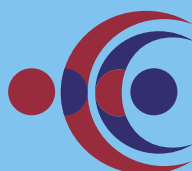


Annual Report 2009



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

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Foreword



Pursuant to Section 16(1) of the Company Law Enforcement Act 2001, I am pleased to present Mr Batt O'Keeffe, T.D., Minister for Enterprise Trade and Innovation, with my Office's Annual Report for 2009.

The Companies Acts 1963 to 2009 establish a framework of duties,

obligations and rights which sets out the manner in which companies, company directors, shareholders, creditors, auditors and other stakeholders interact with one another on a fair basis. It is a task of the ODCE to ensure as far as possible that the balance of responsibilities and rights distributed among company stakeholders operates as the law intends. We see ourselves:

- helping those who want to comply with their legal obligations to do so;
- discouraging misconduct by those who may be tempted not to comply and
- pursuing those who may have breached their duties and obligations under the law.

2009 has been a particularly challenging and demanding year for the ODCE. In particular, significant resources were deployed in investigating certain matters at Anglo Irish Bank Corporation Ltd, the most extensive ever undertaken by the Office. The Office has also had to deal with a dramatic increase in corporate insolvency rates over the last year. These exceptional demands have placed a considerable strain on Office resources and forced us to re-evaluate and re-prioritise the work being undertaken. The steps taken as a result have helped us overcome some of these difficulties and make further progress last year.

With this as background, I wish to highlight the following key pieces of work and achievements of the Office during the course of 2009:

- the extensive work undertaken on the Anglo investigation which included the exercise of our search and seizure powers under the Companies Acts;
- the conclusion by the High Court Inspector to DCC plc, S&L Investments Ltd. and Lotus Green Ltd. of his Inquiry into aspects of various purchases and sales of shares in Fyffes plc in 1995 and 2000;
- a 47% increase from 1,036 to 1,519 in the number of new reports and complaints received by the Office in 2009. Unfortunately, most of this increase was attributable to the growth in newly insolvent companies and a consequent surge in initial reports from liquidators;
- a 22% increase from 1,184 to 1,446 in the number of cases concluded in 2009. This increase was primarily due to our additional work in evaluating liquidator reports;

- the issue of 14 separate company law publications in 2009, including a new suite of eight 'quick guides' on company law responsibilities. Some 23,500 copies of various Office publications were distributed during the year;
- the delivery of 67 presentations to over 3,700 people and attendance at eleven exhibitions and seminars in 2009. The primary purpose of this activity was to inform business and professional interests and the general public of their rights and responsibilities under the Companies Acts;
- a total of ten disqualifications and six convictions (with a further twelve charges taken into account) for various breaches of company law and duty. ODCE convictions were confirmed in two appeals taken by defendants to the Circuit Criminal Court. Also in 2009, one disqualification decision made in 2008 was set aside on appeal in the Supreme Court;
- financial expenditure of just over €5.8 million, a 34% increase on the outturn of €4.34 million in 2008. The increase was primarily due to the cost of the DCC Inquiry which is now completed;
- an increase of about five in Office staff numbers during 2009. These extra staff were deployed to support the Anglo investigation and the large increase in the Office's corporate insolvency work.

Particular thanks are due to the Ministers and staff of the Department of Enterprise Trade and Employment in 2009 for their financial and staffing support of the Office at a difficult economic time.

I want to thank all of the Office's dedicated and hard working staff for their continuing commitment to our important work. Notwithstanding the fact that the Anglo investigation is absorbing about one-third of ODCE staff on a full-time basis, the remaining staff successfully delivered increased throughput in many areas of the Office's remit.

I also want to acknowledge the continuing support given to the Office in 2009 by the Oireachtas, the Government, the Courts and those professionals engaged by us. The enactment and implementation of the Companies (Amendment) Act 2009 to which many of these parties contributed is making a valuable contribution to our investigative work.

I hope that this support and the wider support of the public and of business and professional interests will continue for 2010 and that we will continue to make a positive difference to upholding corporate standards in the overall public interest. Our collective efforts are helping business people, community interests and the general public to engage fairly and equitably with one another through Irish companies.

Paul Appleby
Director of Corporate Enforcement
31 March 2010

Introduction

The three main functions of the Director of Corporate Enforcement, as set out in the Company Law Enforcement Act 2001, are:

- to encourage compliance with the Companies Acts;
- to investigate instances of suspected offences under the Acts and
- to take enforcement proceedings for breaches of company law or duty.

Consistent with this statutory framework, the present strategy of the Director comprises the primary goals and related sub-goals outlined in the following table.

Strategic Goals and Sub-Goals of the Director of Corporate Enforcement

Goal 1: Improving Public Understanding of Company Law Rights and Duties

- Sub-Goal 1.1: Raising Standards of Compliance
- Sub-Goal 1.2: Deepening our Relationship with Stakeholders
- Sub-Goal 1.3: Influencing Policy Development

Goal 2: Confronting Unlawful Company Law Behaviour

- Sub-Goal 2.1: Identifying Suspected Misconduct
- Sub-Goal 2.2: Enforcing Serious Breaches under the Companies Acts

Goal 3: Providing Quality Services to Internal and External Customers

- Sub-Goal 3.1: Securing and Prudently Managing our Resources
- Sub-Goal 3.2: Developing our Staff
- Sub-Goal 3.3: Improving our Customer Services

This Report reviews progress in 2009 by reference to each of these goals and sub-goals.

Goal 1: Improving Public Understanding of Company Law Rights and Duties

Introduction

ODCE staff carry out a significant amount of advocacy work with the aim of enhancing the knowledge and awareness of company directors, officers and other stakeholders to their powers and responsibilities under company law.

2009 presented significant challenges in this area given the reduced budget available to publicise ODCE work and the significant workload of the Office in investigating suspected unlawful behaviour in the banking sector. Notwithstanding these challenges, the Office continued its successful communications policies and searched out new ways of improving public awareness of company law rights and duties.

Sub-Goal 1.1: Raising Standards of Compliance

Publications - Overview

The Office issued 14 separate company law publications during 2009 (nine in 2008) of which the more significant are discussed below. The full list is at **Appendix 1.1.1**.

The Office issued some 23,500 copies of its various publications in 2009 (24,000 in 2008). All publications are available on the ODCE website at www.odce.ie.

Quick Guides

During late 2008 and early 2009, the Office developed a new suite of guidance booklets for company stakeholders. The new booklets present in a summary form the key information on the roles of companies, directors, secretaries, auditors, creditors, members/shareholders and liquidators, receivers and examiners. They complement the longstanding Information Books¹ which discuss these same topics in more detail.



The ODCE Quick Guides

In developing the Quick Guides, the Office worked closely with the National Adult Literacy Agency and successfully secured the Plain English mark in recognition of their accessibility and readability. Office staff have been gratified by the positive response to the style and value of these Quick Guides and will pursue similar initiatives in future.

Information Notices

The Office published four Information Notices during 2009.

Reduced Liquidator Reporting

Further to the reporting regime established for the liquidators of insolvent companies², liquidators have been making a series of initial, further and final reports to the ODCE during the life cycle of a company's liquidation. Following a review of their utility, the Office published in early 2009 an Information Notice which detailed the revised liquidator reporting arrangements which would apply from 1 February 2009³.

From that date, liquidators would not be generally required to submit further or final reports to the Office in cases where the Office had decided to definitively relieve, or definitively not relieve, liquidators of their statutory obligation to take High Court restriction proceedings against a company's directors. This decision will alleviate the workload on liquidators as well as allowing the Office to focus its attention on the growing volume of initial liquidator reports for newly insolvent companies.

¹ Decision Notice D/2002/1.

² Under Section 56 of the Company Law Enforcement Act 2001 (the 2001 Act).

³ Information Notice I/2009/1 – Reduced Liquidator Reporting to the ODCE.

Relief Decisions on Liquidator Reports

The second Information Notice⁴ detailed the insolvent companies in liquidation whose liquidators were relieved by the ODCE in 2008, either permanently or temporarily, from their statutory obligation to take restriction proceedings against the directors of those insolvent companies. The purpose of this annual Notice is to inform creditors and other stakeholders that the directors are no longer facing High Court proceedings for suspected irresponsible conduct. This enables all concerned to make informed future business decisions. Where relief is not granted, the Office publishes in its Annual Reports for similar market information reasons the results of High Court proceedings determining if the restriction of individual company directors was merited.

Companies (Amendment) Act 2009

The third Information Notice⁵ dealt in detail with the Companies (Amendment) Act 2009 which was enacted on 12 July 2009 with immediate applicability. The Act extended the Director's investigative powers in certain areas including by granting:

- a right under District Court search warrant (subject to conditions and safeguards) to seize something that:
 - is believed to be or contain information of an offence where a determination of relevance is not practicable on the premises, or
 - includes seizable and non-seizable information where their separation is not practicable on the premises, and
- a right to take legally privileged material on a sealed basis subject to making an application to the High Court within seven days for a determination.

Among other measures, the 2009 Act modified the law as it relates to directors using company assets for their own purposes. The burden of proof of 'knowing and wilful default' has been lowered to one of 'strict liability' where breaches occur. The Act also extended the disclosure obligations of licensed banks in respect of transactions with their directors or with persons connected with those directors.

Auditor Reporting of Suspected Indictable Company Law Offences

The fourth Information Notice⁶ provided additional guidance to auditors on their obligations to report suspected indictable offences under the Companies Acts to the ODCE⁷. This complements the current main guidance which dates from 2006⁸. Both documents were developed in conjunction with the recognised accountancy bodies.

The purpose of the Information Notice was to help broaden the scope of the reported offences which were dominated by only two or three offence types notwithstanding the wide range of potentially reportable offences⁹. The new guidance lists 13 offences which, once committed, should be detectable during the course of an audit. These include the following rarely reported offences:

- fraudulent trading;
- wilfully providing false information to auditors and
- the destruction, mutilation or falsification of documents.

The Information Notice also includes a useful flowchart of the decision making process that auditors must go through in deciding whether a report is necessary, as well as discussing the impact of qualified audit reports and other reporting obligations. All auditors were made aware of the Notice by their professional bodies following its publication in September 2009.

Communications

In 2009, the Office positively responded to the Government's request that non-essential expenditure be curtailed as much as possible. This inevitably reduced the amount of advertising and promotional work which the Office undertook during the year and restricted its ability to communicate its core message of compliance.

⁴ Information Notice I/2009/2 – List of "Relief" Decisions issued in 2008 for Insolvent Companies in Liquidation.

⁵ Information Notice I/2009/3 – Companies (Amendment) Act 2009.

⁶ Information Notice I/2009/4 – Reporting Company Law Offences: Information for Auditors.

⁷ Under Section 194(5) of the Companies Act 1990 (the 1990 Act) as inserted by Section 74 of the 2001 Act and subsequently amended by Section 37 of the Companies (Auditing and Accounting) Act 2003 and Section 73 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

⁸ Decision Notice D/2006/2 – Revised Guidance on the Duty of Auditors to report Suspected Indictable Offences to the Director of Corporate Enforcement.

⁹ A complete schedule of reportable offences is attached to Decision Notice D/2006/2 – Auditor Reporting to the ODCE and is available from the ODCE website at www.odce.ie.

Syndicated Articles

In lieu of media advertising, the Office set about finding alternative and cost-effective ways of communicating its compliance message to company stakeholders. During 2009, a series of six articles on company law were drafted and submitted to local newspapers throughout the country. These articles covered various topics including choosing to incorporate, keeping proper books of account, the restrictions on directors using company assets for personal purposes, insolvency and corporate governance.

To date, the series of articles have run in five local papers, and several more have expressed an interest in running them at a future date.

Presentations, Events and Exhibitions

Notwithstanding the innovative step of syndicated articles, the Office continued to implement other cost-effective elements of its communications policy. This included in particular the delivery of presentations at public and professional gatherings around the country and attendance at relevant conferences, seminars and exhibitions.

Office staff delivered 67 presentations to over 3,700 people (65 presentations to 3,100 in 2008). A list of these presentations is included in **Appendix 1.1.2**. Key target groups included business professionals and the voluntary and community sector. Business professionals are vitally important in helping to develop good compliance habits among their clients. The voluntary and community sector is also significant, because it comprises a large number of companies and company directors in the State. Many directors in the sector have limited business experience, training or professional assistance, and the Office accordingly makes special efforts to provide it with information and support.

The Office also attended eleven exhibitions and seminars in 2009, the details of which are outlined in **Appendix 1.1.3**. At these events, staff distributed copies of its wide range of publications and guidance, answered questions on company law issues and dealt with complaints of suspected breaches where relevant. A primary reason for the decline from 16 similar events in 2008 was a fall-off in such events due to the general economic downturn. However, the Office was also selective in only attending events which offered good value or engaged sufficiently with its target markets.

Media

The Office issued one formal press release during 2009 to coincide with the launch of its Annual Report for 2008. While the Office sees the media as an important conduit for highlighting the value of company law compliance, there are severe legal restrictions on the disclosure of confidential information in relation to its civil and criminal investigative and enforcement work. Accordingly, the Office must employ a high degree of discretion in its dealings with the media, and it must very often refrain from commenting publicly on investigative or enforcement developments for fear of prejudicing any investigation or subsequent court proceedings.

The Office has systems in place for dealing with and recording media queries, and ordinarily all media queries are dealt with by a senior staff member. In 2009, the Office dealt with several hundred media queries, and these were in the main related to its more high profile investigation and enforcement work. Over press, internet and radio/TV, the ODCE was mentioned some 1,560 times in 2009, a sharp increase on the equivalent figure of 513 in 2008.

Public Enquiries

The Office receives many hundreds of phone calls, e-mails and letters every year from members of the public. The great majority of these are dealt with routinely by Office reception staff either by issuing relevant copies of publications, referring callers to the ODCE website, answering standard or routine questions themselves or occasionally by clarifying that the matters of concern to them are not within the Office's remit.

A smaller number of these enquiries require a more considered response. In all during 2009, 278 queries required such a response (compared with about 400 in 2008). A sample of these is set out in **Illustration 1.1.1** below. While the Office does not provide legal advice, it does try to provide relevant information and signpost callers to the most appropriate information source.

Illustration 1.1.1: Sample of Public Enquiries dealt with by the Office in 2009

Nature of Query	Response Given
A director of an unlimited company enquired about the general prohibition in relation to the use by directors of company assets for personal use and enquired whether it applied to unlimited companies.	The prohibition under Section 31 of the Companies Act 1990 (the 1990 Act) applies to all companies including unlimited companies.
A caller asked if it was possible for a company to hold its annual general meeting (AGM) online using conference call software rather than physically meeting up. ¹⁰	<p>The law is silent on the matter, but Section 140 of the Companies Act 1963 (the 1963 Act) states that an AGM must be held at a place in the State, unless all of the company's members agree that it can be held elsewhere and provided that the company's Articles of Association permit it.</p> <p>There is English legal precedent for the proposition that all members must be capable of being both seen and heard at an AGM. This dealt with a case where an overflow room was used, but the principle may apply more generally. Accordingly, it is uncertain if an AGM held in the manner described would be valid. It might therefore be possible to legally challenge any decisions made at such an AGM and have them declared void.</p> <p>The caller was accordingly encouraged to seek independent legal advice on the question.</p>
A caller, a member of an apartment management company, asked about when financial statements should be signed. One member insisted it should occur at the Annual General Meeting.	The caller was told that the financial statements should be approved and signed by the directors before they are circulated to members in advance of the AGM. Section 156, Companies Act 1963 sets out the requirement.

