

Conclusion

While the volume of incoming work to the Office declined in 2006 because auditors no longer had to report annual return defaults, this exemption has had no practical impact on the quantity of work being handled by the Office, because these defaults were always referred to the CRO for attention. It is however expected that a further decline in auditor reports will arise in 2007 if there is a significant use 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, there is every expectation that the rise in public complaints which we experienced in 2006 will continue in 2007. A particular factor in this context is the increasing awareness that the ODCE can improve the performance of property management companies which is an area of increasing public concern. The Office is also becoming more sophisticated in detecting possible company law offences itself or in conjunction with other bodies. The Director is accordingly satisfied that the character of issues which are on hands and in prospect will continue to absorb considerable resources in the coming year.

Goal 3 – Prosecuting Detected Breaches of the Companies Acts

Introduction

2006 was another busy year for the Office on the enforcement front. We again delivered on our aim of securing a reasonable balance between civil and criminal enforcement proceedings with 32 civil enforcement, 28 criminal enforcement and nine other proceedings during the year. We also maintained a good record of success in the proceedings brought and defended by the Office as indicated by the fact that of the 46 proceedings determined in 2006, only three were unsuccessful.

Our continuing desire to bring significant breaches of company law duties and obligations to the attention of the Courts was reflected in the imposition of suspended sentences of six months' imprisonment on two persons continuing to act as directors while in breach of company capitalisation requirements following their restriction by the High Court. We also secured the disqualification for nine years of a central figure in the Ansbacher affair.

Primarily from a concern for the effectiveness of our law enforcement functions, we are anxious insofar as penalties are concerned that breaches of the law should be capable of being sanctioned by effective, proportionate and dissuasive penalties. We recognise that judges have full discretion to determine what is an appropriate penalty in the circumstances of each particular case and that comparing the level of aggregate fines imposed every year is not necessarily indicative of the gravity of the matters determined by the Courts. Subject to that caveat, the aggregate amount of fines imposed in criminal cases dropped back in 2006 to over €23,000 from some €35,000 in 2005. However, 2006 was unusual in that in some of the cases heard, judges found it appropriate to deal with matters having regard to charitable donations made by the defendants. We understand that donations in excess of €7,000 arose in these instances.

Legal Proceedings

In an overall context, the Director participated in 69 proceedings, of which 39 were in the High Court and 26 were in the District Court. A further two cases were each before the Supreme Court and Circuit Court on appeal, and one of the cases before the Supreme Court was awaiting hearing at year-end. A brief overview of the

outcome of these proceedings by type is provided in **Appendix 3.1**.

Appendix 3.2 provides some more detail on the nature of the Court proceedings in which the Director was involved in 2006, together with the status and summary result of each type of proceeding.

Appendix 3.3 identifies the parties who were held by the High Court and the District Court to have breached their duties and obligations under the Companies Acts. The ODCE continued in 2006 to post the results of its enforcement actions on the ODCE website (www.odce.ie) shortly after the Court had made its judgement. The accompanying table summarises the nature of the Court decisions made in the successful proceedings in which the Director participated in 2006 (relative to 2005).

Number/Nature of Successful Enforcement Results	2005	2006
Charges on which convictions were secured	49	48
Charges taken into account on conviction	28	13
Charges disposed of (Probation of Offenders Act 1907)	35	36
Disqualifications	21	14
Judicial Reviews	2	-
Orders made in compliance proceedings	1	2
Restrictions	-	2
Other Decisions	8	8
TOTAL	144	123

Criminal Enforcement

Among the more significant features of the ODCE's criminal enforcement proceedings in 2006 were:

