Office's administrative costs in 2007 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 2007 figures is contained in **Appendix 5.1.2**.

Subhead A09, Vote 34	2007 Allocation (€000s)	2007 Expenditure (€000s)
Pay	2,119	2,140
Non-Pay	2,704	2,238
Total	4,823	4,378

The outturn of just under €4.38 million represented a 30% increase on the equivalent figure of €3.355 million in 2006. Most of the increase was attributable to higher legal and other professional costs in support of the Office's remit, but these costs were nevertheless below what was initially allocated. It is expected that current and anticipated legal proceedings will result in a further increase in the outturn for 2008 relative to 2007. In accordance with Government Accounting Procedures, the surplus of some €0.445 million was surrendered at the end of 2007.

Organisational Development

In 2007, the ODCE engaged external expertise as required to assist it in undertaking its investigative and enforcement work in particular. The ODCE again invited by way of public advertisement firms and individuals to notify their interest in being included on the Office's Legal and Accounting Panels from which suitable persons are 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 2007 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 Report³⁵ which dealt with accountability issues in the areas of internal financial controls, internal audit arrangements and risk management.

³⁵ A copy of the Report of the Working Group on the Accountability of Secretaries General and Accounting Officers (the Mullarkey Report) is available at www.finance.gov.ie.

Sub-Goal 5.2: Developing Staff

Performance Management

The Office implements the Performance Management and Development System (PMDS) which applies across all Government Departments and Offices. PMDS is directly related to the Business Plan of the Office and aims to ensure that staff roles are directly supportive of Office objectives. It also relates training requirements directly to the role of each staff member.

In 2007, some 38.8 training days were provided from ODCE resources to 28 staff across all grades. The Department of Enterprise Trade and Employment provided an additional 32.75 days of training to 19 ODCE staff.

In early 2007, the Director completed a Leadership Programme which was run in conjunction with the Institute of Public Administration for senior public servants. Many of the Office's staff in management grades were involved at year-end in the initial roll-out of a Departmental Leadership Programme. The Programme will continue into 2008.

In-house seminars on various topics were also undertaken relating to the work of the Department, the Office and the public service generally, and an ODCE-specific induction course was provided to new staff joining the Office.

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. A pictorial representation of the respective involvements of ODCE staff by functional area is at **Appendix 5.2**.

During 2007, the Director made a number of adjustments to the powers delegated to designated staff under section 13 of the Company Law Enforcement Act 2001. In all, six new members of staff working in various teams and areas of the Office were formally delegated to discharge one or more of the Director's legal functions. In addition, there were five changes to existing delegations.

The Office Management Committee, chaired by the Director and representative of all staff, met quarterly in 2007 to deal with policy and organisational issues affecting the Office's continuing development and direction.

Sub-Goal 5.3: Developing and Maintaining Quality Customer Services

Services Offered

The ODCE continued in 2007 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. At end-2007, some 793 customers were registered to receive notification of new information being placed on the website;
- talks, seminars and other compliance initiatives provided by Office staff. As indicated earlier in this Report, the Office expanded its 'outreach' activities to the small and medium enterprise sector in particular;
- the facility permitting the making of complaints of suspected corporate misconduct;
- statute-based services, whereby auditors, liquidators and other interests are required to report in certain circumstances to the Office;
- general assistance offered to Office clients in dealing with telephone queries, correspondence, e-mails, etc. For instance, some 602 requests to the *info@odce.ie* account were promptly answered during the year.

Publications

Five formal publications were prepared and published during 2007 as indicated in **Appendix 1.1.1** to this Report. Of these, the Annual Report for 2006 was published in both the Irish and English languages.

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

Website

The ODCE website at www.odce.ie was substantially redesigned in 2006 and re-launched early in 2007. The re-design followed a survey of users and had the primary aim of meeting the metadata standards, accessibility guidelines, Irish language & bilingualism policy and e-mail and archiving requirements as well as securing improvements to the website's aesthetic appearance in line with that common to other civil and public sector websites³⁶.

Accordingly, the new website was designed to adhere to the highest standards of public accessibility and to enable the Office to comply in due course with the requirements of the Official Languages Act 2003. Improvements to the navigation of the website should also ease access to the available corporate governance information. A second survey of users is planned in 2008 to confirm whether or not this aim has been achieved. The following **Illustration 5.3.1** contains a screen shot of the new home page.

Illustration 5.3.1: Screen Shot of the Home Page of the New ODCE Website



New information on the ODCE's work and associated corporate governance developments was regularly updated on the site during the year. New material posted to the website in 2007 included new Office publications, press statements and articles issued by the Director and other staff, the results of Court cases in which the Director prosecuted suspected breaches of company law or duty and the outcome of other Court decisions relevant to company law.

The website once again attracted large numbers of people interested in corporate governance matters. In 2007, some 150,000 visits were made. Analysis of the visitor statistics showed that approximately 80% were "unique visitors" to the site with only 20% visiting a number of times. The analysis also indicated that the duration of each visit has slightly lengthened.

³⁶ Department of the Taoiseach "Report of the Interdepartmental Group, Recommended Guidelines for Public Sector Organisations" – ISBN 0-7076-6275.

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. The Office regularly reviewed and sought to improve further the service standard provided. The Feedback and Complaints Services on the website are part of this process. Within the constraints of a demanding workload, the Director considers that satisfactory compliance with our Customer Service Standards was achieved in 2007.

Monitoring the Effectiveness of the Office

As indicated in the earlier Goal 1 chapter, the ODCE commissioned market research from Millward Brown IMS in late 2007 as part of a series of occasional research which aims to ascertain the quality of the company law compliance environment and take soundings as to the ODCE's ongoing contribution to the indicated results. The latest research gave a positive picture of the overall situation at end-2007.

The research also addressed public perceptions of the effectiveness of the ODCE in discharging its remit. The accompanying **Illustration 5.3.2** summarises the views of 299 company directors, and overall, it indicates that some 75% of them rate the Office as effective in discharging its remit. This is a material improvement on the 68% result achieved in late 2005 when the last equivalent research was undertaken.

