

Office of the Director  
of Corporate Enforcement

*Oifig an Stiúrthóra um  
Fhorfheidhmiú Corparáideach*

Annual Report | 2005

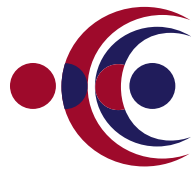


printed on recycled material

[www.odce.ie](http://www.odce.ie)

# Contents

Foreword by the Director of Corporate Enforcement	3
Introduction	4
Goal 1 - Encouraging Compliance with the Companies Acts	5
Goal 2 - Uncovering Suspected Breaches of Company Law	11
Goal 3 - Prosecuting Detected Breaches of the Companies Acts	22
Goal 4 - Sanctioning Improper Conduct relating to Insolvent Companies	30
Goal 5 - Providing Quality Services to Internal and External Customers	37
Conclusion	43
Appendices	46



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

# Foreword

Pursuant to section 16(1) of the Company Law Enforcement Act 2001, I am pleased to present Mr Mícheál Martin, T.D., the Minister for Enterprise Trade and Employment, with my Office's Annual Report for 2005.

Last year's highlights for the Office included:

- a new focus on civil enforcement actions. 21 company officers were disqualified in 2005 following legal proceedings initiated by the ODCE. This represents a substantial increase on the three individuals disqualified by the Office in 2004;
- the improved recording in the Register of Disqualified Persons of persons deemed to be disqualified. Following co-operation between the ODCE, the Courts Service and the CRO in 2005, the Register now contains the identity of over 1,000 disqualified persons compared with just ten names at the end of 2004;
- the continuing success in prosecuting company law offences. 2005 saw 112 charges being determined by the District Court in 19 cases (99 charges and 20 cases respectively in 2004). These resulted in 49 convictions with an extra 28 charges being taken into account, while 35 other charges were thought proven in the context of the Court applying the Probation Act;
- the near 70% rise in the fines imposed by the District Court in conjunction with the convictions (some €35,700 in fines last year relative to €21,550 in 2004);
- the substantial pipeline of enforcement work (20 civil and nine criminal proceedings) which is now before the Courts;
- the continuing restriction of a minority of the directors of insolvent companies in liquidation. In 2005, a further 145 directors were restricted on foot of actions taken by liquidators in compliance with their company law duties;
- the 21% increase in the volume of alleged misconduct reported to the ODCE in 2005. Notwithstanding an improved throughput of cases last year, some 1,000 are now on hands for evaluation at year-end;
- the exponential growth in traffic to the ODCE's



Paul Appleby, Director

website and its continuing value as an information resource for compliance and enforcement assistance. Visits increased by 53% in 2005 to almost 179,000;

- new market research suggesting that about 75% of company directors, accountants and liquidators rate the ODCE as effective in discharging its remit.

I want to thank in particular the marvellous contribution of my staff in achieving these significant results. Their commitment and hard work continue to support our ongoing efforts to improve the quality of the environment for corporate activity in the State.

There were many others who also contributed to this success. Professional auditors and liquidators and their professional bodies were again to the fore in fulfilling their statutory reporting duties to the Office and assisting us with follow-up enquiries. Regulatory authorities and the general public have also been availing of ODCE services to an increasing extent, and this is a welcome development in our efforts to extend the compliance and enforcement message to a wider constituency.

I also want to acknowledge the Oireachtas, the Government, the Courts and the Ministers and staff in the Department of Enterprise Trade and Employment who have supported our remit and ongoing work. Consistent with our ambition to do more as an Office, we are hoping that our request for 20 extra staff will receive a positive response shortly.

Finally, there were many other State, business and private interests who assisted us in 2005. We hope that this support will continue this year.

Our collective aim as an Office in 2006 is to improve further the standards of legal compliance with the Companies Acts in the overall public interest.

**Paul Appleby**  
**Director of Corporate Enforcement**  
**31 March 2006**

## Copyright and Disclaimer Statement

The contents of this document are the copyright of the Director of Corporate Enforcement.

Nothing herein should be construed as a representation by, or on behalf of, the Director of Corporate Enforcement as to his understanding or interpretation of any of the provisions of the Companies Acts 1963 to 2005 or as to the interpretation of any law. Independent legal advice should be sought in relation to the effects of any legal provision. The Director of Corporate Enforcement accepts no responsibility or liability howsoever arising from the contents of this publication or any errors, inaccuracies or omissions in the contents of this document. The Director reserves the right to take action, which may or may not be in accordance with the provisions of this document.



# Introduction

The present Strategy Statement of the Director of Corporate Enforcement for the 2003 - 2005 period 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 2005 by reference to each of these goals and sub-goals.

# Goal I - Encouraging Compliance with the Companies Acts

## Introduction

In 2005, the Director of Corporate Enforcement and his staff continued to promote compliance with the requirements of the Companies Acts, and they also contributed to the development of policy and practice vis-à-vis corporate governance frameworks.

## Sub-Goal I.1: Publishing Accessible Company Law Information

### Information Notices

It is the practice of the Director to bring to public attention significant developments in the company law field. The Office issued three Information Notices during the year<sup>1</sup>. These:

- listed the companies in insolvent liquidation for which a liquidator's report was received by the Director of Corporate Enforcement and in respect of which a decision to grant full relief or relief "at this time" issued in 2004. The purpose of this Notice was to inform the public of the companies where the liquidators had been absolved of an immediate requirement to issue High Court proceedings for the restriction of the relevant company directors (Information Notice I/2005/1);
- summarised the effect of the amendments to company law contained in Parts 3 to 6 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (Information Notice I/2005/2). This Notice dealt in particular with:

- Miscellaneous Investment Fund Amendments to Part XIII (Investment Companies) of the Companies Act 1990 (Part 3 of the 2005 Act),
- Market Abuse, by providing a framework for the implementation in Irish law of recent EU market abuse legislation<sup>2</sup> in amendment of Part V (Insider Dealing) of the Companies Act 1990 (Part 4 of the 2005 Act),
- Public Offers of Securities, in particular the implementation in Irish law of recent EU prospectus legislation<sup>3</sup> in amendment of Part III of the Companies Act 1963 (Part 5 of the 2005 Act) and
- Miscellaneous Company Law Provisions affecting in particular the remits of the Registrar of Companies and the ODCE (Part 6 of the 2005 Act);

- informed auditors in particular that the requirement on them to report annual return defaults to the ODCE was removed with effect from 1 September 2005 as a result of the commencement on that date of Section 37(d) of the Companies (Auditing and Accounting) Act 2003 (Information Notice I/2005/3).

The 2005 Act has conferred on the Financial Regulator primary responsibility for market abuse on the main ISEQ market and for prospectuses from mid-2005. However, the ODCE has temporarily retained responsibility for the investigation and enforcement of insider dealing in respect of the smaller Irish Enterprise Exchange (IEX) market, pending the application of the legal provisions on market abuse to the IEX under which it is envisaged that this function will in due course be transferred to the Financial Regulator.

Information Notice I/2005/3 was significant in that some 80% of indictable offence reports made by auditors to the ODCE have related to annual return defaults. However as these defaults were primarily a matter for enforcement by the Registrar of Companies, most of these reports were forwarded to him for attention.

<sup>1</sup>These Information Notices are available at <http://www.odce.ie/publications/information.asp>. The primary and secondary legislation associated with a number of these Notices are also accessible via the ODCE website.  
<sup>2</sup>The relevant instruments are Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003, Commission Regulation (EC) No. 2273/2003 of 22 December 2003 and three Commission Directives - 2003/124/EC of 22 December 2003, 2003/125/EC of 22 December 2003 and 2004/72/EC of 29 April 2004.  
<sup>3</sup>The relevant instruments are Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 and Commission Regulation (EC) No. 809/2004 of 29 April 2004.

Accordingly while this provision will eliminate an unnecessary reporting obligation on auditors and thereby reduce over time the number of auditor reports made to the ODCE, it will otherwise have little effect on the real focus of enforcement activities in the Office.

### Decision Notices/Consultation Papers

In anticipation of a more substantive change to the auditor reporting requirement which would oblige auditors to assist the Director with information relating to any indictable offence report submitted to the ODCE, the Director initiated in 2005 an update of Decision Notice D/2002/2 dealing with the Duty of Auditors to Report to the Director of Corporate Enforcement. This guidance was originally issued in conjunction with the Auditing Practices Board<sup>4</sup> (APB), and the Director and his staff are currently working closely with the Consultative Committee of Accounting Bodies - Ireland (CCAB-I) and the APB on revising this Notice. The updated Decision Notice will also reflect the recent move to International Standards on Auditing by the auditing profession.

Towards the end of 2005, the Office also developed a draft Consultation Paper on the pending legal requirement for certain public limited companies, large private companies and relevant undertakings to have an Audit Committee<sup>5</sup>. This Paper will be issued for public comment early in 2006.

The Director and his staff have also commenced a review of the seven Information Books forming part of Decision Notice D/2002/1. These outline the principal powers and duties of companies, company directors and various other parties under the Companies Acts. The Books are being updated to reflect a number of changes in Irish companies legislation since their original publication and to incorporate a number of helpful suggestions which users of the Books have made over the last three years to the ODCE as to how their content could usefully be enhanced.

### Website Development

Throughout 2005, the Director and his staff continued to ensure that new legislative and other material of interest in a compliance and enforcement context was included promptly on the ODCE website.

<sup>4</sup>Auditing Practices Board Bulletin 2002/1.  
<sup>5</sup>Section 42 of the Companies (Auditing and Accounting) Act 2003

## Sub-Goal 1.2: Promoting Compliance

### Advocacy Work

The ODCE delivered some 58 presentations in 2005 to a combined audience of over 3,000. The details are contained in Appendix 1.2.1 to the Report. These presentations are an important part of the ODCE's compliance efforts with respect to the requirements of Irish company law. An Office presentation, entitled "Corporate Health Check" and identifying a few key company law compliance issues has proven to be popular with company directors and was regularly given in 2005 on its own or as part of a wider presentation on the ODCE's role. The work of the Office was also outlined on occasion to an international audience, e.g., at the Ninth Annual Irish European Law Forum.

During 2005, the Office extended its target audience and included in its advocacy programme the community and voluntary sector whose members often deliver their activities through the medium of companies. As a result of the ODCE becoming part of the syllabus on business courses at third level and in postgraduate courses, Office staff also participated



The Contributors<sup>6</sup> to the Ninth Annual Irish European Law Forum in Newman House, December 2005

<sup>6</sup>The pictured contributors are:  
Back Row (L-R): Dan O'Keefe SC, Chairman, Irish Takeover Panel; Professor Klaus J Hopt, Director, Max Planck Institute for Private Law, Hamburg; Paul Appleby, Director of Corporate Enforcement; David Devlin, European Corporate Governance Forum; Professor Gerard Hertig, Swiss Federal Institute of Technology (ETH Zurich); Professor J A McCahery, University of Amsterdam; Professor Jonathan Rickford, British Institute of International and Comparative Law; Professor Paul Davies, London School of Economics.  
Front Row (L-R): Dr Blánaid Clarke, UCD School of Law; Professor Janet Dine, Queen Mary University of London; Professor Paul O'Connor, Dean, UCD School of Law; Professor Eilis Feeran, University of Cambridge; Professor Irene Lynch-Fannon, University College Cork.

in 2005 in lecturing students on the background to the ODCE, as well as on its current activities and future plans.

A particular feature of ODCE advocacy work in 2005 was the number of presentations made to Revenue staff. This followed the Memorandum of Understanding which

was agreed between the Office and Revenue management in late 2004 which defined the operational arrangements for the sharing of confidential information between both Offices as permitted by law. An acknowledgement of the value of a closer working relationship between the ODCE and Revenue is contained in the accompanying recent letter from Revenue.





Press Statements, Briefings and Queries

The Director issued five press statements in 2005. The details are contained in **Appendix 1.2.2** to the Report.

The Director and his staff also dealt with about 100 press queries during the year on various aspects of the Office’s remit.

Public Enquiries

The Office dealt with an increasing number of public enquiries in 2005, the majority of these by phone or e-mail. Many enquiries were from members of the public with concerns as to the operation of companies in areas such as property management, as well as from company directors seeking more information about their rights and duties.

As a matter of policy, the Office does not dispense legal advice on an individual basis, but it does direct callers to relevant sources of information, including where appropriate the ODCE’s own Information Books. Demand for these Books continues to be strong, and over 12,000 copies were distributed in 2005 which represented a substantial increase on the 8,000 or so issued in 2004.

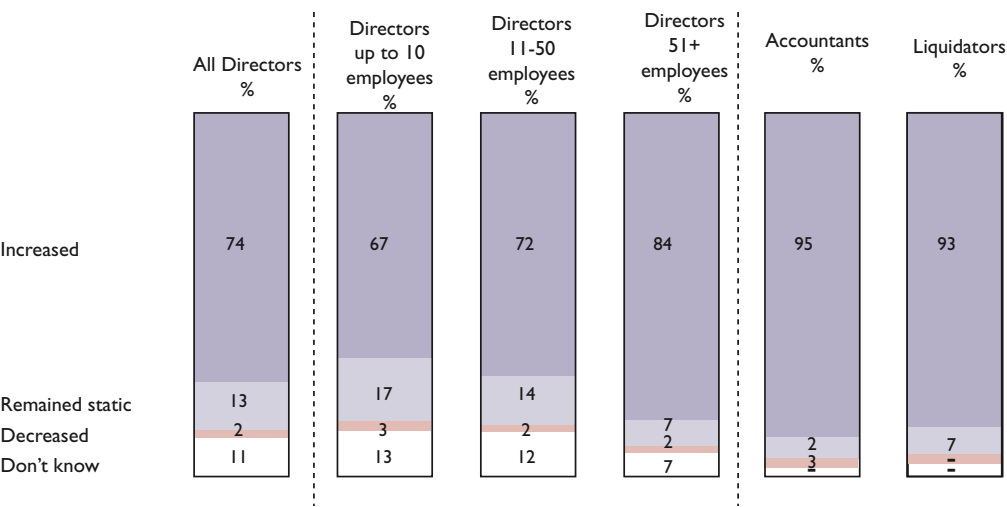
Market Research

The ODCE commissioned market research from Millward Brown IMS in late 2005. The research results indicated that 74% of all directors surveyed believed that the company law compliance environment has improved over the past five years. For accountants and liquidators, the corresponding figure was about 95%. **Illustration 1.2.1** contains further information on these results.

For directors, the research revealed that the main reason for the improved compliance was the increased publicity with respect to compliance and a greater awareness of the need to comply with company law. Accountants and liquidators primarily attributed the improvement to the establishment of the ODCE. The Director and his staff regard these results as encouraging and welcome.

Other findings of this research are contained in later sections of this Report.

Illustration 1.2.1 - 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 5 years?

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

Directors’ Compliance Statements

Following the publication of the Revised Guidance on Directors’ Compliance Statements (DCS) in December 2004, the Office continued its work of publicising the DCS requirements in early 2005.

On 21 April 2005, the Government announced that it was referring the provision<sup>7</sup> to the Company Law Review Group (CLRG) for a review of its “proportionality, efficacy and appropriateness”. The Group was asked to conduct its analysis and structure its report consistent with the model of regulatory impact analysis developed by the Working Group on Regulatory Impact Analysis.

During the CLRG’s work, the Director contributed with his colleagues to the development of the Group’s Report<sup>8</sup>. The Director’s views are contained in the completed Report which was forwarded to Mr Michael Ahern, T.D., the Minister for Trade and Commerce, by the deadline of 31 July. The recommendation of the majority of the CLRG subsequently formed the basis of a Government decision on 1 December to substantially modify the existing requirement.

The Government decision will require an amendment to the current provision, and no definitive timetable for the enactment and commencement of the revised provision is yet available. The Director will consider the need for further Revised Guidance at a later date.

Company Law Review Group

Although the review of the Directors’ Compliance Statement took up a significant portion of the CLRG’s time in 2005, it also met on several occasions to further its wider remit. As a member of the CLRG, the Director continued to work with his fellow members in advancing its key project, the proposed Companies Consolidation Bill. The Group made good progress on this initiative in 2005.

Irish Auditing and Accounting Supervisory Authority - Interim Board

As a member of the Interim Board of the Irish Auditing and Accounting Supervisory Authority, the Director contributed to the deliberations of the Interim Board during 2005. Following the completion of a number of statutory and other preconditions, the Authority was formally established as a public company by year-end, paving the way for the start of its auditing and accounting supervisory activities in early 2006.

Restrictive Practices (Groceries) Order 1987

During 2005, Mr Mícheál Martin, T.D., the Minister for Enterprise Trade and Employment, launched a consultation process on the recommendation in the Consumer Strategy Group Report<sup>9</sup> that the Restrictive Practices (Groceries) Order 1987 banning ‘below-cost selling’ be revoked. In a submission to the Minister’s Department in July, the Director drew attention to some of his concerns in relation to the reported practice of ‘off-invoice discounts’. He referred in particular to subsections (1), (2), (3) and (4) of section 202 of the Companies Act 1990 which specify the requirements for the keeping of proper books of account by companies.

The subsequent Report<sup>10</sup> by his Department led to the Government deciding that the Order should be revoked. Section 6.14 of the published Report concluded by expressing the view that there was little doubt but that the Order encouraged the practice of off-invoice discounting and that particular weight should be attached to the views of the Director of Corporate Enforcement in this regard. The Director’s views, as quoted in section 6.10 of the Report, included the following:

“...if - as I understand it - a practice has developed whereby certain invoices are drawn up on a basis which suggests that a different form of transaction is recorded to that which actually occurs in practice, it seems to me that, in some instances at least, there may be potential breaches of Section 202. In other cases, it seems conceivable that even if no criminal breach of Section 202 occurs, the company’s books and records may be less than fully reflective of the true form and substance of the company’s

<sup>7</sup>Section 45 of the Companies (Auditing and Accounting) Act 2003.  
<sup>8</sup>A copy of the CLRG Report on the Directors’ Compliance Statement is available at [www.clrg.org](http://www.clrg.org).  
<sup>9</sup>The Consumer Strategy Group Report entitled ‘Making Consumers Count’ is available at [www.irishconsumer.ie/report/index.html](http://www.irishconsumer.ie/report/index.html).  
<sup>10</sup>The Report entitled ‘Restrictive Practices (Groceries) Order 1987 – A Review and Report of the Public Consultation Process’ is available at [www.entemp.ie/commerce/consumer/groceriesorderreport.htm](http://www.entemp.ie/commerce/consumer/groceriesorderreport.htm).

transactions. From a company law perspective, it is difficult to see how that can ever be advantageous.

...it does seem desirable to us that if the Order is being retained, it should be amended to remove any direct or indirect inducements therein which may lead companies to cause their primary books and records (including invoices) to be kept on any form of artificial basis.”

## International Association of Insolvency Regulators

As a member of the International Association of Insolvency Regulators (IAIR), the ODCE continued to contribute to the development of the Association as a forum for international research and co-operation in insolvency matters. In 2005, the ODCE contributed inter alia to the preparation of a Report on Assetless Insolvencies<sup>11</sup>. The Report is a useful survey of the alternative approaches adopted in various jurisdictions to the need in the public interest to investigate and curb the development of insolvency situations constituting potential misconduct.

The IAIR Annual Conference in Helsinki which was attended by the Director and a staff member agreed a number of further research topics for the 2005/2006 period, and the ODCE contributed in late 2005 to that dealing with the treatment of student loans in personal insolvency situations. These reports will be considered at the IAIR's Annual Conference in 2006.