As can be seen, the Office is not in a position to answer definitively all of the questions received. Office staff always encourage callers to obtain independent legal advice in case of any doubt.

Sub-Goal 1.2: Deepening our Relationship with Stakeholders

In aid of its statutory compliance remit, the Office regularly interacts with its many stakeholders in order to help secure their support for the ODCE's compliance and enforcement work. These stakeholders include statutory authorities, professional bodies, interest groups, auditors and liquidators and the public at large.

Department of Enterprise Trade and Employment (DETE)

Critical to the effective performance of the ODCE's functions is the maintenance of a positive and effective relationship with DETE which resources the Office. The following events particularly evidenced the Department's support of the Office's work in 2009:

- the provision of additional funding and staffing to the Office to meet its increasing investigative and enforcement commitments notwithstanding the very difficult circumstances faced by the Department itself;
- the prompt support given to ODCE legislative proposals which resulted in the enactment of a new Companies (Amendment) Act 2009 to address specific issues arising from the Office's investigation of Anglo Irish Bank Ltd.

The Director and his senior staff also met formally with their Departmental colleagues during the year to share information on developments in their respective work.

¹⁰ Note: This query was received prior to the commencement of the Shareholders' Rights (Directive 2007/36/EC) Regulations 2009 (S.I. 316 of 2009) which allowed this facility for companies trading on a regulated market.

DETE Working Group on reducing Administrative Burdens for Business

The ODCE participated in this work which is part of the Government's commitment to reduce administrative burdens by 25% by 2012. The Group's immediate focus is on measuring the current burdens and identifying where reductions may be possible. The Working Group considered its draft measurement report towards the end of 2009, and is expected to commence work on identifying potential reductions to the burden in mid-2010.

DETE Risk-Based Enforcement and Inspections Discussion Group

The Office also contributed to the work of this Discussion Group during 2009. Areas being discussed by the participating inspection and enforcement agencies to help reduce administrative burdens on business include:

- information sharing including the associated data protection issues and
- e-government including the possible development of a unique business identifier.

It is expected that the Group will finalise its report in 2010.

Company Law Review Group (CLRG)

The Director is a statutory member of the CLRG. Members of his staff attended a number of meetings in 2009 during which the Group continued to make good progress on its work programme for the two-year period 2008 and 2009. These issues included a proposed extension of audit exemption to companies limited by guarantee and certain other categories of company, the implementation of the UNCITRAL Model Law on Cross-Border Insolvency and the transposition into Irish company law of certain elements of the revised EU Directive on Capital Maintenance¹¹. The Group hopes to publish the results of its deliberations early in 2010, and its report will be made available on www.clrg.org.

Irish Auditing and Accounting Supervisory Authority (IAASA)

The Director is a director of IAASA, and he continued with his fellow directors to develop the remit of the Authority. He also served in 2009 on the board's Remuneration Committee and on an Enquiry Committee which is investigating alleged improper practice by Chartered Accountants Ireland in its handling of a complaint against a member firm some time ago. A copy of IAASA's Annual Report will be available from its website at www.iaasa.ie in mid-2010.

In addition, the ODCE and IAASA consulted regularly in 2009 at an operational level to discuss issues of mutual interest. These contacts included a formal meeting and occasional exchanges of confidential information on matters such as suspected unqualified auditors and deficient auditing and accounting practice.

Companies Registration Office (CRO)

Overall, CRO/ODCE working relationships continue to be excellent. During the year, the CRO regularly provided valuable information to the ODCE in support of its many investigations. CRO staff also supported ODCE enforcement proceedings by swearing affidavits and certifying documents for evidential purposes as required.

Following discussions between the ODCE and the CRO regarding unqualified auditors, the CRO introduced in 2009 a more rigorous checking procedure on audited accounts to ensure that the named auditor is on the CRO's Register of Auditors. This has complemented the ODCE's own dissuasive efforts to eliminate the phenomenon of unqualified persons auditing company accounts.

Garda Bureau of Fraud Investigation (GBFI)

In 2009, Office staff regularly consulted with their counterparts in the GBFI and in the wider force on matters of mutual interest. In particular, GBFI staff provided valuable professional expertise with respect to the important investigation of certain events in Anglo Irish Bank Corporation Ltd.

ODCE staff also outlined its work to a visiting delegation from the Swedish Economic Crime Bureau during the year. This visit was facilitated by the GBFI.

Financial Regulator (FR)

In 2009, the incidence of ODCE contacts with the FR was the highest of any year of ODCE operations to date. This was substantially due to our respective investigations into certain events at Anglo Irish Bank Corporation Ltd ("Anglo") which warranted the sharing of confidential information with one another. However, a number of other matters also featured in the ODCE/FR information exchanges.

Revenue Commissioners

Revenue staff continued to work closely with the Office in 2009. Information was shared on some 91 companies and former companies (80 in 2008), and most of these related to Office examinations of the demise of insolvent companies.

¹¹ Directive 2006/68/EC.

Pensions Ombudsman

During the year, the Director signed a Memorandum of Understanding on information-sharing with the Pensions Ombudsman which, it is hoped, will assist both authorities in dealing with cases of suspected misconduct by companies and company directors with respect to deducted employee pension contributions.

Accountancy Bodies

In 2009, the Director and his staff twice met with the chief executives and staff of the major accountancy bodies to discuss matters of mutual interest. Their discussions included the Companies (Amendment) Act 2009, the Office's compliance and enforcement activity and relevant accounting and auditing issues.

A Technical Liaison Group also met on a number of occasions during the year, and work was successfully completed on Information Notice I/2009/4 (discussed above). At year-end, preliminary discussions had started on the possible development of a document which would define the expectations of both the Office and auditors on their interactions with respect to reported suspected breaches of company law.

International Association of Insolvency Regulators (IAIR)

The ODCE is an IAIR member, and a senior staff member attended the IAIR's Annual Conference in South Africa in October 2009. The issues discussed included:

- the impact of the global financial crisis. All IAIR members reported increased insolvency activity although the growth in Ireland seemed to be at the extreme end of experience elsewhere. The UK reported some influx of foreign individuals seeking to avail of its more favourable bankruptcy regime;
- the effect of the UNCITRAL Model Law. This was reported to be reasonably effective in dealing with large multinational insolvencies at present;
- fraud in insolvencies with particular reference to the behaviour of insolvency practitioners (excessive fee-taking, etc.) and creditors (exaggerated claims, etc.). The meeting generally agreed that this area warranted further study;
- the regulation of the insolvency profession. While enhanced registration and regulation systems were advocated, it was clear that account had to be taken of any adverse consequences for insolvency costs in developing such systems.

It was confirmed that the IAIR's 2010 Annual Conference would be held in Dublin.

Visit by the Bankruptcy Ombudsman's Office, Finland

The ODCE facilitated a visit to Dublin by the Finnish Bankruptcy Ombudsman's Office in late March 2009. Office and Courts Service staff and a prominent liquidator provided briefings on corporate insolvency and personal bankruptcy legislation in Ireland and on recent developments in both areas.

IBEC Corporate Rescue and Restructuring Guidelines

In the light of the difficult economic circumstances, IBEC decided to prepare a set of guidelines for their members on the rescue and restructuring of businesses. At IBEC's invitation, the ODCE contributed material on its regulatory role in dealing with insolvent companies. The IBEC Guidelines are to be published in the first half of 2010.

New Corporate Governance Guidelines

The Office agreed in 2009 to participate in a corporate governance initiative at the invitation of the National Standards Authority of Ireland (NSAI) and the Institute of Directors. Professional bodies and other persons from the private and public sectors were also involved. The group met on a number of occasions in late 2009 and agreed to develop a methodology by which companies could assess their corporate governance standards. The work also identified suitable qualifications for potential assessors. It is hoped that the agreed Guidelines will serve as a catalyst to improve corporate governance standards in the future as well as establishing Ireland as an innovator in developing corporate governance tools. The final document was published early in 2010¹².

NSAI – ISO Work on Corporate Social Responsibility

In 2009, the ODCE continued to contribute to the deliberations of the NSAI-led 'Mirror Committee' which is contributing comments to a new draft International Standard on Corporate Social Responsibility being drafted by the International Standards Organisation. The Standard is scheduled for completion in 2010¹³.

¹² The Guidelines can be purchased from the NSAI online at www.nsai.ie.

¹³ More information on the draft Standard is available at <http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/home.html?nodeid=4451259&cversion=0/>.

Council of Europe GRECO Evaluation

The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor States' compliance with its anti-corruption standards. GRECO launched its Third Evaluation Round in 2007.

At the request of the Department of Justice Equality and Law Reform in early 2009, the ODCE provided information in response to GRECO's questionnaire which wished to establish Ireland's compliance with its obligations on domestic and international bribery. The Office also attended meetings with a GRECO Evaluation Team in Dublin on 8/9 June 2009. GRECO's subsequent report was broadly positive¹⁴. GRECO plans to assess the implementation of its recommendations in late 2011.

Sub-Goal 1.3: Influencing Policy Development

The Office welcomes the opportunity to engage with those developing law, regulations and policy which may impact on company law or the work of the Office. The Office contributed on a number of these appropriate occasions in 2009.

Companies (Amendment) Act 2009

The Office made a number of legislative proposals to DETE in early 2009 which subsequently resulted in the enactment of this Act. The Director is grateful for the prompt and sympathetic consideration which was given to these proposals by Government and by the Department. Some provisions of this Act are outlined above.

Companies (Miscellaneous Provisions) Act 2009

Shortly before year-end, the Companies (Miscellaneous Provisions) Act 2009 was enacted. The Office engaged constructively with the Department in advance on certain elements of the Bill, in particular those relating to the recognition of US Generally Accepted Accounting Principles in preparing the financial statements of newly incorporated companies migrating to Ireland up to 31 December 2015. The ODCE intends to publish an Information Notice on this Act early in 2010.

Companies Consolidation and Reform Bill

In response to an invitation from DETE, the ODCE provided extensive comments during 2009 on draft Part 14 of the Bill (Compliance and Enforcement) and draft Chapter 4 (Director of Corporate Enforcement) of Part 15 (Persons with Company Regulatory Functions). It is understood that the Bill may be published by end-2010.

DETE Consultation Paper on External Quality Assurance for Auditors

Following the EU Commission Recommendation on external quality assurance for auditors auditing public interest entities¹⁵, DETE published a Consultation Paper¹⁶ which invited respondents to consider the following three alternative options for the implementation of such a quality assurance regime in Ireland:

- regulatory responsibility remaining with the recognised accountancy bodies;
- regulatory responsibility transferring to IAASA and
- regulatory responsibility remaining with the recognised accountancy bodies subject to oversight by IAASA.

The Office in its response expressed a clear preference for the second option (IAASA) on the basis that this represents international best practice as evident in jurisdictions like the UK, the US and Japan. This could, it was suggested, be achieved on a cost-neutral basis. While recognising that IAASA had faced difficulties in recruiting persons of appropriate calibre in the past, current market conditions would indicate that the same difficulties would be less prevalent for the foreseeable future.

The Office also advocated that the term 'public interest entities' include all companies with a turnover in excess of €50 million and a balance sheet total over €25 million.

Revised Eighth Company Law Directive

This revised Directive, when transposed, will put in place a comprehensive structure for the training, qualification, registration and oversight of auditors across the EU. It will also specify appropriate ethical standards and independence requirements for auditors and will require that public interest entities have an audit committee.

Although the Directive only marginally affects the remit of the ODCE, the Office offered constructive comments to DETE on the draft implementing S.I. throughout 2009. The Department intends to implement this Directive early in 2010.

¹⁴ Evaluation Report on Ireland - Incriminations (ETS 173 and 191, GPC 2) (Theme 1) (January 2010). Further details of this Report are available via the GRECO homepage at www.coe.int/greco.

¹⁵ EU Commission Recommendation 2008/362/EC.

¹⁶ A copy of the Consultation Paper can be viewed at www.deti.ie.

Consultation Paper on the Industrial and Provident Societies Acts 1893-2005

In response to DETE's Consultation Paper on this legislation (the IPS Acts), the Office acknowledged the contribution, value and role which cooperatives play in Irish society. The ODCE noted that many cooperative-type activities are discharged equally well by companies limited by guarantee or by other forms of company. The Office suggested accordingly that the merits of the cooperative structure need to be distinguished from the specific utility of the IPS Acts.

In noting that there were many similarities between the IPS Acts and the Companies Acts, the ODCE suggested that consideration should be given to the future need for a code of IPS law and that cooperatives could continue to exist as a form of company under the planned Companies Consolidation Bill. The benefits of the latter approach would include a modern, sophisticated and regularly updated legal framework for cooperatives in the future.

Spent Convictions Bill

The Office responded to a DETE request for observations on certain aspects of this Bill¹⁷ which is intended to give certain convicted offenders a 'fresh start' by removing their conviction from the public record after a certain period. While appreciating the basis for the Bill, the ODCE expressed concern at any reduction of the planned five-year rehabilitation period for non-custodial sentences. Where, for example, a person was disqualified for five years on foot of a criminal conviction, an elimination of their conviction record prior to completing their disqualification period would create a somewhat anomalous position.

Other ODCE observations made included the difficulty in expunging all records of an offence in situations where such information was recorded in Annual Reports, etc. Account, it was suggested, would have to be taken of these difficulties in the Bill.

LRC Consultation Paper on Search Warrants and Bench Warrants

In late 2009, the Law Reform Commission (LRC) published a lengthy consultation paper on the law and procedure as it applies to search warrants and bench warrants¹⁸. Prior to its issue, the Office engaged with the LRC at their request to give an overview of the operation of search warrants under the Companies Acts and the ODCE's practical experience in these matters.

Oireachtas Public Accounts Committee Proposal in Relation to Fiduciary Taxes

In responding to a proposal by the Public Accounts Committee (PAC) that company directors be made personally liable for outstanding fiduciary taxes (e.g., PAYE, PRSI, VAT and RCT) in certain circumstances, the ODCE pointed out the measures already in place to deal with insolvency and corporate misbehaviour (notably restriction and disqualification) and the relative success of the ODCE in these areas in recent years. It also highlighted the substantial powers available to the Revenue in this area.

In expressing caution about the proposal, it was suggested that there was need to be certain that the existing law was inadequate and needed change. The imposition of personal liability could result in directors liquidating potentially viable companies in order to avoid liability. Any such trend could significantly increase liquidations and overwhelm liquidators, the ODCE and the Courts in the discharge of their duties.

Following a PAC hearing in late 2009 at which the ODCE participated, the Committee published its report in February 2010¹⁹ and recommended that company law be changed to provide that company directors who wilfully try to evade the payment of fiduciary taxes and who do not engage with Revenue can in certain circumstances be made personally liable for unpaid PRSI.

Conclusion

The Office's work in pursuit of its compliance remit is wide-ranging and comprehensive as evidenced by this Report. The Director believes that it is valuable in a compliance context that the Office contributes to policy development, engages with its stakeholders and actively communicates information with the public at large.