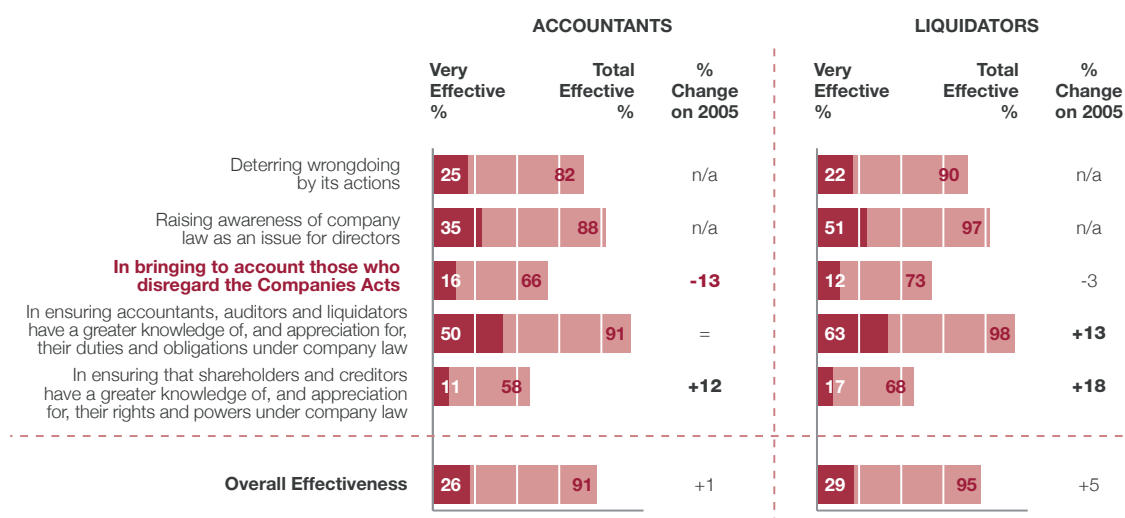
Illustration 5.3.2: ODCE Effectiveness – Views of Company Directors

	Very Effective %	Total Effective %	% Change on 2005	Up to 10 Employees %	11-50 Employees %	51+ Employees %
Detering wrongdoing by its actions	12	64	n/a	58	64	71
Raising awareness of company law as an issue for directors	21	73	n/a	65	70	86
In bringing to account those who disregard the Companies Acts	10	46	+3	52	38	49
In ensuring that shareholders and creditors have a greater knowledge of and appreciation for their rights and powers under company law	8	52	+13	46	54	56
Overall Effectiveness	11	75	+7	72	69	85

Q. I am going to read out a list of aims and activities associated with the ODCE, and for each one I would like you to tell me, in your opinion, how effective or otherwise you believe the ODCE to be. So firstly...

The following **Illustration 5.3.3** summarises the views of 100 accountants and 41 liquidators on the subject of ODCE effectiveness. More than nine out of every ten polled considered the Office to be effective which again represented an improvement on the equivalent results in late 2005. Both results were heartening for the Office's staff in discharging their respective compliance and enforcement remits.

With regard to the Office's publications, a majority of each of the groups of directors, accountants and liquidators who participated in the market research were aware of the ODCE's publications. Those who had an awareness of them gave them a mean score of 7.6 (out of 10) in terms of the quality of information and usefulness/relevance. Those who had been in contact with the Office in the last twelve months awarded an average score of 7.7 for the helpfulness of staff and 8.0 for knowledge of company law. The Office was awarded a mark of 7.2 for encouraging and facilitating compliance with company law as well as for satisfactory resolution of the matter in hand.

Illustration 5.3.3: ODCE Effectiveness – Views of Accountants and Liquidators

Q. I am going to read out a list of aims and activities associated with the ODCE, and for each one I would like you to tell me, in your opinion, how effective or otherwise you believe the ODCE to be. So firstly...

Freedom of Information (FOI) Acts

The FOI Acts permit the disclosure of records concerning the general administration of the Office only. During 2007, the ODCE received no requests for records under the Acts.

Ombudsman Enquiries

The Ombudsman approached the Office on two occasions in 2007 on behalf of persons who were dissatisfied with the response which they had received from the Office. A detailed reply was provided in one case, and no further information was subsequently sought by the Ombudsman. The second enquiry was received close to the end of 2007, and a final reply was outstanding at year-end.

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 2007, the ODCE continued to adhere to this requirement by updating its registration, as well as by complying with its own strict confidentiality provisions contained in the Company Law Enforcement Act 2001. The Office handled one request for information under these Acts in 2007.

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. In line with the Office's policy of arranging that all invoices are settled in a timely manner, the ODCE incurred no interest surcharge on payments in 2007.

Official Languages Act 2003

During the year, the Office was in contact with the Department of Community Rural and Gaeltacht Affairs regarding its Draft Scheme of commitments under the Act to provide services in the Irish and English languages. It is anticipated that the Scheme will be agreed in 2008.

Meetings with the Department of Enterprise Trade and Employment

The Director and his staff had two regular liaison meetings in 2007 with senior Departmental staff. These discussions included the performance of the Office in discharging its compliance and enforcement remit, its immediate plans, ODCE staffing and resources and Departmental/Office contacts.

Attendance at Oireachtas Joint Committee on Enterprise and Small Business

In March 2007, the Director attended before the Oireachtas Joint Committee on Enterprise and Small Business for the first time. After an opening statement giving an overview of the work of the Office and its achievements to date, the Director was invited to comment on a number of topics. Amongst these were the Office's work in response to the various Tribunals of Inquiry established by the State, the scale of prohibited loans to company directors as an issue for the Office, Office staffing and the performance of the construction industry vis-à-vis company law.

In response to a request for feedback on required legislative changes, the Director made mention of his Office's proposals in 2006, the objective of which was to improve in certain respects how company law operates. He noted that most of these were now with the Company Law Review Group for evaluation. (The subsequent results of that evaluation are now evident from the discussion in the earlier Goal 1 chapter.) The Director also commented, in reply to an enquiry, on the role of auditors and their importance in protecting the rights of shareholders.

Conclusion

Taking account of the ODCE's successes and the difficult challenges which the Office is facing, the Director believes that the Office has again delivered very good value for the State's investment in it in 2007.

Conclusion

The Annual Report has indicated that 2007 was another busy year for the ODCE. Substantial progress was made under each Goal.

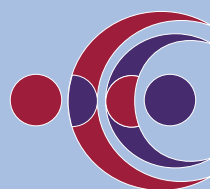
The market research results were particularly encouraging in outlining the positive progress which has been made in recent years in changing the culture from one of non-compliance to one of general compliance with the Companies Acts. However, our ongoing experience indicates that there are continuing deficiencies which are causing problems in business and social enterprises. The area of property management companies is one which has been a frequent subject of complaint, and the Office plans to do further work to improve the governance of these companies in 2008.

Some useful initiatives were taken on the enforcement front in 2007, and the Office plans to continue to focus resources on the more difficult issue and case. It is hoped to progress during 2008 and beyond some more of those case types which the Office has on hands.