## GRECO Review of Ireland's Capacity to Combat Corruption

The ODCE participated in two international peer reviews of Ireland's administrative and legal systems in 2005. One was undertaken by an evaluation team from GRECO (Groupe d'États contre la Corruption), a group of 40 Member States from the Council of Europe which is committed to improving its Members' capacity to combat corruption. One of the themes of the recent evaluation was legal persons and corruption. The subsequent Report on Ireland was adopted by GRECO in December 2005<sup>12</sup>.

In the company law field, the Report notes inter alia the respective roles of the ODCE and the Companies Registration Office (CRO), the requirement on auditors to report suspected indictable company law offences to the ODCE for investigation and the latter's success in prosecuting offences relating to accounts and other documentary irregularities. The Report also compliments the legal provisions which serve to restrict and disqualify persons from acting in leading positions in companies arising from findings of misconduct in court proceedings. It does however urge the Irish Authorities to consider:

- strengthening the material checking function of the Companies Registration Office with regard to confirming the accuracy of filed information, in particular with regard to the identity of persons behind a company;
- increasing the penal sanctions for accounts offences in order to ensure that the available sanctions are effective, proportionate and dissuasive.

## Review of Ireland's Compliance with FATF Recommendations

The ODCE also participated in a peer review which was undertaken by the OECD's Financial Action Task Force (FATF). This review focused on compliance by Ireland with the FATF's 40 Recommendations and its nine Special Recommendations combating money laundering and terrorist financing respectively. Recommendation 33 urges access by competent authorities to adequate, accurate and timely information on beneficial ownership and control in respect of legal persons such as companies. The subsequent FATF Report on Ireland was adopted in February 2006<sup>13</sup>.

Having outlined the relevant provisions in Irish company law and elsewhere, the FATF Report states inter alia that the information on the directors and members of companies which is filed in the CRO is taken at face value and that no verification is carried out. It also notes that nominee directors and corporate/

trustee members are permitted so that the CRO Register will not necessarily disclose the true beneficial ownership and control of a company. While acknowledging that the Garda and the ODCE have certain legal powers at their disposal to investigate beneficial ownership and control and that these powers have been successfully employed in the past, the Report only rates Ireland as 'partially compliant' with Recommendation 33. It accordingly recommends that the Irish Authorities take measures to improve transparency in the area by providing for the recording of the requisite information, so that it can be made available to competent authorities on request.

## Other International Visitors

The Office also briefed a number of foreign visitors on the role and activity of the ODCE. These included:

- a delegation from the Iraqi Government whose visit was facilitated by the Government at the request of the World Bank and
- a delegation from the Ukraine examining corporate governance structures which was also sponsored by the World Bank.

## Conclusion

As evidenced by the market research undertaken by the ODCE in late 2005, the work of the Office in promoting compliance has helped to improve corporate governance standards and in particular compliance with the legal requirements of the Companies Acts. The following sections of this Report indicate however that there is still substantial work to be done before compliance with the law and duty can be said to be more or less universal.

# Goal 2 - Uncovering Suspected Breaches of Company Law

## Introduction

The Office continued in 2005 to receive a large number of reports and complaints of suspected corporate misconduct. Once again, those received from auditors, professional bodies and many State and regulatory authorities were quite specific in identifying the suspected company law offence(s). Unsurprisingly, those complaints made by the public tended to be less well defined in identifying the relevance of the alleged misconduct to the Companies Acts. In addition, ODCE staff themselves detected company law issues requiring attention. These included targeted enquiries in a number of areas (e.g., restricted directors acting in breach of the terms of their restriction and directors disqualified in other jurisdictions acting in the State in the absence of the registration of their disqualification) and the assessment of information in the public domain, such as media reports and filings in the Companies Registration Office. (See footnotes 54 and 55 in a later section of the Report for explanations of the terms restriction and disqualification respectively.)

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

### Number/Sources of Suspected Breaches

Some 2,373 reports and complaints were received in 2005, a 21% increase on the equivalent result for 2004. As usual, the majority (1,965) were from auditors, although the general public continued to be the source of a significant minority. A breakdown of the reports by source is outlined in **Appendix 2.1.1**.

<sup>11</sup>A copy of the Assetless Insolvencies Report is at <http://www.insolvencyreg.org>

<sup>12</sup>A copy of the GRECO Report is available at <http://www.greco.coe.int>

<sup>13</sup>The FATF Report is expected to be published in the first half of 2006.



## 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, the law also permits such regulators to share information where it is of relevance to the remit of another. The cooperation arrangements in place with the Financial Regulator, the Irish Stock Exchange and the Revenue Commissioners in particular were used frequently in 2005.

The Irish Stock Exchange submitted 13 reports of suspected breaches of the Companies Acts to the ODCE in 2005. Many of the reports which have been submitted by the Exchange to date relate to missed notification deadlines involving share purchases or disposals by the directors of listed companies. In most cases, the size of the transaction was small and/or the notification was only marginally late, and in such situations, the ODCE has taken the view that enforcement action was not warranted. However, the area is being kept under review, and if a material default arises in any case, enforcement action will be considered.

The cooperative relationship between the ODCE and the Revenue Commissioners was further developed during 2005. Reference was made earlier to the successful programme of presentations given by the ODCE to Revenue staff, and this resulted in some 12 reports being received on their initiative from Revenue by year-end.

A small number of cases also gave rise to contact with the Financial Regulator in 2005, and ODCE enquiries into a number of these were ongoing at year-end.

Separately, the ODCE sought and received cooperation in relation to its examination of a number of issues, particularly those relating to insolvent companies where Revenue would be a significant creditor. The arrangements have also enabled the Office to pass on relevant information to the Revenue, including the wider corporate interests of persons known to be of interest to Revenue.

A useful two-way flow of information also occurred in 2005 between the Garda members of the Office and their colleagues in the Garda Bureau of Fraud Investigation and in other areas of the force. Some 350 company and related enquiries were made.

The staff of the Companies Registration Office (CRO) also continued to be of substantial assistance, not only in keeping the Register of Companies up to date but also in retrieving and certifying filed original documentation for use by the ODCE in Court proceedings.

A small number of contacts on individual cases also took place with the Department of Social and Family Affairs, the Pensions Ombudsman and the Employment Rights Section of the Department of Enterprise Trade and Employment.

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

The nature of the matters reported in 2005 was quite similar to previous years in respect of both mandatory and voluntary reporting.

### Nature of Issues identified in Mandatory Reports

The 1,992 mandatory reports received in 2005 disclosed some 15 suspected offences under the Companies Acts. **Appendix 2.2.1** to this Report outlines the nature of the offences reported to the Office in any meaningful numbers in 2005 relative to the previous year's outturn.

The following five offences represented almost 98% of those reports:

- almost 2,000 offences (or slightly more than 80% of the total number of suspected offences reported in mandatory reports) involved the suspected failure to file on time annual returns with the Registrar of Companies. As reported earlier, the obligation to report such offences ceased<sup>14</sup> in September 2005, and accordingly, the volume of such reports should decline dramatically in the future. Helped by prior ODCE notifications to auditors, the incidence of these reports did diminish significantly in the last four months of 2005, although the ODCE still received over 150 such reports in that period;
- 342 instances (or some 14% of the total) involved the reported excessive use of company assets for

the personal purposes of directors and connected persons. The associated sums amounted to over €80 million;

- over 60 instances of suspected failure to keep proper books of account in companies were received (about 2.5% of the total). This obligation is fundamental to the maintenance of a sound individual and collective structure for corporate affairs, and accordingly, the question of enforcement action is seriously considered in each such case;
- some 16 cases (or almost 0.6% of the total number of reported offences) were notified in respect of the alleged failure of companies and their directors to hold an extraordinary general meeting (EGM) where the company's assets/liabilities ratio was reduced to 50% or less. The incidence of these reports continues a downward trend evident from 2003 when there were 92 such reports. The welcome improvement suggests that the relevant companies may now be acting by way of an EGM to consider their weak capital positions;
- a further 16 reports dealt with the reported offence of there being no Irish-resident director. It is ODCE practice to refer these cases to the CRO for attention.

### Nature of Issues identified in Voluntary and Other Reports

Many public complaints regularly report some general suspicion of misconduct on the part of a company or its directors. The ODCE assessment of these complaints is focused on the identification of a company law dimension. Where it is clear that the default arises under other legislation, it is ODCE practice to advise the complainant to refer the matter to the relevant authority for their attention. Likewise, the ODCE will almost invariably urge the complainant to contact his/her professional advisers for advice as to whether and/or how they should seek to avail of their private law remedies, where it appears that their concerns do not disclose any significant breach of public law requirements but that a remedy may exist in the sphere of private law.

Notwithstanding the difficulty of categorising the nature of these complaints and reports, **Appendix 2.2.2** provides information on the type of issues coming to attention under this heading. The following eight main areas constituted close to 78% of the issues raised:

- complaints alleging fraudulent, reckless or insolvent trading (62 cases);
- cases involving debt owed by companies to the complainant and/or other parties (61 cases);
- non-compliance with CRO filing requirements (35 cases);
- issues relating to perceived shareholder grievances (28 cases);
- the submission of forged or false documents to the CRO in particular (27 cases). This represents a doubling of the reported instances for 2004;
- companies trading whilst struck off the Register of Companies (26 cases);
- matters relating to a failure by company directors in particular to discharge their statutory duties which sometimes is the result of a lack of understanding of the requirements of the Companies Acts (26 cases);
- the failure to hold annual or extraordinary general meetings of the company (12 cases).

### Throughput of Cases

**Appendix 2.2.3** provides the key data in relation to the progress of the Office in 2005 in determining the cases on hands at detection stage. In summary, the ODCE concluded its deliberations on 2,111 cases representing some 73.5% of the 2,872 cases received and on hands in 2005. The corresponding closure figure for 2004 was 66.7%. In addition, a further 154 cases were referred for more detailed investigation of the prospects for possible civil or criminal proceedings.

The substantial increase in the numbers of concluded cases is explained in part by the rise in filing default cases referred to the CRO. However, there was still a significant increase in the numbers of other cases disposed of following assessment by ODCE staff. Notwithstanding this discernible improvement in

<sup>14</sup>Section 37(d) of the Companies (Auditing and Accounting) Act 2003



throughput, some 607 cases were on hands at the end of 2005, a significant increase on the 499 on hands at end-2004. This increase is primarily due to an insufficient number of staff being available to handle the large volume and complexity of reports and complaints being received by the Office on an ongoing basis.

It is a matter of continuing concern that it tends to be the more complex or resource-intensive cases which are not receiving timely attention. At end-2005, more than 350 were on hands for more than a year. About half of these cases relate to excessive directors' transactions. In 2005, the Office gave administrative priority to these reported offences with a view to securing rectification of the reported defaults or identifying those of them warranting civil or criminal enforcement proceedings. Significant progress was made during the year in achieving rectification of the associated defaults. Over 250 cases involving transactions to a value of more than €40 million were assessed, and some 700 directors were cautioned in respect of their improper use of company funds. In many of these cases, the loans were repaid to the company with consequent benefits for company stakeholders in reduced credit risk. Nevertheless, some 320 further cases remain on hands at the end of the year. The value of the associated transactions in these cases is about €176 million.

### Manner of Disposal of Cases

The accompanying **Appendix 2.2.4** provides a breakdown of the manner in which the 2,111 cases were disposed of in 2005, distinguishing between those which

were the subject of mandatory and voluntary reports.

Leaving aside those cases referred to the CRO for attention or requiring more detailed investigation by the ODCE, it is perhaps useful to illustrate by way of a number of examples:

- where timely action by the complainant could have prevented the occurrence of the events giving cause for his or her concern and
- where intervention by the Office secured a positive result in terms of remedying the reported breach of the Companies Acts.

As indicated above, the non-payment of debt is a common source of complaint to the ODCE. It is not however a matter for the ODCE to undertake debt collection activity on behalf of third parties; creditors must pursue their own legal remedies in conjunction with their professional advisers as appropriate.

It is common for the ODCE to encounter situations where a little advance research by a creditor could have prevented financial losses and the associated time, expense and aggravation of seeking to pursue a debtor. Before engaging in or continuing a significant trading relationship with a company, creditors should at a minimum examine the financial and other data lodged in the CRO and consider if the filed information is audited and relatively up-to-date. **Illustration 2.2.1** outlines the circumstances of one case dealt with by the ODCE in 2005 where the creditor failed to undertake this research and suffered financial losses in consequence.

### Illustration 2.2.1: Civil Debt Case not warranting ODCE Intervention - Creditors must evaluate their own Trading Risks in advance

A small trader provided credit facilities on a monthly basis to a company in the hospitality sector in a city location. The extended credit grew to €11,500 over a seven month period to the end of March 2005. Shortly thereafter, the trader complained to the ODCE that:

- the company had ceased operations,
- the principals could not be located and
- the company's accounts had not been audited for over two years.

In evaluating the complaint, it was established that the company concerned last made an annual return to the CRO in March 2004 for the financial year ended 31 December 2002. The financial statements associated with that annual return indicated that:

- the company had incurred a loss,
- creditors had increased by 100% from the previous year and
- the net assets were less than half of the amount of its called up share capital.

Moreover, the complainant was unable to provide sufficient assurance to the ODCE that he had in fact traded with the company and not with an unincorporated entity. The Office concluded that the available information did not warrant intervention by the ODCE. While the Office had considerable sympathy for the plight of the complainant, there did not appear to be any viable basis for the consideration of enforcement action under the Companies Acts. While company law provides remedies to deal with instances of insolvent trading, it is not the case that those remedies follow automatically in all cases where a debt remains unpaid.

The lesson from this type of case is that many creditors fail to undertake basic credit checks on their trading partners. In this case, it was clear that a simple examination of the filed documentation in the CRO would have warned the complainant creditor of the risk of continuing to offer credit to the company or the related trading entity. The failure to do so in this instance resulted in this small trader having to bear a significant commercial loss in relative terms.

Occasionally, a person will complain to the ODCE that information which should have been filed in the CRO was not in fact filed. While such inadequacies are primarily a matter for attention by the CRO, the ODCE

will try to encourage rectification if this is feasible in the circumstances. **Illustration 2.2.2** provides an example of an ODCE intervention in 2005 which led to a CRO filing being corrected.

### Illustration 2.2.2: Instance of Administrative Rectification of Inadequate Filing by Medium-Sized Company following the ODCE's Intervention

The ODCE receives a number of complaints from individuals each year relating to the non-filing of complete returns by companies in the CRO. In many of these cases, Office enquiries of the company or its agents are sufficient to resolve the default.

By way of example, a professional person undertook a search of the CRO Register on behalf of a client in 2005. This resulted in his lodging a complaint with the ODCE to the effect that a named company had not made a complete filing in the CRO in respect of the financial period ending 31 December 2003. The complainant asserted that it was his belief that the company was a medium-sized

company<sup>15</sup> and that it had not complied fully with the disclosure requirements necessary for such a company. The company had merely filed an abridged balance sheet and auditor's report with its return, whereas if it were a medium-sized company, it should have also filed a profit and loss account. The Office contacted the auditors of the company in question who subsequently arranged to submit a correctly completed return for the company. The complainant was subsequently advised of the rectification of the default.

In addition, the ODCE will often assist company stakeholders to assert their own rights under company law. **Illustration 2.2.3** provides an example of a successful intervention by the ODCE in 2005 in securing

compliance by a company with its statutory duties to make available to members of the public certain basic information on the company's affairs.

### Illustration 2.2.3: Instance of the ODCE intervening to facilitate the disclosure of Company Information to a Stakeholder

An employment dispute arose between a trade union member and a company providing a community service in the Dublin area. The individual's trade union sought to inspect the register of members/shareholders of the company and its register of directors. The company declined to permit access to both registers.

Subsequently, the trade union and various parties acting for the company contacted the ODCE to clarify the company's legal entitlement to refuse access. The Office drew the company's attention to sections 119 and 195 of the Companies Act 1963 (as amended). Section 119(1) permits any member of the public to inspect the register

of members, while section 195(10) gives similar access to the register of directors.

Following these clarifications, the company afforded the required access to a trade union representative. In subsequent correspondence with this Office, the trade union thanked the ODCE for its assistance and indicated that *"the information gleaned from this documentation is invaluable to us, as we prepare to represent our member in the Employment Appeals Tribunal"*.

<sup>15</sup>Within the meaning of Section 8(1)(b) of the Companies (Amendment) Act 1986.

It is also the ODCE's experience that certain types of companies are more likely to be deficient in holding annual general meetings or calling them in accordance with the requirements of company law. This is most evident in guarantee and not-for-profit companies (e.g., apartment management companies and charities), in private closely owned companies where there are external non-family shareholders and in companies

benefiting from Business Expansion Scheme funding. **Illustration 2.2.4** outlines one such case in 2005 where the ODCE successfully assisted the members of a company to assert their rights under the Companies Acts and thereby influence the future destiny of their company.

### Illustration 2.2.4: Instance of the ODCE assisting the members of a Management Company in asserting their rights to call the directors to account

In October 2005, a resident of an estate contacted the ODCE indicating difficulties in resolving issues with its managing agent. At that point, she was unaware that she and her fellow residents were in fact members of the management company for the estate. The ODCE indicated to her that the members of the company would initially have to pursue their complaints with the company's directors.

Having corresponded without success with the directors in relation to the holding of the company's annual general meeting and the availability of its audited financial statements, the member subsequently made a formal complaint to the ODCE. The Office then wrote to the directors on these same matters but received no response.

Having regard to the lack of progress, the Director exercised his power<sup>16</sup> to direct the holding of an annual general meeting by the company. The direction required that:

- the meeting be held within a defined timeframe,
- specified documentation be circulated to each member and
- the members be advised that the meeting was being called at the direction of the ODCE.

On subsequent examination of the documentation which was issued to members, the Office noted that proxy forms had been withheld, and the ODCE arranged with the company that these forms were posted separately to the members. Immediately prior to the meeting, the directors co-opted an additional director to the board. This director then chaired the annual general meeting of the company, and the 20 members present successfully concluded its business.

Subsequent to the meeting, the member wrote a letter of thanks to the Office for its prompt attention of her complaint. She reported that *"While a lot of questions remain unanswered by the directors, it has commenced dialogue and perhaps now we can move forward"*.

<sup>16</sup>Pursuant to section 131 of the Companies Act 1963 (as amended).

Of course, the ODCE does not always wait for public complaints before identifying an issue suitable for possible intervention. **Illustration 2.2.5** is an example of an issue which was in the public domain. While the primary issues in question did not initially warrant ODCE intervention, the Office continued to monitor the situation relating to the company during 2005. In the second half of 2005, steps were taken to notify the company of its obligations under company law with respect to the proper disclosure of employee numbers in its annual accounts.

### Illustration 2.2.5: Gama Construction Ireland Limited - Instance of the ODCE encouraging future compliance

In Judicial Review proceedings<sup>17</sup> heard by the High Court in April/May 2005, it was stated on behalf of Gama Construction Ireland Limited, an Irish-registered parent company (“the Company”), that it had only one Turkish employee and that several hundred other Turkish persons working on sites operated by the Company (and/or related companies) were seconded employees of a Turkish company to which it was related - Gama Endustri Tesisleri Imalat Ve Montaj AS (“Gama Endustri”). The Affidavit on behalf of the Company added:

“The 2003 accounts [for the Company] contain a note to the effect that GAMA Ireland had 1,066 employees to whom €28,051,524 was paid in the course of 2003. I would however note that this does not involve the acceptance by [the Company] that the employees were other than the employees of GAMA Endustri...”<sup>18</sup>

The Company’s Group Accounts for 2004 were filed in the Companies Registration Office on 28 October 2005. These reiterated that the average number of persons employed by the Company during 2003 had been 1,066 and went on to indicate inter alia that the Company had an average of 1,188 employees in 2004. The relevant note on Company employee and staff costs in these Accounts acknowledged for the first time that these costs included payments made to employees of Gama Endustri who were on secondment to the Company and a related company,

The circumstances of this case are also likely to be relevant to other companies using similar employment practices, and the Director therefore believes that consistent with his compliance function, there is merit in his highlighting the manner in which employment arrangements of a similar type and scale should, in his view, be treated in a company’s financial statements.