- the successful prosecution of two new offence types for the first time:
 - one involved convictions under section 161 of the Companies Act 1990 ("the 1990 Act") of a company director who was disqualified from so acting, because he had failed to disclose his continuing UK disqualification when notifying the Companies Registration Office of his appointment as a director of two companies here. The related **Illustration 3.2.2** discusses the case in more detail later on in this Section of the Report;
 - the second arose from a contravention of section 243 of the 1990 Act involving the use by a company director of a set of financial statements which were falsely represented to the company's bank as having been audited by a named firm of auditors who had not in fact audited them. The accused did so in the context of a request to renew an overdraft facility;
- the bringing to the Circuit Court (for the first time to our knowledge) of appeals by persons who had been

convicted in the District Court of offences under the Companies Acts. Two cases arose:

- one involved the imposition in 2005 of a six month suspended sentence on a company director who had, contrary to section 161 of the 1990 Act, continued to act as a director while in breach of company capitalisation requirements which apply as a consequence of a High Court restriction. In this case, the Court decided to rescind the suspended custodial sentence while maintaining the conviction and the associated disqualification of the director for a period of five years;
- the second involved the conviction in one District Court of a partner in an audit firm for having been disqualified from auditing the books of a company of which she was a director, contrary to section 187 of the 1990 Act. The appeal which was against the severity of the sentence only arose in circumstances where the other partners in the auditing firm were given the benefit of the Probation Act arising from similar charges heard before a different District Judge. On appeal, the Circuit Court decided to quash the conviction and apply the Probation Act instead.

In all, 103 charges were determined in 27 cases, a similar result to the outturn of 112 charges in 19 cases in 2005.

Civil Enforcement

Significant events in the ODCE's civil enforcement proceedings in 2006 included:

- the refusal by the High Court to dismiss pending ODCE disqualification proceedings against a former auditor and director of a company called Kentford Securities Ltd. on the grounds of alleged delay¹⁷. See also the ODCE's Annual Reports for 2004 and 2005 for further information on this case. The main disqualification proceedings were heard later in 2006, and while the Court indicated in December that it would not be disqualifying the Respondent, the formal judgement was awaited at year-end;
- the nine year disqualification imposed on Mr Pádraig Collery in consequence of the High Court Inspectors' Report into the affairs of Ansbacher (Cayman) Ltd. This case is discussed in more detail later on in this Section of the Report in conjunction with the accompanying **Illustration 3.4.1**;
- continuing work associated with disqualification applications initiated against eight former senior

managers of National Irish Bank Ltd. See the accompanying **Illustration 3.1** for further details on some of the aspects of this litigation which arose in 2006;

- the commencement, following a lengthy ODCE investigation, of disqualification proceedings against two company directors who were also the subject of criticism by the Tribunal of Inquiry into Certain Planning Matters and Payments.

Enforcement Cases

The volume of cases under consideration for possible criminal enforcement reduced during the course of the year from over 350 to less than 300 as a result of a large increase in the number of cases which were determined as unsuitable for legal action. The Office continued in 2006 to select for enforcement only those priority cases which merited investigation and the possible imposition of a legal sanction. The cases on hands figure at end-2006 include some 109 new cases which were received in 2006 for investigation. Almost half of the cases on hands are two years or older, the majority of which will be closed without recourse to legal action in 2007. **Appendix 3.4** provides further statistical information on the throughput of cases in 2006 vis-à-vis 2005.

Illustration 3.1: Disqualification Proceedings in consequence of the High Court Inspectors' Report into the affairs of National Irish Bank Ltd. (NIB)

The ODCE Annual Report for 2005 indicated that the Director had initiated disqualification proceedings against nine former directors or senior managers of NIB as a consequence of the findings in the High Court Inspectors' Report of 2004. While a disqualification order for ten years was obtained against one of the former managers, the remaining eight Respondents are contesting the ODCE proceedings. At end-2005, the Director was awaiting the High Court's judgement in his application for access to the Inspectors' papers. He believed that he needed these papers to assure the Court that the Respondents' criticisms of the Report were not valid.

In February 2006, the High Court refused to grant access to the Inspectors' papers¹⁸. In the light of this decision, the Director made an application to the Court for discovery of documents from the Bank, and in May, the Court duly ordered the Bank to make the documents sought by the Director available for inspection and copying. In addition, the Director sought discovery from each of the eight Respondents. The Respondents ultimately made discovery either by consent or, where the Respondents resisted the requests for discovery, on foot of Court Orders.