After five years of supervising companies in liquidation, it was useful in this Report to review what had happened in that period. Certainly, the judgments of the High Court have given useful guidance on the nature of a director's duties and responsibilities in a failing company, and that has helped liquidators and the ODCE to discharge their respective roles under Section 56 of the Company Law Enforcement Act 2001. Our remit in the statutory framework is to act as a filter and gatekeeper – to separate those cases which warrant High Court attention from those which do not. The figures outlined earlier in the Report have indicated that the Office has discharged that role effectively in selecting appropriate cases for decision by the Court.

As we face into 2008, we are anxious to continue our work to promote compliance with the requirements of the Companies Acts. Greater assurance with respect to the quality of the environment in which business and social enterprises operate will provide improved confidence in their future decision-making. At a time of some uncertainty with respect to market conditions generally, a stable and predictable legal environment will assist with the competitiveness of decision-making at company level as well as maintaining the reputation of Ireland as a good place to do business.

Appendices



Office of the Director
of Corporate Enforcement

*Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach*

Appendix 1.1.1

Publications issued by the ODCE in 2007

Title	Subject	Date of Issue
Interim Review of ODCE Activity in 2006	Activities of the ODCE in 2006	January 2007
ODCE Information Notice I/2007/1	Section 56 Reports – List of Decisions made for Insolvent Companies in liquidation for which valid section 56 reports were received by his Office and in respect of which a relief decision issued in 2006	February 2007
ODCE Information Notice I/2007/2	Disclosure of Company Particulars in E-Communications and on Websites	February 2007
Corporate Compliance Matters	Articles on ODCE activity in 2006, Audit Committees, Extension of Disclosure of Company Particulars to E-Communications and Websites, the Governance of Apartment Owners Management Companies	March 2007
ODCE Annual Report 2006	Completed Report of ODCE Activities in 2006	June 2007

Appendix 1.2.1

List of ODCE Presentations in 2007

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
08/01/07	Waterford Institute of Technology	Presentation	Introduction to the Business Planning Process	Carriganore Campus, Waterford	20	Kevin Prendergast
08/01/07	Professional Diploma in Compliance	Presentation	The Role of the ODCE	Citibank Offices, Dublin	120	Kevin Prendergast
23/01/07	Louth County Council	Presentation	Corporate Governance and Responsibility	County Council Offices, Dundalk	25	Kevin Prendergast
24/01/07	Audit Committee Institute Ireland	Presentation	ODCE Guidance for Audit Committees	Berkeley Court Hotel, Dublin	300	Paul Appleby
25/01/07	Law Reform Commission	Conference on Multi-Unit Developments	Highlights of the Draft ODCE Guidance on AOMCs	The Law Society, Blackhall Place, Dublin	250	Paul Appleby
29/01/07	Regulators' Conference	Presentation	Disqualification and Restriction Proceedings under the Companies Acts	Central Bank	25	Adrian Brennan
13/02/07	Institute of Public Administration	Presentation	ODCE Guidance on Audit Committees	IPA Offices, Ballsbridge, Dublin	55	Kevin Prendergast
27/02/07	Dublin Solicitors' Bar Association	Presentation	AOMCs – A Company Law Perspective	The Westbury Hotel, Dublin	150	Kevin O'Connell
07/03/07	Dundalk IT	Presentation	Role of the ODCE	CRO Offices, Dublin	15	Kevin Prendergast
09/03/07	Dublin City University	Presentation	Role of the ODCE	DCU Campus, Glasnevin	45	Paul Appleby
14/03/07	Ardee Business Park	Presentation	Corporate Governance and Responsibility	Ardee Business Park, Ardee, Co. Louth	15	Kevin Prendergast
15/03/07	Jordans' Publications	Corporate Governance & Administration Conference	Update on ODCE Compliance and Enforcement Work	Stillorgan Park Hotel	100	Paul Appleby

Appendix 1.2.1 (continued)

List of ODCE Presentations in 2007

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
21/03/07	University of Limerick	Presentation	Powers, Functions and Duties of the ODCE and Case Law	University of Limerick	30	Ann Keating
29/03/07	Irish Development Education Association	Presentation	Corporate Governance and Directors' Responsibilities	Clonmel Street, Dublin	10	Kevin Prendergast
12/04/07	Networks	Presentation	Corporate Health Check for Directors of Private Limited Companies	Breesy Centre, Cashelard, Ballyshannon, Co. Donegal	12	Kevin Prendergast
19/04/07	IT Carlow Enterprise Platform Programme	Presentation	Role of the ODCE and Corporate Enforcement	Institute of Technology, Carlow	12	Kevin Prendergast
25/04/07	Dublin Business Innovation Centre	Presentation	Corporate Governance and Directors' Responsibilities	Guinness Enterprise Centre, Dublin	15	Kevin Prendergast
01/05/07	Institute of Directors/ Cork Chamber	Presentation	Current Issues and Coming Developments	Montenotte Hotel	50	Kevin Prendergast
08/05/07	Dublin Solicitors' Bar Association	Presentation	AOMCs – A Company Law Perspective	The Royal College of Physicians in Ireland	80	Kevin O'Connell
15/05/07	Tipperary North County Enterprise Board	Presentation	Duties of Directors	Abbey Court Hotel, Nenagh, Co. Tipperary	19	Kevin Prendergast
16/05/07	KTN Skillnet	Presentation	Corporate Health Check for Directors of Private Limited Companies	Killarney	10	Kevin Prendergast
12/06/07	Institute of Directors	IOD Strategic Briefing	ODCE Guidance for Audit Committees	St. Stephen's Green Hibernian Club	100	Paul Appleby

Appendix 1.2.1 (continued)

List of ODCE Presentations in 2007

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
15/06/07	Law Society of Ireland	Presentation	Corporate Health Check	Blackhall Place	70	Adrian Brennan
26/06/07	Dublin City Enterprise Board	Presentation	Company Law and the ODCE	National College of Ireland, IFSC	50	Kevin Prendergast
27/06/07	Galway IRD/Galway Enterprise Board	Presentation	Corporate Health Check for Directors of Private Limited Companies	Shannon Oaks, Portumna	20	Kevin Prendergast
09/07/07	Laois County Enterprise Board	Presentation	Corporate Health Check for Directors of Private Limited Companies	Portlaoise Enterprise Centre	12	Kevin Prendergast
02/09/07-05/09/07	International Association of Insolvency Regulators	Presentations	Insolvency Developments in Ireland; Future Research Options	Bangkok	40	Paul Appleby
22/09/07	Enterprise Start Programme	Presentation	Corporate Health Check	Macroom Environmental Park	15	Kevin Prendergast
25/09/07	Dublin Solicitors' Bar Association	Presentation	Company Law Update	Law Society, Blackhall Place	50	Adrian Brennan
12/10/07	Law Society of Ireland	Presentation	Role and Functions of the ODCE	Law School, Blackhall Place	280	Michael Moran
12/10/07	Law Society of Ireland	Presentation	Role and Functions of the ODCE	Law School, Blackhall Place	40	Michael Moran
23/10/07	Westmeath County Enterprise Broad	Presentation	Corporate Health Check for Directors of Private Limited Companies	Radisson Hotel, Athlone	10	Kevin Prendergast
24/10/07	The Law Society of Ireland	Presentation	AOMCs – A Company Law Perspective	Courthouse Chambers, Cork	25	Kevin O'Connell
30/10/07	Dublin City Council AOMC Forum	Forum	Governance of AOMCs	Dublin City Council Offices, Wood Quay	220	Kevin Prendergast