Gama-Tubin Construction Ltd.<sup>19</sup>

The manner in which the Company’s Group Accounts reported its staffing arrangements led the ODCE to examine the Company’s compliance with the requirements of the European Communities (Companies: Group Accounts) Regulations 1992<sup>20</sup> (“the 1992 Regulations”). Following correspondence with the Company, the ODCE review has concluded:

- that the Company should clearly record in its Group Accounts the number of persons who were employed under contracts of service by the Company and its subsidiaries<sup>21</sup> and
- that by reason of the high proportion of seconded workers, the Company should separately identify in its Group Accounts the numbers of such persons and provide appropriate information on the associated secondment arrangements, having regard to the overriding requirement that “group accounts must give a true and fair view of the company’s state of affairs”<sup>22</sup>.

Pursuant to its compliance role, the ODCE communicated these views to the Company in late 2005/early 2006, and it has been invited to adopt this interpretation of the ensuing obligations imposed by the 1992 Regulations for the future.

## Goal 2.3: Commissioning/ Supporting Formal Company Investigations

Judicial inquiries and professional examinations of company documentation have been used recently on a reasonably regular basis to investigate suspected misconduct in Irish and foreign-registered companies. As well as requiring the production of documents directly from companies and related persons, the Director’s powers in this area include the acquisition of documents and related material by order of the District Court under search warrant and under the Bankers’ Books Evidence Acts.

### Completed Investigations

#### Ansbacher (Cayman) Ltd.

Previous ODCE Annual Reports have dealt with the developments subsequent to the publication in July 2002 of the High Court Inspectors’ Report with respect to Ansbacher (Cayman) Ltd. and related matters. Having concluded his deliberations, the Director determined in 2005 that there were persons criticised in the Inspectors’ Report whose conduct warranted the initiation of possible disqualification proceedings. He subsequently notified a number of them of his intention to initiate proceedings in accordance with section 160(7) of the Companies Act 1990. The preparation of disqualification proceedings in these cases was under active consideration at end-2005.

#### Barnroe Ltd.

The ODCE’s Annual Report for 2004 indicated that the Director had initiated disqualification proceedings against two of the directors of Barnroe Ltd., a building company which then had its registered office at 4c Kiltalawn Cottages, Blessington Road, Tallaght, Dublin 24. The Report also recorded that the Director’s decision to invoke his investigative powers with respect to the company was the subject of parallel judicial review proceedings at end-2004.

The judicial review proceedings<sup>23</sup> were heard in the High Court in June 2005, while the Director’s disqualification proceedings<sup>24</sup> were heard in September 2005. The nature of the information on the company’s affairs which the Director presented to the Court in support of his request for the making of disqualification orders in this case is contained in the accompanying **Illustration 2.3.1**. Judgement in both cases was delivered on 21 December 2005<sup>25</sup>. The Court ordered that the two directors, Patrick Rogers and Paul Rogers, be each disqualified for a period of five years, although the directors were allowed a period of one month from that date to divest themselves of any company involvement inconsistent with the disqualification orders. The High Court refused the reliefs sought by Barnroe Ltd., Patrick Rogers and Paul Rogers in their judicial review proceedings.

In a separate development, the Revenue Commissioners successfully applied to the High Court in October 2005 to wind up the company, and it remained in official liquidation at end-2005.

<sup>17</sup> Gama Construction Ireland Limited (Applicant) v The Minister for Enterprise Trade and Employment and Edward Nolan (Respondents), High Court Record Number 2005/374 JR.

<sup>18</sup> Paragraph 36(i) of the Affidavit sworn by Mr Hakan Karaalioglu on 12 April 2005 on behalf of the Company.

<sup>19</sup> Note 5 to the Group Accounts of the Company for the year ended 31 December 2004.

<sup>20</sup> S.I. No. 201 of 1992.

<sup>21</sup> Paragraph 15 of the Schedule to the 1992 Regulations.

<sup>22</sup> Regulation 14 of the 1992 Regulations.

<sup>23</sup> The High Court - Judicial Reviews – 638 JR/2004 and 639 JR/2004.

<sup>24</sup> In the Matter of Barnroe Limited and in the Matter of the Companies Acts 1963 to 2003 and in the Matter of an Application pursuant to Section 160(2) of the Companies Act 1990 Between the Director of Corporate Enforcement, Applicant and Patrick Rogers and Paul Rogers, Respondents – The High Court – 2004 No. 490 COS.

<sup>25</sup> 2005 IEHC 433 and 2005 IEHC 440. Copies are available at [www.odce.ie](http://www.odce.ie).



### Illustration 2.3.1: Barnroe Ltd. - Nature of ODCE Evidence on its Affairs

The nature of the evidence presented by the ODCE to the High Court in its application to disqualify Patrick Rogers and Paul Rogers (“the Respondents”) included:

- the opinion of the professional accountant who had examined the company’s books and documents that the company and its officers had failed to keep proper books of account within the meaning of section 202 of the Companies Act 1990;
- evidence that the Respondents had operated a company bank account which was not recorded in the company’s books or records;
- evidence that the Respondents had failed to notify the company’s auditor of the account’s existence;
- evidence that the Respondents had misappropriated company funds to personal bank accounts and used a company bank account for personal expenditure purposes;
- evidence that the Respondents caused the company to expend monies in relation to property owned personally by them;
- evidence that the company failed to file tax returns on a timely basis and
- evidence that the Respondents caused the company to trade over an extended period of time while the company was insolvent.

#### Kentford Securities Ltd.

The ODCE Annual Report for 2004 adverted to the Director’s consideration of the Departmental report on the examination of this company’s books and documents. Following the completion of necessary preliminary work, the Director initiated High Court disqualification proceedings in March 2005 against a former director and auditor of the company. The individual subsequently responded with an application to the Court to strike out the disqualification proceedings on the grounds of delay. This delay motion was heard in the High Court in December 2005, and judgment was reserved.

#### National Irish Bank Ltd./National Irish Bank Financial Services Ltd. (NIB)

The High Court Inspectors’ Report on NIB was published on 30 July 2004. Having carefully considered the Report, the Director noted that while a number of identified

persons were criticised, the Report did not identify any of the members of the NIB Audit Committee. This was despite the Committee being criticised for accepting proposed remedial action in respect of the Bank’s compliance with its obligations for Deposit Interest Retention Tax when those proposals did not address the issue of the Bank’s potential retrospective liability in this area. Having regard to the important role discharged by audit committees in corporate governance and having taken account of legal advice, the Director felt that he should seek an order from the High Court granting the Inspectors liberty to identify the person(s) whom they were criticising on the Audit Committee. The purpose of the application was to enable the Director to consider if disqualification proceedings were warranted in any of these cases.

Following the issue of proceedings<sup>26</sup>, the High Court heard the Director’s motion in February 2005. In its judgement in April 2005, the Court declined to grant the Director’s request<sup>27</sup>.

In accordance with section 160(7) of the Companies Act 1990, the Director separately wrote in March 2005 to nine former senior managers of the Bank who were criticised in the Inspectors’ Report indicating to them that he intended to apply to the High Court for their disqualification. Having considered the replies received in conjunction with his legal advisers, the Director initiated disqualification proceedings against all nine in July 2005.

One of the respondents, Mr Nigel D’Arcy, the former head of the Bank’s Financial Advice and Services Division, consented to his disqualification<sup>28</sup>. Having considered the findings in the Inspectors’ Report, the High Court determined in October 2005 that Mr D’Arcy should be disqualified for a period of ten years with immediate effect<sup>29</sup>.

Having considered the affidavits lodged by a number of the eight remaining respondents in opposition to the disqualification proceedings, the Director determined that he would need access to certain documentation in the possession of the NIB Inspectors for the purpose of assuring the High Court that the respondents’ criticisms of the Inspectors’ findings were not valid. Accordingly, he asked the Court to order the Inspectors to produce certain defined categories of documents. The Director’s application was heard in December 2005 and was opposed by the Inspectors and a number of the respondents. The Court’s judgement was awaited at end-2005.

#### Other ODCE Company Examination

Reference was made in the ODCE’s Annual Report for 2004 to the examination of the books and documents of an unnamed company. This examination which has concluded did not provide a basis for the taking of any enforcement action under the Companies Acts in relation to the affairs of the company.

### Ongoing Investigations

#### AIB Investment Managers Ltd.

The ODCE Annual Report for 2004 dealt with certain historic problems with respect to AIB Investment Managers Ltd. which caused the Director to examine certain books and documents of the company. The Director considered in 2005 the results of a detailed investigation by the Financial Regulator of those same events, and the case remained ongoing at end-2005.

#### Cologne Reinsurance (Dublin) Limited

Irish and foreign media reports in June 2005 criticised the activities of Cologne Reinsurance (Dublin) Limited (“the Company”) and specifically its conclusion in 2000 and 2001 of certain dubious contracts of reinsurance with members of the AIG Group. Following contact with the Company and the Financial Regulator, the Director decided to appoint one of his officers to examine the books and documents of the Company. Confirmation of this decision was included in a filing by AIG with the Securities and Exchange Commission in the United States in September 2005.

Since this decision, the Company has made available to the officer a large volume of material. He has also received assistance from the Financial Regulator. This work was ongoing at end-2005.

#### Departmental Company Examinations

In 2005, the Department of Enterprise Trade and Employment kept the Director informed of developments in relation to the longstanding examinations of the books and documents of College Trustees Ltd., Guinness and Mahon (Ireland) Ltd. and Hamilton Ross Company Limited.

<sup>26</sup> In the Matter of National Irish Bank Limited and in the Matter of the Companies Acts 1963 to 2003 and in the Matter of an Application by the Director of Corporate Enforcement pursuant to Section 12 of the Companies Act 1990 – High Court Proceedings Record Nos: 1998/89 COS and 1998/132 COS.

<sup>27</sup> Re National Irish Bank Limited [2005] IEHC 126. A copy is available at [www.odce.ie](http://www.odce.ie).

<sup>28</sup> In the Matter of National Irish Bank Limited and in the Matter of the Companies Acts 1963 to 2003 and in the Matter of an Application by the Director of Corporate Enforcement pursuant to Section 160(2) of the Companies Act 1990 Between the Director of Corporate Enforcement, Applicant and Nigel D’Arcy, Respondent – High Court Proceedings Record No: 2005/270 COS.

<sup>29</sup> Director of Corporate Enforcement v D’Arcy [2005] IEHC 333. A copy is available at [www.odce.ie](http://www.odce.ie).

## Dunnes Stores Ireland Company/Dunnes Stores (ILAC Centre) Ltd.

Previous ODCE Annual Reports have explained the circumstances which delayed until mid-2003 the effective commencement of the examination of the books and documents of Dunnes Stores Ireland Company and Dunnes Stores (ILAC Centre) Ltd. Mr Cyril Houlihan, an ODCE staff member, maintained his work on these examinations at the end of 2005.

### Conclusion

With the support of company stakeholders, the Office has continued in 2005 to resolve many of the company law deficiencies which are brought to its attention or are otherwise detected by it. The ongoing difficult challenge is to deal fairly and in a timely fashion with all of the reports and complaints received by it. While the ODCE has experienced, due to legal change, a welcome reduction in the volume of reported annual return defaults by end-2005, this will have no discernible effect on the overall workload of the Office in 2006 given that these defaults are primarily a matter for enforcement by the CRO.

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

### Introduction

2005 was a very active year for the Office on the enforcement front. While the number of criminal charges for breaches of the Companies Acts dealt with by the Courts in 2005 compared well with the preceding year (112 charges in 19 cases in 2005 vis-à-vis 99 in 20 cases in 2004), what was most significant was the better balance achieved between civil and criminal proceedings. Some 49 convictions and 21 disqualifications were secured (compared with 66 and three respectively in 2004).

It was also significant that notwithstanding the reduction in convictions, the total amount of fines imposed by the courts actually rose by nearly 70%, to over €35,000 relative to fines of some €21,550 imposed in 2004. The fines increase is also indicative of the fact that the Courts regarded last year's cases in aggregate as more serious than those of 2004, and the Office aims to continue to bring forward good quality cases of suspected default for legal enforcement action.

In addition, it was very satisfactory that the Office succeeded in obtaining an acceptable result from virtually all of the cases which were determined by the Courts in 2005.

### Legal Proceedings

Particular highlights of the ODCE's criminal enforcement proceedings in 2005 included:

- the conviction of six restricted individuals who had failed to abide by the terms of their restriction following the High Court's consideration of their past conduct as directors of insolvent companies. In one of these cases (currently under appeal), a prison term of six months suspended for two years was imposed on the director. As well as the imposition of substantial fines, these convictions entailed consequential disqualifications for periods ranging from three to five years in each case;

- the initiation of a first prosecution under section 243 of the Companies Act 1990 arising from the use of a falsified document affecting or relating to the property or affairs of a company.

Notable developments in the ODCE's civil enforcement proceedings in 2005 included:

- the initiation of disqualification proceedings against nine former directors or senior managers of National Irish Bank Ltd. as a consequence of the findings in the High Court Inspectors' Report of 2004. This was the first occasion in which a High Court Inspectors' Report was being used to directly support disqualification proceedings. The circumstances are discussed in more detail in the preceding section of this Report;
- the imposition of five year disqualification periods on two directors of an insolvent building company arising from their misconduct in relation to the company's affairs. The case is discussed in more detail in the preceding section of this Report where it is accompanied by **Illustration 2.3.1** which outlines the nature of the detected misconduct which was considered by the High Court prior to its determining that disqualification was appropriate;
- the disqualification for periods ranging from one year to five years of ten directors of insolvent companies, which had been struck off involuntarily by the Registrar of Companies for repeated failure to file annual returns;
- the initiation of a first civil enforcement action directing a company and a director to hold an annual general meeting (AGM) in compliance with the law following their failure to comply with a direction to do so, pursuant to section 371 of the Companies Act 1963. See the following **Illustration 3.1.1** for more details;
- the obtaining for the first time of an order, also under section 371 of the Companies Act 1963, compelling a liquidator to initiate restriction proceedings from which no relief had been given and to furnish a second report to the ODCE, pursuant to section 56 of the Company Law Enforcement Act 2001;
- the obtaining of orders joining the Director to

proceedings issued by restricted directors under section 152 of the Companies Act 1990 for relief from the terms of their restriction orders. The Director sought to be joined to the proceedings for the purpose of objecting to the granting of relief (in whole or in part) from the restriction.

The year was also significant for the legal representation of the ODCE at a hearing before the European Court of Justice in the Eurofood (IFSC) Ltd. case on which a decision is awaited at year-end. The background to this case is outlined in Illustration 4.1 of the ODCE Annual Report for 2004.

Overall, the Director directly participated in 69 proceedings, of which 40 were in the Superior Courts and 29 were in the District Court. Of those proceedings, 35 were concluded, and 34 remained ongoing at year-end. All but two of the concluded proceedings were successful in progressing the ODCE's enforcement activity or achieving some other satisfactory outcome. Two cases are under appeal at year-end, one by the Director of a High Court decision not to disqualify any director of a company which had been struck off the Register of Companies for failing to file annual returns and the second by a restricted person who was convicted and disqualified as a result of her acting as a company director while in breach of the statutory conditions governing restriction. An overview of the outcome of these proceedings by type is provided in **Appendix 3.1**.

The accompanying table summarises the nature of the Court decisions made in the successful proceedings in which the Director participated in 2005 (relative to 2004).

**Appendix 3.2** outlines the nature of the Court proceedings in which the Director was involved in 2005, 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 obligations under the Companies Acts. The ODCE continued in 2005 to post the results of its enforcement actions on the ODCE website ([www.odce.ie](http://www.odce.ie)) shortly after the Court had made its judgement.

Number/Nature of Successful Enforcement Results	2004	2005
Bankers' Books Orders	2	-
Charges on which convictions were secured	66	49
Charges taken into account on conviction	9	28
Charges thought proven	24	35
Disqualifications	3	21
Judicial Reviews	-	2
Orders made in compliance proceedings	2	1
Restrictions	2	-
Retention of Seized Documents	5	4
Search Warrants	4	-
Other Decisions	5	4
Total	122	144

Enforcement Cases

The volume of cases for possible criminal enforcement dealt with in the Office continued to increase last year. Some 368 cases were on hand at end-2005, compared with 284 at the start of the year. In all, some 159 new cases were received in 2005. **Appendix 3.4** provides further statistical information on the throughput of these cases in 2005 vis-à-vis 2004.

**Appendix 3.5** shows that the character of the cases on hands on which criminal enforcement action is being considered was 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).

In an effort to deal with rising volumes of enforcement cases, the Office continued to refine its system of case prioritisation. This necessarily has meant the selection of those cases of a serious nature for more detailed attention and decisions to close less meritorious cases. Very often, the Office engages with the suspects directly and/or with their auditor, and this may be sufficient to encourage the persons concerned to take the necessary remedial action to prevent a recurrence of the default.

For example in relation to deficiencies in the keeping of books of account, a suitably qualified person may be employed by the company to carry out that function for the future.

In addition, a decision not to proceed with a prosecution in relation to one complaint or report does not prevent the ODCE from having some regard to the facts of that case when considering the exercise of its prosecutorial discretion in relation to second and subsequent complaints in relation to the same parties.

Sub-Goal 3.1: Developing a Balanced Enforcement Policy

As indicated above, the combination of case volumes and small numbers of front-line enforcement personnel obliges the Office to be innovative, proportionate and responsive in the way in which it executes its enforcement policy, so that the full range of available enforcement actions is employed in a manner which obtains the optimal result for the least expenditure of resources.

Therefore, factors such as the character and scale of the offence, set against the quality of the evidence and the accessibility of that evidence, meant that we continued in 2005 to employ one or more of the following options to rectify, deter or sanction misconduct under the Companies Acts:

- acceptance of actual remediation or an offer of voluntary rectification of the default;
- the issue of a warning letter indicating that any repeat of the default will be treated seriously;
- the issue of a warning letter urging early rectification of the default, failing which High Court proceedings will be initiated to seek to compel compliance;
- the initiation of High Court restriction or disqualification proceedings to sanction past non-compliance;
- the taking of summary criminal proceedings for a suspected company law offence;
- the referral of an indictable offence case to the Director of Public Prosecutions for decision.

Reference is made in other sections of this Report to the Office’s success in securing voluntary rectification of certain defaults and/or in cautioning individuals that any future similar defaults would be viewed more seriously. In one instance in 2005, our efforts to secure

rectification of a default on an administrative basis failed, and it became necessary to obtain a High Court order to compel compliance. The details of the case which involved a company failing to hold an AGM are contained in the accompanying **Illustration 3.1.1**.