In addition, the Director sought to have a number of the Respondents attend at the trial of each action to be cross-examined on their Affidavits. In one such case, the Respondent refused to consent to cross-examination, and accordingly the Director asked the Court to order the attendance of the Respondent at the trial of the action for the purpose of cross-examination. The Court duly directed that the Respondent do so¹⁹. That case was heard in full with cross-examination of the Respondent, and the Court's judgement was awaited at year-end. The remaining seven disqualification cases were also ongoing at the end of 2006.

17 The Director of Corporate Enforcement v. Patrick McCann [2006] IEHC 57. A copy of Mr Justice Peart's judgement of 7 March 2006 is available at www.odce.ie/en/court_disqualifications.aspx or at www.bailii.org/ie/cases/IEHC/2006/H57.html.

18 In the Matter of National Irish Bank Limited (Under Investigation) and In the Matter of National Irish Bank Financial Services Limited (Under Investigation) and In the Matter of the Companies Act 1990 [2006] IEHC 35. A copy of Mr Justice Kelly's judgement of 10 February 2006 is available on the Court Decisions section of http://www.odce.ie/en/court_investigations.aspx or at www.bailii.org/ie/cases/IEHC/2006/H35.html.

19 In the Matter of the Companies Acts 1963-2003 and In the Matter of National Irish Bank and In the Matter of National Irish Bank Financial Services Limited and In the Matter of an application between the Director of Corporate Enforcement - Applicant and Barry Seymour -Respondent [2006] IEHC 369. A copy of Mr Justice O'Donovan's judgement of 16 November 2006 is available on the Court Decisions section of http://www.odce.ie/en/court_disqualifications.aspx.

Appendix 3.5 shows the character of the cases on hands in relation to which criminal enforcement action is being considered. This continues to be dominated by two particular offence categories: the failure to keep proper books of account (section 202 of the 1990 Act) and the failure of restricted directors to comply with the terms of their restriction (section 161 of the 1990 Act). Aside from these case types, we are also focused on other forms of company law malpractice (e.g., phoenix-type activity), and the Office will continue to seek out other areas of wrongdoing for investigation.

Sub-Goal 3.1: Developing a Balanced Enforcement Policy

By its nature, legal action is costly and time-intensive and is only warranted where the misconduct is deliberate, persistent, reckless and/or serious. Our own limited staffing resources also mean that the bulk of our work must be directed towards:

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

As will be obvious from the earlier sections of this Report, most company stakeholders respond positively to encouragement to comply with their legal obligations and to information that they may have deviated from the conduct required of them in certain instances.

As a matter of policy therefore, the Office operates a graduated approach to its regulatory responsibilities:

- we seek as best we can to encourage compliance by company stakeholders with the duties and obligations of company law, and we inform them in general terms of the available remedial measures to secure the correction of any non-compliant actions;
- we will often accept the taking of remedial measures or an offer of voluntary rectification of the default where the default is minor or inadvertent;
- in appropriate circumstances, we may issue a caution warning that any repeat of the default will be treated seriously;

- where the default is continuing, we may send a warning letter urging early rectification of the default, failing which High Court proceedings will be initiated to seek to compel compliance;
- we may in relevant cases initiate High Court disqualification or restriction proceedings to sanction past non-compliance and to protect the public from future risk;
- we may take summary criminal proceedings for one or more suspected company law offences of a non-major character, or
- we may refer an indictable offence under the Companies Acts to the Director of Public Prosecutions for a decision as to whether the matter should be tried on indictment.

In implementing this tiered approach, the ODCE tries to ensure as best it can that company stakeholders voluntarily accept or adhere to the responsibilities and rights which are distributed among them under the law and that formal legal action is only necessary in a small minority of cases.

The following three sub-sections provide more detail on the Office's enforcement activity during 2006 in the indicated areas.