Appendix 1.2.1 (continued)

List of ODCE Presentations in 2007

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
01/11/07	Law Society of Ireland	Presentation	Role & Functions of the ODCE	Law Society, Cork	200	Adrian Brennan
13/11/07	UCD Masters of Accounting	Presentation	The Role of the ODCE	Smurfit Business School, Carysfort, Co. Dublin	85	Kevin Prendergast
19/11/07	Consortium of Physical and Sensory Disabilities	Presentation	Corporate Health Check for Directors of Private Limited Companies	Gweedore, Co. Donegal	16	Kevin Prendergast
22/11/07	Genesis Enterprise Programme	Presentation	Corporate Health Check for Directors of Private Limited Companies	Rubicon Centre, Cork	19	Kevin Prendergast
23/11/07	Institute of Chartered Accountants in Ireland	'Meet the Regulators' Conference	The ODCE's Perspective – New Challenge New Focus	Marriott Druids Glen	250	Paul Appleby
27/11/07	Coláiste Dhúlaigh	Presentation	Role of the ODCE	ODCE Offices	12	Kevin Prendergast
30/11/07	Waterford Institute of Technology	Presentation	Corporate Health Check for Directors of Private Limited Companies	Arklow Enterprise Centre	18	Kevin Prendergast
04/12/07	Dublin City University	Presentation	Role of the ODCE	DCU Campus, Glasnevin	45	Kevin Prendergast
12/12/07	Public Affairs Ireland	Seminar	Corporate Governance in Public Authorities	Westin Hotel, Dublin	150	Paul Appleby
17/12/07	Diploma Course for Compliance Officers	Presentation	The Role and Powers of the ODCE	Citibank Offices, Dublin	75	Kevin Prendergast

Appendix 1.2.2

List of Exhibitions/Events attended by the ODCE

Date	Event	Venue
16/02/07	Wicklow County Enterprise Board Information Day	Glenview Hotel, Delgany, Wicklow
24/04/07	Dun Laoghaire/Rathdown County Council Enterprise Day	Council Offices, Dun Laoghaire
15/06/07-16/06/07	BT Small Business Show	RDS, Dublin
25/09/07-27/09/07	National Ploughing Championships	Tullamore, Co. Offaly
27/09/07	Fingal County Enterprise Board Open Day	Fingal County Council offices, Swords, Dublin
21/11/07	National Women's Enterprise Day	Mullingar Park Hotel
23/11/07-24/11/07	Grow Your Own Business Exhibition	RDS, Dublin

Appendix 1.2.3

List of ODCE Press Statements – 2007

Date	Subject
07/01/07	Publication of ODCE Interim Activity in 2006
30/01/07	Disqualification of Mr Sam Field-Corbett in consequence of the findings made by High Court Inspectors in their Report on Ansbacher (Cayman) Ltd.
31/01/07	Re-launch of the ODCE website
13/02/07	Launch of ODCE Information Notice I/2007/2 – Extension of Disclosure of Company Particulars to E-Communications and Websites
19/02/07	Disqualification by the High Court of three company directors for periods of twelve, eight and six years respectively
20/03/07	Disqualification for nine years of Mr Barry Seymour in consequence of the findings made by High Court Inspectors in their Report into National Irish Bank Ltd (NIB) and National Irish Bank Financial Services Ltd (NIBFS)
07/06/07	Publication of ODCE Annual Report for 2006
31/07/07	Disqualification for five years of Mr John J. (a.k.a. Jack) Stakelum in consequence of the findings made by High Court Inspectors in their Report on Ansbacher (Cayman) Ltd.
13/11/07	ODCE Intervention in the Fyffes plc v DCC plc and Others proceedings
23/11/07	Launch of ODCE's first national radio advertising campaign

Appendix 2.1.1

Breakdown of New Investigation Cases in 2007 by Source (v. 2006)

Source of New Investigation Cases	Total 2006	Total 2007
Voluntary Reports		
- Public Complaints	344	331
- Reports from State Authorities ³⁷	4	19
- Reports from non-State Authorities ³⁸	3	3
- Reports in the Public Domain	1	0
Other Detections	54	117
Total Voluntary Reports	406	470
Mandatory Reports		
- Indictable Reports from Auditors	268	186
- Reports from the CRO	12	10
- Indictable Reports from Professional Bodies	10	7
- Reports from Liquidators	7	1
Total Mandatory Reports	297	204
TOTAL REPORTS	703	674

³⁷ Typically, the ODCE receives these reports from a variety of sources, including the Department of Enterprise Trade and Employment, the CRO, the Garda Síochána, the Revenue Commissioners, the Financial Regulator and other Departments and regulatory agencies.

³⁸ In 2007, these reports emanated from a body outside the State.

Appendix 2.2.1

Mandatory Reports in 2007 – Character of Possible Company Law Defaults (v. 2006)

Types of Indicated Default	Total 2006	Total 2007
Directors' Loan Infringements	268	138
Failure to Keep Proper Books of Account	38	40
Non-Qualification for Appointment as Auditor	5	4
No Director Resident in the State	2	3
Non-holding of Extraordinary General Meetings	9	2
Falsification of Documents	4	2
Other	19	16
Total Defaults in Mandatory Reports	345	205

Appendix 2.2.2

Voluntary Reports in 2007 – Character of Issues Involved (v. 2006)

Types of Indicated Issues	Total 2006	Total 2007
E-Communications Regulations	n/a	86
Shareholder Issues	41	65
Reckless/Fraudulent/Insolvent Trading	85	52
Annual/Extraordinary General Meetings	22	45
Debt Issues	40	38
Trading while Struck Off the Companies Register	43	29
Forgery/False Information	11	27
Director Issues	39	23
Auditor issues	8	11
Unclear/Other Issues	117	94
Total	406	470