Of equal importance is a clear and consistent strategy for dealing with suspected corporate misbehaviour. The following section of the Report addresses this element of the Office's work which can have important demonstrative benefits in encouraging compliant behaviours.

17 A copy of the Bill is available at www.oireachtas.ie/documents/bills28/bills/2007/4807/b4807d.pdf.

18 LRC CP 58 – 2009 is available at www.lawreform.ie/publications/cpSearchWarrantsandBenchWarrants.pdf.

19 www.oireachtas.ie/documents/committees30thdail/pac/reports/20100217.pdf.

Goal 2: Confronting Unlawful Company Law Behaviour

Introduction

The financial health of economic and social enterprises in the State is reflected to some extent in the quantity of insolvent liquidations. Accordingly, the number of liquidator reports received annually by the ODCE in respect of insolvent companies which have been placed in liquidation in the preceding six months offer an overall indication of enterprise performance.

Similarly, the numbers of public complaints and auditor reports sent annually to the Office relating to alleged breaches of company law provide some insight into the ongoing standard of corporate governance in the State.

Statistical Overview of Reports and Complaints Received

In 2009, some 1,519 new report and complaint cases were opened, a 47% increase on the 1,036 cases of 2008. Most of this increase was attributable to a doubling in the number of initial liquidator reports on recently liquidated companies, an increase which reflected the decline in the national economy. Auditor reports also grew by 13.5% from 207 in 2008 to 235 in 2009. **Appendix 2.1** provides further details on these input figures.

Appendix 2.2 provides details of case throughput. The Office handled some 2,284 cases in 2009, a 17% increase on 2008. The number of concluded cases grew by 22% from 1,184 in 2008 to 1,446 in 2009, and cases on hands at end-2009 increased to 838 from 765 at end-2008. The substantial factor underlying these increases was the contribution attributable to the growth in the number of liquidator reports.

Appendix 2.3 provides information on the manner of disposal of the 1,446 concluded cases:

- almost half (715) was accounted for by the making of definitive relief decisions on liquidator reports;
- almost a quarter (351) resulted in the rectification of company law defaults and/or the issue of warnings as to future conduct in instances of detected default;
- there was insufficient evidence of default in 15% of cases (222) to warrant the taking of any definitive action;
- 10% of cases (147) were closed on the basis that it was either not a company law matter or that it was a company law matter that was appropriate for legal action by other company law stakeholders (e.g., company shareholders or creditors or the Registrar of Companies);
- less than 1% of cases (11) in 2009 were closed following the completion by the ODCE of criminal or civil proceedings.

Sectoral Distribution of New Reports and Complaints in 2009

As evidenced by **Appendix 2.4**, the construction, real estate and renting, wholesale and retail and manufacturing sectors constituted almost two-thirds of the 1,500 new reports and complaints made to the ODCE in 2009.

A breakdown by economic sector of insolvent companies in liquidation by reference to the 876 initial reports received from liquidators in 2009 is provided in **Appendix 2.5**. Unsurprisingly, construction accounted for close to a third of all reported insolvent liquidations. However, businesses in three other sectors (wholesale and retail, hotel, bar and catering and manufacturing) constituted a further 45% of all insolvent liquidations in 2009. Clearly, these sectors are being hit hardest by the present difficult economic environment.

By contrast, comparatively few real estate and renting companies are going into liquidation, but yet as a sector, they dominate the other issues being reported to the Office (including from auditors and the general public) as indicated in **Appendix 2.6**.

Solvent and Insolvent Liquidations

The severe economic downturn has presented major challenges to enterprises in the last two years. While many companies have been able to cope with these challenges, a significant increase in company failures has occurred. The most dramatic effect has been a 361% increase in the number of insolvent liquidations from 344 in 2007 to 1,243 in 2009. The following table shows the number of solvent (members' liquidations) and insolvent liquidations (creditors' and Court liquidations) notified to the CRO in recent years.

Liquidations	2005	2006	2007	2008	2009
Creditors' Liquidations	300	323	308	530	1,124
Court Liquidations	49	31	36	83	121
Total Insolvent Companies	349	354	344	613	1,243
Members' Liquidations	868	930	1,057	1,051	1,158
All Liquidations	1,217	1,284	1,401	1,664	2,403

Unliquidated/Dissolved Insolvent Companies

The 1,243 insolvent companies liquidated in 2009 which are identified in the table above constitute the visible consequences of the economic downturn. In addition, there may be several hundred or thousand unidentified insolvent companies on the Register of Companies at any one time which have ceased to trade but which have not been put into liquidation. Many of these will come to be struck off the Register eventually.

While there are no definitive figures that capture the entire population of insolvent companies (both liquidated and

unliquidated), CRO annual figures are available for the number of solvent and insolvent dissolved companies. In interpreting the figures in the following table for the number of struck-off/dissolved companies for the years 2005 to 2009, the following must be borne in mind:

- strike-off figures, particularly for insolvent companies, will lag the economic cycle. It may be two years or so before a dormant insolvent company (as evidenced by a failure to file its annual returns with the CRO) is struck off the Register of Companies;
- the number of strike-offs in any year will be influenced by the activity of the CRO, Revenue and company directors in pursuing the strike-off option.

Type of Dissolved Company	2005	2006	2007	2008	2009
'CRO Strike-off' ²⁰	9,514	5,255	4,085	5,804	5,729
'Revenue Strike-Off' ²¹	794	444	149	223	142
'Voluntary Strike-Off' ²⁰	3,316	3,757	3,975	4,542	5,428
Total	13,624	9,456	8,209	10,569	11,299

These factors probably serve to explain why the same dramatic increases in company insolvent liquidations are not yet evident in this table's figures for recent years.

Sub-Goal 2.1: Identifying Suspected Misconduct

The work of the Office in 2009 was dominated in particular by the growing number of insolvent companies and by one large investigation, namely that related to Anglo Irish Bank Corporation Ltd. ("Anglo").

The Anglo Investigation

This investigation is the largest and most complex that has been undertaken by the ODCE since it was established in late 2001. In close cooperation with the Garda Bureau of Fraud Investigation (GBFI), various matters are being examined including:

- the provision by Anglo in 2008 of financial assistance for the purchase of its shares;
- matters associated with the loans made by Anglo to its directors over a number of years and
- matters relating to the declared level of customer deposits at Anglo in 2008.

The ODCE's involvement is limited to those aspects of the investigation falling within its company law remit.

Acquisition of Relevant Documents

In early January 2009, the ODCE made formal demands of Anglo for certain books and documents under Section 19 of the Companies Act 1990 (as amended). Relevant documents were forwarded to the Office over the succeeding weeks.

²⁰ Section 311 of the Companies Act 1963 (as amended) and section 12 of the Companies (Amendment) Act 1982 (as amended).

²¹ Section 882 of the Taxes Consolidation Act 1997.

In late February 2009, three Garda officers seconded to the ODCE obtained search warrants from Dublin District Court under Section 20 of the 1990 Act (as amended) in respect of three business premises of Anglo. In undertaking these searches, the Gardaí and other ODCE staff were supported by officers from the GBFI. Three other search warrants and a number of further orders were secured and executed later in 2009. The Office only employed the new extended power of seizure²² on one occasion during the year, and this arose in its execution of one of these search warrants.

During the year, the ODCE also sourced documentation and information from the Financial Regulator, the Irish Auditing and Accounting Supervisory Authority and various other parties. Additional material continues to be gathered as necessary.

In all, the ODCE acquired in 2009 several million hard copy and electronic documents which have presented challenges in preserving, evaluating and managing the material. Enhanced IT tools have been acquired as necessary. The Computer Crime Unit in the GBFI, together with the ODCE's own IT experts, have been a substantial support in overcoming these challenges.

Certain aspects of this process of acquiring relevant documentation are being supervised by the High Court. When last before the Court in December 2009, the ODCE referred to the fact that its evaluation of several million electronic documents from Anglo was ongoing. The Court proceeded to approve the Office's retention of certain computer media for a further six months under Section 20(2G)(a) of the 1990 Act²³ so as to permit a determination to be made as to whether what had been seized was 'material information' within the meaning of Section 20. The Court acknowledged that this evaluation constituted a 'daunting task'.

In consequence of the fact that certain of the documentation seized from Anglo was subject to claims of legal professional privilege (LPP), the ODCE had cause in both March and October 2009²⁴ to address the High Court on this issue. With the acquiescence of the Court, arrangements were made by the ODCE and Anglo to appoint an Independent Assessor to adjudicate on a discrete number of LPP documents which the ODCE did not accept to be privileged. The High Court indicated that there would be no need to revert to it if the parties were satisfied with the Assessor's report. At year-end, confirmation of the Assessor's findings was awaited.

Interviews

Interviews of Anglo staff and other relevant persons by ODCE officers commenced in 2009 and were continuing at the end of the year.

Staffing Resources

Significant staffing resources were assigned during the year to meet the challenges posed by the Anglo investigations. This entailed firstly some reorganisation of the Office's own work programme. In early 2009, some Departmental staff were temporarily assigned to the ODCE to help with its management of the seized Anglo documentation. The Department of Enterprise Trade and Employment later made available an additional four administrative staff to support the Anglo work.

For much of 2009, some 16 full-time equivalent staff (or one-third of available personnel) were permanently deployed on the Anglo investigations within the ODCE. These staff included Gardaí and staff with accounting, administrative, IT and legal expertise. In addition, the Garda Commissioner has made available a further five Gardaí to support the related Garda and ODCE enquiries.

Overall, the investigations were progressing well at year-end. Ultimately, the Director of Public Prosecutions will decide in due course if there is a basis for launching criminal proceedings.

Inquiry into Events at DCC plc, S&L Investments Ltd and Lotus Green Ltd

Fyffes plc initiated a civil insider dealing claim against DCC plc, S&L Investments Ltd, Lotus Green Ltd and Mr James Flavin in early 2002. This lengthy action culminated in a unanimous Supreme Court decision in 2007 to the effect that Mr Flavin dealt in the shares of Fyffes in February 2000 when he was in possession of price-sensitive information in relation to that company by virtue of his membership of its board of directors at that time. The settlement of the civil claim in 2008 cost the DCC Group some €42 million (including legal costs).

After the civil action ended, the ODCE applied to the High Court for the appointment of an Inspector to DCC plc, S&L Investments Ltd and Lotus Green Ltd in order to establish the facts relating to the relevant transactions in Fyffes's shares not only in February 2000 but also in 1995 when other related transactions took place. On foot of this application, the High Court decided to appoint Mr Bill Shipsey SC in July 2008 as Inspector to the three companies. The purpose of this inquiry was to clarify the prevailing uncertainties in relation to aspects of the various purchases and sales of the shares of Fyffes in 1995 and 2000 and to attribute appropriate responsibility and culpability to any person who may have contributed to a detected default.

²² Permitted by Section 20 of the 1990 Act (as amended by Section 5 of the Companies (Amendment) Act 2009).

²³ As inserted by Section 5(b) of the Companies (Amendment) Act 2009.

²⁴ The March and October applications were made under Section 23(1) of the Companies Act 1990 and Section 23(1C) of the 1990 Act (as inserted by Section 6 of the Companies (Amendment) Act 2009) respectively.

Towards the end of 2009, the Inspector presented his completed Report to the High Court which subsequently ordered its publication on 19 January 2010. On its publication, the Director of Corporate Enforcement indicated that he did not intend taking any action as a result of the Report's findings. Copies of the extensive Report and the Director's press statement are available at www.odce.ie. **Illustration 2.1.1** summarises the main conclusions of the Inspector.

Illustration 2.1.1: Main Conclusions of the Inspector to DCC plc, S&L Investments Ltd and Lotus Green Ltd

"...the companies took their corporate responsibilities very seriously." and "the directors, officers and employees, from the then Chief Executive down, placed a high value on legal and regulatory compliance..." (paragraph 12.1.6)

"...the decision of DCC and S&L to transfer the beneficial interest in the Fyffes shares to Lotus Green, and Lotus Green's acquisition of that interest in 1995, does not give rise to facts or circumstances suggesting a breach of Section 108 of the Companies Act, 1990 [dealing with insider dealing]..." (paragraph 12.1.9)

"...[in 2000] Mr Flavin did not communicate the Fyffes' price sensitive information in his possession to anyone in the companies other than to the DCC Group Compliance Officer...as part of a compliance procedure and the companies' legal adviser...for the purpose of seeking legal advice. Therefore, although several persons within DCC... facilitated the 'dealing' in the shares in a technical sense, I am satisfied that no one involved in effecting the share sales within DCC knew that Jim Flavin had any information of a price sensitive nature in his possession which could make the dealing unlawful." (paragraph 12.1.15)

"The error was a costly one for DCC and its former Executive Chairman and founder. It was costly for DCC in terms of the money it was required to pay to Fyffes, but it was, arguably, more costly in terms of the reputational damage to both DCC and Jim Flavin. No finding of mine can repair the reputational damage inflicted in this matter. At least, however, the suggestion that the dealing was intentionally wrongful, or that it was evidence of dishonesty on the part of Jim Flavin and of a culture of disrespect for the companies code in DCC can be dispelled." (paragraph 12.1.18)

"The actions of Jim Flavin were not undertaken recklessly or with an absence of care. He was ultimately found to have misjudged the information he had in his possession when he was approached by the stockbrokers with a view to buying the shares, but he did not 'deal' without considering whether he or DCC were free to sell the shares. With hindsight, he placed far too much reliance on the actions of Fyffes. His familiarity with such guidance as existed from the Stock Exchange in Ireland and the U.K. as to what constituted 'insider dealing' or 'price sensitive information', did not protect or assist him." (paragraph 12.1.19)

"At a time however when 'Ireland Inc' is taking a beating internationally from a perception of low standards in high corporate places the message from this report is that the actions and behaviour of DCC, S&L and Lotus Green between 1995 and 2000 in connection with the transactions under investigation measured up to the standards required by law notwithstanding Mr. Flavin's error of judgment." (paragraph 12.1.20).

Other Formal Investigations

Apart from DCC and Anglo, the Office had two ongoing formal examinations of company books and documents in hand at the start of 2009. In one case, significant progress was made in advancing consideration of the complex events in question, and this may give rise to ODCE enforcement action in 2010.

Previous Annual Reports have referred to the Office's examination of Cologne Reinsurance Company (Dublin) Ltd. It is understood that some related legal proceedings in the USA involving a number of parties concluded in 2009, and the Office was awaiting confirmation of the outcome of these proceedings at year-end prior to considering what ODCE action, if any, may be appropriate in the case.

The Liquidator Reporting Regime

The process and scope of liquidator reporting are outlined in two main ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1²⁵. In summary, the liquidator of a company in insolvent liquidation is required by law²⁶ to report to the ODCE on its demise and on the conduct of any person who was a director of the company during the twelve months preceding its liquidation.

25 These documents are available at www.odce.ie/en/media_decision_notices.aspx.

26 Section 56 of the Company Law Enforcement Act 2001.

The liquidator must also proceed to apply to the High Court for the restriction²⁷ 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.

Faced with a large and growing number of new reports from liquidators and having regard to its finite resources, the Office implemented in 2009 its decision to drop the requirement on liquidators to produce further and final reports once the Office has made a definitive decision to grant or not to grant relief. This policy decision which was announced in Information Notice I/2009/1²⁸ has allowed more resources to be focused on the more important initial reports of liquidators.