Sub-Goal 3.2: Upholding Disclosure Requirements

The benefit of incorporation brings with it certain legal obligations as enshrined in the Companies Acts. These include the requirement that companies and their directors maintain up-to-date information on the status and performance of their company and that this information is made available on a timely basis, so that members, creditors and other stakeholders can judge the company's future prospects and make an informed decision on the risks of continuing to engage with the enterprise.

Obligation to Keep Proper Books of Account

Previous ODCE Annual Reports have outlined the importance for the conduct of commercial relations that the transactions of companies are properly recorded and described, so that relevant company stakeholders (such as banks, creditors and other stakeholders) with access to the company's prepared financial statements can rely on the associated information. Moreover, it is a fundamental

requirement of the Companies Acts as outlined in section 202 of the 1990 Act.

Due to the importance of the obligation, the ODCE gives priority in its investigations to detected breaches of these requirements. 13 cases of this character were concluded in 2006, and 12 were successful. Of the 42 charges prosecuted during the year, convictions were secured on 25 charges in respect of nine companies and nine directors. Another eight charges were thought proven and five more were taken into consideration by the relevant District Court. Fines totalling over €10,000 were imposed in these cases.

In the single unsuccessful case, the Court dismissed four charges against a company and its three directors.

Provision of False Information/Use of Falsified Documents

The Registrar of Companies accepts the information filed by and on behalf of company stakeholders on a 'good faith'

principle, namely that he expects the filed information to be accurate and complete at the time it is filed. As this information is used to assess commercial risk, the filing of false information can have financial consequences for other company stakeholders in the market. It is important therefore that any company stakeholders abusing the law by filing incorrect information be brought to account, so that the quality of information publicly made available by the Companies Registration Office is not compromised.

As reported in our Annual Report for 2005, the ODCE successfully prosecuted two unqualified auditors for filing financial statements that were represented as having been audited by a qualified auditor contrary to section 242 of the 1990 Act. In 2006, the Office successfully prosecuted two further cases of this character. The accompanying **Illustration 3.2.1** provides a summary of the two cases.

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

The Office successfully prosecuted two company directors in 2006 who had knowingly submitted materially false annual returns to the Companies Registration Office, contrary to section 242 of the 1990 Act. Both cases involved the submission of annual returns to which company financial statements were attached which were incorrectly represented as having been audited.

In one case, Mr John McElhinney, an accountant, had submitted an annual return in respect of a company, Portway Ltd., of which he was a director. Financial statements were attached to the annual return which indicated that they had been audited notwithstanding the fact that the audit had not been completed. As Mr McElhinney pleaded not guilty to the two charges, the Court hearing on 1 November 2006 included testimony from both Mr McElhinney and the company auditor. The Court subsequently convicted him of knowingly or recklessly making a materially false statement in the form of a Certificate of Director and Secretary in purported compliance with the provisions of section 18 of the Companies (Amendment) Act 1986 which stated that the report attached thereto was a true copy of the auditor's report in respect of the company. Mr McElhinney was fined €800 and ordered to pay witness and prosecution costs totalling €1,410.

In the second case, the circumstances were similar. Mr Thomas Nolan who acted as a presenter in relation to the filing of documents with the Companies Registration Office had submitted five annual returns which purported to attach signed independent auditors' reports in respect of the financial statements of Elaborate Homes Ltd. and Bodie Developments Ltd. over a number of years. However, the named auditor had neither done nor been engaged to do any of these audits. Having pleaded guilty to the five prosecution charges on 28 September 2006, the Court convicted Mr Nolan on two charges and took the remaining three charges into account in imposing fines totalling €3,200.

The ODCE will continue to give priority to the investigation and prosecution of cases involving the provision of materially false information in purported compliance with a provision in the Companies Acts due to the potential impact which these practices have for increasing market risk for all company stakeholders.