Appendix 2.2.3

Throughput of Cases at Detection Stage in 2007 (v. 2006)

Assessment of Cases	Total 2006	Total 2007
Cases on hands at 1 January	607	267
New Cases	703	674
Cases Concluded	913	507
Cases for Further Consideration by the ODCE	130	111
Cases on hands at 31 December	267	323

Appendix 2.2.4

Cases Concluded at Detection Stage by Primary Manner of Disposal in 2007

Character of Decisions	Voluntary Reports	Mandatory Reports	Total 2007
Insufficient Evidence of Default	163	0	163
Default Appropriate for Civil Action	58	1	59
Cases Concluded by Remedy of Default/Warning	125	127	252
Matters not Directly Relevant to the ODCE	12	7	19
Other	14	0	14
Total Cases Concluded	372	135	507
Cases Referred for Possible Enforcement	46	55	101
Cases Referred for Insolvency Examination	9	1	10
Cases Referred for Further Consideration	55	56	111

Appendix 3.1

Overview of ODCE Proceedings in 2007 (v. 2006)

Proceedings by Case Type	2006	2007
Investigative		
■ Successful	–	13
■ Unsuccessful	–	–
■ Ongoing	–	–
Sub-Total	0	13
Civil Enforcement		
■ Successful	9	11
■ Unsuccessful	–	–
■ Settled	3	–
■ Ongoing	20	15
Sub-Total	32	26
Criminal Enforcement		
■ Successful	25	8
■ Unsuccessful	2	1
■ Ongoing	1	7
Sub-Total	28	16
Judicial Review and Others		
■ Successful	6	3
■ Unsuccessful	1	–
■ Settled	–	3
■ Ongoing	2	3
Sub-Total	9	9
All Proceedings		
■ Successful	40	35
■ Unsuccessful	3	1
■ Settled	3	3
■ Ongoing	23	25
Total	69	64

Appendix 3.2

Breakdown of Legal Proceedings in 2007 involving the Director

Type	Subject Matter	Section/Act, etc. ³⁹	Case Nos.	Case Status/Result
Superior Courts				
Appeal by ODCE	Disqualification of company directors, etc.	S. 160, 1990	3	Ongoing
Appeal by Respondent	Disqualification of company director	S. 160, 1990	1	Ongoing
Appeal by Respondent	Cross-examination of the Respondent at the disqualification hearing	S. 160, 1990	1	Ongoing
Application by ODCE	Cross-examination of the Respondent at the disqualification hearing	S. 160, 1990	1	Granted
Application by ODCE	Retention of Inspectors' Papers	S. 12, 1990	1	Granted
Application by ODCE	Retention of Bank's Papers	S. 12, 1990	1	Granted
Application by ODCE	Disqualification of company directors	S. 160, 1990	19	Disqualifications (13) (one under appeal); Concluded (9 cases); Ongoing (10 cases)
Application by ODCE	Compliance with obligation to deliver liquidator's report to ODCE and to pay costs	S. 371, 1963	2	Order granted (1); Costs Awards (2)
Application by Respondents	Nature of Evidence to be advanced in the disqualification hearing	S. 160, 1990	1	Ongoing
Intervention by ODCE	Jurisdiction of Court to make a disqualification order of its own motion	S. 160, 1990	1	Ongoing

³⁹ 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 2007 involving the Director

Type	Subject Matter	Section/Act, etc. ³⁹	Case Nos.	Case Status/ Result
Joinder of ODCE as Notice Party	Cost of Failed Restriction Proceedings by Liquidator	S. 150, 1990	1	Settled
Judicial Review by Defendant	Decision by ODCE to prosecute	S. 40, 1990	1	Settled
Judicial Review by ODCE	Vacation of District Court Order compelling disclosure of reasons of prosecution	S. 40, 1990	1	Settled
Circuit Criminal Court				
Prosecution	Excessive directors' transactions	S. 40, 1990	1	Ongoing
District Court				
Application	Production of banking and other documents	S. 7A, 1879/ S. 52, 2001	13	Granted
Prosecution	Acting as an auditor while unqualified	S. 187, 1990	3	Convictions (23) TICs ⁴⁰ (15)
Prosecution	Acting as a company director while restricted and in breach of the statutory conditions	S. 161, 1990	7	Conviction (1) Disqualification (1) TIC (1) Probation Act (5) Dismissals (4) Ongoing (4 cases)
Prosecution	Failure to keep proper books of account	S. 202, 1990	4	Convictions (4); Ongoing (1 case)
Prosecution	Provision of false information to the CRO	S. 242, 1990	1	Ongoing

⁴⁰ TIC identifies the number of charges taken into consideration when the Judge determined the case.

Appendix 3.3

Details of Successful ODCE Enforcement Actions in 2007⁴¹

Parties Sanctioned/ Reason for Sanction	Company Number	Penalty/Decision	Costs/ Expenses
Acting as an auditor while unqualified			
Ignatius Forde	–	Convictions (3), TICs (13) and €2,500 in fines	€600
Patrick Monahan	–	Convictions (16) and €3,200 in fines	€2,000
Brian O'Reilly	–	Convictions (4), TICs (2) and €1,000 in fines	€892
Acting as a company director while restricted and in breach of the statutory conditions			
Brian Keogan	291949 398222 432962	Probation Act (5) and €2,500 paid to charity	€684
Steven Keogan	375424	Conviction (1), TIC (1), Disqualification (1) for five years and €500 in fines	€250
Failure to keep proper books of account			
Cloudbury Developments Ltd.	317968	Conviction (1) and €750 in fines	€300
Mediasatellite Ireland Ltd.	300584	Conviction (1) and €1,200 in fines	€375
Michael O'Brien (Claremorris) Ltd.	92823	Convictions (2) and €200 in fines	€750
Failure to submit a liquidator's report			
Pat Crowdle	192820	Compliance Order Granted	To be taxed in default of agreement
John O'Connor	303887	Costs Order Granted	€2,000

⁴¹ This Appendix only contains information on enforcement proceedings initiated by the ODCE, where there was a successful result in 2007. 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.