Illustration 3.1.1: Grangewood Estate Services (Rosslare) Limited - Need for High Court proceedings to secure the calling of its AGM

Following complaints from the members of a management company that the company had failed to hold an AGM in accordance with its obligations under the Companies Acts, an officer of the Director issued a demand under section 145 of the Companies Act 1963 for the minutes of the company’s meetings in order to ascertain the position with regard to the holding of an AGM by the company. It was clear from the minutes produced by the company that no AGM had taken place during the relevant periods. Therefore, the officer issued a direction under section 131 of the 1963 Act requiring the calling of the AGM.

When it became clear that this direction would not

be complied with, the Director initiated High Court proceedings against the company and a director under section 371 of the 1963 Act. These proceedings sought orders directing the company and the director to make good their default in failing to hold an AGM together with an order for the Director’s costs.

Following the initiation of the High Court proceedings, the company and the director in question called an AGM, and this took place in the second half of 2005. At year-end, the High Court was aware that the AGM had been adjourned for the resolution of some final matters.

The ODCE did not refer any cases to the Director of Public Prosecutions (DPP) for decision in 2005. However, reference was made in last year’s Annual Report to the submission of a file relating to a number of parties suspected to have been in breach of various company law obligations. The DPP informed the ODCE during the year that it had decided not to institute criminal proceedings against the suspects in question.

The following three sub-sections, covering three main types of offence, provide more detail on a number of the matters pursued by the Office in 2005.

Sub-Goal 3.2: Upholding Disclosure Requirements

In return for the privilege of limited liability, the Companies Acts require 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 its future prospects and make an informed decision on the risks of continuing to engage with the enterprise.



## Failure to Keep Proper Books of Account<sup>30</sup>

The maintenance of a proper record of the transactions of a company is a fundamental requirement of the Companies Acts. In many cases, it is accompanied by an obligation to make summary financial and other information available to the CRO, so that company stakeholders and the general public can access the information. A failure to record all material transactions may, for instance, result in the company's books not showing its real level of income or liabilities, thereby misleading the stakeholders on its financial or other performance. Furthermore in cases where a company becomes insolvent, the absence of full and complete accounting information may hinder the liquidator's ability to ensure that the liabilities of the company are discharged in an orderly manner according to the priorities set down in the Companies Acts. Such a situation will naturally increase the cost and effectiveness of the liquidation process.

Given that it is a core element of the public scrutiny aspect of limited companies, the ODCE continued in 2005 to give priority to the prosecution of detected breaches of this requirement. Convictions were secured on 20 charges in respect of seven companies and 12 directors, with a further nine charges taken into consideration. Fines totalling over €11,000 were imposed.

In another case involving 29 charges, the Probation Act was applied in respect of seven related companies where the charges were thought proven by the Court.

### Provision of False Information<sup>31</sup>

The ODCE continued in 2005 to treat seriously any case involving the making available of false information to company stakeholders.

This Report has already adverted to the initiation for the first time of ODCE criminal proceedings under section 243 of the Companies Act 1990. This involved the use of a falsified document affecting or relating to the property or affairs of a company. The document in question was supposed to represent a set of audited financial statements for the company and was presented to a

bank for the purpose of renewing a credit application. The case in question was scheduled for hearing in early 2006.

The Office also prosecuted two cases in 2005 involving inter alia the provision of false information of a material character to the CRO. Both cases related to the submission by unqualified auditors of financial statements which were represented as having been audited by a qualified auditor. Four convictions were secured in one case, while in the second, the District Court took three charges into account when convicting the individual in question of acting as an unqualified auditor.

## Failure by Person Disqualified abroad to disclose that Disqualification<sup>32</sup>

The ODCE's Annual Report for 2004 discussed the requirement that persons disqualified in another jurisdiction must notify the Registrar of Companies<sup>33</sup> of that disqualification on their appointment as a director of an Irish-registered company. Where they fail to do so, s/he is deemed to be disqualified in the State. And if they act as a director while disqualified, they are guilty of an offence.

In 2005, the ODCE initiated prosecution proceedings against an individual who was deemed to be disqualified arising from his failure to disclose his disqualification as a company director in the UK. The case in question is scheduled to be heard in early 2006.

## 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.

## Undischarged Bankrupts<sup>34</sup>

It is an offence under company law for an undischarged bankrupt to act in a responsible position in a company in the State without having first sought and obtained permission from the High Court to do so. In 2005, the

Office again identified individuals acting as company directors in this jurisdiction who remained undischarged bankrupts in Northern Ireland. **Illustration 3.3.1** outlines the circumstances of the case which was prosecuted with the cooperation and support of the Northern Ireland Insolvency Service.

### Illustration 3.3.1: ODCE Conviction of two Undischarged Bankrupts

It came to the notice of the ODCE that two individuals, Messrs Conor and Tony McGreevey who had been declared bankrupt in Northern Ireland in 2003 were acting as directors of Covert Inns Ltd., a company registered in this jurisdiction.

Our enquiries with the Northern Ireland Insolvency Service confirmed that both persons were undischarged bankrupts. Their bankruptcy orders arose from their involvement with an insolvent company in the North. We also learned that the Official Receiver of the company in liquidation had successfully petitioned the High Court in Belfast to make a second order in the case of Mr Tony McGreevey preventing him from obtaining an automatic discharge from his bankruptcy after three years. This order directed that the automatic discharge period should run until he had complied with the original order which required inter alia that he cooperate with the Official Receiver.

In November 2005, the District Court was informed that Covert Inns Ltd. was no longer operating. Having heard

the evidence, the Court convicted the two individuals and imposed fines totalling €1,500. These convictions carry disqualifications of five years for each of them from the date of conviction.

The success of this case and a similar prosecution in 2004 underline the willingness of the authorities on both sides of the border to work together in the public interest. A primary rationale for the prohibition on undischarged bankrupts acting as company directors is to prevent their bypassing their obligation to account for all moneys received by them by forming and operating a limited company with a separate legal personality. The wide definition of undischarged bankrupt in Irish company law is also intended to ensure that persons barred for valid reasons from acting as company directors in an external jurisdiction cannot inflict potential commercial damage on the unsuspecting public in the State simply by establishing a business here. This case accordingly demonstrates the valuable public protection purposes associated with this type of provision.

<sup>30</sup> Section 202 of the Companies Act 1990.

<sup>31</sup> Section 242 of the Companies Act 1990 as amended by section 106 of the Company Law Enforcement Act 2001.

<sup>32</sup> Section 195 of the Companies Act 1963 as amended by section 51 of the Companies Act 1990, section 47 of the Companies (Amendment) (No. 2) Act 1999 and section 91 of the Company Law Enforcement Act 2001.

<sup>33</sup> CRO notification is of course intended to enable the public in general to access the information that a director has previously been disqualified elsewhere, so that they can assess the associated commercial risks of dealing with or continuing to deal with the company

<sup>34</sup> Section 183 of the Companies Act 1963 as amended by section 169 of the Companies Act 1990.

## Restricted Persons acting in breach of the Statutory Conditions<sup>35</sup>

Now that some 600 persons stand restricted, the Office has focused attention on identifying situations where persons restricted by the High Court appear to be in breach of the terms of their restriction. In 2005, convictions were secured on 15 charges affecting six individuals, with fines of almost €18,000 imposed. Each person was also disqualified for periods ranging

from three to five years. In one of these cases which is being appealed at year-end, a custodial sentence of six months suspended for two years was imposed together with a fine.

Some of the investigated cases involve restricted directors continuing to act in companies limited by guarantee. **Illustration 3.3.2** explains that a restricted person is precluded from acting as a director in such a company for the duration of his or her restriction.

### Illustration 3.3.2: Prohibition on a Restricted Person acting as a Director of a Company limited by Guarantee

Section 150(3) of the Companies Act 1990 provides that a restricted person is prohibited from acting as a director in a company unless it complies with certain 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.

A company limited by guarantee is a company which cannot meet the above conditions, and it must follow therefore that a restricted person cannot act as an officer of a company limited by guarantee for the duration of his

or her restriction. Such companies are usually involved in charitable, community and non-profit activities.

In a number of recent cases, the District Court has confirmed that a restricted person is in breach of the terms of their restriction by acting as a director of a company limited by guarantee. Accordingly, restricted persons should resign from a leading role in any guarantee company from the date of their restriction in order to comply with the Companies Acts. Any failure to do so is an indictable offence, and if convicted, the person will generally be deemed to be disqualified for a period of five years from the date of conviction.

Further proceedings for suspected offences in this area were ongoing at year-end, and the Office is continuing to watch for similar instances of persons acting in breach of the terms of their restriction.

## Acting as Auditor while not Qualified or while Disqualified<sup>36</sup>

Under the Companies Acts, only properly qualified and certified persons can act as auditors. In 2005, the ODCE secured convictions on eight charges against three

individuals who acted as auditors while not qualified. A further 13 charges were taken into consideration in the three cases in question. A feature of many of these cases is that the persons involved could reasonably have been expected to be aware of the reserved nature of the auditing function.

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 has one set of proceedings in this area on hands at year-end.

## Acting as Liquidator while Disqualified<sup>37</sup>

Similar legal restrictions apply in respect of liquidators acting as liquidators of companies with which he or she has or has had a business or family connection. This requirement applies, in order to secure the independence and integrity of the liquidation process. An ODCE prosecution against a liquidator of a company who was suspected of being disqualified from acting in that company was ongoing at year-end.

## Excessive Directors' Transactions<sup>38</sup>

The preceding section of this Report has discussed the extensive number of such cases which are under examination in the ODCE. Only a small minority of these cases produce sufficient evidence to consider a criminal prosecution. In 2005, a company director received the benefit of the Probation Act, the Court having thought the six charges proven. One further case is ongoing in the Courts at year-end, and it is expected that a small number of other cases in this area will be initiated in 2006.

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

The Director vigorously examines any case 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

In 2005, the Director secured from the High Court ten disqualification orders under section 160(2)(h) of the Companies Act 1990 against persons who were directors and who had abandoned indebted companies, failed to comply with statutory filing obligations and allowed the companies to be struck off the Register of Companies. **Illustration 4.3.1** in the following section summarises the key features of an important High Court judgment in a number of these cases.

The Director remains anxious in appropriate cases of corporate indebtedness to pursue actively parties who seek to avoid being made accountable for their behaviour by failing to appoint a liquidator.

## Failure by a Liquidator to initiate Restriction Proceedings against the Directors of a Company in Liquidation<sup>39</sup>

Following on the ODCE's success in 2004 in securing a number of orders against liquidators requiring them to comply with their reporting requirement to the Office, the Director continued to actively monitor this area and to take action where any liquidator was in default. For the first time in 2005, it became clear that a liquidator had failed to apply to the High Court to restrict the directors of a company in liquidation, notwithstanding his obligation to do so. When correspondence from the ODCE failed to persuade the liquidator of the need to correct this default, the Director found it necessary to initiate proceedings under section 371 of the Companies Act 1963 to compel the liquidator to do so and to file a second section 56 report with the ODCE. The High Court subsequently granted the Director the order sought.

## Conclusion

2005 marked a continuing development of the enforcement activity of the ODCE with a new focus on civil enforcement actions. The ability of the Office to respond to detected misconduct on an administrative basis or by way of civil or criminal enforcement proceedings offers considerable flexibility. It is a strength of the Office that when the high standard of proof required for criminal proceedings is not reached, the option of civil enforcement proceedings may still be available to sanction and deter misconduct. In the interests of effecting a continuing improvement in market conduct and reducing commercial risk for corporate enterprises, the ODCE will continue in 2006 to seek a good balance between its administrative and legal actions and between its civil and criminal enforcement options.

<sup>35</sup> Section 161 of the Companies Act 1990.

<sup>36</sup> Section 187 of the Companies Act 1990.

<sup>37</sup> Section 300A of the Companies Act 1963 as inserted by Section 146 of the Companies Act 1990.

<sup>38</sup> Section 40 of the Companies Act 1990.

<sup>39</sup> Section 56 of the Company Law Enforcement Act 2001.



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

## Introduction

Because of the adverse consequences for third parties arising from the failure of economic or social enterprises, there is a public interest dimension in identifying the extent to which the phenomenon of insolvent companies is a product of unlawful or irresponsible corporate behaviour. The Companies Acts now contain a number of provisions by which such conduct can be brought to attention and addressed.

The ODCE’s work in this area remained focused in 2005 on:

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

## Liquidation Trends

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

Liquidations	2001	2002	2003	2004	2005
Creditors	415	378	346	321	300
Court	24	34	31	40	49
Members	589	720	941	827	868
Total	1,028	1,132	1,318	1,118	1,217

Previous ODCE Annual Reports have drawn attention to the reduction in recent years in the number of insolvent companies going into liquidation, and the combined 2005 figure of 349 for Court and voluntary creditor liquidations continues this recent trend by showing a

21% drop between 2005 and 2001. This reduction in insolvent liquidations has been somewhat offset by a 47% rise between 2001 and 2005 in the number of solvent companies being liquidated.

Clearly, it is a welcome development that a good proportion of company stakeholders have been receiving full payment for their outstanding liabilities since 2002 when the insolvency regime in the Company Law Enforcement Act 2001 came into force. It is a continuing objective that the coherence and credibility of the new framework for responsible corporate conduct should be maintained. The ODCE is intent on minimising any evasion of accountability in the area of insolvent companies, and the Office accordingly keeps developments under close scrutiny on an ongoing basis.

## 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 2005. The wholesale and retail, manufacturing and construction sectors continued to feature prominently in the companies in insolvent liquidation.

## Unliquidated/Dissolved Insolvent Companies

There are no authoritative figures which 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 which 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 2001 to 2005.

Type of Dissolved Company	2001	2002	2003	2004	2005
‘CRO Strike-off’ <sup>40</sup>	1,430	-	14,836	1,401	9,514
‘Revenue Strike-Off’ <sup>41</sup>	5,649	2,766	-	1,599	794
‘Voluntary Strike-Off’ <sup>40</sup>	-	3,125	5,483	3,595	3,316
Total	7,079	5,891	20,319	6,595	13,624

## Eurofood IFSC Limited (In Liquidation)

The ODCE’s Annual Report for 2004 dealt with the case of Eurofood IFSC Limited (In Liquidation) and the importance for Irish and EU insolvency law of a number of issues which were referred by the Supreme Court to the European Court of Justice (ECJ). The Office participated at the ECJ hearing of the case in 2005, and on 27 September 2005, Advocate General Jacobs issued his Opinion<sup>42</sup> in the case which was broadly supportive of the Director’s position that Eurofood should be liquidated in accordance with Irish law. The judgement of the ECJ was awaited at year-end.

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

### Liquidator Reporting under Section 56

Since 2002, the liquidator of a company in insolvent liquidation is required by law to report to the ODCE<sup>43</sup> on the company’s 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 publications were prepared following public consultation processes and are available from the ODCE website at [www.odce.ie/publications/decision.asp](http://www.odce.ie/publications/decision.asp).

Appendix 4.1.1 provides statistical information on the volume of liquidator reporting in 2005. Some 1,009 liquidator reports were received (992 in 2004). Of these, 327 were initial reports<sup>44</sup> (362 in 2004) from 102 liquidators, while the balance of 682 (630 in 2004) constituted further<sup>45</sup> or final<sup>46</sup> reports on company liquidations.

The compliance rate for the timely production by liquidators of their first reports showed a slight reduction to 95% in 2005 compared with 97% in 2004. The Office also monitored the liquidators’ submission of their further and final reports. In respect of all reports due in 2005, the Office had cause to correspond formally with liquidators on 64 occasions (81 in 2004) indicating that they were in default with regard to their statutory reporting obligations.

The Office also corresponded with liquidators on 23 occasions in 2005 (52 in 2004) in respect of their failure to advise it that restriction applications had been taken where relief was not granted. Two liquidators (four in 2004) 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. In one other case, the ODCE secured an order under section 371 of the Companies Act 1963 which inter alia compelled, for the first time, a liquidator to initiate restriction proceedings.

The standard of liquidator reports received was again mostly satisfactory in 2005. This area continues to be reviewed, in order to maintain the effectiveness of liquidator reporting.

<sup>40</sup>Section 311 of the Companies Act 1963 (as amended) and section 12 of the Companies (Amendment) Act 1982 (as amended).  
<sup>41</sup>Section 882 of the Taxes Consolidation Act 1997.  
<sup>42</sup>A copy of the Opinion of Advocate General Jacobs in the Eurofood case is available at <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:62004C0341:EN:HTML>.  
<sup>43</sup>Section 56 of the Company Law Enforcement Act 2001.  
<sup>44</sup>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.  
<sup>45</sup>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.  
<sup>46</sup>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.



Other Liquidator and Receiver Issues

Two liquidators reported to the ODCE in 2005 in relation to three companies under section 299 of the Companies Act 1963 (as amended). No receiver made any section 299 reports. 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.

The ODCE received no reports in 2005 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 liquidator<sup>47</sup> or receiver<sup>48</sup> in 2005.

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

The ODCE issued decisions in the case of 942 liquidator reports (1,084 in 2004) of which 317 (529 in 2004) constituted initial reports from liquidators. The primary reason for the drop in the number of initial reports determined was because the 2004 figure comprised more than a single year's liquidations<sup>49</sup>.

ODCE Relief Decisions

Of the 317 initial reports determined, the relief decisions in 2005 (relative to 2004) were of the following character:

Decision Type	2004	%	2005	%
Full relief <sup>50</sup>	357	67%	194	61%
No relief <sup>51</sup>	93	18%	49	16%
Relief 'at this time' <sup>52</sup>	53	10%	58	18%
Partial relief <sup>53</sup>	21	4%	13	4%
Other decisions	5	1%	3	1%
Total	529	100%	317	100%

The indicated figures are broadly consistent with the outcomes for 2004. The small reductions in the proportion of 'no relief' cases (from 18% to 16% between 2004 and 2005 respectively) and 'full relief' cases (from 67% to 61%) are balanced by the increase in 'relief at this time' decisions (from 10% to 18%). This primarily reflects an increasing number of liquidator requests for additional time to complete their examinations of the companies' affairs.

In examining these reports with respect to directors' conduct, the ODCE is particularly anxious to ensure that entrepreneurial endeavour is not inhibited by needlessly imposing the burden of a High Court hearing on persons who have clearly shown that they behaved honestly and responsibly in the conduct of the affairs of failed companies, even though losses may have ensued to others. On the other hand, the Office is anxious to ensure that liquidators properly investigate suspected misconduct or irresponsibility and that an appropriate recommendation with respect to relief is made in each case.

Decisions of 'no relief' or 'partial relief' by the ODCE 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 the case of any particular company director.

Complete lists of the companies in respect of which full relief and relief 'at this time' were granted in 2005 are available in ODCE Information Notice No. I/2006/1 on the ODCE website at [www.odce.ie](http://www.odce.ie).

Tracking Court Decisions on the Restriction Applications

During 2005, the High Court reached decisions in 102 cases where no relief or partial relief had previously been decided by the ODCE, with the remaining cases pending before the Court or yet to be initiated. In respect of the cases heard, the High Court has restricted or disqualified one or more directors in 88 cases, representing 86% of the total. No restriction orders were made in respect of the remaining 14 cases or 14% of the total.

In terms of individual directors, there were 135 directors restricted,<sup>54</sup> five directors disqualified<sup>55</sup> and two directors both restricted and disqualified. This represents 74% of the 192 directors that were the subject of restriction or disqualification proceedings. Restrictions were not made in respect of the balance of 50 directors.

The Director welcomes the initiative of some liquidators

in 2005 to bring disqualification proceedings against the directors of insolvent companies, because the nature of the indicated misconduct warranted a more serious sanction than restriction. The Director hopes that further similar cases will be taken in 2006 and beyond. The accompanying **Illustration 4.2.1** provides some information on these cases.