Our 2005 Annual Report also adverted to the initiation for the first time of ODCE criminal proceedings under section 243 of the 1990 Act which prohibits the falsification of company documents and their use. Reference has been made above to the fact that this prosecution was successfully concluded in 2006 and that the company director was convicted and fined.

Failure by Person Disqualified abroad to disclose that Disqualification

In updating corporate regulation in Ireland's open trading economy, the Company Law Enforcement Act 2001 introduced a provision whereby a person who stands disqualified in another jurisdiction is required to disclose

that disqualification on becoming a director of an existing Irish company²⁰ or a newly incorporated company²¹. The details which must be disclosed to the Companies Registration Office are:

- the jurisdiction in which s/he is so disqualified,
- the date on which s/he became so disqualified, and
- the period for which s/he is so disqualified.

The immediate effect of disclosure is that the disqualified person is permitted to act as a director in the State on the basis that this information allows creditors and others to assess the risk of doing business with the company and person involved.

Illustration 3.2.2: Prosecution of a Person who had failed, on appointment as a director in the State, to disclose his continuing disqualification elsewhere

In 2005, the ODCE initiated prosecution proceedings against a Mr John Francis Xavier O'Brien who was deemed to be disqualified arising from his failure to disclose his continuing disqualification as a director in England and Wales. Mr O'Brien, a former chief executive officer of a gas and exploration company listed on the London Stock Exchange known as Alliance Resources plc, had been disqualified for seven years by virtue of an Order made by Southwark Crown Court on 11 February 2000 in proceedings entitled "Regina - v - John Francis Xavier O'Brien". The UK disqualification followed convictions for forgery and false accounting offences for which he received a 15 months' custodial sentence.

In the ODCE proceedings, Mr O'Brien was charged with contravening section 161(1) of the Companies Act 1990 in acting as a director of two Irish companies, Barnabrow Cottages Limited and Self Build Planning Services Limited, while subject to a deemed disqualification. As Mr O'Brien pleaded not guilty, the charges were heard in full before Middleton District Court on 2 March 2006.

Having heard the evidence, the Court convicted Mr O'Brien, fined him €1,900 on each charge and ordered him to pay prosecution costs of €1,000. The Court also ordered that his disqualification from acting as a director in the State be extended to 1 January 2008.

It is important for creditor protection reasons that on their appointment as a director in the State, there is full disclosure by persons who stand disqualified from acting as a director in another jurisdiction.

Where, however, a person fails to notify his/her disqualification in the foreign jurisdiction or provides materially false or misleading information, then the person is deemed to be disqualified from acting as a director²². The period of disqualification in Ireland expires at the same time as that stipulated by the foreign jurisdiction²³.

However, any person convicted of an offence of acting while deemed to be disqualified is liable to have his/her disqualification period extended by ten years as well as bearing the financial and other penalties which may be imposed by the Court²⁴.

In 2006, a director of two Irish companies was convicted of acting while disqualified having failed to disclose his continuing foreign disqualification on appointment. The details of the case are outlined in the accompanying **Illustration 3.2.2.**

²⁰ Section 195(8) of the Companies Act 1963 as amended by section 91(a) of the Company Law Enforcement Act 2001.

²¹ Section 3A of the Companies (Amendment) Act 1982 as amended by section 101 of the 2001 Act.

²² Section 160(1A) of the Companies Act 1990 as amended by section 42(b) of the 2001 Act.

²³ Section 160(1B) of the Companies Act 1990 as amended by section 42(b) of the 2001 Act.

²⁴ Section 161 of the Companies Act 1990.

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

The Companies Acts contain many provisions where the freedom of company stakeholders to act is prohibited or restricted in order to protect the integrity of commercial relations and reduce the risk attaching to the creditors, employees and investors of the companies involved. The following paragraphs discuss some of the cases dealt with by the Office in 2006 where company stakeholders ignored the public interest protections imposed on them by law.

Restricted Persons acting in breach of the Statutory Conditions

The current list of persons restricted by the High Court stands at some 700 persons, and the Office continues to monitor as part of its detection function the extent to which the restricted individuals comply with the statutory conditions applying to restriction in any future company of which they are or become a director.