Appendix 3.3 (continued)

Details of Successful ODCE Enforcement Actions in 2007

Parties Sanctioned/ Reason for Sanction	Company Number	Penalty/Decision	Costs/ Expenses
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			
Martin Allen	301311 324700 335259 338931 340907 342808 372521 383554	Disqualification (1) for 12 years	To be taxed in default of agreement
Peter Banks	301311 324700 335259 340907	Disqualification (1) for 8 years	To be taxed in default of agreement
John Browne Gaye Browne	249055 311901	Disqualifications (2), each for 7 years	To be taxed in default of agreement
John Cornally Catherine Mary Cornally Somers	92585	Disqualifications (2), each for 2 years	John Cornally – €1,000; Catherine Mary Cornally Somers – €750
Thomas Donoghue	251067 311944 317920	Disqualification (1) for 6 years	To be taxed in default of agreement
Henry Kinsella Aileen Kinsella	271675	Disqualifications (2), each for 5 years	€2,000
Brian Teeling	304339	Disqualification (1) for 5 years	€500
Unfitness to act as a company officer in consequence of an Inspectors' Report			
Sam Field-Corbett	–	Disqualification (1) for 3 years	–
Barry Seymour	30478 65780	Disqualification (1) for 9 years (under appeal to Supreme Court)	To be taxed in default of agreement – stay on Order pending appeal
Jack Stakelum	–	Disqualification (1) for 5 years	To be taxed in default of agreement

Appendix 3.4

ODCE Throughput of Possible Criminal Enforcement Cases in 2007 (v. 2006)

Cases for Possible Criminal Prosecution	2006	2007
Cases on hands with ongoing criminal proceedings at 1 January	9	1
Other cases on hands for possible enforcement at 1 January	359	290
New cases received for possible enforcement	110	81
Total Cases	488	372

Treatment of Cases during the Year	2006	2007
Cases where criminal proceedings were withdrawn	0	0
Cases where criminal proceedings were determined	27	9
Cases where criminal proceedings were adjourned	0	0
Other cases closed	170	45
Cases on hands with ongoing legal proceedings at year end	1	8
Cases on hands for possible enforcement at year end	291	310
Total Cases	488	372

Appendix 3.5

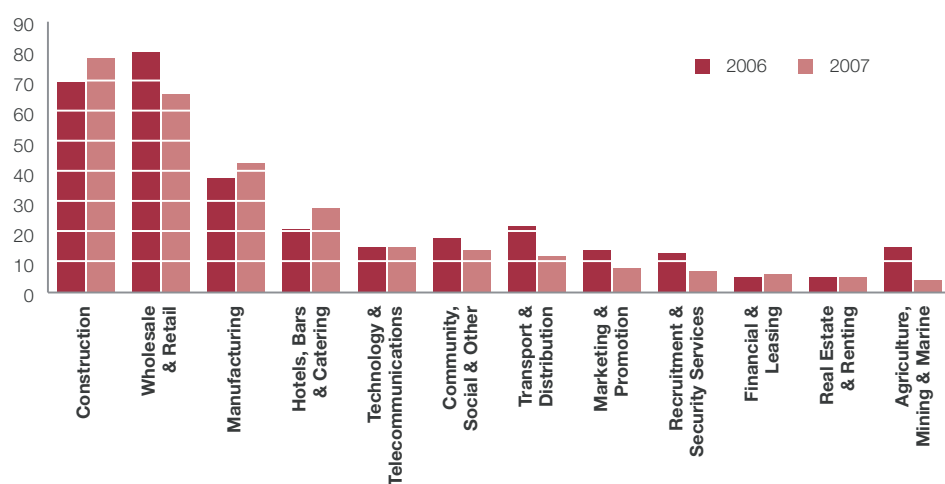
Breakdown of New Cases for Possible Enforcement by Character in 2007

New Cases by Character	Number
Failure to keep proper books of account	51
Restricted Person acting as Director while not permitted	12
Person acting as Auditor while not permitted	5
Falsification, etc. of company books and documents	3
Other Suspected Offences	10
Total Cases	81

Appendix 4.1

Liquidator Reports at 31 December 2007 – Sectoral Analysis

Insolvency by Sector	Section 56 Reports			
	2006		2007	
Construction	70	22%	78	27%
Wholesale & Retail	80	25%	66	23%
Manufacturing	38	12%	43	15%
Hotels, Bars & Catering	21	7%	28	10%
Technology & Telecommunications	15	5%	15	5%
Community, Social & Other	18	6%	14	5%
Transport & Distribution	22	7%	12	4%
Marketing & Promotion	14	4%	8	3%
Recruitment & Security Services	13	4%	7	2%
Financial & Leasing	5	2%	6	2%
Real Estate & Renting	5	2%	5	2%
Agriculture, Mining & Marine	15	5%	4	1%
TOTALS	316	100%	286	100%



Appendix 4.1.1

Liquidator Reports at 31 December 2007 – Reports Progressed

Classification	First Reports	Further Reports	Final Reports	Total Reports
Section 56 Reports received				
Reports brought forward from 2006	104	148	66	318
Reports received in 2007	286	446	275	1,007
Reports due and <u>not</u> received in 2007	12	24	N/A	36
Compliance Rate	96%	95%	N/A	97%
Section 56 Reports determined				
Decisions due in 2007	285	499	269	1,053
Decisions issued in 2007	289	503	271	1,063
Conclusion Rate	101%	101%	101%	101%
Decisions where full relief was granted ⁴²	189	430	N/A	890
Decisions where partial relief was granted ⁴³	7	5	N/A	12
Decisions where relief at this time was granted ⁴⁴	63	42	N/A	105
Decisions where relief was not granted ⁴⁵	30	26	N/A	56
Other Decision made	0	0	N/A	0
Reports carried forward to 2008	101	91	70	262
No. of Liquidators Involved in Section 56 Reports	85	134	84	135
No. of Directorships Involved in Section 56 Reports	963	1,116	628	2,114

⁴² 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.

⁴³ Cases of Partial Relief are those in which such circumstances apply in respect of some, but not all, of the company's directors.

⁴⁴ 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.

⁴⁵ 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 2007 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [See Explanatory Note at end of this Table]
185846	A & A Transport Services Limited	Nolan	Ann	23/07/2007	Full Restriction
		Nolan	Adrian	23/07/2007	
394826	A & E Skip Hire Limited	Kelly	Mark	09/07/2007	Full Restriction
		Kelly	Ann Marie	09/07/2007	
204985	A.B.A. Stationery Limited	Graham	James	12/11/2007	Full Restriction
		Graham	Elizabeth	12/11/2007	
344099	Affordable Modern Dwellings Limited	Percival	Marie	02/10/2007	Full Restriction
		Percival	James	02/10/2007	
241419	Application Building Blocks Limited	Clancy	Declan	25/06/2007	Full Restriction
		Doyle	Michael	25/06/2007	
351976	Aziza Limited	Bettayeb	Samir	15/01/2007	Full Restriction
120819	Ban Ard Cash and Carry Limited	O'Sullivan	Margaret	30/07/2007	Full Restriction
		O'Sullivan	Shirley	30/07/2007	
		O'Sullivan	Patrick	30/07/2007	
		O'Sullivan	Declan	30/07/2007	
325027	Bandit Lites Ireland Limited	Mac Risteaird	Damien	17/01/2007	Full Restriction
		MacMahon	Phelim	17/01/2007	
		Mahedy	William	17/01/2007	
248038	Boherduff Engineering Limited	Nolan	Edward	11/01/2007	Full Restriction
		Nolan	Anne	11/01/2007	
288300	Cableking Limited	Gunning	Martin	30/04/2007	Full Restriction
		Neimand	Dennis	30/04/2007	
284267	Candescent Limited	Hoey	Conor	06/11/2007	Full Restriction
348787	Carrigeen Newtown Stone Limited	Walsh	Catherine	15/01/2007	Full Restriction
		Walsh	David	15/01/2007	
304292	Cerise Glen Limited	Casey	Sharon	18/06/2007	Full Restriction
		Casey	Joseph	18/06/2007	