Liquidator Reports in 2009

Details of the number of liquidator reports in 2009 are contained in **Appendix 2.1.1**. 876 initial reports²⁹ (406 in 2008) were received in respect of recently liquidated companies. A further 247 further³⁰ or final³¹ reports (768 in 2008) were also submitted. The sharp drop in these reports was due to the ODCE's decision to reduce the requirement for the submission of these reports. In all, 1,123 liquidator reports were received in 2009 (1,174 in 2008).

The compliance rate for the timely production by liquidators of their first reports was 95% during the year, the same as in 2008. The Office also monitored liquidators'

submission of their further and final reports. In respect of all reports due, the Office corresponded formally with 60 liquidators on 172 occasions (110 occasions in 2008) indicating that they were in default with regard to their statutory reporting obligations.

In preparing their reports, the ODCE encourages liquidators to make an appropriate recommendation with respect to relief by reference to the results of their investigations. The Office considered the standard of liquidator reports received in 2009 to be mostly satisfactory. Office staff regularly engaged with liquidators during the year to clarify elements of their reports. This area is subject to ongoing review in order to maintain reporting quality.

ODCE Relief Decisions

The ODCE made decisions on 962 liquidator reports in 2009 of which 625 constituted initial reports and 337 were further or final reports. The equivalent figures for 2008 were 1,098, 351 and 747 respectively. While the large increase in initial reports substantially offset the decline in further and final reports, most staff time is deployed on evaluating a liquidator's initial report. Accordingly, the increase from 351 to 625 in the throughput of initial liquidator reports represented a significant increase in activity in this area.

The relief decisions on initial reports in 2009 (versus 2008) were of the following type:

Decision Type	2008	%	2009	%
Full relief ³²	251	71%	426	68%
No relief ³³	23	7%	41	7%
Relief 'at this time' ³⁴	70	20%	149	24%
Partial relief ³⁵	6	2%	9	1%
Other decisions	1	0%	0	0%
Total	351	100%	625	100%

27 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.

28 This document is available at http://www.odce.ie/en/media_information_notices.aspx.

29 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.

30 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.

31 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.

32 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.

33 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.

34 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.

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

The small decrease from 71% to 68% in the proportion of 'full relief' decisions between 2008 and 2009 respectively was matched by a small increase from 20% to 24% in 'relief at this time' decisions. The Office has noticed an increase in the liquidators seeking additional time to complete their investigative work. This is likely to be due to work pressures in liquidator practices arising from the large increase in the number of companies going into liquidation. However, the Office is anxious to maintain full and timely reporting and will expect liquidators in 2010 to limit to 20% the proportion of requests for additional time which will be made to the Office.

In making its decisions with respect to relief, the Office is also anxious to ensure that no director needlessly bears the burden of a High Court hearing where he or she has clearly demonstrated that they behaved honestly and responsibly in the conduct of the affairs of the failed enterprise.

Of course, ODCE decisions of 'no relief' or 'partial relief' do not constitute a finding in relation to the honesty or responsibility of the directors concerned, and it would be improper for any such inference or imputation to be drawn. It is a matter for the High Court (having heard the liquidator's evidence and the explanations of company directors) to determine if a restriction declaration should be made in respect of any particular company director.

Complete lists of the companies in respect of which full relief and relief 'at this time' were granted in 2009 are available in ODCE Information Notice No. I/2010/1 on the ODCE website at www.odce.ie.

The Auditor and Accountancy Body Reporting Regime

There is a statutory requirement on auditors to report to the ODCE suspected indictable offences under the Companies Acts which are detected in the course of audit³⁶. The ODCE has produced important guidance in conjunction with the recognised accountancy bodies on this important reporting obligation³⁷. As indicated earlier in this Report, a new ODCE Information Notice³⁸ was published jointly with the recognised accountancy bodies in 2009 with the aim of broadening the limited scope of the offences which have historically been reported to the Office.

A similar reporting obligation applies to professional accountancy bodies in the discharge of their disciplinary functions³⁹.

Auditor and Accountancy Body Reports in 2009

Some 237 such reports (210 in 2008) were received in 2009, all but two of them (three in 2008) from auditors.

Appendix 2.1.2 to this Report identifies the primary suspected offences reported in 2009. Consistent with previous years, the following two issues represented about 92% of the reported defaults:

- some 185 cases involved directors' transactions which involved an improper use of company assets⁴⁰. This figure represented an increase of over 25% on the 146 defaults received in 2008;
- 33 instances of a suspected failure to keep proper books of account⁴¹ were received (32 cases in 2008).

Directors' Transactions

Previous Annual Reports have highlighted the phenomenon of directors' loans and other transactions, and unfortunately, events in 2009 kept this issue in the public eye. The 185 reported cases of excessive directors' transactions in 2009 constituted an increase of 20% over the volume of 2008 cases. This particular offence accounted for almost 80% of the auditor reports received. With regard to the reported cases, the associated monetary amounts were €162 million in 2009, up from the 2008 figure of €134 million – an increase of 21%.

The Office continued in 2009 in appropriate cases to encourage directors to rectify the detected offensive transactions by repaying monies to the company in order to bring the outstanding amounts back within the limits permitted by company law. Other acceptable methods included appropriate corporate restructuring so that a group of companies as defined by the Companies Acts is formed between the lending and borrowing companies. Directors were warned of the possible consequences for them and their companies should such defaults be repeated in the future.

³⁶ Under Section 194(5) of the Companies Act 1990 as inserted by Section 74 of the 2001 Act and subsequently amended by Section 37 of the Companies (Auditing and Accounting) Act 2003 and Section 73 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

³⁷ Decision Notice D/2006/2 – Revised Guidance on the Duty of Auditors to report Suspected Indictable Offences to the Director of Corporate Enforcement.

³⁸ Information Notice I/2009/4 – Reporting Company Law Offences: Information for Auditors.

³⁹ Section 58 of the Company Law Enforcement Act 2001 (in respect of liquidators and receivers) and Section 192(6) of the Companies Act 1990 (as amended by Section 73 of the Company Law Enforcement Act 2001) (in respect of members of the body in general) relating primarily to suspected indictable offences committed under the Companies Acts.

⁴⁰ Contrary to the restrictions in Part III of the Companies Act 1990 (as amended).

⁴¹ Contrary to Section 202 of the Companies Act 1990.

In all, company directors brought some €94 million in transactions back within the requirements of law including the major case identified in **Illustration 2.1.2** below. As a consequence of the declining economic environment, there was increasing evidence in 2009 of an inability to repay some of the loans and other transactions which directors and connected persons had secured from their companies. Overall, the Office cautioned about 360 directors during the year. The reduction of the burden of proof with respect to the associated offence provision⁴² will offer a viable means of sanctioning defaulting directors in the future in appropriate cases.

At year-end, some 55 cases remained on hands with a combined reported transaction value of €68 million.

Illustration 2.1.2: Rectification of a Breach of the Restrictions Governing Directors' Transactions by means of Corporate Restructuring

In 2009, the Office received an indictable offence report from the auditor of a large company ("Company A") regarding a transaction in excess of the amount permitted by law. This involved Company A making loans of over €70 million to companies which were not part of a group of companies which included Company A. However, the directors of Company A did separately control the beneficiary companies.

The matter was rectified by way of a corporate restructuring which created a group of companies within the meaning of Section 155 of the Companies Act 1963. Internal group transactions are permitted in Part III of the Companies Act 1990 (as amended).

In addition to restricting the use of company assets for purposes other than the benefit of the company or other group companies, the law⁴³ requires that specified information involving transactions between companies and their directors or between companies and other parties connected to the directors must be disclosed in the notes to company financial statements. This continued to be an area of scrutiny by ODCE staff during 2009.

Public Complaints and Other Detections – A Voluntary Process

Unlike liquidators, auditors and accountancy bodies where reporting to the ODCE is required in the circumstances specified by law, the making of complaints by the public and other entities is entirely a voluntary process. In the case of other regulators, this reporting may be facilitated by legal

information-sharing provisions which exempt the bodies from their usual secrecy obligations.

The ODCE itself also detects issues of a possible company law character during the course of its work and in its monitoring of media and other published reports.

Public Complaints and Other Detections in 2009

There was a small 3% decline (from 416 to 405) in the number of public complaints and other detections which came to attention in 2009.

Appendix 2.1.3 outlines in summary form the character of the various public complaints and other detected issues which came to attention in 2009. It will be immediately apparent that there is a greater variation in the issues reported from this source relative to those emanating from auditors.

Perhaps the most dramatic change in the character of issues coming to attention was the rise from eight to 53 in the number of detected auditing deficiencies between 2008 and 2009. Contributing factors to this large increase included increased detections of:

- the non-disclosure by directors or auditors in company financial statements of details of certain types of transactions and arrangements made by directors and others with their companies and their companies' subsidiaries;
- the so-called 'auditing' of companies by persons who are not qualified to act as auditors.

Corporate Governance Failures in Public Bodies

Although not particularly evident from the classification outlined in **Appendix 2.1.3**, the Office is increasingly subject to calls to involve itself in investigating corporate governance failures in public sector bodies. On occasion, the entities involved are not even companies formed and registered under the Companies Acts. In one recent case for instance, the public body in question was a statutory corporation which had been established under its own code of law. As a result, no intervention by the ODCE was possible as the body in question was beyond the Office's statutory remit.

⁴² Section 40 of the Companies Act 1990 (as amended by Section 7 of the Companies (Amendment) Act 2009).

⁴³ Sections 41 to 46 of the Companies Act 1990 (as amended in particular by Sections 8 and 9 of the Companies (Amendment) Act 2009).

Where the public body in question has been formed and registered under the Companies Acts, it is standard practice for the ODCE to treat every such case in the same fashion as it would any private sector company report or complaint. In a particular case in 2009, the Office engaged with a Government Department and public representatives in respect of general claims of misconduct in a public body which had been the subject of professional forensic examination. The ODCE concluded from the information at its disposal that no evident breach of company law had occurred in the case. The claims of misconduct had also been referred to An Garda Síochána. The following **Illustration 2.1.3** provides some further information on the nature of the conclusion reached by the ODCE in the matter.

Illustration 2.1.3: ODCE Conclusion with respect to a Corporate Governance Failure in a Public Body

The ODCE determined in 2009 that it did not have a role in investigating issues in a particular public body which had been the subject of complaint. In a concluding reply to a correspondent on this decision, the Director indicated as follows:

“As you will know, my remit is to encourage compliance with the Companies Acts and to bring to account those who are suspected of breaching the obligations in those Acts. We have examined the information available to us in relation to [the] Company and have concluded our enquiries on the basis that no evident breach of the Companies Acts is indicated.

As I explained in a previous reply, companies and company directors have legal obligations under various codes of law. Moreover, companies... which are wholly owned by the State have additional corporate governance responsibilities.

We note that the... Report specifically addressed the following regulatory and corporate governance requirements pertaining to [the] Company:

- [a named primary Act];
- *Guidelines for the appraisal and management of capital expenditure proposals in the public sector (July 1994);*
- *Code of Practice for the Governance of State Bodies 2001;*
- *Public Procurement Guidelines 1994 and 2004 and relevant EU Procurement Directives and*
- *Ethics in Public Procurement (June 2005).*

It will be evident that none of these matters are within the statutory remit of this Office.

Any breaches of general criminal law are a matter for An Garda Síochána. It is, I believe, a matter of public record that they have been involved in examining the circumstances associated with this case. I am generally aware that one or more statements of complaint have been made to the Gardai..., but I have no information on the status of any resultant investigation.”

Directors Prohibited from Acting as Directors in the State

The ODCE continued in 2009 to give priority in the public interest to the detection of persons acting improperly as directors of Irish-registered companies where they still stood disqualified in the State⁴⁴ or in other jurisdictions. It also maintained its efforts to try to identify restricted persons who may be continuing to act contrary to law.

Insofar as persons disqualified elsewhere are concerned, they stand automatically disqualified from holding directorships and other leading positions in Irish-registered companies unless their disqualification has been declared to the Registrar of Companies on their appointment to the newly incorporated company or to the existing company as the case may be⁴⁵. It is also an offence for them to act while so disqualified. The purpose of the disclosure provision is to alert people doing business with the company in question to the fact that the director was disqualified in another jurisdiction.

It is open to the ODCE to prosecute any such disqualified persons, and it considers doing so in all suitable cases. In 2009, the Office dealt with six individuals who had been detected as having been disqualified in Northern Ireland or Britain. Notices were served on them requiring *inter alia* their resignation from all of their directorships and their relinquishing of any management positions in Irish-registered companies. Alternatively, they were advised that they could apply to the High Court for relief from their disqualification. All six acted to comply with the notice, resigned from all of their directorships and undertook to disengage in the required manner from all other companies until the term of their foreign disqualifications had expired.

Property Management Companies

ODCE received 82 complaints specifically about property management companies in 2009 which represented an increase of 32% on the 2008 outturn. As in previous years, many of these complaints dealt with issues which fell outside the remit of the Office. Typically, these complaints dealt with the level of service charges and the non-assignment of the common areas to the management company.

⁴⁴ 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.

⁴⁵ Section 195(8) of the Companies Act 1963 (as amended by Section 91(a) of the Company Law Enforcement Act 2001) and by Section 3A of the Companies (Amendment) Act 1982 (as amended by Section 101 of the 2001 Act).

The relevant company law issues in these complaints primarily related to failures to:

- convene annual general meetings (AGMs);
- inform members in good time of the holding of these meetings;
- disclose to members the companies' latest financial accounts and
- permit the inspection of company registers.

Some of these complaints involve protracted engagement initially with the complainants who may need to provide the Office with copies of the legal agreements which they signed on purchase of the property. This information is often needed in order to be clear as to the nature of the contractual or other commitments which exist with respect to the property management company.

When it is clear that there is a basis for the ODCE to involve itself with the complaint, extensive correspondence can ensue with the developers of the property or with those persons who may be in effective control of the management company. The following **Illustration 2.1.4** provides an example of one case in 2009 which entailed prolonged and ultimately successful engagement with a property developer.

Illustration 2.1.4: Successful Resolution of an Intractable Problem relating to a Property Management Company

Complaints were received from members of a management company in the northern suburbs of Dublin comprising a mix of private and social affordable housing. The complainants alleged that there had never been an AGM of the company, that they wished to put themselves forward for election to the board of directors and that they had encountered disinterest on the part of the company's directors in responding to their concerns and to their company law obligations.

Initially, the ODCE corresponded with the directors of the management company without success. In the absence of progress, the Director elected to direct the convening of an AGM⁴⁶. This successfully resulted in the convening of the company's AGM. The then most recent audited accounts were laid before the meeting, and some of the members who offered themselves for election were successful in being appointed to the board.

It is worth noting that it took over six months to resolve what was a relatively simple issue due mainly to the failure of the directors in question to engage meaningfully with the Office. The company is now believed to be compliant with provisions of the Companies Acts and is up-to-date with its filings at the CRO.

Unliquidated Insolvent Companies including 'Struck-off' Companies

In previous Annual Reports, the ODCE has indicated that it is particularly anxious to investigate 'phoenix' companies and other delinquent practices that typically result in a new company assuming the assets and business (but not the liabilities) of a failed company such that:

- competition in the applicable business market is distorted, because the company enjoys lower-than-market costs (for example, through non-payment of creditors and/or the Revenue Commissioners). As a result, this potentially gives the delinquent an unfair competitive advantage in the marketplace;
- creditors suffer financial losses, some of whom may themselves fail in consequence, and
- directors either bear no personal liability for the commercial losses or otherwise escape accountability for the failure of the company.