It is a matter of continuing surprise to the Office that it is regularly detecting directors who fail to abide by the company capitalisation criteria associated with their restriction contrary to section 161 of the 1990 Act. After convictions in 2004 and 2005, convictions were again secured in 2006 in respect of three individuals, and in one case, the Court determined that the breach merited the imposition of suspended six months' sentences. All three individuals were also disqualified for periods ranging from three to five years as a consequence of their conviction. In another similar case, the Probation Act was applied to two individuals in respect of two charges thought to be proven.

As indicated earlier, the Circuit Court heard an appeal for the first time against the imposition in 2005 of a six month suspended sentence on a company director who had continued to act as a director while in breach of company capitalisation requirements. In this case, the Court decided to rescind the suspended custodial sentence while maintaining the conviction and the associated disqualification of the director for a period of five years.

The ODCE will continue to devote resources to ensuring that the integrity of the restriction regime is preserved and that those deemed by the High Court not to be entitled to serve as company directors on the normal unconditional basis will be sanctioned.

Acting as Auditor while not Qualified or while Disqualified

Under the Companies Acts, only properly qualified and certified persons can act as auditors. It is an offence under section 187 of the 1990 Act to act while unqualified or disqualified. A feature of this type of enforcement case is that many of the persons involved are offering accounting services of some character and could reasonably be expected to be aware of the reserved nature of the auditing function.

In 2006, the ODCE secured convictions on 14 charges against an individual who acted as an auditor while not qualified. A further five charges were taken into consideration. These charges related to eight different companies. Fines totalling €4,000 were imposed, and costs of €1,000 were also awarded against him.

The Acts also prohibit a qualified auditor from acting in a company with which he or she has or has had a business or family connection. The ODCE had one set of proceedings in this area during the year. The Probation Act was applied to five persons in respect of 15 charges thought to be proven, subject to a total of €5,000 in charitable donations being made by the persons concerned. In the case of one of the five persons, this outcome followed an appeal by the defendant to the Circuit Court in respect of convictions which were imposed in respect of three charges at District Court level.

The Circuit Court appeal was made in circumstances where the appellant had been convicted in one District Court of offences under section 187 while the other partners in the same auditing firm were given the benefit of the Probation Act arising from similar charges heard before a different District Judge sitting in a different District Court area. The Circuit Court decided on appeal to quash the conviction and apply the Probation Act instead. As indicated earlier, the ODCE has recommended a change in the law which would further enable similar cases arising from common facts or circumstances to be disposed of in one District Court hearing rather than (as sometimes still happens) their having to be heard in two or more District Court areas. As well as removing the scope for what might be perceived as inconsistent outcomes at District Court level, this change would save Court time and legal costs. It is hoped that the Department of Enterprise Trade and Employment will approve this proposal in 2007 following its consideration by the Company Law Review Group.

Acting as Liquidator while Disqualified

Similar legal restrictions apply in respect of persons acting as liquidators of companies with which they have a business or family connection. This requirement exists in order to secure the independence and integrity of the liquidation process.

The ODCE failed in 2006 to secure the prosecution of a liquidator who was suspected of being disqualified by reason of having acted as an auditor of the same company. The Court dismissed the charge under section 300A of the Companies Act 1963 (as inserted by section 146 of the 1990 Act).

Excessive Directors' Transactions

As indicated in the preceding section of this Report, most of the instances involving excessive directors' transactions are dealt with on an administrative basis. However on occasion, there is sufficient evidence of knowing default or reasonable belief to warrant the taking of prosecution proceedings under section 40 of the 1990 Act.

During 2006, two cases were prosecuted, and the Court gave the two persons involved the benefit of the Probation Act in respect of 11 charges thought to be proven. A third case was ongoing at year-end.

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

The Director takes seriously those cases where it appears that a company or company officer persists in engaging in conduct which is contrary to law.