Illustration 4.2.1: Insolvent Companies: Liquidator Disqualifications in 2005

In one case, the High Court imposed a seven year disqualification on the principal company director. The second listed company director was restricted for five years. The main reasons for the disqualification appear to have been non-cooperation with the liquidator and payments to the principal director of some €200,000 at a time when the company was insolvent. An interesting aspect to this case was that the High Court deemed the actions of the principal director to warrant disqualification, and the application against him was elevated from restriction to disqualification proceedings.

In another case, the High Court imposed a ten year disqualification on the principal and sole remaining company director. The main reasons for the disqualification appear to have been non-cooperation with the liquidator, the writing of cheques that were not honoured and payments in excess of €110,000 to the principal director, some of which were made when the company was insolvent. Also, the company had never filed accounts and had been struck-off by the CRO. The Revenue Commissioners had petitioned for its restoration to the Companies Register and its subsequent winding up on foot of tax liabilities in excess of €87,000.

In a further case, the High Court imposed a ten year disqualification on a person who was found to be a de facto company director. A second listed company director was restricted for five years. The company had an overall deficit in excess of €900,000 upon liquidation (including €865,000 to the Revenue Commissioners), and it had traded for lengthy periods while insolvent. The directors had taken substantial loans from the company, had

improperly transferred company debts to a new company and had maintained inadequate books and records while insolvent.

Separately, a ten year disqualification was imposed on a company director who had improperly used company funds for his personal gain. At liquidation, the company's liabilities were shown as exceeding €1 million, including liabilities to Revenue of over €500,000. The absence of proper books and records meant that the company was never able to ascertain its true financial position.

A seven year disqualification was also imposed on a company director who was found to have created fraudulent purchase invoices in the books and records of the company totalling in excess of €330,000. He had also been sentenced to three months in prison for Revenue offences. The second listed director was restricted for five years.

A five year disqualification was imposed on a company director who had burnt the books and records of the company on the night of its last day of trading. The Revenue Commissioners who were owed close to €100,000 had petitioned for the winding-up of the company. The second listed company director was restricted for 5 years.

A five year disqualification was also imposed on a company director where the insolvency was attributable to under-capitalisation and losses were masked by the over-valuation of stocks. Total unsecured creditors were estimated at €2 million with a further sum of €187,000 due to the Revenue Commissioners.

<sup>47</sup>Under section 57 of the Company Law Enforcement Act 2001.

<sup>48</sup>Under section 323A of the Companies Act 1963 (as inserted by section 53 of the 2001 Act).

<sup>49</sup>As well as dealing with the reports of liquidations initiated in 2003/2004, the 2004 figure included decisions on the initial liquidator reports relating to ongoing liquidations commenced in the period 1 January 2000 to 30 June 2001, which required filing by 30 November 2003 pursuant to the Company Law Enforcement Act 2001 (Winding Up and Insolvency Provisions) (Commencement) Order 2003 (S.I. No. 217 of 2003).

<sup>50</sup>Full relief was granted in cases where the ODCE was satisfied, on the basis of information provided by the liquidator or otherwise, that all of the directors of the insolvent company had satisfactorily demonstrated that they had acted honestly and responsibly in the conduct of the company's affairs.

<sup>51</sup>Relief was not granted in cases where the ODCE was satisfied, on the basis of information provided by the liquidator or otherwise, that none of the directors of the insolvent company had satisfactorily demonstrated that they had acted honestly and responsibly in the conduct of the company's affairs.

<sup>52</sup>Relief 'at this time' was granted in cases where the ODCE was satisfied that the liquidator needed more time to investigate properly the circumstances giving rise to the company's demise. The ODCE requires such liquidators to submit a second report, after which a fresh relief decision is made.

<sup>53</sup>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.

<sup>54</sup>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.

<sup>55</sup>If disqualified by the High Court, a person is prohibited from being appointed or acting as an auditor, director or other officer, receiver, liquidator or examiner and from being in any way, whether directly or indirectly, concerned in or part of the promotion, formation or management of any company or any society registered under the Industrial and Provident Societies Acts. A disqualified person who breaches the Court order is liable to be convicted and disqualified for ten years.

In addition to the 137 persons restricted as a result of proceedings pursuant to section 56, a further eight persons were restricted by the High Court in unrelated proceedings. While a total of 145 new persons were restricted in 2005, the net increase in the CRO’s Register of Restricted Persons was 113 due to those restricted in 2000 being removed from the Register in 2005 on the completion of their restriction period. The following table indicates the net increase in the number of restricted persons since the end of 2002.

Number of Directors standing restricted at end-2002 to 2005 inclusive			
End-2002	End-2003	End-2004	End-2005
54	295	487	600

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

In relation to restriction proceedings that concluded before the High Court in 2005, **Appendix 4.2.1** to this Report outlines the outcome of the cases where restrictions were made and the identity of the persons in question.

**Appendix 4.2.2** to this Report outlines the outcome of the cases in 2005 where disqualifications were obtained on the application of a liquidator arising from the section 56 process. The Appendix also identifies the persons in question.

**Appendix 4.2.3** to this Report identifies the companies where the High Court concluded in 2005 that a restriction should not be made against any of their directors.

Relief from Restriction

A restricted director may apply to the High Court for relief, in whole or in part, from a restriction within a period of one year from the making of the restriction declaration. The High Court may, if it deems it just and equitable to do so, grant such relief on whatever terms and conditions it sees fit<sup>56</sup>.

<sup>56</sup>Section 152 of the Companies Act 1990.  
<sup>57</sup>Section 160(1) of the Companies Act 1990.

During 2005, the Office became aware of four relief applications and sought to intervene before the Court in all of them, in order to oppose the applications or to assist the Court in evaluating their merits. In two cases, the applications were withdrawn once the Office signalled its intention to intervene. In a third case, the application was withdrawn after the High Court ruled that the Director could be joined as a party to the proceedings. In the fourth case, the High Court also ruled in favour of the Director being joined as a party to the proceedings, and the hearing of the relief application was awaited at the end of 2005.

It is the ODCE’s intention to continue to monitor planned relief applications and to seek to intervene in appropriate cases, subject to the Court’s approval. The Office does not wish to see these applications being used in any way to undermine the coherence of the statutory restriction regime.

Tracking Directors not abiding by the Conditions of Restriction

As indicated earlier in this Report, ODCE investigations have confirmed that there are a number of restricted individuals acting in breach of the statutory requirements. The Office successfully pursued some of these cases in 2005 and secured a number of convictions and disqualifications as a result.

Deemed Disqualifications

The law<sup>57</sup> provides that where a person is convicted on indictment of any indictable offence in relation to a company, or involving fraud or dishonesty, s/he is deemed to be disqualified for a period of five years from the date of the conviction or for such other period as the court, on the application of the prosecutor, may order. In cooperation with the Courts Service and the Registrar of Companies, the Office secured during 2005 the updating of the CRO’s Register of Disqualified Persons to include those individuals subject to deemed disqualifications. This led to the identities of 985 individuals, who were deemed to be disqualified during the past five years, being notified to the CRO in 2005 with the result that more than 1,000 persons are now listed on the Register. This was a substantial increase on the ten individuals who were registered at end-2004.

Sub-Goal 4.3: Sanctioning Fraudulent or Abusive Behaviour

Introduction

The ODCE has no inherent difficulty with situations where directors restart a business following an orderly wind down of the previous enterprise (e.g., by placing the company into liquidation and perhaps purchasing some of the available company assets from the liquidator at the market rate). Rather, its remit is intended to address situations where directors restart a business in disregard both of their duties under company law and their financial and other obligations to one or more of the stakeholders in the failed company.

Such ‘phoenix’ practices can result in:

- competition in the applicable business market being distorted, because the ‘phoenix’ enjoys lower-than-market costs and therefore 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.

<sup>58</sup>Section 160(3A) of the Companies Act 1990.

‘Struck-off’ Companies

Much of the ODCE’s focus in 2005 was directed towards the particular category of potential abuse denoted by the phenomenon of ‘struck-off’ companies. This category refers to companies which are not in liquidation but which have been dissolved following their being struck off the Register of Companies for failing to file annual returns with the CRO. As a result of their failure to file annual returns, there is a lack of financial information available to the public, to creditors and to regulatory authorities concerning struck-off companies and their liabilities at the time of strike-off. Some of the directors in question would have established a ‘phoenix’ company in the same or a similar business to that of the abandoned company.

The directors of such struck-off companies are eligible to be disqualified from acting as company directors in accordance with section 160(2)(h) of the Companies Act 1990, and the ODCE may initiate such applications. However, the law precludes the High Court from disqualifying a person who shows 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.<sup>58</sup>

Following a successful test case in late 2004, the Office increased its focus on this area in 2005, although our involvement necessarily continues to be on a selective basis. During the year, we secured the disqualification of ten directors of struck-off companies for periods varying from one to five years. A summary of the outcome of a number of these cases is contained in the accompanying **Illustration 4.3.1**.



### Illustration 4.3.1: Summary of the High Court Judgments in the Clawhammer Limited, Shinrone Food Market Limited and Cautious Trading Limited Cases

All of these cases involved companies which had been struck off the Register of Companies following a failure to file annual returns. Section 160(2)(h) of the Companies Act 1990 (as amended) provides that the former directors of such companies at the time of strike-off are eligible to be disqualified from acting as a company officer. Section 160(3A) provides however that the respondents may avoid disqualification if they can satisfy the Court that the company had no liabilities at the time of strike-off or that any such liabilities were discharged before the initiation of the disqualification proceedings.

In dealing with the cases, the Court set out some general principles on section 160(2)(h) disqualifications as well as dealing with the individual applications. The High Court accepted the Director's view that the enactment of section 160(2)(h) in 2001 was indicative of a serious legislative concern on the part of the Oireachtas about the practice whereby to the detriment of creditors, insolvent companies are allowed by their directors to be struck off the Register rather than be wound up in a proper fashion. The Court also accepted that the Oireachtas regarded the fact that directors may have permitted a company to be struck off the Register as a result of their failing to make annual returns as more than a technical breach of their obligations under the Companies Acts. The Court

determined that a minimum level of proof was sufficient to warrant a disqualification order. It also confirmed that the onus is on the respondents to demonstrate to the Court that the company had no liabilities at the time that it was struck off the Register or that such liabilities as existed were discharged prior to the date of any disqualification action. The Court established that there is no onus on the ODCE to establish facts in relation to such a company's liabilities in making an application for disqualification.

In considering the appropriateness of a disqualification order, the Court decided that in the absence of any exculpatory evidence from the directors either as to their involvement in the company, the circumstances leading to the strike-off of the company or the outstanding liabilities of the company, an order for disqualification was probably in general justified. The Court considered it appropriate that it should attempt to apply a consistent period of disqualification in such cases and that a period of five years' disqualification appeared appropriate.

In the three specific cases referred to, the Court applied its general principles and imposed disqualifications of one year in the first case having taken into account the efforts of the respondents in question to regularise the affairs of the dissolved company and five years in the remaining two cases.

In all, over 100 struck-off companies were selected for action in 2005. In 30 of these cases, the directors were able to show the ODCE before the issue of any court proceedings that there were no liabilities currently or at the time of strike-off. This was on the basis of the production of appropriate formal accounts along with an auditor's certificate covering the period from the date of the last accounts up to dissolution along with sworn declarations from the directors that no liabilities existed. Confirmations were also required from creditors where it was alleged that liabilities were settled, including Revenue liabilities. In three cases, the directors committed to restoring the company to the Companies Register. At the end of 2005, eight cases were before

the courts. Many of the remaining cases remain open at year-end, and it is anticipated that several additional cases will be initiated before the courts in 2006.

In many cases, it was apparent that former directors used the involuntary strike-off process as a mechanism for terminating the corporate structure without recourse to other formal mechanisms for liquidation or voluntary strike-off. In some of these cases, the former directors alleged that they did so on the basis of professional advice received. The Director wishes to point out clearly that involuntary strike-off should not be seen as a replacement for more formal terminations of companies

and that those resorting to such a route are now likely to be selected by the ODCE for disqualification proceedings and thus likely to incur disqualification or the expense of preparing accounts and declarations and defending their position before the courts. Involuntary strike-off should not be seen as a mechanism for directors of insolvent companies to avoid the scrutiny of their conduct that is applied to directors of insolvent companies in liquidation under the section 56 process described earlier.

In all cases where companies are struck off the Companies Register, the assets of the company are vested in the Minister for Finance in accordance with the provisions of the State Property Act. It is the policy of the Office to bring to the attention of the Department of Finance cases where a company held significant assets at the time of strike-off.

### Trading Insolvent Companies

While it is primarily the responsibility of company creditors to protect their financial interests, the ODCE occasionally involves itself in investigating suspected misconduct in trading insolvent companies. Reference has been made earlier in this Report to the ODCE's success in 2005 in securing the disqualification for five years of two directors of a company in the building industry for serious misconduct. See **Illustration 2.3.1** above.

### Conclusion

With a further 145 director restrictions and 19 director disqualifications known to be directly related to insolvent companies in 2005, the ODCE made further progress in collaboration with liquidators and the Courts in deterring irresponsible or unlawful conduct in this area. Market research undertaken on behalf of the ODCE in late 2005<sup>59</sup> confirmed that the new legal framework for corporate insolvency is contributing to better standards of corporate conduct, viz:

- 66% of directors surveyed were aware that the ODCE applied for director disqualifications following companies who had liabilities outstanding being struck off the Register of Companies;

- 56% of directors were aware of the fact that insolvent companies in liquidation come to the notice of the ODCE;
- 68% of directors believe that the behaviour of directors of insolvent companies has become more responsible in the last number of years;
- nine out of ten liquidators have indicated that ODCE is effective.

The research also identified a number of particular issues for further useful work by the ODCE in the insolvency area, and some of these will be taken forward in 2006.

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

### Introduction

The ODCE endeavoured in 2005 to continue to provide quality customer services for its customers, and the Director believes that his staff substantially succeeded in meeting this objective. The following records the highlights of Office work in this area during the year.

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

#### 5.1.1 Staffing

The ODCE remained close to its approved staffing complement throughout the year. Having regard to the nature and extent of the ODCE's current workload, the Director deemed it necessary in May 2005 to seek sanction for an extra 20 staff comprising administrative, Garda and some specialist resources. No definitive decision is available on this Staffing Submission at year-end, and the Director continues to press for a positive response. **Appendix 5.1.1** provides a breakdown of the Office's staffing at the end of the year.

<sup>59</sup>Market Research undertaken by Millward Brown IMS for the ODCE in late 2005/early 2006.



The Director wishes to acknowledge the valuable contributions made by Pat Collins, Marie Devaney, Denis Murray and Denis O’Sullivan to the development of the Office in its formative years. All four left the Office in 2005 to take on new challenges.

5.1.2 Financial Resources

The administrative costs of the Office in 2005 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 are provided in the following table.

Subhead A09, Vote 34	2005 Allocation (€000s)	2005 Expenditure (€000s)
Pay	1,793	1,809
Non-Pay	2,745	1,090
Total	4,538	2,899

A more detailed breakdown of the 2005 figures is contained in Appendix 5.1.2.

The outturn of €2.899 million represented a 5.9% decrease on the outturn of €3.07 million in 2004. While pay expenditure was very close to the allocation, a saving was recorded on the non-pay budget. This was primarily due to legal and other professional costs being less than anticipated. Given current and anticipated legal proceedings, the figure for 2006 is likely to exceed the 2005 outturn. In accordance with Government Accounting Procedures, the surplus of €1.639 million was surrendered at the end of 2005.

5.1.3 Organisational Development

An upgrade and expansion of the Office’s database which records and tracks its detected, enforcement and insolvency cases was commenced in 2005 and was well advanced by year-end. This development will further enhance Office effectiveness, and it is expected to be fully implemented early in 2006.

The ODCE had occasion in 2005 to engage external expertise to assist it in undertaking its investigative and

enforcement work in particular. The ODCE Legal and Accounting Panels were continued and expanded, and they remain open to applicants who wish to provide such services to the Office.

5.1.4 Risk Management Action Plan

During 2005, the ODCE co-operated with the Department of Enterprise Trade and Employment in reviewing and updating the Office’s risk management system in accordance with the recommendations of the Mullarkey Report.

Sub-Goal 5.2: Developing Staff

5.2.1 Performance Management

The Office implements the Performance Management and Development System which applies across all Government Departments and Offices. The system is directly related to the Business Plan of the Office, which in turn is based on the focus identified in the ODCE’s current Strategy Statement.

The individual roles of staff members were reviewed during 2005, and adjustments to tasks and training requirements were made as necessary in the light of work-related developments.

In 2005, some 96 external training days were provided to 16 ODCE staff across all grades. 62 of these were IT-related training days and benefited 10 staff. The Department of Enterprise Trade and Employment provided an additional 55.5 days of training to 32 ODCE staff, of which 5.5 days were IT-related training benefiting five ODCE staff. In-house seminars on various topics were also undertaken related to the work of the Department, the Office and the Public Service generally.

5.2.2 Team-Based Working

Multi-disciplinary teams continued to operate within the ODCE in order to handle the Office’s rising volume of casework. This is particularly so in the detection, enforcement and insolvency areas. The teams’ operating procedures and performance were reviewed, developed

and adjusted during the year, in order to improve the quality and quantity of case evaluation and throughput. It is fair to say that the arrangements have matured well at this stage with standard procedures having been developed and implemented in a number of particular case types. A pictorial representation of the respective involvements of ODCE staff by functional area is at Appendix 5.2.1.

During 2005, the Director made a number of revisions to the powers delegated to designated staff under section 13 of the Company Law Enforcement Act 2001. In all, four 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. This encompassed seven changes to existing delegations.

The Office Management Committee, chaired by the Director and representative of all staff, met on a reasonably regular basis in 2005 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

5.3.1 Services Offered

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

- information on company law and related matters via the Office’s website, publications, etc. In this context, some 174 customers self-registered in 2005 to be notified of new information being placed on the website;
- talks, seminars and other compliance initiatives provided by Office staff;
- 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-mail, etc.

Internal and external customer concerns are key issues for the ODCE and have been addressed in its Strategy Statement, Business Plans and Annual Report. During 2005, staff of the Office continued to make every effort to provide quality services both to its internal and external customers.

5.3.2 Publications

The following publications were prepared and issued during 2005:

- the Director’s End-of-Year Statement and Review of 2004;
- the ODCE Annual Report for 2004 (in both the Irish and English languages);
- the ODCE Customer Service Charter, the Statement of ODCE Principles of Quality Customer Service and the ODCE Customer Complaints Procedure (in both the Irish and English languages);
- Information Notice I/2005/1 which outlined the companies in insolvent liquidation in respect of which the ODCE had decided to grant full relief or relief ‘at this time’ in 2004 pursuant to section 56 of the Company Law Enforcement Act 2001;
- Information Notice I/2005/2 which explained the key changes to company law arising from the enactment of the Investment Funds, Companies and Miscellaneous Provisions Act 2005;
- Information Notice I/2005/3 which informed auditors in particular that they were exempted with effect from 1 September 2005 from reporting suspected annual return defaults to the ODCE.

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.