Appendix 4.2.1 (continued)

Cases where Restriction Orders were made against Directors by the High Court in 2007 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [See Explanatory Note at end of this Table]
201370	Chadsley Company Limited	DeValera	Eamonn	19/11/2007	Full Restriction
		DeValera	Geraldine	19/11/2007	
292434	Clovmere Developments Limited	Aspel	Karl	08/10/2007	Full Restriction
		Hill	Neil	08/10/2007	
287784	Coolreen Limited	Hand	Kathleen	03/10/2007	Full Restriction
		Hand	Bryan	03/10/2007	
302529	Corgan Construction Limited	Corcoran	David	10/12/2007	Full Restriction
		Corcoran	Vincent	10/12/2007	
		Ganley	Christopher	10/12/2007	
356007	Corrymore Construction Limited	Murray	Kevin	26/11/2007	Full Restriction
		Murray	Daniel	10/12/2007	
274977	Corrymore Developments Limited	Lynch	Thomas	09/05/2007	Full Restriction
		Mcilvenna	James	09/05/2007	
291811	Dev-Oil & Gas Limited	McCooey	Sonya	17/12/2007	Partial Restriction
239900	Draintec Plumbing Limited	Bellew	James	21/03/2007	Full Restriction
		Mullen	Thomas	21/03/2007	
329862	Driving Force Ire. Limited	Brennan	Barbara	15/01/2007	Full Restriction
		Kelly	Aidan	15/01/2007	
330237	Dromard Construction Limited	McCabe	Pauric	05/10/2007	Full Restriction
392157	Dry Core Systems Limited	Moran	Denise	23/07/2007	Full Restriction
		Thompson	Paul	23/07/2007	
372990	Eagle Force Security Limited	McDonald	Martin	16/07/2007	Full Restriction
		Black	Hayley	16/07/2007	
337481	Eastern District Carpentry Limited	Bradley	Barry	30/07/2007	Full Restriction
		Bradley	Leslie	30/07/2007	

Appendix 4.2.1 (continued)

Cases where Restriction Orders were made against Directors by the High Court in 2007 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [See Explanatory Note at end of this Table]
269134	Galberts Foods Limited	Browne	Geraldine	12/02/2007	Full Restriction
		Clarke	Austin	12/02/2007	
		Clarke	Janet	12/02/2007	
368195	Gheorghe Eftenoiu Limited	Eftenoiu	Maria	12/11/2007	Full Restriction
		Eftenoiu	Gheorghe	12/11/2007	
224494	Greenmount Holdings Limited	Carberry	Sean	31/07/2007	Partial Restriction
356266	Hydro Klenze Limited	Cavanagh	Brian	27/11/2007	Full Restriction
		Duffy	Liam	17/07/2007	
		Ryan	Ken	17/07/2007	
		Scott	Raymond	17/07/2007	
277877	John O'Reilly & Company Limited	Cahill	Gerard	23/04/2007	Full Restriction
		O'Reilly	John	23/04/2007	
281619	K.I.B. (Ireland) Limited	Bradshaw	Christopher	09/11/2007	Partial Restriction
		Bradshaw	Bernie	09/11/2007	
287802	Kempford Limited	Delaney	Elizabeth	22/01/2007	Full Restriction
		Delaney	John	22/01/2007	
380383	Kevin McDonald Haulage Limited	McDonald	Kevin Paul	12/11/2007	Full Restriction
		McDonald	Patricia	12/11/2007	
332571	Lakil Construction Limited	Droney	Patrick	27/07/2007	Full Restriction
		O'Sullivan	Denis	27/07/2007	
349063	Limerick Waste Recycling Limited	Curtis	Marion	10/12/2007	Full Restriction
		Curtis	Robert	10/12/2007	
294741	M.J. Hayden Limited	Hayden	John	12/11/2007	Partial Restriction
373363	Maher Pubs Limited	Maher	Peter	03/12/2007	Full Restriction
		Maher	Enda	03/12/2007	
284723	Margaret Keane Limited	Keane	Margaret	05/11/2007	Full Restriction
		O'Gara	Helen	05/11/2007	

Appendix 4.2.1 (continued)

Cases where Restriction Orders were made against Directors by the High Court in 2007 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [See Explanatory Note at end of this Table]
274378	McGrattan Engineering Limited	McGrattan	John	26/03/2007	Partial Restriction
186847	Metalcove Limited	Paffrath	Rudi	11/06/2007	Full Restriction
		Paffrath	Deirdre	11/06/2007	
382448	MP Building & Gardening Limited	Prendergast	John	18/01/2007	Full Restriction
352599	Noel Weldon Products Limited	Weldon	Noel	12/03/2007	Full Restriction
		Weldon	Marian	12/03/2007	
282378	Novowood Limited	Farrell	Pauline	23/07/2007	Full Restriction
379170	Paintball Pursuit Limited	Cross	Julie	14/05/2007	Full Restriction
		Wachuku	David	14/05/2007	
310579	Pat Coyne (Snr) Limited	Coyne	Pat (Snr)	10/12/2007	Full Restriction
		Lavin	James	10/12/2007	
366345	PDC (Moate) Limited	Conroy	Liam T.	07/11/2007	Full Restriction
113874	Pineroad Distribution Limited	Fleming	John Joe	19/01/2007	Full Restriction
		Fleming	Maria	19/01/2007	
309237	Premier Contract Services Limited	Fanning	Deirdre	22/10/2007	Full Restriction
		Fanning	John	22/10/2007	
342277	Prestbury Alarms Limited	Casey	Robert John	10/12/2007	Partial Restriction
364298	Professional Fire Protection Limited	Connolly	Michael	22/01/2007	Full Restriction
		Connolly	Martin	22/01/2007	
		Connolly	Liam	22/01/2007	
		Connolly	Jacqui	22/01/2007	
345415	R. & C. O'Connor Catering Limited	O'Connor	Celia	19/02/2007	Full Restriction
		O'Connor	Raymond	19/02/2007	
310690	Reton Technologies Limited	Doyle	Catherine	25/06/2007	Full Restriction
		Doyle	Michael John	25/06/2007	

