



Office of the Director  
of Corporate Enforcement

*Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach*

**Decision Notice D/2003/1**

*The Liquidation-Related Functions of the  
Director of Corporate Enforcement -*

*Further Commencement of Section 56 of the Company  
Law Enforcement Act 2001*

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

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## 1. Initial Commencement of Section 56

Section 56 of the Company Law Enforcement Act 2001 (CLEA) requires the liquidators of insolvent companies to report to the Director of Corporate Enforcement (“the Director”) and to apply to the High Court to restrict the directors of those companies, unless relieved by the Director of that obligation. Section 56 was commenced on an initial basis on 1 June 2002 under the provisions of the Company Law Enforcement Act 2001 (Winding-up and Insolvency Provisions) (Commencement) Order 2002 [S.I. No. 263 of 2002] and applied to:

- (a) liquidators appointed to insolvent companies on or after 1 June 2002 and
- (b) liquidators appointed to insolvent companies on or after 1 July 2001 and before 1 June 2002 where, before 1 June 2002 –
  - (i) an order had not been made under section 249(1) of the Companies Act 1963, or
  - (ii) the meetings required under section 273(1) of the Companies Act 1963 had not been held.

Section 249(1) deals with the making of a dissolution order by the High Court. Section 273(1) deals with the final meeting of creditors and the dissolution of the company.

The effect of these Regulations was to require the qualifying liquidators to report to the Director on the conduct of the directors of insolvent companies within six months of their appointment or within six months of the commencement of section 56, whichever was the later. However, section 56 did not initially apply to the liquidators of insolvent companies appointed before 1 July 2001.

## 2. Possible Extension of Section 56

In publishing details of the reporting regime applying under section 56 in Decision Notice D/2002/3<sup>1</sup>, the Director indicated that a further extension or extensions of the scope of section 56 would be considered, and, in the event of a positive decision, suitable recommendations would be made to the Minister for Enterprise Trade and Employment.

## 3. Consultation Paper C/2003/1

On 10 March 2003, the Director published Consultation Paper C/2003/1 entitled “The Liquidation-Related Functions of the Director of Corporate Enforcement – Further Commencement of Section 56 of the Company Law Enforcement Act 2001”. The purpose of that Consultation Paper was:

- to set out the views of the Director that section 56 should be extended to apply to all liquidators appointed to insolvent companies on or after 1 January 2000 and before 1 July 2001, where these liquidations were still ongoing on 1 June 2003, and
- to provide an opportunity to insolvency practitioners, professional and representative bodies, Government agencies and other interested parties to offer comments on this proposal.

The Director also indicated that he envisaged that this would be the final phase of implementing section 56.

<sup>1</sup> Decision Notice D/2002/3 – The Liquidation-Related Functions of the Director of Corporate Enforcement – November 2002.  
A copy is available at <http://www.odce.ie/publications/decision.asp>.

## 4. Justification for the Proposal

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The initial commencement of section 56 resulted in 300 reports being submitted to the ODCE by the end of 2002 dealing with the conduct of over 780 directors. The evidence from these reports suggested that relief from restriction was warranted in about 50% of cases and that serious misconduct appeared to be present in a significant minority of insolvent companies. In the circumstances, the Director was satisfied that a further commencement of section 56 was warranted, in order to bring to light errant behaviour in other insolvent companies for possible sanction.

## 5. Impact of the Proposal

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It was estimated that there were over 250 cases which could be covered by the proposal. On the basis that some of these liquidations would be completed by 1 June 2003 and would not therefore be subject to the reporting requirements, it was anticipated that some 175 insolvent companies might actually be subject to report. Such a volume of reports would be conducive to -

- the orderly and efficient examination of those reports by the Director's Office and
- a timely and detailed consideration by the High Court of the applications for restrictions which would subsequently be made.

## 6. Receipt of Comments and Decision

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The Director sought comments from interested parties on the Consultation Paper by close of business on Monday, 31 March 2003.

A total of eight organisations and individuals made submissions, and all but one were generally supportive of the Director's proposal.

In the light of the overall submissions received, the Director subsequently recommended to the Minister for Enterprise Trade and Employment that section 56 be further extended in line with the proposal contained in Consultation Paper C/2003/1.

## 7. Commencement Order

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Mr. Michael Ahern, T.D., Minister of State at the Department of Enterprise Trade and Employment, signed a Commencement Order consistent with the Director's proposal on 30 May 2003. A copy of the Commencement Order entitled the Company Law Enforcement Act 2001 (Winding-up and Insolvency Provisions) (Commencement) Order 2003 [S.I No 217 of 2003] is available on the ODCE website at <http://www.odce.ie/legislation>.

This Commencement Order appointed 1 June 2003 as the day when section 56 of the Company Law Enforcement Act 2001 became effective in so far as it relates to liquidators who were appointed to insolvent companies on or after 1 January 2000 and before 1 July 2001, where, in respect of the company to which the liquidator was appointed, an order had not been made under section 249(1) of the Companies Act 1963 or where the meetings required under section 273(1) of the Companies Act 1963 had not been held.

Accordingly, a liquidator appointed to such an insolvent company is now obliged to submit a section 56 report in the prescribed form to the Director within six months of 1 June 2003. Decision Notice D/2002/3 referred to earlier contains details of the obligations

and requirements for completing the requisite section 56 report






## 8. Contacts with Liquidators

The ODCE will make every effort to contact those liquidators who are now covered by the further commencement of section 56 to remind them of their new obligations. However, it should be noted that there is no legal requirement for the ODCE to do this and that the responsibility for submitting a section 56 report rests entirely with the relevant liquidator. It is the policy of the ODCE to seek speedy legal redress where liquidators fail to submit section 56 reports within the statutory deadline.

## 9. Copies of Decision Notice

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Copies of this Decision Notice are available from the following contact points:

-  Insolvency Unit,  
Office of the Director of Corporate  
Enforcement,  
16 Parnell Square,  
Dublin 1
-  <http://www.odce.ie/publications/decision.asp>
-  [insolvency@odce.ie](mailto:insolvency@odce.ie)
-  01 – 858 58 00  
*Lo call* 1890 315 015
-  01 – 858 5802

Office of the Director of Corporate  
Enforcement

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