Persistent Failure to comply with Company Law and Other Requirements

The Director remains anxious to pursue actively parties who abuse or ignore the law and/or seek to avoid being made accountable for their behaviour.

The High Court Inspectors' Report with respect to Ansbacher (Cayman) Limited and related matters was the product of a comprehensive and lengthy inquiry into the Irish business of a company which had been conducted in an illegal and secretive manner over more than two decades. In March 2006, the High Court determined the first of a series of disqualification proceedings against persons who are the subject of adverse findings in the Inspectors' Report. The case in question involved Mr. Pádraig Collery, a person who was criticised for his actions and omissions with respect to Ansbacher (Cayman) Limited and a related company, Hamilton Ross Company Limited. Mr Collery consented to his disqualification under section 160(2)(e) of the 1990 Act, and having considered the findings in the Inspectors' Report, the High Court ordered that he be disqualified for nine years²⁵. A summary of the serious findings placed before the Court in this case is contained in the accompanying **Illustration 3.4.1**.

High Court proceedings against two other persons criticised in the Ansbacher Inspectors' Report were ongoing at end-2006.

In 2006, the Director also secured from the High Court nine other disqualification orders and two restrictions arising out of proceedings undertaken under section 160(2)(h) of the Companies Act 1990 against company directors who had abandoned indebted companies, failed to comply with statutory filing obligations and allowed the companies to be struck off the Register of Companies. Further detail on the cases involved is provided in Section 4 of this Report.

²⁵ The Director of Corporate Enforcement v. Pádraig Collery [2006] IEHC 67. A copy of Ms Justice Finlay-Geoghegan's judgement of 9 March 2006 is available on the Court Decisions section of www.odce.ie/en/court_disqualifications.aspx or at www.bailii.org/ie/cases/IEHC/2006/H67.html.

Illustration 3.4.1: Findings of the Ansbacher High Court Inspectors relevant to the disqualification of Mr Pádraig Collery for nine years

The Inspectors' Report (pages 489-491 and 500 and 501) concluded that both Ansbacher (Cayman) Ltd. and Hamilton Ross Company Ltd. had knowingly engaged in business in the State over a prolonged period without conforming to specific requirements in the Companies and Central Bank Acts. The Inspectors also concluded that there was evidence tending to show that both companies breached tax law and the general criminal law and facilitated widespread tax evasion by their clients.

Insofar as Mr Collery was concerned, the Inspectors concluded in their Report (paragraph 29.12) that there was evidence tending to show that:

- “1. From 1989 to May 1994, Mr Collery assisted Ansbacher in carrying on an unlicensed banking business, in breaching Sections 352, 353, 355 and 357 of Part XI of the Companies Act, 1963, in evading tax due on its own activities and in assisting others to evade tax.
2. From 1989 to May 1994, Mr Collery knowingly assisted Ansbacher in conducting its affairs in the State so as to defraud a creditor of some of its clients, namely the Revenue Commissioners.
3. From late 1992/early 1993 to 1995, Mr Collery also knowingly assisted Hamilton Ross in operating its unlicensed banking business in Ireland, in its breaches of Sections 352, 353, 355 and 357 of Part XI of the Companies Act 1963, in evading tax due on its own activities and in carrying on business in the State in such a manner as to defraud a creditor of some of its clients, namely the Revenue Commissioners.
4. From 1989 to 1995, Mr Collery may have committed:
 - a) the common law offence of conspiracy to defraud, and
 - b) the offence of knowingly aiding, abetting, assisting, inciting or inducing another person to make or deliver knowingly or wilfully any incorrect return, statements or accounts in connection with their tax contrary to the provision of the appropriate tax legislation now consolidated in Sections 1056 and 1078(2) of the Taxes Consolidation Act, 1997.”

Conclusion

It is clear that the ODCE made further progress in developing its enforcement-related activities in 2006. A range of civil and criminal matters were pursued, and a number of them constituted new initiatives. The Office will continue to develop as best as possible its enforcement work in 2007 within existing resource and other constraints.