Insolvent companies which are abandoned by their directors and which subsequently come to be struck off the Register of Companies for a failure to file their annual returns continued to receive ODCE attention in 2009. It is open to the ODCE to apply to the High Court for the disqualification of the directors of such struck-off companies⁴⁷. However, the law⁴⁸ also provides that the High Court cannot impose a disqualification on a person who demonstrates to the Court that the company had no liabilities at the time of strike-off or that those liabilities were discharged before the initiation of the disqualification application. In considering the penalty to be imposed, the Court may instead restrict the directors where it adjudges that disqualification is not warranted.

However, Court actions do not arise in respect of every struck-off company that is investigated by the Office. In some cases investigated by the Office, the former directors have sought to regularise their position by formally restoring the struck-off company to the Register. This procedure involves the preparation and submission of all outstanding annual returns to the CRO, the payment of all late-filing fees and the making of a formal application to the High Court for the restoration of the company, in cases where the company has been struck off for more than one year.

⁴⁷ Section 160(2)(h) of the Companies Act 1990 (as amended by Section 42(b)(ii) of the 2001 Act).

⁴⁸ Section 160(3A) of the Companies Act 1990 (as amended by Section 42(c) of the 2001 Act).

⁴⁶ Section 131(3) of the Companies Act 1963 (as amended by Section 14 of the Company Law Enforcement Act 2001).

In other cases, the former directors are able to satisfy the ODCE that all liabilities had been settled at the time of strike-off or prior to the issue of the intended Court proceedings. This usually requires the preparation and submission of appropriate accounts, often stretching back several years, showing the company's trading since the last set of accounts were submitted to the CRO or since incorporation in cases where accounts were never submitted to the CRO. The former directors are also required to show that all creditors have been paid or those debts settled, and independent verification of this from individual creditors is frequently sought.

As indicated below, the Office secured in 2009 the disqualification of ten directors of struck-off companies (12 in 2008) for periods ranging from four years to six years. At the end of 2009, three more cases were awaiting hearing in the High Court. Some cases remained open at year-end, and it is anticipated that several more cases will be initiated in 2010.

In the light of the potential consequences outlined above for the abandonment of insolvent companies, prudence would suggest that directors should consider formally placing their company into liquidation or arranging for voluntary strike-off. Directors should be aware that in the case of any company that is struck off the Companies Register, its remaining assets are vested in the Minister for Finance in accordance with the provisions of the State Property Act. It is ODCE policy to bring to the attention of the Department of Finance cases where a company is identified to have held significant assets at the time of strike-off.

Sub-Goal 2.2: Enforcing Serious Breaches under the Companies Acts

Introduction

The Office continued in 2009 to pursue a number of suspected serious defaults of law and duty with respect to the Companies Acts. Particular highlights included:

- the determination by the Supreme Court of the first appeal in the various ODCE disqualification cases arising from the adverse findings in the High Court Inspectors' Report into National Irish Bank Limited (NIB) and National Irish Bank Financial Services Limited (NIBFS). The Respondent in question was successful in overturning his High Court disqualification;

- the hearing of appeals by two defendants in the Circuit Criminal Court against convictions imposed on them for specific breaches of the Companies Acts. In both cases, the convictions were upheld. In one case, the penalties imposed by the District Court were confirmed while in the second, the penalties were amended only to the extent that a penalty of six months' imprisonment was suspended for two years;
- the first disqualification of a non-resident director on foot of an ODCE application for disqualification pursuant to Section 160(2)(h) of the 1990 Act;
- the first disqualifications of persons who acted as directors of companies although not registered as directors of the companies in question. Again, the ODCE proceedings in question were initiated under Section 160(2)(h).

ODCE Enforcement Proceedings

In 2009, the ODCE secured six criminal convictions (with a further 12 charges taken into consideration) and ten disqualifications for breaches of company law and duty. The table below summarises the position and provides the equivalent detail for 2008.

Outcome of Successful Legal Enforcement Proceedings	2008	2009
Charges on which convictions were secured	32	6
Charges taken into account on conviction	1	12
Disqualifications	20	10
Restrictions	1	-
Other Decisions	1	1
Total	55	29

In 2009, the Office participated in thirteen separate civil and criminal enforcement proceedings before the Courts, of which one was in the Supreme Court, seven in the High Court, three in the District Court, one in the Circuit Criminal Court and a further one in both the Circuit Criminal Court and the District Court.

The Office also made application for a further fifteen orders and other reliefs during the year of which four were in the High Court and eleven at District Court level.

It is clear from the overview of the status and outcome of these and other legal proceedings in **Appendix 2.2.1** that the Office, as in previous years, was substantially successful in these proceedings. Only one case was lost in 2009.

Appendix 2.2.2 gives a more detailed breakdown of the enforcement proceedings only, with case details included. In accordance with ODCE practice, a summary of each case result was placed on its website at www.odce.ie during 2009.

Civil Enforcement Actions

The High Court disqualified ten directors for periods of five years in eight cases and periods of four and six years in two different cases. All of these proceedings were undertaken under Section 160(2)(h) of the 1990 Act and involved companies which were struck off the Register of Companies for failing to file outstanding returns where the directors failed to show to the High Court that the companies involved had no outstanding liabilities. In the majority of these cases, the persons disqualified were directors of more than one struck-off company.

As indicated earlier, the ODCE secured for the first time a disqualification order against a non-resident person who was a director of two companies that were struck off. In another case, disqualifications were obtained for the first time against persons who acted as company directors but who were not notified to the Companies Registration Office as being directors.

Considerable work continued to be done by the Office arising from the High Court Inspectors' Report on National Irish Bank Limited (NIB) and National Irish Bank Financial Services Limited (NIBFS) which was published in July 2004. During 2009, one of the cases was heard by the High Court over a three-week period, and judgment was awaited at the year-end.

Also in 2009, the Supreme Court determined the first appeal against a High Court disqualification in the NIB/NIBFS case, and this resulted in the Respondent successfully overturning a four year disqualification period.⁴⁹

The status of the nine disqualification actions which were originally initiated in 2005 is summarised in the following table. Seven of them are ongoing at end-2009.

Disqualification Proceedings on foot of NIB Report at end-2009	Number
Disqualification granted by the High Court – No Appeal	1
Disqualification granted by the High Court – Respondents' Appeal	3
Disqualification refused by the High Court – ODCE Appeal	2
Disqualification set aside by the Supreme Court on Appeal	1
Proceedings heard by the High Court – Judgment Awaited	1
Proceedings not yet heard by the High Court	1

In all, the ODCE had some 13 proceedings before the High Court and the Supreme Court at year-end. Aside from the seven NIB-related cases, three dealt with the directors of insolvent companies which had been struck off the Register of Companies for failing to file outstanding annual returns, two involved other types of disqualification action which are awaiting appeal before the Supreme Court and one related to the DCC Inspectors' Report.

Criminal Enforcement Actions

2009 was a relatively quiet year for ODCE criminal prosecutions. The main reason for this was the need to reconfigure staffing resources (both Garda officers and administrative staff) to take account of the scale and complexity of the investigation of certain matters at Anglo.

As indicated earlier, the year was notable for the fact that the appeals of two persons convicted in the District Court were heard in the Circuit Criminal Court. Both appeals were successfully defended. **Illustration 2.2.1** below provides information on one of those cases.

⁴⁹ Although granted by the High Court, the disqualification never actually came into effect as the Court Order was stayed pending appeal on the basis of an undertaking given by the Respondent.

Illustration 2.2.1: Person Auditing the Accounts of a Company while Not Qualified to do so and/or while Disqualified

The most common method of qualification for appointment as auditor to a company is for a person to be a member of one of six recognised accountancy bodies and to hold a valid audit practising certificate from one of those bodies. Generally, the body ensures that an auditor in practice meets certain annual criteria which includes their recorded attendance at continuing professional development courses.

Toward the end of 2008, the ODCE instituted criminal proceedings against Mr Noel O'Gara, Athlone, Co Westmeath, alleging breaches of Section 187 of the Companies Act 1990. This Section prohibits a person from acting as an auditor of a company either while unqualified to do so or while disqualified by virtue of a defined close association with the company being audited. The disqualification provision protects the independence of the auditing function.

The case was heard in Athlone District Court on 16 January 2009 when Mr O'Gara was charged with nine counts of providing audit services for four companies contrary to Section 187. In relation to eight of the nine charges, the Court accepted ODCE evidence that Mr O'Gara acted as an auditor when he was both unqualified to do so and disqualified by virtue of his being an officer of the company at all material times. In relation to the remaining offence, the Court was satisfied that Mr O'Gara was not qualified to act as auditor. As a result, the Court proceeded to convict Mr O'Gara on four of the charges, imposed fines totalling €3,200 and directed that he pay €1,500 towards the costs of his prosecution. The remaining five charges were taken into account.

Mr O'Gara then appealed both the convictions and the penalties imposed to the Circuit Criminal Court. This appeal was heard on 24 February 2009 when the Court dismissed the appeal and affirmed the District Court convictions and order in relation to the fine and costs. Mr O'Gara was also directed to pay a further €1,500 towards the costs of his failed appeal.

Mr O'Gara, representing himself, contested the charges during lengthy hearings in both Courts. He attempted to persuade the Courts that as a professional accountant and a former member of one of the bodies, he was competent to carry out the relevant audit work. In making their determinations, the Courts accepted evidence from each of the recognised accountancy bodies that Mr O'Gara did not possess a current audit practising certificate. During the proceedings, witnesses from the Department of Enterprise Trade and Employment and the Irish Auditing and Accounting Supervisory Authority gave evidence in relation to the legislation. Witness evidence was also given by two investigating ODCE officers, one of whom was a Detective Garda. The case proved to be a robust test of the legislation and the associated Court proofs.

Mr O'Gara has since stated that the Circuit Court's determination has been appealed to the High Court.

Liquidator Restriction and Disqualification Applications

Reference has been made earlier to the role of the ODCE in relieving liquidators from their statutory duty to take restriction proceedings against the directors of insolvent companies in liquidation. In a minority of the cases considered by the ODCE, liquidators must proceed to initiate restriction proceedings in the High Court.

During 2009, the High Court reached decisions in 68 cases (54 in 2008), and one or more directors were restricted or disqualified in 62 cases (49 in 2008) representing 91% of the total (91% also in 2008). No restriction orders were made in respect of the remaining six cases (five in 2008). These outcomes suggest that the ODCE continues to successfully identify the cases meriting consideration by the High Court.

In terms of individual directors, there were 108 directors restricted (76 in 2008), twelve directors disqualified (six in 2008), eleven directors against whom no orders were made (eight in 2008), and there were no occasions where a director was both restricted and disqualified in 2009 (two in 2008). This means that the Court made orders against 92% of the 131 directors (91% in 2008) that were the subject of restriction or disqualification proceedings during 2009.

In relation to restriction proceedings that concluded before the High Court in 2009, **Appendix 2.2.3** to this Report outlines the outcome of the cases where restrictions were made and the identity of the persons in question.

Appendix 2.2.4 identifies the six companies where the High Court concluded in 2009 that a restriction order should not be made against any of their directors.

The Director welcomes the continuing willingness of a number of liquidators to bring disqualification proceedings in respect of serious detected misconduct. In 2009, successful proceedings were brought against twelve directors of insolvent companies (eight in 2008). **Appendix 2.2.5** identifies the persons in question and their periods of disqualification. The accompanying **Illustration 2.2.2** provides some information on these cases. The Director hopes that further similar cases will be taken in 2010.

Disqualifications and Restrictions Generally

At end-2009, over 3,200 persons were listed on the Register of Disqualified Persons (2,700 at end-2008) although some duplication of entries would appear to exist. Over 3,000 of these are deemed to be disqualified; 190 stand disqualified by High Court Order; 10 have been disqualified arising from their failure to notify their disqualification in another jurisdiction, and 11 were disqualified on the basis of their having acted as a director while restricted.

Overall, there was a net decrease in the CRO's Register of Restricted Persons from 624 to 538 as some earlier restricted persons were removed from the Register in 2009 on the completion of their five year term. The following table indicates the number of persons on the Register at the end of each year since 2005.

Number of Directors standing restricted at end-2005 to end-2009 inclusive

End-2005	End-2006	End-2007	End-2008	End-2009
600	685	791	624	538

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.

Illustration 2.2.2: Insolvent Companies - Liquidator Disqualifications in 2009

Mr Jason Davis, a director of Jason Davis Security Management Services Ltd, was disqualified for eight years. The Court heard evidence of the diversion of €67,500 in company funds for use as deposits on two apartments in Spain and the transfer of debtor assets valued at €280,000 and employees to two different 'phoenix' companies in order to obtain new security licences. The Revenue Commissioners who were owed about €1 million in taxes had petitioned for the winding-up of the company.

Mr Peter Killeen and Ms Lorraine Higgins, directors of P.S.K. Construction Ltd, were disqualified for seven and five years respectively. The Court imposed on them personal liability for the company's debts ⁵⁰. It also made an order against Mr Killeen under Section 297A ⁵¹ of the 1963 Act. The Court heard evidence that he had decided to under-declare and under-pay over €1.6 million on the company's monthly liabilities for PAYE/PRSI and Relevant Contracts Tax (RCT). In all, the company was estimated to owe about €2.6 million in taxes on its liquidation.

Mr Sean Hartigan, a director of Prestige Recycling Co Ltd, was disqualified for seven years. The Court heard evidence that the company had traded while insolvent for a considerable period, had failed to remit taxes when due, had failed to maintain proper books and records and had failed to submit CRO statutory returns over a number of years. Mr Hartigan had also transferred company employees to his sole trader business while leaving liabilities within the company. Company tax liabilities at liquidation were estimated to exceed €310,000.

Mr John Dillon, Mr Anthony Brierton and Mr Glen Kane, directors of Rodaka Ltd, were each disqualified for six years. The Court heard that the company had incurred large trading losses over a three year period, had traded while insolvent for some time, had not properly operated the company's pension scheme which led to arrears being due and had failed to deduct RCT and cooperate fully with the liquidator.

A five year disqualification was imposed on Mr Paul McArthur, a UK-based director of SGCI Ltd, which provided security guard services in the retail sector. He was deemed to be the effective managing director and to be responsible for the company's tax liability increasing from €120,000 to over €800,000 in a 17 month period. A sum of €68,000 was transferred out of the company prior to liquidation, and other amounts totalling €128,000 were moved to bank accounts in the UK and Spain controlled by Mr McArthur. Another two directors were restricted for the required five year period.

Mr Hugh O'Neill was held to be a *de facto* director of Marhug Engineering Services Ltd and disqualified for five years. There was evidence of 'phoenix activity', that the company had failed to keep proper books and records and that Mr O'Neill had applied company funds to meet debts of an earlier company, effected irregular withdrawals from the company for his own benefit, diverted funds from post-liquidation trading to another company and falsely filed CRO returns in naming his daughter as a director and later attempting to reverse this. Company tax liabilities were close to €240,000.