### 5.3.3 Website

The ODCE website was continually updated in 2005 with information on the ODCE's work and associated corporate governance developments. New material posted to the website included the following:

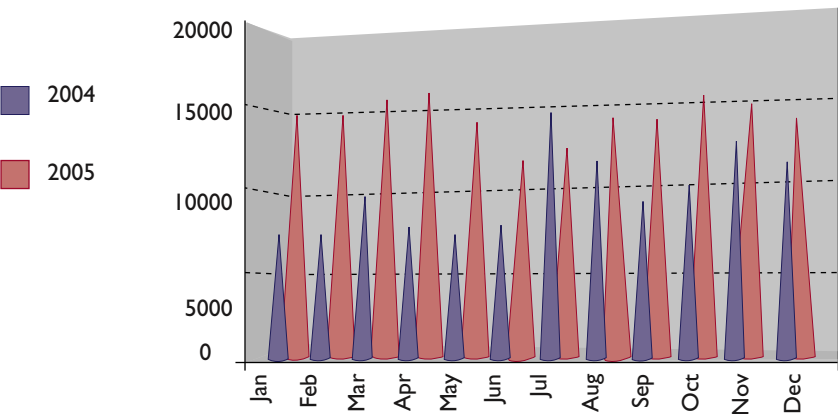
- new Office publications as indicated above;
- copies of certain presentations made by Office staff to business, professional and related interests;
- press statements, articles, etc. issued by the Director and other staff and
- the results of Court cases in which the Director prosecuted suspected breaches of company law or duty and other Court decisions relevant to company law.

The Office's website at [www.odce.ie](http://www.odce.ie) continued in 2005 to attract significant numbers of visitors reflecting the utility of the site for corporate governance and related information. In all, some 178,904 visits were made which represented a 53% increase on the 116,783

figure achieved in 2004 (which itself was up 54% on the 2003 figure of 75,597). The chart below indicates the monthly distribution of visits from which it is evident that visits adopted a reasonably consistent pattern during the year.

During 2005, the Office commissioned a website design company to assist in a fundamental overhaul of the ODCE website with a view inter alia to bringing it into line with the highest standards of accessibility (i.e., WAI compliance level III giving maximum accessibility for users with disabilities). This overhaul was felt necessary following four years' experience with the website structure and the intervening exponential growth in visitor traffic. The new website, when ready in 2006, should allow users easier access to the available corporate governance information.

Some 229,961 downloads of information on the ODCE website were recorded in 2005, a substantial increase on the comparable figure of 59,261 in 2004. The downloads related to a total of 335 documents (191 in 2004). **Appendix 5.3.1** itemises the classes of documents most in demand in 2005. It is clear that there is a wide interest in the various categories of documents on the website.



Visits to [www.odce.ie](http://www.odce.ie) in 2004 and 2005

### 5.3.4 Market Research

As part of the Office's policy of establishing independently its standing in regulating companies, the ODCE commissioned Millward Brown IMS in late 2005 to conduct a survey of market perceptions in a number of areas. Reference has already been made in other sections of this Report to the findings denoting inter alia improvements in the company law compliance environment.

Insofar as perceptions of ODCE effectiveness are concerned, it was clear from the survey that in its key corporate and professional constituency, there was a very satisfactory improvement relative to the results from similar research in 2004. Of the 130 accountants and liquidators interviewed, 90% of them rated the Office as effective. A very satisfactory result of 68% effectiveness was also returned from the 300 directors polled, and this indicated a significant improvement on 2004 across a number of headings as identified in the accompanying diagram.

In a parallel poll of the general public, Millward Brown IMS also found that awareness of the ODCE was

confined to about one in three Irish adults. The profile of the Office was also raised during the year when it featured in a story line on RTE's series "Fair City".

### 5.3.5 Freedom of Information (FOI) Acts

The FOI Acts permit the disclosure of records concerning the general administration of the Office only. During 2005, the ODCE received three new requests for records under the Acts. One request was refused as it did not relate to records concerning the general administration of the Office, and the other two were partially granted.

### 5.3.6 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 disclosure of any information held about an individual. In 2005, 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.

### Effectiveness of ODCE in.....

Base: All Directors	Very effective %	Total effective %	% Change on 2004	Up to 10 employees %	11-50 employees %	51+ employees %
In ensuring that accountants & auditors have a greater knowledge of, & appreciation for their duties & obligations under company law	32	66	+25	63	65	72
In encouraging adherence to the Companies Act	14	65	+24	59	65	73
In deterring company directors & others from breaching company law or otherwise acting dishonestly or irresponsibly	14	62	+25	57	62	68
In ensuring company directors have a greater knowledge of, and appreciation for their duties & obligations under company law	13	56	+17	52	53	63
In bringing to account those who disregard the Companies Acts	8	43	+14	42	41	45
In ensuring that shareholders & creditors have a greater knowledge of & appreciation for their rights and powers under Company Law	9	39	+20	42	37	36
Overall effectiveness	9	68	n/a	66	68	71

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....

### 5.3.7 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 be settled in a timely manner, the ODCE incurred no interest surcharge on payments in 2005.

### 5.3.8 Compliance with Agreed Customer Service Standards

The Office published in 2005 its statement on the standards of service which its customers may expect. A Customer Charter was also published, along with a Customer Complaints Form and information on Complaints Procedures in relation to ODCE customer services.

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 is part of this process, as is the ongoing redevelopment of the website.

However, the Director believes that customer services levels have declined in 2005 due to work pressures. For instance, reference has been made earlier in this Report to the fact that notwithstanding the increasing numbers of cases being dealt with, there is a large and growing backlog of cases. A substantial increase in the staff numbers of the Office will be necessary if the positive impact which the Office has had on the company law compliance environment is to be maintained in 2006 and beyond.

### Conclusion

The Director is satisfied overall that taking account of ODCE successes and notwithstanding the difficult challenges which it is facing, the Office has again delivered very good value for taxpayers' investment in it in 2005.

## Conclusion

The ODCE's results for 2005 represented a further significant development of its remit with respect to its civil enforcement role in particular. The market research results were also substantially positive in relation to:

- the improved compliance environment with respect to the obligations of company law and
- the perceived effectiveness of the Office among company directors and professionals.

The Office retains a strong desire to develop the quality of its work over time, and it is important that its compliance and enforcement capacity matches the challenges which it is facing. If it does not, ODCE effectiveness will decline.

At present, the public perceives that only 50% of companies are good at fulfilling their obligations under company law<sup>60</sup>. The fact that the ODCE continues to receive 1,000 new reports and complaints per year confirms that significant corporate wrongdoing still exists. The greater appreciation of the need for better corporate standards has also generated demand for more compliance information. Present ODCE resources are stretched in dealing effectively with this ongoing work.

In this regard, the Director has identified a number of recurring problems and deficiencies, the alleviation of which require a step change in the ODCE's compliance and enforcement capacity. Present resource constraints mean that:

- the ODCE can only progress one or two large investigation cases every year due to their complexity and scope. Larger companies also have the resources to resist or delay inquiry. Small and medium sized business should not be the only sector which is regularly brought to account after the detection of misconduct;
- no targeted resources are available to tackle properly the problem of 'phoenix' companies;
- only limited capacity is available to devote to the Office's compliance effort. The Director would like

to develop more guidance material and focus his Office's compliance effort on start-up enterprises and social, voluntary and community groups.

Company law aims to provide an attractive and reliable environment for the conduct of economic and social relations. When stakeholders ignore their obligations, market performance suffers, and Revenue, other creditors and compliant companies become the victims. The public interest requires a strong ODCE in order to make markets work effectively and better meet these particular objectives:

- equity - securing implementation of the law by all stakeholders, regardless of their market power or sphere of operations;
- competition - the prevention of abusive and unlawful commercial practices which undermine sustainable market competition;
- excellence - the attainment of quality governance practices and procedures on a more reliable basis in small, medium and large enterprises.

Ireland has secured an international reputation as an attractive place to do business in the recent years. This success must be consolidated in the coming years by a strong capacity to tackle serious or recurring corporate misconduct in all forms and sizes of enterprise.

<sup>60</sup> Research undertaken by Millward Brown IMS for the ODCE in late 2005/early 2006.



# Appendices

Appendix 1.2.1

List of ODCE Presentations in 2005

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
25/01/2005	Waterford I.T.	Presentation	Company Law Health Check	Waterford	180	Adrian Brennan
26/01/2005	Sligo County Council	Presentation	Company Law Health Check	Sligo	30	Adrian Brennan
27/01/2005	Institute of Directors/UCD Centre for Corporate Governance	Seminar	Directors' Compliance Statements	UCD Belfield, Dublin	100	Paul Appleby
02/02/2005	An Garda Síochána	Fraud Investigation Course	Role of the ODCE	Harcourt Square, Dublin	20	Pat Collins
09/02/2005	Audit Committee Institute Ireland	Seminar	Directors' Compliance Statements - Issues Addressed in the ODCE's Revised Guidance	Berkeley Court Hotel, Dublin	200	Paul Appleby
14/02/2005	ICTU Worker Directors	Presentation	Company Law Health Check	Parnell Square, Dublin 1	30	Adrian Brennan
14/02/2005	Irish Bankers' Federation	Seminar	Directors' Compliance Statements: Issues Addressed in the ODCE's Revised Guidance	Nassau House Dublin 2	50	Paul Appleby
15/02/2005	The Institute of Taxation in Ireland	Presentation	The ODCE and its Revised Guidance on Directors' Compliance Statements	Four Seasons Hotel	80	Paul Appleby
17/02/2005	Financial Services Ireland	Presentation	Directors' Compliance Statements	IBEC, Confederation House	30	Paul Appleby
02/03/2005	ICTU Briefing Session	Presentation	Directors' Compliance Statements - Scope and Effect	ICTU, Parnell Square, Dublin 1	15	Paul Appleby
09/03/2005	Jordan Publishing	Conference	Developments in Enforcement Activity and Policy	Jury's Ballsbridge Hotel	80	Paul Appleby
09/03/2005	An Garda Síochána	Presentation	Role of the ODCE	Garda Headquarters	25	Gerry Walsh

Appendix 1.2.1(continued)

List of ODCE Presentations in 2005

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
31/03/2005	Dublin International Insurance and Management Association	Presentation	Directors' Compliance Statement - Scope and Effect	Fitzwilliam Hotel, Dublin	40	Paul Appleby
12/04/2005	Orwell Network Group	Presentation	Corporate Health Check for Directors/ Auditors of Small Private Limited Companies	Fitzwilliam Lawn Tennis Club	20	Adrian Brennan
15/04/2005	Institute of Chartered Accountants in Ireland	Conference	Auditor Reporting to the ODCE	Radisson SAS Hotel, Galway	200	Paul Appleby
20/04/2005	Insurance Institute of Ireland	Presentation	Directors' Compliance Statements - Scope and Effect	Davenport Hotel	80	Paul Appleby
25/04/2005	Current Law Training	Presentation	Role of the ODCE	Westbury Hotel	100	Adrian Brennan
04/05/2005	Network Group	Presentation	Company Law Health Check	Fitzwilliam Lawn Tennis Club	20	Adrian Brennan
05/05/2005	Network Group	Presentation	Company Law Health Check	Jury's Hotel, Dublin	15	Adrian Brennan
05/05/2005	Network Group	Presentation	Company Law Health Check	Mont Clare Hotel, Dublin	25	Adrian Brennan
11/05/2005	Insurance Institute of Galway	Presentation	Directors' Compliance Statements	Harbour Hotel, Galway	18	Kevin Prendergast
11/05/2005	Law Society of Ireland	Presentation	Role and Functions of the ODCE	Law Society of Ireland, Blackhall Place, Dublin	250	Adrian Brennan
17/05/2005	Disability Federation of Ireland	Presentation	Corporate Health Check	Smithfield, Dublin	60	Kevin Prendergast
17/05/2005	An Garda Síochána	Presentation	Role of the ODCE	Garda Headquarters	25	Gerry Walsh
17/05/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Tralee District	15	Dermot Madden and Mick Moran

Appendix 1.2.1(continued)

List of ODCE Presentations in 2005

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
18/05/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Limerick	40	Dermot Madden and Mick Moran
23/05/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Cork	40	Dermot Madden and Mick Moran
25/05/2005	Marsh Ireland	Presentation	Corporate Governance Today - Issues and Solutions	Berkeley Court Hotel, Dublin	100	Kevin Prendergast
08/06/2005	International Association of Insolvency Regulators	Conference	Corporate Insolvency Developments in Ireland	Helsinki	35	Paul Appleby
28/06/2005	Insurance Institute of Cork	Presentation	Directors' Compliance Statements - Scope and Effect	The Imperial Hotel, Cork	10	Paul Appleby
13/09/2005	Nova	Presentation	Corporate Health Check	UCD	25	Kevin Prendergast
13/09/2005	An Garda Síochána	Presentation	Role of the ODCE	Garda Headquarters	25	Gerry Walsh
16/09/2005	Networks Cross Border Community Enterprise Programme	Conference	Corporate Health Check	Eglinton, Derry, Northern Ireland	25	Kevin Prendergast
23/09/2005	Milltown Institute	Conference	Business Ethics	Milltown Institute	80	Paul Appleby
04/10/2005	Probation and Welfare Service	Conference	Corporate Health Check	Hodson Bay Hotel, Athlone	100	Kevin Prendergast
12/10/2005	Institute of Chartered Secretaries and Administrators	Presentation	Company Law Regulation – ODCE	Jury's Hotel, Dublin	150	Paul Appleby
13/10/2005	Family Resource Centre	Presentation	Corporate Health Check	Keadeen Hotel, Newbridge	40	Kevin Prendergast
07/11/2005	UCD's School of Accounting	Presentation	The Role of the ODCE	UCD	115	Kevin Prendergast

Appendix 1.2.1(continued)

List of ODCE Presentations in 2005

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
10/11/2005	MBA Association of Ireland – Western Chapter: 'Guest Speaker' Event	Presentation	The ODCE's Role in Reducing Risk and Improving Market Performance	NUI Galway	30	Paul Appleby
11/11/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Dundalk District	18	Dermot Madden and Mick Moran
16/11/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Galway	18	Dermot Madden and Mick Moran
17/11/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Wicklow District (Sandymount)	12	Dermot Madden and Mick Moran
24/11/2005	An Garda Síochána	Presentation	Role of the ODCE	Garda Headquarters	25	Gerry Walsh
25/11/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Wexford District	22	Dermot Madden and Mick Moran
25/11/2005	Institute of Chartered Accountants in Ireland	Conference	'Regulation – Achieving the Balance'	Tullow, Co. Carlow	100	Paul Appleby
25/11/2005	Omnipro Practice Support	Presentation	'What's on the ODCE's Agenda?'	The Clarion, Limerick	25	Kevin Prendergast
01/12/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Meath District (Ashtown Gate)	15	Dermot Madden and Mick Moran
02/12/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Waterford District	22	Dermot Madden and Mick Moran



Appendix 1.2.1(continued)

List of ODCE Presentations in 2005

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
02/12/2005	Omnipro Practice Support	Presentation	‘What’s on the ODCE’s Agenda?’	City West Hotel, Dublin	15	Kevin Prendergast
05/12/2005	Association of Compliance Officers	Presentation	The Role of the ODCE	Institute of Bankers, IFSC, Dublin	100	Kevin Prendergast
07/12/2005	Omnipro Practice Support	Presentation	‘What’s on the ODCE’s Agenda?’	Cork	10	Kevin Prendergast
08/12/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Athlone District	22	Dermot Madden and Mick Moran
09/12/2005	Enterprise Start Programme	Presentation	Corporate Health Check	Sligo	10	Kevin Prendergast
10/12/2005	UCD School of Law	Irish European Law Forum	Enforcing Corporate Governance Practices. Ireland’s Experience – the Impact of the ODCE	Newman House, St. Stephen’s Green, Dublin	30	Paul Appleby
19/12/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Letterkenny District	30	Dermot Madden
20/12/2005	ODCE/Revenue Commissioners	Presentation	Information Exchange between the ODCE and Revenue	Sligo District	30	Dermot Madden

Appendix 1.2.2

Subject of ODCE Press Statements – 2005

Date	Subject
07/01/05	Publication of ODCE End-of-Year Review for 2004
09/03/05	Presentation to the Jordans’ Corporate Governance and Administration Conference highlighting the value of supervising insolvent companies
15/03/05	ODCE Secures Disqualification of six more Directors of ‘Struck-off’ Companies
03/06/05	Publication of ODCE Annual Report for 2004
28/07/05	ODCE Seeks Nine Disqualifications arising from the NIB/NIBFS Report

Appendix 2.1.1

Breakdown of New Investigation Cases in 2005 by Source

Source of New Investigation Cases	2004	2005
<b>Mandatory Reports</b>		
Indictable Reports from Auditors	1,568	1,965
Reports from the CRO	15	17
Report from Liquidator	2	3
Indictable Reports from Professional Bodies	9	7
<b>Total Mandatory Reports</b>	<b>1,594</b>	<b>1,992</b>
<b>Voluntary Reports</b>	341	323
Public Complaints	2	6
Reports from State Authorities	18	15
Reports from non-State Authorities	1	0
Reports in the Public Domain	n/a	37
<b>ODCE Detections</b>	<b>362</b>	<b>381</b>
<b>Total Voluntary and Other Reports</b>	<b>362</b>	<b>381</b>
<b>TOTAL REPORTS</b>	<b>1,956</b>	<b>2,373</b>

Appendix 2.2.1

Mandatory Reports – Character of Possible Company Law Defaults

Types of Indicated Default	2004	2005
Non-filing of Annual Returns on a timely basis	1,560	1,989
Excessive Directors' Loans	303	342
Failure to keep Proper Books of Account	59	64
Non-holding of Extraordinary General Meetings	30	16
No Director Resident in the State	12	16
Directors' Interests/Share Registration Infringements	15	9
Notice Defaults on Resignation of Auditor	1	7
Non-Qualification for Appointment as Auditor	4	5
False Statements to Auditors	0	5
Falsification of Documents	2	4
Other Defaults	21	20
<b>Total Defaults in Mandatory Reports</b>	<b>2,007</b>	<b>2,477</b>

Appendix 2.2.2

Voluntary and Other Reports – Character of Issues Involved

Types of Indicated Issues	2004	2005
Reckless/Fraudulent/Insolvent Trading	53	62
Debt Issues	63	61
Filing Issues	11	35
Shareholder Issues	24	28
Forgery/False Information	13	27
Director Issues	16	26
Trading while struck off the Companies Register	13	26
Annual/Extraordinary General Meetings	27	12
Liquidated Companies	3	8
Auditor issues	0	7
Unclear/Other Issues	139	88
Total	362	380

Appendix 2.2.3

Throughput of Cases at Detection Stage in 2005

Detection of Cases	2004	2005
Cases on hands at 1 January	406	499
New Cases	1,956	2,373
Cases Concluded	1,577	2,111
<i>of which</i> - Cases Closed	351	470
- Cases Referred to the CRO	1,226	1,641
Cases for Further Consideration by the ODCE	286 <sup>61</sup>	154
Cases on hands at 31 December	499 <sup>62</sup>	607

<sup>61</sup> This differs from the figure of 493 reported in the 2004 Annual Report due to an internal reassignment of 207 cases during 2005.  
<sup>62</sup> This differs from the figure of 292 reported in the 2004 Annual Report due to an internal reassignment of 207 cases during 2005.