Appendix 4.2.1 (continued)

Cases where Restriction Orders were made against Directors by the High Court in 2007 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [See Explanatory Note at end of this Table]
311771	S. Lynch Couriers (Athy) Limited	Lynch	Seamus	30/07/2007	Partial Restriction
		Lynch	Bridin	30/07/2007	
52245	Sallyview Estates Limited	Balzarini	Prescilla	05/11/2007	Full Restriction
		Balzarini	Emilio	05/11/2007	
367431	Security Direct Limited	Byrne	Gerard	14/05/2007	Full Restriction
		Caffrey	David	23/07/2007	
255484	Smyth Aerospace Manufacturing Limited	Smith	Joseph	17/07/2007	Full Restriction
		Smith	Marianne	17/07/2007	
267479	Straight Eight Limited	Donnelly	Desmond	17/04/2007	Full Restriction
		Donnelly	Veronica	17/04/2007	
375409	Suirform Construction Systems Limited	Barrett	Tony	03/12/2007	Full Restriction
332463	Synrg Live Limited	Nolan	Patricia	26/03/2007	Partial Restriction
246070	The Achievers Group Limited	Duffy	John	15/01/2007	Full Restriction
		Forman	Mark	26/03/2007	
		O'Neill	John	26/03/2007	
334150	The Village Gala Food Store Limited	Naddy	Maura	05/02/2007	Full Restriction
		Naddy	Edward	05/02/2007	
220233	The Wedding Dress Limited	Linehan	Judith	16/07/2007	Full Restriction
		Tobin	Margaret	23/07/2007	
359615	The Yard Broadcast Network Limited	Crownborn	David	22/01/2007	Full Restriction
		Crownborn	Esther	22/01/2007	
		King	Deborah	22/01/2007	
354210	Tierney & Kirwan Limited	Kirwan	Paul	03/12/2007	Full Restriction
		Tierney	Andrew	03/12/2007	
387855	Toronto's Taverns Limited	O'Hara	Elizabeth	05/11/2007	Full Restriction
		O'Hara	Chris	05/11/2007	

Appendix 4.2.1 (continued)

Cases where Restriction Orders were made against Directors by the High Court in 2007 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [See Explanatory Note at end of this Table]
370952	Trueform Construction Limited	Murphy	John	30/07/2007	Full Restriction
		Murphy	Jacqueline	30/07/2007	
313649	Vincent Clarke & Sons Limited	Clarke	Vincent	26/02/2007	Full Restriction
		Clarke	Catherine	26/02/2007	
283441	Visual Eyes Opticians Limited	Crowley	Elmarie	21/05/2007	Full Restriction
341873	VLV Limited	McEntee	Andy	23/07/2007	Full Restriction
		McEntee	Declan	23/07/2007	
262177	Wexford Alarms Limited	Ennis	Noleen	16/04/2007	Full Restriction
		Ennis	Edward	16/04/2007	
335680	Willenberry Limited	Hodge	Niamh	07/11/2007	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 2007 pursuant to Section 56

Company No.	Company Name	Disqualified Directors		Date Disqualified From	Date Disqualified To
330645	BGN Development & Civil Engineering Limited	Maguire	Brendan	05/11/2007	04/11/2013
		Maguire	Gerard	05/11/2007	04/11/2012
248038	Boherduff Engineering Limited	Nolan	Edward	11/01/2007	10/01/2011
101890	Cornafulla Motor Works Limited	Kenny	Michael	15/10/2007	14/10/2012
		Kenny	Patricia	15/10/2007	14/10/2012
381365	Crime Force Security Services Limited	Kinsella	Terence	26/02/2007	25/02/2014
330237	Dromard Construction Limited	McCabe	John	05/10/2007	04/10/2012
282378	Novowood Limited	Farrell	Peter	23/07/2007	22/07/2014

Appendix 4.2.3

Cases where Restriction Declarations or Disqualification Orders were *not* made against Directors by the High Court in 2007 pursuant to Section 56

Company Name	Company Number	Date of Court Order
Business & Finance Media Limited	52960	27/04/2007
PR Investments Limited	388915	13/12/2007
Shinnick Plant Hire Limited	303053	08/05/2007

Appendix 5.1.1

Approved versus Actual Staffing Complement by Grade at end-2007

Grade	Approved	Actual
Accountant Grade I	2	2
Accountant Grade III	1	0
Assistant Principal	4	4
Clerical Officer ⁴⁶	5	6.6
Corporate Compliance Manager	1	1
Detective Garda	5	4
Detective Inspector	1	1
Detective Sergeant	2	2
Director	1	1
Executive Officer	8	5.8
Higher Executive Officer/Systems Analyst	8	5.2
Legal Adviser	3	3
Principal Officer	2	2
Principal Solicitor	1	1
Solicitor	2	1
Total	46	39.6

⁴⁶ 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

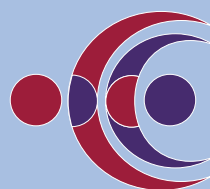
Breakdown of Expenditure against Allocation in 2007

Source of Allocation/Expenditure	€000s	€000s
Allocation		4,823.0
Exchequer Grant		
Expenditure		
Salaries, Wages and Allowances	2,140.2	
Advertising and Publicity	326.8	
Office Premises	286.6	
Legal Expenses	913.2	
Consultancy Services	268.7	
Computerisation	74.1	
Printing	157.0	
Incidental Expenses	14.8	
Travel and Subsistence	31.0	
Telecommunications	43.7	
Postal/Courier Services	69.6	
Photocopying	33.6	
Human Resource Development	18.9	
Total Expenditure		4,378.2
Amount Surrendered		444.8

Appendix 5.2.1

Principal Relationships between ODCE Staff and Functional Areas

Director				
Personal Assistant				
Administrative Staff	Legal Advisers	Accountants	Garda Síochána	Solicitors
↓	↓	↓	↓	↓
Compliance	Compliance	Compliance		
Detection	Detection	Detection	Detection	
Enforcement	Enforcement	Enforcement	Enforcement	Enforcement
Insolvency	Insolvency	Insolvency	Insolvency	Insolvency
Corporate Services				



Office of the Director
of Corporate Enforcement

*Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach*