

# 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.