Appendix 2.2.4

Cases Concluded at Detection Stage by Primary Manner of Disposal

Nature of Decisions	Voluntary Reports	Mandatory Reports	Total 2005
Insufficient Evidence of Default	91	-	91
Default Appropriate for Civil Action	66	-	66
Remedy of Default/Warning	35	263	298
Default Referred to CRO	39	1,602	1,641
Other	15	-	15
<b>Total Cases Closed</b>	<b>246</b>	<b>1,865</b>	<b>2,111</b>
Cases Referred for Possible Enforcement	64	80	144
Cases Referred for Insolvency Examination	6	4	10
<b>Cases Referred for Further Consideration</b>	<b>70</b>	<b>84</b>	<b>154</b>

Appendix 3.1

Overview of ODCE Proceedings in 2004 and 2005

Proceedings by Case Type	2004		2005	
<b>Investigative</b>				
•Successful	11		1	
•Unsuccessful	-		-	
•Ongoing	-		-	
<b>Sub-Total</b>		<b>11</b>		<b>1</b>
<b>Civil Enforcement</b>				
•Successful	4		10	
•Unsuccessful	1		1	
•Settled	-		1	
•Ongoing	7		20	
<b>Sub-Total</b>		<b>12</b>		<b>32</b>
<b>Criminal Enforcement</b>				
•Successful	20		19	
•Unsuccessful	2		-	
•Ongoing	9		9	
<b>Sub-Total</b>		<b>31</b>		<b>28</b>
<b>Judicial Review and Others</b>				
•Successful	4		2	
•Unsuccessful	-		1	
•Ongoing	3		5	
<b>Sub-Total</b>		<b>7</b>		<b>8</b>
<b>All Proceedings</b>				
•Successful	39		32	
•Unsuccessful	3		2	
•Settled	-		1	
•Ongoing	19		34	
<b>Total</b>		<b>61</b>		<b>69</b>

Appendix 3.2

Breakdown of Legal Proceedings in 2005 involving the Director

Type	Subject Matter	Section/Act, etc. <sup>63</sup>	Case Nos.	Case Status/Result
Superior Courts				
Application	Termination of ODCE Proceedings	S. 160, 1990	1	Ongoing (1)
Application	Disclosure of identity of unnamed parties in Inspectors' Report	S. 12, 1990	1	Refused (1)
Application	Access to the Inspectors' papers, etc.	S. 12, 1990	1	Ongoing (1)
Application	Compliance with obligation to bring restriction action and file liquidation report	S. 371, 1963	1	Compliance Order and Costs (1)
Application	Compliance with obligation to hold AGM	S. 371, 1963	1	Ongoing (1)
Application	Disqualification of company officers	S. 160(2), 1990	27	Disqualifications (13), Settled (1), Ongoing (18 of which 1 is appealed to the Supreme Court),
Application	Participation in relief application by a restricted director	S. 152, 1990	3	Granted (2); Ongoing (1)
Intervention	Interpretation of law relating to liquidation of Irish-registered company	S. 214, 1963 and the EU Insolvency Regulation	1	Ongoing at the European Court of Justice (1)

<sup>63</sup>The Acts referred to are the Companies Acts 1963 and 1990 and Council Regulation (EC) No. 1346/2000 of 29 May 2000.

Appendix 3.2 (continued)

Breakdown of Legal Proceedings in 2005 involving the Director

Type	Subject Matter	Section/Act, etc.	Case Nos.	Case Status/Result
Judicial Reviews, etc.	Validity of actions of authorised officer	Ss. 19 and 20, 1990	4	Dismissed (2)
	Director's application to quash District Justice's direction to disclose documents			Ongoing (1)
	Defence of challenge to legality of ODCE investigation and prosecution, etc.			Ongoing (1)
District Court				
Application	Retention of seized documents	S. 20, 1990	1	Retention Orders (4) granted
Prosecution	Acting as a company director while an undischarged bankrupt	S. 183, 1963	1	Convictions (2), Disqualifications (2)
Prosecution	Acting as a company director while disqualified	S. 161, 1990	1	Ongoing (1)
Prosecution	Acting as a company director while restricted and in breach of the statutory conditions	S. 161, 1990	7	Convictions (15) and Disqualifications (6 of which 1 is appealed to the Circuit Court), Ongoing (2)
Prosecution	Acting as an auditor while unqualified	S. 187, 1990	3	Convictions (8), TICs (16) <sup>64</sup>

<sup>64</sup>TICs means charges taken into consideration.

Appendix 3.2 (continued)

Breakdown of Legal Proceedings in 2005 involving the Director

Type	Subject Matter	Section/Act, etc.	Case Nos.	Case Status/Result
Prosecution	Acting as an auditor while disqualified	S. 187, 1990	1	Ongoing (1)
Prosecution	Acting as a liquidator while disqualified	S. 300A, 1963	1	Ongoing (1)
Prosecution	Provision of false information to the CRO	S. 242, 1990	2	Convictions (4), TICs (3)
Prosecution	Use of falsified company document	S. 243, 1990	1	Ongoing (1)
Prosecution	Excessive directors' transactions	S. 40, 1990	2	Probation Act - 6 charges thought proven, Ongoing (1)
Prosecution	Failure to keep proper books of account	S. 202, 1990	11	Convictions (20), Probation Act – 29 charges thought proven, TICs (9), Ongoing (2)
TOTAL			69 <sup>65</sup>	

<sup>65</sup>The aggregate of the case numbers in this column (71) is not the actual number of cases, because two criminal cases involved more than one type of offence. The actual number of distinct cases is 69.

Appendix 3.3

Details of Successful ODCE Enforcement Actions in 2005

Parties Sanctioned/ Reason for Sanction	Company Number	Penalty/Decision	Costs/ Expenses
Acting as an auditor while unqualified			
Liam Butler <sup>66</sup>	-	€1,000	€1,500
Acting as an auditor while unqualified/Furnishing false information			
Joseph M Casey (9 convictions) <sup>67</sup>	-	€2,250	€500
Raymond Scully (2 convictions) <sup>68</sup>	-	€2,000	€2,000
Acting as a company director while restricted and in breach of the statutory conditions			
William Coleman, Director, Douglas Community Association Ltd.	255549	€1,000 and 3 years' Disqualification	€233
Kenneth Daly, Director, Enterprise Dunmore Ltd.	199766	€500 and 3 years' Disqualification	€250
James V Mealy, Director, Choice Textiles Ltd.	343883	€1,000 and 5 years' Disqualification	€500
Shirley O'Donoghue, Director, Jetnova Ltd. <sup>69</sup>	301104	6 months' custodial sentence (suspended for 2 years), €1,500 fine and 5 years' Disqualification	€250
Marion Scanlon, Director, Cardy Rock Management Company Ltd. and Golden Meadow Construction Ltd.	373806 299696	€4,308 and 5 years' Disqualification	€300

<sup>66</sup>A further ten charges were taken into consideration by the Court.  
<sup>67</sup>Five convictions were for auditing while unqualified, and four related to furnishing false information.  
<sup>68</sup>A further six charges were taken into consideration by the Court, three in respect of auditing while unqualified and three in respect of furnishing false information.  
<sup>69</sup>This case is under appeal at year-end.



Appendix 3.3 (continued)

Details of Successful ODCE Enforcement Actions in 2005

Parties Sanctioned/ Reason for Sanction	Company Number	Penalty/Decision	Costs/ Expenses
Phelim Scanlon, Director, St. Mochta's Property Management Company Ltd., Cygnet Properties Ltd., Cardy Rock Management Company Ltd., Coolmine Properties Ltd.	361126 235971 373806 370166	€9,616 and 5 years' Disqualification	€300
Acting as a company director while an undischarged bankrupt			
Conor McGreevey, Director Tony McGreevey, Director Covert Inns Ltd.	371452	€750 each and 5 years' Disqualification each	) €1,000 )
Excessive Directors' Transactions			
Mary Kane, Director, Kane's Travel Agency (Longford) Ltd.	63823	Probation Act - 6 charges thought proven	-
Failure of a liquidator to seek directors' restrictions and submit a report to the ODCE			
John McGuigan	-	Compliance Order	€3,000
Failure to keep proper books of account			
Caljo Manufacturing Ltd. Joseph Callan, Director Linda Callan, Director	182656	€750 €750 €750	) )€750 )
Century City Ltd. Flix Restaurants Ltd. Sheridan Simulation Ltd. Sheridan Theatres (Dublin) Ltd. Grovepark Properties Ltd. Daylong Ltd. Strike Four Ltd.	244695 237447 260013 283828 219123 237289 244697	Probation Act – 29 charges thought proven	
Hitechniques Ltd.	174035	€600	€263

Appendix 3.3 (continued)

Details of Successful ODCE Enforcement Actions in 2005

Parties Sanctioned/ Reason for Sanction	Company Number	Penalty/Decision	Costs/ Expenses
Horgan and O'Sullivan Ltd. <sup>70</sup> Martin O'Sullivan Noel Horgan	117664	€500 €500 €500	) ) €1,000 )
Laragh Investments Ltd. Paul Carter, Director Denis Carter, Director Raymond Carter, Director	331230	€1,500 €1,500 €1,500	€300
Little Spain Ltd. Samir Haouanoh, Director Madani Haouanoh, Director	359746	€500 €100 €300	€208 €208 €208
Pinnacle Investments Ltd. Ann Marie Slevin Terry Slevin	353485	€200 €100 €100	€300
The Tornado Server Company Ltd. (2 convictions)	291633	€450	€200
Walshe Heating and Plumbing Services Ltd. Martin Walshe, Director	309276	€200 €250	€450
Unfitness to act as a company officer due to breaches of law and duty			
Patrick Rogers, Director Paul Rogers, Director Barnroe Ltd.	247370	5 years' Disqualification each	To be determined
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			
Francis Endicott, Director Marita McDonnell, Director Clawhammer Ltd.	210140	1 year's Disqualification each	) €2,000 )
Martin Forristal, Director Ruth Forristal, Director Cautious Trading Ltd.	289000	5 years' Disqualification each	To be taxed in default of agreement

<sup>70</sup> A further three charges against the company and three charges against each director were taken into consideration by the Court.

Appendix 3.3 (continued)

Details of Successful ODCE Enforcement Actions in 2005

Parties Sanctioned/ Reason for Sanction	Company Number	Penalty/Decision	Costs/ Expenses
Andrew Hctor, Director Deirdre Hctor, Director Shinrone Food Market Ltd.	305810	5 years' Disqualification each	) €2,000 )
John McCoy, Director Maeve McCoy, Director J and M Catering Ltd.	177512	5 years' Disqualification each	Contribution (€1,500) to costs
Eileen Mongey, Director Thomas Mongey, Director Allied Mechanical Handling Ltd.	135810	3 years' Disqualification each	) €2,500 )
Unfitness to act as a company officer in consequence of an Inspector's Report			
Nigel D'Arcy, former Manager National Irish Bank Ltd.	65780 30478	10 years' Disqualification	-

Appendix 3.4

ODCE Throughput of Possible Criminal Enforcement Cases

Cases for Possible Criminal Prosecution	2004	2005
Cases on hands with ongoing criminal proceedings at 1 January	12	10
Other cases on hands for possible enforcement at 1 January	241	274
New cases received for possible enforcemen	263 <sup>71</sup>	159
<b>Total Cases</b>	<b>516<sup>72</sup></b>	<b>443</b>

Treatment of Cases during the Year	2004	2005
Cases where criminal proceedings were withdrawn	2	-
Cases where criminal proceedings were determined	20	19
Cases where criminal proceedings were adjourned	1	-
Other cases closed	209	56
Cases on hands with ongoing legal proceedings at year end	10	9
Cases on hands for possible enforcement at year end	274	359
<b>Total Cases</b>	<b>516<sup>72</sup></b>	<b>443</b>

<sup>71</sup>This differs from the figure of 469 reported in the 2004 Annual Report primarily as a result of an internal reassignment of 207 cases during 2005.  
<sup>72</sup>This differs from the figure of 722 reported in the 2004 Annual Report primarily as a result of an internal reassignment of 207 cases during 2005.

Appendix 3.5

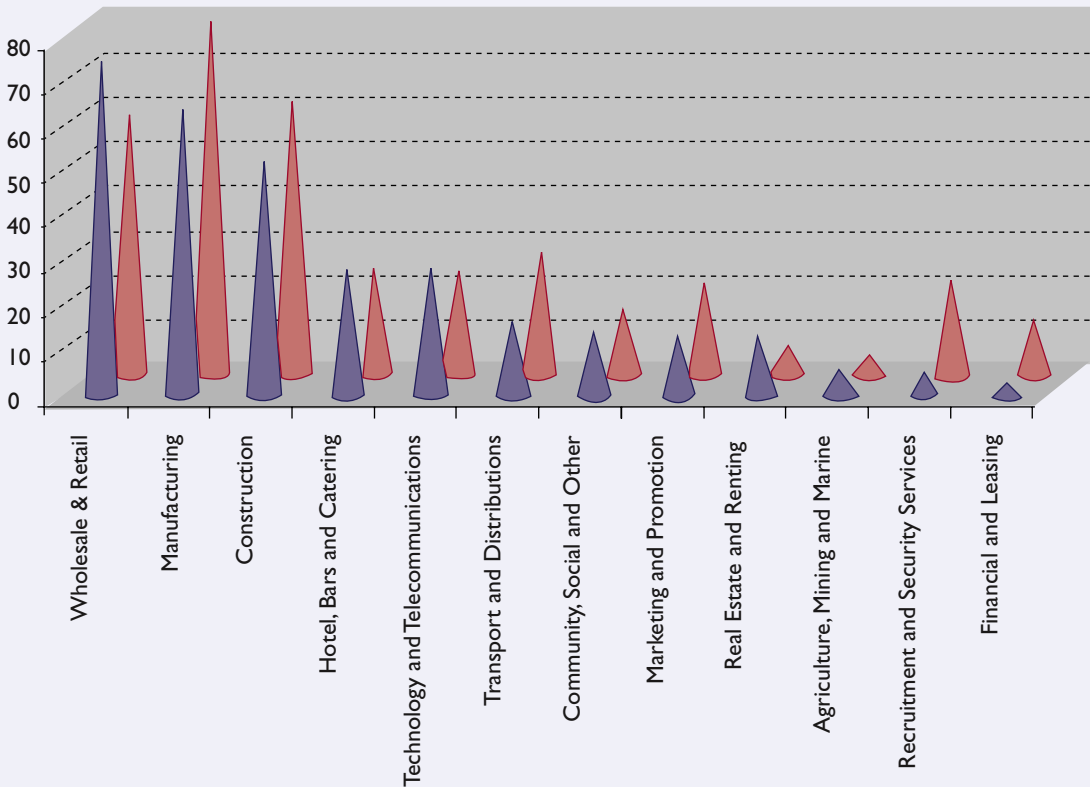
Breakdown of Cases for Possible Enforcement in 2005 by Character

New Cases by Character	Total
Breach of High Court Restriction Orders	34
Breach of Foreign Disqualification orders	2
Failure to Keep Proper Books of Account	68
Destruction, Mutilation or Falsification of Books and Documents	7
Reckless/Fraudulent Trading	4
Trading as a Limited Company While Not So Incorporated	5
Unliquidated Insolvent Companies	6
Undischarged Bankrupts Acting as Directors	1
Acting as Director Whilst subject to a Disqualification Order	1
Non-cooperation With Auditor	1
Unqualified Auditors	6
Stock Exchange-related Cases	12
Other Suspected Offences	12
Total Cases	159

Appendix 4.1

Liquidator Reports at 31 December 2004 - Sectoral Analysis

Insolvency by Sector	Section 56 Reports Involved			
	2004		2005	
Wholesale & Retail	59	16%	75	23%
Manufacturing	80	22%	65	20%
Construction	62	17%	53	16%
Hotels, Bars & Catering	24	7%	29	9%
Technology & Telecommunications	24	7%	29	9%
Transport & Distribution	29	8%	18	6%
Community, Social & Other	15	4%	15	4%
Marketing & Promotion	21	6%	14	4%
Real Estate & Renting	7	2%	14	4%
Agriculture, Mining & Marine	5	1%	6	2%
Recruitment & Security Services	23	6%	6	2%
Financial & Leasing	13	4%	3	1%
TOTALS	362	100%	327	100%





Appendix 4.1.1

Liquidator Reports at 31 December 2005 – Reports Progressed

Classification	First Reports	Further Reports	Final Reports	Total Reports
Section 56 Reports received				
Reports brought forward from 2004**	97	60	77	234
Reports received in 2005	327	364	318	1,009
Reports due and <u>not</u> received in 2005	17	50	N/A*	67
Compliance Rate	95%	87%	N/A	94%
Section 56 Reports – Decisions				
Decisions due in 2005	314	316	326	956
Decisions issued in 2005	317	308	317	942
Conclusion Rate	101%	97%	97%	98%
Decisions <u>where full relief</u> <sup>73</sup> was granted	194	247	317	758
Decisions <u>where partial relief</u> <sup>74</sup> was granted	13	2	0	15
Decisions <u>where relief at this time</u> <sup>75</sup> was granted	58	35	0	93
Decisions <u>where relief was not granted</u>	49	24	0	73
Other Decision made	3	0	0	3
Reports carried forward to 2006	107	116	78	301
No. of Liquidators Involved in Section 56 Reports	102	N/A	N/A	N/A
No. of Directorships Involved in Section 56 Reports	724	N/A	N/A	N/A

\* N/A denotes not applicable  
\*\* 2004 Annual Report figures adjusted

<sup>73</sup> Full Relief is granted in all cases where the ODCE is satisfied, on the basis of information provided by the liquidator or otherwise, that the directors of the insolvent company had acted honestly and responsibly in the conduct of the company's affairs.  
<sup>74</sup> No Relief / Partial relief is granted in circumstances where either the liquidator has not sought to be relieved and ODCE accords with this recommendation or where the ODCE is not fully persuaded by the reasons which the liquidator had given as to why he/she ought to be relieved from the obligation of applying to the Court for the directors' restriction. Cases of Partial Relief are those in which such circumstances apply in respect of some, but not all, of the company's directors.  
<sup>75</sup> Relief 'at this time' is granted in cases where the ODCE is satisfied that the liquidator needs more time to investigate the circumstances giving rise to the company's demise. The ODCE requires such liquidators to submit a second report, after which a fresh decision will be made on relief.

Appendix 4.2.1

Cases where 'Restriction Orders' were made against Directors by the High Court in 2005 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [*See Explanatory Note at end of this Table]
316338	360 Networks Services (Europe)	Coughlan	Patrick	14/03/2005	Full Restriction
		Lake	Steven	14/03/2005	Full Restriction
170334	A.B.A. Security Limited	McDonald	Martin	09/05/2005	Partial Restriction
241543	A.N.P. Hire Limited	Ryan	John	28/11/2005	Full Restriction
		Ryan	Mary	28/11/2005	Full Restriction
93737	Advance Print & Stationery	Noone	Stephen	10/10/2005	Full Restriction
		Watkins	Thomas	10/10/2005	Full Restriction
344519	Airect Limited	Mulligan	Frances	24/10/2005	Full Restriction
293498	Automobility Limited	Burgess	Jacqueline	17/10/2005	Full Restriction
		Walker	Michael	17/10/2005	Full Restriction
210643	Barola Limited	Moore	Aidan	30/05/2005	Full Restriction
		Whelan	Eamon	30/05/2005	Full Restriction
351049	BBS Construction Limited	Keogan	Stephen	14/03/2005	Full Restriction
		Keogan	Brian (Jnr)	14/03/2005	Full Restriction
		Keogan	Brian	14/03/2005	Full Restriction
		Smith	Fergal Patrick	14/03/2005	Full Restriction

### Appendix 4.2.1 (continued)

Cases where 'Restriction Orders' were made against Directors by the High Court in 2005 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [*See Explanatory Note at end of this Table]
351612	BDS Catering Equipment Limited	Byrne	Garrett	21/02/2005	Full Restriction
		Doherty	George	21/02/2005	Full Restriction
274905	Brendan Tynan Electrical Limited	Tynan	Brendan	10/10/2005	Full Restriction
		Tynan	Pauline	10/10/2005	Full Restriction
227584	C.M.C. (Ireland) Limited	Carolan	Gary	14/03/2005	Full Restriction
		Cosgrave	Niall	14/03/2005	Full Restriction
335374	Capital Auto Group Limited	Chambers	Gary	20/06/2005	Full Restriction
		Swords	Paul	21/12/2005	Full Restriction
216230	Capital Stone International	Cullen	John	25/07/2005	Full Restriction
		Cullen	Bridget	25/07/2005	Full Restriction
161560	Careca Investments Limited	Coady	Leo	14/03/2005	Full Restriction
19332	Castleholding Investment	Kachkar	Jack	15/09/2005	Partial Restriction
181659	Cherby Limited	Cooke	Paul	14/03/2005	Full Restriction
		Cooke	John	06/07/2005	Full Restriction
316685	Clonsel Systems Limited	Lee	Noel	21/11/2005	Partial Restriction
355424	Cooke's Events Co. Limited	Cooke	John	06/07/2005	Partial Restriction
295512	Cronkearn Developments Limited	Cron	Emmanuelle	10/10/2005	Full Restriction
		Kearns	John	10/10/2005	Full Restriction
94485	Dataroll Manufacturing Limited	Farrell	Peter	24/02/2005	Full Restriction
		O'Reilly	Enda	24/02/2005	Full Restriction

### Appendix 4.2.1 (continued)

Cases where 'Restriction Orders' were made against Directors by the High Court in 2005 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [*See Explanatory Note at end of this Table]
94485	Dataroll Manufacturing Limited	Farrell	Peter	24/02/2005	Full Restriction
		O'Reilly	Enda	24/02/2005	Full Restriction
360989	DC & Sons Construction Limited	Curtis	Daniel	12/12/2005	Full Restriction
		Mahon	Edwina	12/12/2005	Full Restriction
240891	Direct Memory International	Matthews	Stuart	30/05/2005	Full Restriction
207979	Doonsheen Enterprises Limited	Rooney	Raphelle	24/10/2005	Full Restriction
		Rooney	David	24/10/2005	Full Restriction
254884	Dunkellin Developments Limited	Bermingham	Donal	28/11/2005	Full Restriction
		Martin	Kevin	28/11/2005	Full Restriction
274495	Finchley Construction Ltd.	Barry	Michael	28/07/2005	Partial Restriction
		Moran	John	28/07/2005	Partial Restriction
305600	G & N House Supplies Ltd.	Justice	George	10/10/2005	Full Restriction
		Justice	Noel	10/10/2005	Full Restriction
168422	H.R.B. Building Services Limited	Keogan	Brian	14/03/2005	Full Restriction
		Keogan	Elizabeth	14/03/2005	Full Restriction
235394	In Catering Limited	Biddulph	Damian	11/07/2005	Full Restriction
		Ward	Patricia	11/07/2005	Full Restriction
240800	Interior Dimensions Limited	Maher	Michael	07/11/2005	Full Restriction
357559	Islandbridge Productions Limited	Lambe	Kathleen	14/11/2005	Full Restriction
		Murray	Bryan	14/11/2005	Full Restriction

### Appendix 4.2.1 (continued)

Cases where 'Restriction Orders' were made against Directors by the High Court in 2005 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [*See Explanatory Note at end of this Table]
294643	Kelly Technical Services (Ireland)	Harnett	Brian	28/07/2005	Partial Restriction
		Kelly	Declan	28/07/2005	Partial Restriction
294643	Kelly Technical Services (Ireland)	Kelly	Raymond	27/07/2005	Partial Restriction
282098	Kwikseal Limited	Byrne	Ger	17/02/2005	Full Restriction
		Dobbs	Denis	17/02/2005	Full Restriction
258460	Lancefort Company Limited	Lumley	Ian	11/01/2005	Full Restriction
		Smith	Stephen	11/01/2005	Full Restriction
276662	Leinster Security (Mullingar)	Buckley	Oliver	13/06/2005	Full Restriction
		Molloy	Laz	13/06/2005	Full Restriction
341327	Leinster Security Retail Limited	Buckley	Oliver	13/06/2005	Full Restriction
		Molloy	Laz	13/06/2005	Full Restriction
320096	Lincoln Recruitment Limited	Sullivan	Mary	21/02/2005	Partial Restriction
263169	Loganroy Consultants Limited	Wynne	Anne	07/11/2005	Full Restriction
		Wynne	Garry	07/11/2005	Full Restriction
248185	M.J. Marshall Electrical Limited	Marshall	Noreen	28/06/2005	Full Restriction
		Marshall	Michael	28/06/2005	Full Restriction
79131	M.M. Bakeries & Company	Mason	Richard	18/07/2005	Full Restriction
332705	MCN Windows & Conservatories	Coogan	Ian Joseph	11/04/2005	Full Restriction
		McFadden	Mark Anthony	11/04/2005	Full Restriction

### Appendix 4.2.1 (continued)

Cases where 'Restriction Orders' were made against Directors by the High Court in 2005 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [*See Explanatory Note at end of this Table]
23092	Midland Electrical Co. Limited	Geraghty	Michael	04/04/2005	Full Restriction
		Smyth	Sean	04/04/2005	Full Restriction
151826	Mitek Holdings Limited	Kachkar	Jack	15/09/2005	Partial Restriction
119677	Mitek Limited	Kachkar	Jack	15/09/2005	Partial Restriction
349471	Miza Ireland Limited	Kachkar	Jack	15/09/2005	Partial Restriction
109900	Motogen (Electric) Limited	Byrne	Brendan	28/06/2005	Full Restriction
		Kelly	Thomas	09/05/2005	Full Restriction
		Kenny	Patrick	28/06/2005	Full Restriction
		Lynch	Maurice	14/06/2005	Full Restriction
245179	Mountline Services Limited	McAuley	Thomas	09/05/2005	Partial Restriction
		Mitchell	Michael	24/10/2005	Full Restriction
266390	Moypool Limited	Mitchell	Margaret	24/10/2005	Full Restriction
		O'Hora	Angela	08/12/2005	Full Restriction
230804	NAFTA Products Operators	O'Hora	Anthony	08/12/2005	Full Restriction
305315	Nightglade Limited	Tarasov	Dimitri	19/12/2005	Partial Restriction
		Holland	Anthony	17/01/2005	Full Restriction
149966	Noel Kavanagh Limited	Moloney	Martin	17/01/2005	Full Restriction
		Kavanagh	Noel	28/11/2005	Full Restriction
237889	O.N.C. Contract Personnel Limited	O'Neil	Alan	12/01/2005	Full Restriction



### Appendix 4.2.1 (continued)

Cases where 'Restriction Orders' were made against Directors by the High Court in 2005 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [*See Explanatory Note at end of this Table]
281014	O'Flanagans of Durrow Limited	O'Flanagan	Claire	22/11/2005	Full Restriction
		O'Flanagan	Eamonn	22/11/2005	Full Restriction
315281	P.C. Superstore Limited	Matthews	Stuart	30/05/2005	Full Restriction
312365	Pitcairn Cuisine Limited	Berta	Bruno	27/06/2005	Full Restriction
		Marcelin	Evelyn	27/06/2005	Full Restriction
385004	Poga's Wonderland Limited	Lambe	Kathleen	14/11/2005	Full Restriction
		Murray	Bryan	14/11/2005	Full Restriction
101446	Publicity Gifts Limited	Kennedy	Richard	17/02/2005	Partial Restriction
336109	Pulse Media Limited	Fitzpatrick	Terence	14/02/2005	Full Restriction
		O'Sullivan	Daragh	14/02/2005	Full Restriction
320101	Q.A.F Couriers Service Limited	Delahunt	William	24/10/2005	Full Restriction
278605	Range Construction Limited	Griffin	Andrew John	04/04/2005	Full Restriction
		Ryan	William	04/04/2005	Full Restriction
262401	Redline Entertainments Limited	Lewis	Barry	07/11/2005	Full Restriction
		Thornton	Derek	07/11/2005	Full Restriction
242412	Rosslare Oil Limited	Devereux	Mary	10/10/2005	Full Restriction
222919	Roughan's Limited	Roughan	Bernadette	17/01/2005	Full Restriction
		Roughan	Micheal P	17/01/2005	Full Restriction
186527	Sandow Developments Limited	Rooney	Raphelle	24/10/2005	Full Restriction
		Rooney	David	24/10/2005	Full Restriction

### Appendix 4.2.1 (continued)

Cases where 'Restriction Orders' were made against Directors by the High Court in 2005 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [*See Explanatory Note at end of this Table]
290086	Securiskill Limited	Nangle	Francis (Jnr)	17/01/2005	Full Restriction
		Nangle	Francis (Snr)	17/01/2005	Full Restriction
177665	SPH Limited	Cullen	Padraic	07/04/2005	Full Restriction
		Fitzpatrick	Declan	07/04/2005	Full Restriction
		Shanahan	Sean	25/05/2005	Full Restriction
177665	SPH Limited	Shanahan	Marie	25/05/2005	Full Restriction
293593	Startrans Limited	Byrne	Patrick	09/12/2005	Full Restriction
262238	Stratum Limited	Mathews	Alphonsus	17/10/2005	Full Restriction
		Mathews	Gabriel	17/10/2005	Full Restriction
285253	Sunworth Limited	Doyle	Maragret	25/04/2005	Full Restriction
		Doyle	Liam	25/04/2005	Full Restriction
164589	Swanpool Limited	Lannen	Raymond	04/11/2005	Full Restriction
		Lannen	Deirdre	04/11/2005	Full Restriction
209446	Tech-Spec Ireland Limited	McAuliffe	Terry	13/06/2005	Full Restriction
		O'Brien	Mary	13/06/2005	Full Restriction
275236	The Dublin Sports Café Limited	Long	David	21/12/2005	Full Restriction
		Wright	Gerry	21/12/2005	Full Restriction
301423	The Orthopaedic Bed Company	Bruen	Paraic	13/12/2005	Full Restriction
272927	The Pump Shop Limited	Carmody	Kenneth	14/01/2005	Partial Restriction

Appendix 4.2.1 (continued)

Cases where ‘Restriction Orders’ were made against Directors by the High Court in 2005 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [*See Explanatory Note at end of this Table]
232760	Time Trading Limited	Dewar	Penny	10/10/2005	Full Restriction
		Kennedy	Justin	10/10/2005	Full Restriction
136751	Tipperary Fresh Foods Limited	O'Connor	Joseph Peter	04/04/2005	Full Restriction
234712	Tormey Fabricated Components	Tormey	Rose	07/04/2005	Full Restriction
		Tormey	Joseph	07/04/2005	Full Restriction
119673	Travelodge Limited	Lannen	Deirdre	04/11/2005	Full Restriction
		Lannen	Raymond	04/11/2005	Full Restriction
167879	Tronix Communications Limited	Hanley	Mark	15/10/2005	Full Restriction
		Hanley	Paul	15/10/2005	Full Restriction
108620	Tullow Farm Machinery Limited	Nolan	Marie	01/07/2005	Partial Restriction
		Nolan Jr.	Edward	01/07/2005	Partial Restriction
328607	Up Market Communications	Byrne	Liam	12/12/2005	Full Restriction
362919	Value Call Limited	O'Farrell	Paul	17/10/2005	Full Restriction
330689	Vanellen Limited	O'Reilly	Shay	12/12/2005	Full Restriction
		O'Reilly	Martina	12/12/2005	Full Restriction
305064	Volney Limited	Daly	Patrick	01/07/2005	Full Restriction
		Wyse	John Finbarr	01/07/2005	Full Restriction
196327	Wextrans Limited	Goldsmith	Andrew	17/10/2005	Full Restriction
		Goldsmith	Una	17/10/2005	Full Restriction

Appendix 4.2.1 (continued)

Cases where ‘Restriction Orders’ were made against Directors by the High Court in 2005 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Date Restricted From	Court Outcome [*See Explanatory Note at end of this Table]
190854	Wonderhill Limited	Groome	Joseph	14/03/2005	Full Restriction
		Pardy	John	14/03/2005	Full Restriction
291981	Worldport Ireland Limited	Hanson	John	17/02/2005	Full Restriction

\*Note:

The terms “**Full Restriction**” and “**Partial Restriction**” used in this Appendix 4.2.1 are solely meant to relate to the following:

“**Full Restriction**” relates to a court outcome where the Court restricted or disqualified all the directors against whom restriction or disqualification applications were taken by the liquidator of the company pursuant to sections 150 or 160 of the Companies Act 1990 where the liquidator had not been relieved by the ODCE pursuant to section 56 of the Company Law Enforcement Act 2001. Appendix 4.2.2 lists the persons that were disqualified.

“**Partial Restriction**” relates to a court outcome where the Court restricted or disqualified one or more but not all the directors against whom restriction or disqualification applications were taken by the liquidator of the company pursuant to sections 150 or 160 of the Companies Act 1990 where the liquidator had not been relieved by the ODCE pursuant to section 56 of the Company Law Enforcement Act 2001. Appendix 4.2.2 lists the persons that were disqualified.

Appendix 4.2.2

Cases where ‘Disqualification Orders’ were made against Directors by the High Court in 2005 pursuant to the Section 56 Process

Company No.	Company Name	Disqualified Directors		Date Disqualified From	Date Disqualified To
344519	Airect Limited	Mulligan	Robert	24/10/2005	23/10/2012
258577	Cloghan Tyre Services Limited	Daly	James	25/04/2005	24/04/2010
311222	Connolly Catering Limited	Connolly	Freddie	05/12/2005	04/12/2015
237889	O.N.C. Contract Personell Limited	O’Neil	Alan	12/01/2005	11/01/2010
320101	Q.A.F Couriers Service Limited	Flood	Conor	04/07/2005	03/07/2010
242412	Rosslare Oil Limited	Devereux	John	10/10/2005	09/10/2012
301423	The Orthopaedic Bed Company	Bruen	Paraic	13/12/2005	12/12/2015

Appendix 4.2.3

Cases where ‘Restriction or Disqualification Orders’ were not made against Directors by the High Court in 2005 pursuant to the Section 56 Process

Company Name	Company No.	Date of Court Order
A.G.M. Construction Management	313521	06/12/2005
Camoate Construction Limited	286656	29/07/2005
CG Services Limited	75567	17/02/2005
Collins-McCarthy Promotions Limited	342718	16/02/2005
Crann Imports Limited	163006	15/12/2005
Garweld Construction Limited	289771	12/01/2005
J & D Slater Limited	137005	28/06/2005
Kellistown Steel Fixers Limited	289161	01/07/2005
Mac Contractors Limited	71652	08/04/2005
New Age Components Limited	270215	14/01/2005
Strand Bacon Limited	172149	08/12/2005
Usit Limited	904769	10/08/2005
UsitWorld plc	300260	10/08/2005
Worldsport Networks Limited	259193	13/01/2005



Appendix 5.1.1

Approved versus Actual Staffing Complement by Grade at end-2005

Grade	Approved	Actual
Accountant Grade I	2	2
Accountant Grade III	1	0
Assistant Principal <sup>76</sup>	4	3.8
Clerical Officer <sup>77</sup>	5	7.6
Corporate Compliance Manager	1	1
Detective Garda	4	4
Detective Inspector	1	1
Detective Sergeant	2	1
Director	1	1
Executive Officer	4	4
Higher Executive Officer/Systems Analyst	4	3.2
Legal Adviser	3	3
Principal Officer	2	2
Principal Solicitor	1	1
Solicitor	2	2
Total	37	36.6

<sup>76</sup> One Assistant Principal is work-sharing. The fractional figures here and elsewhere in this table are due to work-sharing arrangements.  
<sup>77</sup> The indicated number includes a Legal Secretary who is employed on a contract basis.

Appendix 5.1.2

Breakdown of Expenditure against Allocation in 2005

Source of Allocation/Expenditure	€000s	€000s
Allocation		
Exchequer Grant	4,538.0	
Total Allocation		4,538.0
Expenditure		
Salaries, Wages and Allowances	1,808.9	
Advertising and Publicity	127.8	
Office Premises	241.6	
Legal Expenses	207.3	
Consultancy Services	156.4	
Computerisation	87.0	
Printing	114.8	
Incidental Expenses	28.6	
Travel and Subsistence	33.3	
Telecommunications	35.9	
Postal/Courier Services	20.7	
Photocopying	8.5	
Human Resource Development	28.3	
Total Expenditure		2,899.2
Amount Surrendered		1,638.8

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				

Appendix 5.3.1

Most Popular Document Downloads from the ODCE Website in 2005 .v. 2004

Title/Subject of Document <sup>78</sup>	2004	2005
Comparative Study of Corporate Governance Codes Relevant to the European Union And Its Member States - Final Report	-	21,590
ODCE Annual Report 2004 (in whole or in part)	-	9,529
Information Book 2 (Company Directors)	2,454	8,989
Inspectors' Report into NIB/NIBFS (in whole or in part)	7,783	6,168
Composite List of Insolvent Companies in Liquidation for 2003	784	6,134
List of Section 56 Cases granted 'Full Relief' in 2004	-	6,098
List of Insolvent Companies in Liquidation, Nov./Dec. 2004	-	5,916
List of Insolvent Companies in Liquidation, May/June 2004	-	5,491
Information Book 1 (Companies)	1,598	5,259
Guide to Transactions involving Directors	1,637	4,760
Duty of Auditors to Report to the ODCE	508	4,604
The Cadbury Report	-	4,592
List of Insolvent Companies in Liquidation, Jan./Feb. 2004	682	4,588
Composite List of Insolvent Companies in Liquidation for 2002	1,019	4,015
List of Insolvent Companies in Liquidation, Sep./Oct. 2004	-	3,910
ODCE Information Notice 1/2005/2: Investment Funds, Companies and Miscellaneous Provisions Act 2005	-	3,873
Draft Guidance on Directors' Compliance Statement Obligations	2,112	3,762
List of Insolvent Companies in Liquidation, May/June 2005	-	3,618
Information Book 3 (Company Secretaries)	1,018	3,319
Information Book 4 (Members/Shareholders)	932	3,151

<sup>78</sup> Where comparison with 2004 is not available, either the document was not available in 2004, or it did not feature in the most popular downloads of 2004

Appendix 5.3.I (continued)

Most Popular Document Downloads from the ODCE Website in 2005 .v. 2004

Title/Subject of Document	2004	2005
List of Insolvent Companies in Liquidation, March/April 2004	640	3,101
Information Book 7 (Examiners, Liquidators and Receivers)	607	3,076
Information Book 5 (Auditors)	1,000	3,055
List of Insolvent Companies in Liquidation, July/Aug. 2004	-	2,764
List of Insolvent Companies in Liquidation, Jan./Feb. 2003	544	2,739
Revised Guidance on Directors' Compliance Statements	952	2,664
List of Submissions in response to Consultation Paper C/2004/I on Directors' Compliance Statements	-	2,654
Indictable Offences Report Form	504	2,459
An Introduction to the ODCE	-	2,290
List of Insolvent Companies in Liquidation, Mar./Apr. 2003	-	1,924
High Court Judgement Record No. 2005/270 COS (The Director of Corporate Enforcement -v- Nigel D'Arcy)	-	1,872
List of Insolvent Companies in Liquidation, Sep./Oct. 2003	404	1,846
Complaint Form	700	1,795
List of Insolvent Companies in Liquidation, Mar./Apr. 2005	-	1,731
Liquidator's Report Form	488	1,546