FAI Finance Corporation Ltd was engaged in providing consumer finance and loans predominantly in the UK. The Court heard evidence that Mr Terence Youngman, a director, deliberately masked the true status of the company's loan book by falsifying loan completions involving the advance and immediate repayment of monies and knowingly colluded with others to introduce sub-prime loans to the company that had little prospect of being repaid. The deficit was estimated at €52 million at liquidation due to non-recovery of most of the loans advanced. He was disqualified for five years.

Mr Martin Harran, a shadow director of Etonford Ltd, a company involved in selling laminate and wood flooring, was disqualified for four years. There was evidence that the company had traded while insolvent, had not been placed in liquidation promptly, had earlier been struck off the Register of Companies for failing to file returns and had failed to keep proper books and records. The Revenue liability was about €387,000. Two other directors, the shadow director's sons, were each restricted for five years.

⁵⁰ Section 204 of the 1990 Act: personal liability of company officers where proper books of account are not kept.

⁵¹ Civil liability of persons involved in the fraudulent or reckless trading of a company.

Mr Brian Lattin, a director of Dublin Wholesale Bag Company Ltd, was disqualified for two years. The Court heard evidence that no audited or management accounts had been completed since 1998, that no statutory returns had been made to the CRO since then and that the directors had failed to cooperate with the liquidation. Revenue were owed approximately €320,000 at liquidation, comprising VAT accrued between 2000 and 2008 and PAYE in 2007/2008. The second director was restricted for five years.

Conclusion

The civil and criminal enforcement activity of the Office was necessarily restricted in 2009 as a result of the redeployment of staffing resources to the investigation of certain events at Anglo and to the examination of the large increase in liquidator reports to the Office which must be dealt with within a statutory timetable. In particular, the availability of Garda resources for ODCE criminal investigations was severely reduced.

Notwithstanding these exceptional pressures, the Office adopted a number of measures during 2009 to maintain a reasonable level of throughput in the enforcement area. These included:

- a greater utilisation of general ODCE staff in taking witness statements in criminal investigations. Garda staff will continue to make themselves available for the interview of potential suspects;
- a re-assignment of legal staff to the development and management of cases for possible disqualification actions;
- the enhanced use of the remedial option which is available in Section 371 of the 1963 Act (as amended) to rectify and sanction detected defaults in appropriate cases.

The benefit of these decisions should become apparent in 2010 and help to forestall the decline in enforcement activity which occurred in 2009. However, the overall outlook for enforcement activity will necessarily remain subdued for the duration of the Anglo investigation.

Goal 3 – Providing Quality Services to Internal and External Customers

Introduction

The provision of quality services to staff and the general public remained a priority goal for the Office in 2009. The main developments underlying the effective execution of the functions of the Office during the year are outlined below.

Sub-Goal 3.1: Securing and Prudently Managing our Resources

Staffing

At the start of 2009, the Office had some 45 staff in place. The demands of the Anglo investigation and the substantial increase in the reports of liquidators appointed to newly insolvent companies required some internal redeployment of Office staff. However, these demands also necessitated the early preparation of submissions by the Director to the Department of Enterprise Trade and Employment and the Garda Commissioner seeking additional staffing resources to help manage this additional work. Five additional general service staff were promptly made available, and all but one of the staff were deployed on the Anglo investigation. The remaining staff member was assigned to the Office's Insolvency Unit to help deal with the increasing numbers of liquidator reports.

This brought the sanctioned ODCE staffing level from 46 at the start of 2009 to 51 at year-end. Actual staffing at 31 December 2009 was 49.7 full-time job equivalents.

Appendix 3.1.1 provides a breakdown of the Office's staff at year-end.

In mid-2009, the Garda Commissioner also assigned a further five Detective Gardaí to the related Anglo investigations of the ODCE and the Garda Bureau of Fraud Investigation (GBFI), and these were supporting the GBFI investigations at year-end.

Financial Resources

The Office's administrative costs in 2009 were funded through Subhead A09 of Vote 34 (Minister for Enterprise Trade and Employment). The allocated and expended amounts for the main pay and non-pay headings in Subhead A09 and for Subhead X02 (Legal Costs) are provided in the following table. A more detailed breakdown of the figures for Subhead A09 is contained in **Appendix 3.1.2**.

Subhead A09, Vote 34	2009 Allocation (€000s)	2009 Expenditure (€000s)
Pay	2,655	2,663.5
Non-Pay	2,880	2,941.1
Total Subhead A09	5,535	5,604.6
Subhead X02, Vote 34	34	195.5
Total Subheads A09/X02	5,569	5,800.1

The outturn of just over €5.8 million represented a 34% increase over the outturn of €4.34 million in 2008. The increase was primarily due to the costs incurred by the Inspector who was appointed by the High Court to inquire into certain matters at DCC plc, Lotus Green Ltd and S&L Investments Ltd. This Inquiry was completed late in 2009 and the Report was published in January 2010. Some €0.99 million of the estimated total cost of €1.4 million was spent in 2009.

The second primary reason for the increase in expenditure was the costs of €0.85 million awarded against the Office by the Supreme Court in a disqualification appeal case taken in consequence of the findings in the 2004 High Court Inspectors' Report relating to National Irish Bank Ltd and National Irish Bank Financial Services Ltd.

Discounting these two exceptional items of expenditure in 2009, it will be clear from **Appendix 3.1.2** that the Office successfully curtailed spending in many areas in response to the Government's request that non-essential expenditure be limited as much as possible. This inevitably reduced the amount of advertising and promotional work which the Office undertook during the year. However elsewhere, the ODCE secured contract price improvements after re-tendering processes in one or two instances. The Office also successfully implemented the 8% reduction in professional fees mandated by the Government. Overall, the Director is satisfied that improved value for money was obtained for Office expenditures in 2009.

Organisational Development

In 2009, the ODCE engaged external expertise as required to assist in undertaking its investigative and enforcement work in particular. For instance, the expertise of the Garda Computer Crime Unit was particularly needed in securing certain electronic records of Anglo during the searches of the Bank's premises in 2009. Enhanced software tools were also obtained as required during the year.

The Office also maintained its Legal and Accounting Panels, which contain the names of persons or firms wishing to be considered for appropriate expert assignments. These Panels remain open at all times to applicants who wish to provide such services to the Office, and details are available on the ODCE website⁵².

Risk Management Action Plan

In 2009, the ODCE reviewed and updated the Office's risk management plan in consultation with the Department of Enterprise Trade and Employment. This plan was originally developed as a result of the recommendations of the Mullarkey Report which dealt with issues of accountability in the areas of internal financial controls, internal audit and risk management.

Sub-Goal 3.2: Developing our Staff

Training and Performance Management

ODCE staff received over 120 days of training and information in 2009 (over 140 days in 2008). Almost 32 training days were provided from internal ODCE resources to 15 staff during 2009. In addition, the Department of Enterprise Trade and Employment provided over 90 further days of training to 24 ODCE staff (of which 45 days benefited nine staff in the area of IT training).

Performance Management which applies across all Government Departments and Offices is implemented each year by the ODCE. It is directly related to the Business Plan of the Office and ensures clarity of individual staff objectives as well as linking training programmes directly to the role of each staff member.

Team-Based Working

Multi-disciplinary teams continued to operate within the ODCE in order to handle the Office's extensive volume of varied casework in the detection, enforcement and insolvency areas. A representational chart of the respective involvements of ODCE staff by functional area is at **Appendix 3.2.1**.

During 2009 under Section 13(1) of the Company Law Enforcement Act 2001, the Director made ten instruments of delegation formally delegating the exercise of one or more of his legal powers to designated Office staff. Six of the instruments involved amendments to existing instruments while four were given to staff newly designated to act on the Director's behalf.

Sub-Goal 3.3: Improving our Customer Services

Services Offered

The ODCE continued in 2009 to commit considerable resources to the development and use of technology to provide information to its customers, to receive input from customers and to enhance efficiencies in work practices. The services offered by the Office to the public and professionals include:

- information on company law and related matters via the Office's website, publications, etc;
- talks, seminars and other compliance initiatives provided by Office staff, details of which are outlined earlier in this Report;
- 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. For instance, some 586 requests to the Office's info@odce.ie account were promptly answered during the year (468 in 2008).

Publications

As indicated earlier, 14 formal publications were prepared and published during 2009 as indicated in **Appendix 1.1.1** to this Report. Of these, the Annual Report for 2008 and the new Quick Guides (8 in all) were published bilingually.

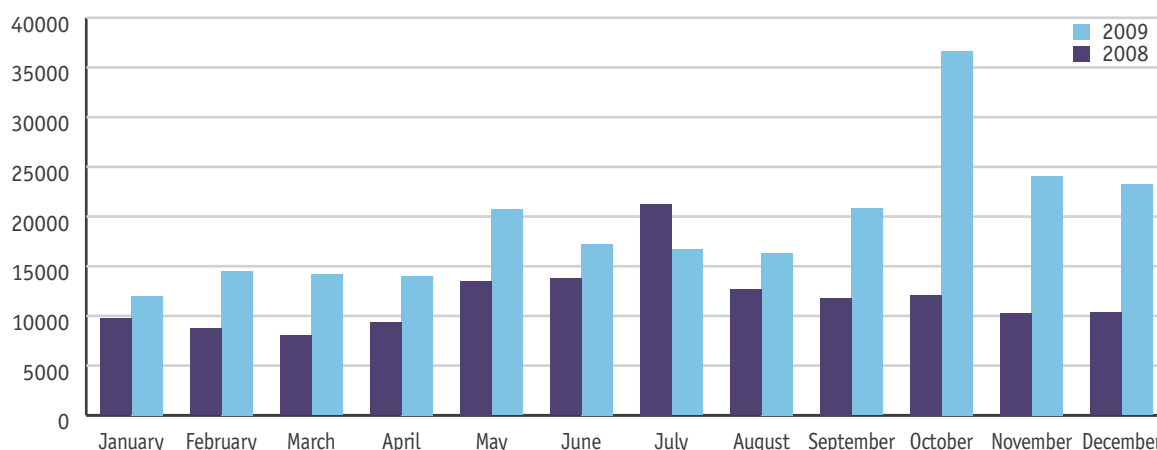
Several ODCE staff also contributed papers and presentations to the national and professional media and business and other groups, and they participated in national and local media interviews on request.

Website

During 2009, the ODCE website at www.odce.ie attracted a record 230,469 visits, up by 63% on the equivalent figure of 141,557 for 2008. The accompanying chart shows that with one exception, the number of visits to the site for every month in 2009 was higher than the comparable month in 2008.

⁵² See www.odce.ie/en/media_general_publications.aspx?page=2.

ODCE Website Visits 2008/2009



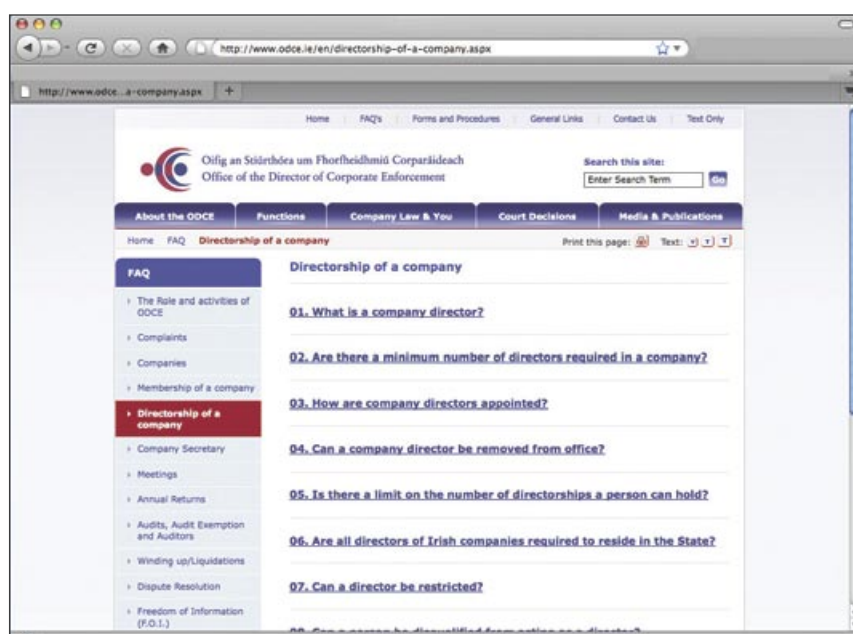
New material posted to the website included the following:

- the new Office publications indicated above;
- the two new Companies Acts and other new secondary legislation;
- 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.

In implementing a more cost effective communications strategy, the Office carried out a significant upgrade of the Frequently Asked Questions (FAQ) section of its website⁵³

during the year. The revised FAQ section which can be accessed directly from the ODCE homepage now has 13 separate categories including topics relevant to complaints, company directors, meetings, dispute resolution, etc. Many callers looking for general information are now referred to this database for further information. It is intended to continually update the FAQs on the basis of questions and queries received as noted above. A screenshot of the new FAQ section is below.

At end-2009, some 891 customers were registered to be notified of new information being published on the website (817 at end-2008). The 76 new registrants for 2009 represented a significant increase on the comparable figure of 48 for 2008.



⁵³ www.odce.ie/en/faq.aspx.

Freedom of Information (FOI) Acts

All records of the Office (other than records concerning its general administration) are exempt from the FOI Acts. During 2009, the ODCE received three FOI requests for copies of records. One of the requests (for records not covered by the Acts) was withdrawn; one was handled outside of FOI (i.e., the information was provided outside of the formal FOI process), and the third request was granted in full.

Data Protection Acts

In 2009, the ODCE maintained its registration as a data controller with the Office of the Data Protection Commissioner. The Data Protection Acts 1988 to 2003 protect against the improper use or disclosure of any information held about an individual, and the ODCE continued to abide by its obligations in this area. These obligations are consistent with the Office's own strict confidentiality requirements in Section 17 of the Company Law Enforcement Act 2001.

During 2009, the legislation governing Data Protection was amended⁵⁴ to exclude certain personal information held by *inter alia* the ODCE. The effect of the amendment was to restrict access to personal data kept by persons or bodies with statutory functions designed to prevent financial loss to members of the public where such access would be likely to prejudice the proper performance of any of those functions. This is consistent with the exclusion of non-administrative records from the Freedom of Information Acts and the statutory duty of confidentiality under which the Office operates. In all other respects, the ODCE is subject to the safeguards afforded by the Acts.

Prompt Payment of Accounts Act 1997

The Prompt Payment of Accounts Act provides for the payment of interest to suppliers whose invoices are unpaid at a prescribed date (usually 30 days after receipt of the invoice). In the current economic climate where cash flow is vital to a business, Government policy is to pay suppliers within 15 days of receipt of an invoice. The Office also has a policy of arranging that all invoices be settled in a timely manner and adheres to the 15-day rule.

Despite the Office's best efforts in this respect, one payment did attract an interest surcharge in 2009. The amount charged was €6.66. The total number of demands for payment processed by the Office in 2009 was 1,047.

Compliance with Agreed Customer Service Standards

The ODCE is committed to providing a quality customer service to its own staff and to all members of the public who have dealings with it. The feedback and complaints services on the website are part of this process.

Although every effort is made to assist persons who contact the Office, one complaint was received regarding the manner in which a staff member was perceived to have treated a customer. On investigation of the complaint, the member of staff was found to have acted correctly, and the complaint was not therefore upheld. The circumstances of the issue were outlined to the complainant, and the matter was satisfactorily resolved. In this instance while the complainant did not invoke the formal complaints procedure, the Office dealt with the matter in accordance with its published Customer Complaints Procedure.

Within the constraints of a demanding workload, the Director considers that satisfactory compliance with the Office's Customer Service Standards was achieved in 2009. Nevertheless, it was determined in late 2009 to undertake a full review of Office Customer Service Standards in early 2010 in order to ensure that staff were providing an appropriate and consistent standard of care to its customers.

Official Languages Act 2003

Oifig an Coimisinéir Teanga audited the ODCE's adherence to its commitments under the Official Languages Act during September/October 2009. The audit covered both the Act's obligations and the specific commitments made for the first year of implementation of the Office's agreed Scheme for 2008-2011 under the Act⁵⁵. The report from An Coimisinéir Teanga found that the Office was compliant with both the Act and its own Scheme.

The amount of information in Irish on the Office website was increased during the latter part of the year in order to improve services to those ODCE customers who wish to do their business through the Irish language.

During 2009, the Office also expanded its glossary of useful company law terms and expressions to assist staff in dealing with citizens who wish to do their business with the Office through Irish. Demand for services through the Irish language remains very low, however, despite publication in 2008 of the Scheme.

Conclusion

Taking account of the difficult challenges which the Office faced in 2009, the Director is satisfied that the Office has again delivered very good value for the State's investment in company law compliance and enforcement.

⁵⁴ S.I. No. 421 of 2009 – Data Protection Act 1988 (Section 5 (1)(D)) (Specification) Regulations 2009.

⁵⁵ The Scheme is available on the ODCE website at www.odce.ie/en/media_general_publications.aspx.

Outlook

The coming year promises to be every bit as demanding as 2009. The Anglo investigation will undoubtedly continue to dominate the work of the Office, and this will mean that proceedings which ODCE might otherwise have considered taking are likely to be curtailed or delayed. Other measures are being adopted to correct or sanction the defaults in question.

The growth in insolvent company liquidations is also expected to continue, and this will necessarily see more work arising for the Office in evaluating the consequential volume of initial liquidator reports.

Economic pressures generally may also lead to a rise in complaints of suspected corporate misconduct.

The fiscal and other corrective measures which the Government has adopted in the present difficult economic environment will necessarily see the Office continuing to manage its budgetary and other resources on a very prudent basis. In particular, this will see a continuing curtailment of all non-essential expenditures in promoting, for instance, the Office's compliance agenda.

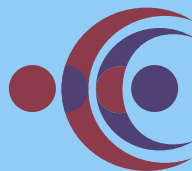
Overall, the Office is facing major challenges in 2010. The most significant is the Anglo investigation, but there is every confidence that this Office and the Garda Bureau of Fraud Investigation will be able to continue to advance their joint investigations appropriately.

The ODCE is well aware of the public's legitimate desire that these investigations should be concluded very quickly. The Office is endeavouring to complete them as quickly as is appropriate. At the same time, it is acutely conscious that these investigations must be thorough and professional. The acquisition of evidence for potential criminal proceedings is a painstaking process. This is especially the case in large-scale commercial investigations.

Overall, these investigations are progressing well. However, the ODCE will continue to refrain from public comment on the investigations until their conclusion. This is being done in order to safeguard the integrity of the investigations.

The reputation of Ireland Inc has suffered as a result of events in the business and economic sectors in recent years. The task of the ODCE in 2010 and beyond will be to play its part in restoring our national reputation for high standards in Irish companies.

Appendices



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

Appendix 1.1.1

List of ODCE Publications issued in 2009

Date	Name of Publication
Jan 2009	Information Notice I/2009/1 – Reduced Liquidator Reporting to the ODCE
Feb 2009	Review of ODCE Activity in 2008
Apr 2009	Companies - their Duties and Powers: A Quick Guide
Apr 2009	Company Directors - their Duties and Powers: A Quick Guide
Apr 2009	Company Secretaries - their Duties and Powers: A Quick Guide
Apr 2009	Members and Shareholders - their Duties and Powers: A Quick Guide
Apr 2009	Auditors - their Duties and Powers: A Quick Guide
Apr 2009	Creditors - their Duties and Powers: A Quick Guide
Apr 2009	Liquidators, Receivers and Examiners - their Duties and Powers: A Quick Guide
Apr 2009	Penalties for Breaches of Company Law: A Quick Guide
May 2009	ODCE Annual Report 2008
July 2009	Information Notice I/2009/2 – Section 56 Reports
July 2009	Information Notice I/2009/3 – Companies (Amendment) Act 2009
Sept 2009	Information Notice I/2009/4 - Reporting Company Law Offences: Information for Auditors

Appendix 1.1.2

List of ODCE Presentations in 2009

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
22/01/09	Cork IT Genesis Programme	Presentation	Corporate Health Check	Cork IT	13	Kevin Prendergast
26/01/09	Dublin City Council	Presentation	Directors' Responsibilities	Dublin City Council, Wood Quay, Dublin	14	Kevin Prendergast
30/01/09	Financial Regulator	Presentation	Role of the ODCE	Financial Regulator, Dame Street, Dublin	50	Kevin Prendergast
30/01/09	ACCA	Presentation	Company Law issues / Update on ODCE work	Buncrana, Co. Donegal	12	Dermot Madden
16/02/09	WIT Centre for Entrepreneurship	Presentation	Corporate Health Check for Directors of Private Limited Companies	Waterford Institute of Technology, Waterford	14	Kevin Prendergast
04/03/09	ACCA	Presentation	Company Law issues/Update on ODCE work	ACCA, Leeson Park, Dublin	8	Dermot Madden
05/03/09	Jordans	Presentation	Current Focus of the ODCE's Compliance and Enforcement Work	Clontarf Castle, Dublin	60	Paul Appleby
06/03/09	Smurfit Business School	Presentation	The ODCE – What is it and what does it do?	Smurfit Business School – UCD, Dublin	25	Paul Appleby
11/03/09	GBFI	Presentation	Role in the ODCE	Garda Depot, Phoenix Park, Dublin	30	Brian Mahon and Mick Prendergast
18/03/09	DCU	Presentation	Role of Directors in accounts and audit	DCU, Dublin	90	Kevin Prendergast
19/03/09	J. W. O'Donovan Solicitors	Presentation	Insolvency Review - An ODCE Perspective	Clarion Hotel, Cork	100	Kevin Prendergast
19/03/09	Nova UCD	Presentation	Corporate Health Check	UCD, Belfield, Dublin	12	Kevin Prendergast
23/03/09	Financial Regulator	Presentation	Role of the ODCE	Financial Regulator, Dame Street, Dublin	140	Kevin Prendergast
24/03/09	DCU	Presentation	Role of Directors in accounts and audit	DCU, Dublin	35	Kevin Prendergast

Appendix 1.1.2 (continued)

List of ODCE Presentations in 2009

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
24/03/09	GBFI	Presentation	Exhibits Handling	Harcourt Square, Dublin	30	Brian Mahon
24/03/09	CIMA/IACT	Presentation	Review of Corporate Governance in Ireland	Clarion Hotel, IFSC, Dublin	135	Kevin Prendergast
24/03/09	GBFI	Presentation	GBFI Fraud Course	GBFI, Dublin	35	Brian Mahon and Mick Prendergast
26/03/09	Bankruptcy Ombudsman's Office, Finland	Presentation	Role and Work of the ODCE	ODCE Offices, Dublin	6	Kevin Prendergast, Adrian Brennan, Conor O'Mahony, Denis Hosford, Peter Durnin
02/04/09	Sligo Chamber of Commerce	Presentation	Corporate Health Check	Sligo Chamber, Sligo	25	Kevin Prendergast
03/04/09	UCD	Presentation	Role of the ODCE	Smurfit Graduate Business School, Blackrock, Dublin	90	Kevin Prendergast
20/04/09	GBFI	Presentation	Exhibit Handling and Presentation	ODCE Office, Dublin	30	Brian Mahon
22/04/09	PLATO	Presentation	Corporate Health Check	Plato Offices, Dublin	10	Kevin Prendergast
25/04/09	First Law	Presentation	Compliance and Enforcement – The ODCE Perspective	Law Society, Blackhall Place, Dublin	250	Paul Appleby
29/04/09	Association of Compliance Officers in Ireland	Presentation	The ODCE- Relevance to Financial Service Companies	Institute of Bankers, North Wall Quay, Dublin 1	100	Paul Appleby
30/04/09	Leinster Society of Chartered Accountants	Presentation	Regulation Really Does Matter	The Westbury Hotel, Dublin	50	Paul Appleby
11/05/09	Chartered Accountants Ireland	Presentation	Certificate in Director's Duties Course	CAI, Burlington House, Dublin	16	Kevin Prendergast
16/05/09	Perren/MHA Consulting/ McGuill and Co, Solicitors	Presentation	Company Law Enforcement in Ireland	The Westbury Hotel, Dublin	35	Kevin O'Connell

Appendix 1.1.2 (continued)

List of ODCE Presentations in 2009

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
23/05/09	Office of the Director of Public Prosecutions	Presentation	Disqualification Orders and Criminal Convictions under the Companies Act	Dublin Castle	225	Kevin O'Connell
26/05/09	ACCA - Galway	Presentation	Company Law issues/Update on ODCE work	Galway	100	Dermot Madden
04/06/09	IBEC	Presentation	Corporate Health Check	Baggot Street, Dublin 2	40	Adrian Brennan
04/06/09	Master Conference, University of Limerick	Presentation	Challenging the Past & Shaping the Future	University of Limerick	40	Mick Moran
13/06/09	National University of Ireland	Presentation	Corporate Health Check	Maynooth, Co. Kildare	14	Eileen McManus
17/06/09	Carlow Enterprise Platform Programme	Presentation	Corporate Health Check	Carlow I.T.	10	Kevin Prendergast
01/07/09	Clúid Housing Association	Presentation	Corporate Health Check	Dublin	8	Kevin Prendergast
01/07/09	UCD - Masters in Management	Presentation	The ODCE – Setting the Standard	UCD, Dublin	45	Kevin Prendergast
02/07/09	Clare Law Association	Presentation	Role of the ODCE	Templegate Hotel, Ennis, Co. Clare	50	Kevin Prendergast
16/09/09	Irish Times Training - M.Sc in Executive Leadership	Presentation	The ODCE – Encouraging Compliance, Enforcing the Law	Morgan Hotel, Dublin	20	Kevin Prendergast
19/09/09	Bizcamp	Presentation	Corporate Health Check	Guinness Storehouse, Dublin	35	Kevin Prendergast
22/09/09	ACCA - Cork	Presentation	Company Law issues/Update on ODCE work	Cork	100	Dermot Madden
22/09/09	Law Society	Presentation	Diploma in Company Law	Blackhall Place, Dublin	250	Paul Appleby

Appendix 1.1.2 (continued)

List of ODCE Presentations in 2009

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
23/09/09	County and City Managers' Association	Presentation	Corporate Governance and Directors' Responsibilities	Local Government House, Dublin 8	30	Kevin Prendergast
30/09/09	GBFI	Presentation	Money Laundering Course	Harcourt Road, Dublin	30	Michael Prendergast
30/09/09	Kilkenny Bar Association	Presentation	Role of the ODCE	Rivercourt Hotel, Kilkenny	20	Kevin Prendergast
6/10/09	ODCE	Presentation	Statement Training	ODCE	10	Brian Mahon
7/10/09	The Institute of Chartered Secretaries and Administrators	Presentation	Corporate Enforcement	Radisson Hotel, Dublin 8	80	Paul Appleby
8/10/09	ACCA - Dundalk	Presentation	Company Law issues/Update on ODCE work	Dundalk, Co. Louth	100	Dermot Madden
8/10/09	ODCE	Presentation	Enforcement Powers and Actions/Case Review	ODCE Offices, Dublin	12	Ann Keating
15/10/09	Paul Partnership	Presentation	Corporate Health Check	South Court Hotel, Limerick	50	Kevin Prendergast
20/10/09	Letterkenny IT	Presentation	The ODCE – Encouraging Compliance, Enforcing the Law	Letterkenny IT, Donegal	60	Kevin Prendergast
20/10/09	Law Society of Ireland	Presentation	Corporate Law Compliance	Dublin	100	Adrian Brennan
21/10/09	Law Society of Ireland	Presentations (2)	Corporate Law Compliance	Cork	100	Adrian Brennan
23/10/09	Meath County Council	Presentation	Corporate Health Check	County Hall, Navan, Co. Meath	15	Kevin Prendergast
27/10/09	Law Society of Ireland	Presentation	Corporate Law Compliance	Dublin	100	Adrian Brennan
27/10/09	DCU MBS in Accounting	Presentation	Role of the ODCE	DCU, Glasnevin, Dublin	65	Kevin Prendergast
29/10/09	Mason Hayes Curran	Presentation	Company Investigations – an Overview	South Bank House, Barrow St., Dublin 4	100	Paul Appleby

Appendix 1.1.2 (continued)

List of ODCE Presentations in 2009

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
29/10/09	South and Mid West Community Development Support Group	Presentation	Corporate Health Check	Tralee, Co. Kerry	15	Kevin Prendergast
30/10/09	South and Mid West Community Development Support Group	Presentation	Corporate Health Check	Bandon, Cork	15	Kevin Prendergast
02/11/09	Chartered Accountants Ireland	Presentation	Certificate in Directors' Duties Course	CAI, Burlington House, Dublin	12	Kevin Prendergast
13/11/09	Garda Síochana, Swedish Economic Crime Division	Presentation	Role of the ODCE	Garda Headquarters, Harcourt Street, Dublin	26	Kevin Prendergast, Eamonn Keogh, Adrian Brennan
19/11/09	UCC	Presentation	Corporate Health Check	UCC, Cork	65	Kevin Prendergast
23/11/09	Institute of Bankers, Professional Diploma in Compliance	Presentation	Role of the ODCE	Citibank, Dublin	60	Kevin Prendergast
26/11/09	Worker Directors Group	Presentation	The ODCE – Encouraging Compliance, Enforcing the Law	Bloomfield House Hotel, Mullingar, Co. Westmeath	17	Kevin Prendergast
30/11/09	Law Society of Ireland	Conference	Regulation and Compliance	Law Society of Ireland, Blackhall Place, Dublin	200	Kevin Prendergast
03/12/09	Blanchardstown Citizens Information Centre	Presentation	Directors Duties and Overview of Corporate Governance	Blanchardstown Library, Dublin	10	Eileen McManus
03/12/09	Grant Thornton	Presentation	Company Law - Update	Limerick	15	Dermot Madden
04/12/09	UUJ/ICSA	Presentation	Role of the ODCE	Companies Office, Dublin	15	Kevin Prendergast
11/12/09	Omnipro, Education and Training	Presentation	Business Under Pressure – a Review by the ODCE	Crowne Plaza, Blanchardstown, Dublin	30	Kevin Prendergast

Appendix 1.1.3

List of Exhibitions/Events attended by ODCE in 2009

Date	Event Type	Name of Event	Venue	Promoter	Stand Attendees
25/03/09	Exhibition	Bank of Ireland Business Advice Show	Stillorgan Park Hotel, Stillorgan	Dun Laoghaire/Rathdown County Enterprise Board (CEB)	Kevin Prendergast
29/04/09	Exhibition	Wicklow Enterprise Information Day	Clermont House, Rathnew, Co. Wicklow	Wicklow CEB	Eileen McManus
12/05/09	Exhibition	Business Advice Show	Ardilaun Hotel, Galway	Bank of Ireland	Eileen McManus
15/09/09	Business Show	Business Advice Show	Maryborough House Hotel, Cork	Bank of Ireland	Kevin Prendergast
22-24/09/09	Exhibition	National Ploughing Championship	Cardenton Athy, Co. Kildare	National Ploughing Association of Ireland	Kevin Prendergast, Dermot Morahan, Aoife Raftery, Deirdre O'Halloran, Eileen McManus, Amie Reddin
24/09/09	Exhibition	Fingal CEB – Day of Enterprise	Europa Academy, Swords	CEB Fingal	Eileen McManus, Amie Reddin
05/10/09	Exhibition	Mid-West Regional Week	Shannon	Enterprise Ireland	Kevin Prendergast
07/10/09	Conference	Irish Chartered Secretaries and Administrators (ICSA)	Radisson Hotel, Dublin	ICSA	Eileen McManus
21/10/09	Exhibition	'Out on Your Own' Exhibition	RDS, Dublin	Sunday Business Post	Eileen McManus, Marian McDermott
13/11/09	Conference	ISME National Conference	Crowne Plaza Hotel, Dublin	ISME	Eileen McManus
20/11/09	Enterprise Day	National Women's Enterprise Day	Park Hotel, Mullingar	Westmeath CEB	Eileen McManus

Appendix 2.1

Breakdown of New Cases in 2009 (v. 2008) by Source

Source of New Cases	2008	2009
Public Complaints and Other Detections		
Public Complaints	295	341
Reports from Public Authorities in the State	10	20
Reports from Public Authorities outside the State	5	1
Other Detections	106	43
Sub-Total	416	405
Auditor and Similar Reports		
Indictable Offence Reports from Auditors	207	235
Indictable Offence Reports from Professional Bodies	3	2
Sub-Total	210	237
Liquidator Reports		
Initial Reports on Insolvent Companies	406	876
Reports by Liquidators of Possible Criminal Liability	4	1
Sub-Total	410	877
Total of New Reports and Detections in Year	1,036	1,519

Appendix 2.2

Throughput of Reports and Complaints in 2009

Throughput of Cases	2008	2009	% Change
Cases on hands at 1 January	913	765	- 17%
New Cases	1,036	1,519	+ 47%
Cases Concluded	1,184	1,446	+ 22%
Cases on hands at 31 December	765	838	+ 9%

Appendix 2.3

Cases Concluded in 2009 (v. 2008) by Primary Manner of Closure

Basis for Closure	2008	2009
Definitive relief decisions on liquidator reports	330	715
A company law default which was rectified))
A company law default where warnings as to future conduct were issued) 329) 351
))
Insufficient evidence of default	412	222
Not a company law matter	31	96
A company law matter which others should pursue	67	51
ODCE legal enforcement	15	11
Total	1,184	1,446

Appendix 2.4

New Reports/Complaints to the ODCE in 2009 (v. 2008) – Sectoral Distribution

Business Sector	All Reports/Complaints			
	2008		2009	
Construction	197	19%	340	22%
Real Estate and Renting	169	16%	266	18%
Wholesale and Retail	118	11%	246	16%
Manufacturing	88	9%	149	10%
Hotels, Bars and Catering	55	5%	111	7%
Community, Social and Personal	132	13%	84	6%
Transport and Distribution	54	5%	71	5%
Marketing and Promotion	20	2%	50	3%
Finance and Leasing	26	3%	33	2%
Technology and Telecommunications	17	2%	29	2%
Recruitment and Security Services	14	1%	17	1%
Agriculture, Mining and Marine	6	1%	15	1%
Other Business Sector	53	5%	14	1%
Unknown Business Sector	56	5%	42	3%
Not a Company	31	3%	52	3%
Total	1,036	100%	1,519	100%

Appendix 2.5

New Reports on Liquidated Insolvent Companies in 2009 (v. 2008) - Sectoral Distribution

Liquidated Insolvent Companies by Business Sector	Liquidator Reports			
	2008		2009	
Construction	141	35%	268	31%
Wholesale and Retail	74	18%	189	22%
Manufacturing	50	12%	111	13%
Hotels, Bars and Catering	36	9%	89	10%
Marketing and Promotion	19	5%	50	6%
Transport and Distribution	16	4%	37	4%
Real Estate and Renting	6	1%	34	4%
Community, Social and Other	25	6%	32	4%
Technology and Telecommunications	16	4%	28	3%
Recruitment and Security Services	13	3%	17	2%
Agriculture, Mining and Marine	3	1%	12	1%
Financial and Leasing	7	2%	9	1%
Other Business Sector	-	-	-	-
Unknown Business Sector	-	-	-	-
Not a Company	-	-	-	-
Total	406	100%	876	100%

Appendix 2.6

New Reports and Complaints (other than on Liquidated Insolvent Companies) in 2009 (v. 2008) - Sectoral Distribution

Entities (other than Liquidated Insolvent Companies) by Business Sector	Reports and Complaints			
	2008		2009	
Real Estate and Renting	163	26%	232	36%
Construction	56	9%	72	11%
Wholesale and Retail	44	7%	57	9%
Community, Social and Personal	107	17%	52	8%
Manufacturing	38	6%	38	6%
Transport and Distribution	38	6%	34	5%
Financial and Leasing	19	3%	24	4%
Hotels, Bars and Catering	19	3%	22	3%
Agriculture, Mining and Marine	-	-	3	-
Technology and Telecommunications	-	-	1	-
Marketing and Promotion	-	-	-	-
Recruitment and Security Services	-	-	-	-
Other Business Sectors	53	8%	14	2%
Unknown Business Sector	56	9%	42	7%
Not a Company	31	5%	52	8%
Total	630	100%	643	100%

Appendix 2.1.1

Liquidator Section 56 Reports at 31 December 2009 – Reports Progressed

Classification	Initial Reports	Further Reports	Final Reports	Total Reports
Liquidator Reports received				
Reports brought forward from 2008	154	128	56	338
Reports received in 2009	876	212	35	1,123
Reports due and not received in 2009	42	18	N/A ⁵⁶	60
Compliance Rate	95%	92%	100%	95%
Liquidator Reports determined				
Decisions due in 2009	730	268	91	1,089
Decisions issued in 2009	625	247	90	962
Conclusion Rate	86%	92%	99%	88%
Decisions where full relief was granted ⁵⁷	426	156	90	672
Decisions where partial relief was granted ⁵⁸	9	9	N/A	18
Decisions where relief at this time was granted ⁵⁹	149	52	N/A	201
Decisions where relief was not granted ⁶⁰	41	30	N/A	71
Other Decision made	-	N/A	N/A	-
Liquidator Reports carried forward to 2010	405	93	1	499

⁵⁶ N/A denotes 'not applicable'.

⁵⁷ 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.

⁵⁸ Cases of Partial Relief are those in which relief was granted in respect of some, but not all, of the company's directors.

⁵⁹ 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.

⁶⁰ Relief was not granted in cases where the ODCE was satisfied, on the basis of information provided by the liquidator or otherwise, that none of the directors of the insolvent company had satisfactorily demonstrated that they had acted honestly and responsibly in the conduct of the company's affairs.

Appendix 2.1.2

Auditor and Accountancy Body Reports in 2009 – Character of Primary Default

Type of Indicated Primary Default	2008	2009
Directors' Loan Infringements	146	185
Failure to Keep Proper Books of Account	32	33
False Statements to Auditors	6	4
Non-Qualification for Appointment as Auditor	2	4
Falsification of Documents	6	3
Non-holding of Extraordinary General Meetings	1	2
Other	17	6
Total	210	237

Appendix 2.1.3

Public Complaints and Other Detections in 2009 – Character of Primary Default

Types of Indicated Issues	2008	2009
Auditing Deficiency	8	53
Annual/Extraordinary General Meetings	48	45
Trading while struck off the Companies Register	18	36
General Shareholder Rights Issue	29	31
Reckless/Fraudulent/Insolvent Trading	49	30
Directors' Conduct – Miscellaneous	27	30
Forgery/False Information	15	26
Unpaid Debt	35	19
Other	187	135
Total	416	405

Appendix 2.2.1

Overview of ODCE Proceedings in 2009 (v. 2008)

Proceedings by Case Type	2008		2009	
Investigative				
• Successful	13		11	
• Unsuccessful	-		-	
• Ongoing	-		-	
Sub-Total		13		11
Civil Enforcement				
• Successful	4		6	
• Unsuccessful	1		1	
• Ongoing	16		13	
Sub-Total		21		20
Criminal Enforcement				
• Successful	9		4	
• Unsuccessful	-		-	
• Withdrawn	1		-	
• Ongoing	3		-	
Sub-Total		13		4
Judicial Review and Others				
• Successful	1		4	
• Unsuccessful	1		-	
• Settled	2		-	
• Ongoing	1		-	
Sub-Total		5		4
All Proceedings				
• Successful	27		25	
• Unsuccessful	2		1	
• Settled	2		-	
• Withdrawn	1		-	
• Ongoing	20		13	
Total		52		39

Appendix 2.2.2

Details of ODCE Legal Proceedings heard in 2009 or earlier and ongoing in 2009

Type	Subject Matter	Section/Act ⁶¹ involved	Case Nos.	Case Status/Result
Superior Courts				
Appeal by ODCE	Disqualification for alleged breach of duty and unfitness re Kentford Securities Ltd	S. 160(2)(b) and (d), 1990	1	Ongoing
Appeal by Respondents and ODCE Cross-Appeal	Disqualifications for alleged fraud, breach of duty and unfitness re Bovale Developments	S. 160(2)(a), (b) and (d), 1990	1	Ongoing
Appeals by ODCE	Disqualification on foot of Inspectors' Report re National Irish Bank Ltd	S. 160(2)(b), (d) and (e), 1990	2	Ongoing
Appeals by Respondents	Disqualification on foot of Inspectors' Report re National Irish Bank Ltd	S. 160(2)(b), (d) and (e), 1990	4	Respondent's appeal successful (1); Ongoing (3)
Applications by ODCE	Disqualification on foot of Inspectors' Report re National Irish Bank Ltd	S. 160(2)(b), (d) and (e), 1990	2	Ongoing
Application by High Court Inspector	Submission of Final Report re DCC plc, Lotus Green Ltd and S&L Investments Ltd	S. 11, 1990	1	Report accepted
Application by ODCE	Treatment of Seized Anglo Irish Bank Corporation Ltd Documents subject to Claims of Legal Professional Privilege	S. 23(1), 1990	1	Clarification obtained
Application by ODCE	Ditto	S. 23(1C), 1990	1	Application granted

⁶¹ The Acts referred to are the Bankers' Books Evidence Act 1879, the Companies Acts of 1963 and 1990 and the Criminal Justice (Theft and Fraud Offences) Act 2001 in their amended form.

Appendix 2.2.2 (continued)

Details of ODCE Legal Proceedings heard in 2009 or earlier and ongoing in 2009

Type	Subject Matter	Section/Act involved	Case Nos.	Case Status/Result
Superior Courts (continued)				
Application by ODCE	Extension of Time for Examination of Seized Anglo Documents	S. 20(2G), 1990	1	Application granted
Application by ODCE	Disqualification of Mr William Bourke, arising from filing defaults resulting in Garden County Construction Ltd and Pilotway Ltd being struck off the Companies Register.	S. 160(2)(h), 1990	1	Disqualification term of four years imposed. Ordered to pay €4,500 towards the ODCE's legal costs, in default of which costs would be taxed in default of agreement. No order made against a second Respondent.
Application by ODCE	Disqualification of Mr Joe Cummins, arising from filing defaults resulting in Joe Cummins Ltd and Derry Oak Homes Ltd being struck off the Companies Register.	S. 160(2)(h), 1990	1	Disqualification of six years imposed. Order for costs made in favour of the ODCE, to be taxed in default of agreement.
Application by ODCE	Disqualification of Mr Paul Cavanagh and Ms Suzanne Cavanagh, arising from filing defaults resulting in TBS Manufacturing Ltd and The Blind Store Ltd being struck off the Companies Register. Mr Cavanagh was also held culpable for similar defaults in relation to Janere Ltd.	S. 160(2)(h), 1990	1	Disqualification term of five years each imposed. Ordered, jointly and severally, to pay a contribution of €2,500 towards the ODCE's costs.

Appendix 2.2.2 (continued)

Details of ODCE Legal Proceedings heard in 2009 or earlier and ongoing in 2009

Type	Subject Matter – Parties Sanctioned	Section/Act involved	Case Nos.	Case Status/Result
Superior Courts (continued)				
Application by ODCE	Disqualification of Mr Martin Browne and Mr Sean McClenaghan, arising from filing defaults resulting in Samic Security Ltd being struck off the Companies Register.	S. 160(2)(h), 1990	1	Two disqualification terms of five years each imposed. Ordered to pay a contribution of €1,000 each towards the ODCE's costs.
Application by ODCE	Disqualification of Ms Caroline Browne and Ms Sadie McClenaghan, arising from filing defaults resulting in Samic Security (Ireland) Ltd being struck off the Companies Register.	S. 160(2)(h), 1990	1	Two disqualification terms of five years each imposed. Ordered to pay a contribution of €1,000 each towards the ODCE's costs.
Application by ODCE	Disqualification of Mr Seamus McClafferty and Mr Christopher Quigley, arising from filing defaults resulting in Asterbourne Ltd, Seapave (Ireland) Ltd and Granite Patio & Decking Ltd being struck off the Companies Register.	S. 160(2)(h), 1990	1	Two disqualification terms of five years each imposed.
Appeal by Respondents	Disqualification of two persons arising from filing defaults resulting in Anderson Kershaw Ltd and Anderson Conforming Ltd being struck off the Companies Register.	S. 160(2)(h), 1990	1	Ongoing

Appendix 2.2.2 (continued)

Details of ODCE Legal Proceedings heard in 2009 or earlier and ongoing in 2009

Type	Subject Matter – Parties Sanctioned	Section/Act involved	Case Nos.	Case Status/Result
Circuit Criminal Court				
Appeal against Prosecution	Acting as a director of Open Up Bars Ltd while disqualified – Mr Donal Harrington	S. 161(1), 1990	1	Conviction and penalties imposed in 2008 confirmed, save that the six month custodial sentence was suspended for two years. Expenses of €228 also imposed.
Appeal against Prosecution	Acting as an auditor while unqualified and disqualified – Mr Noel O’Gara	S. 187(9), 1990	1	Convictions and penalties below confirmed. €1,500 in extra costs imposed.
District Court				
Prosecution	Acting as an auditor while unqualified and disqualified – Mr Noel O’Gara	S. 187(9), 1990		Convictions (4), €3,200 in fines and costs and expenses of €1,500 imposed with five other charges taken into account.
Prosecution	Acting as an auditor while unqualified – Mr Hugh Carron	S. 187(9), 1990	1	Conviction, €1,000 in fines and costs and expenses of €2,000 imposed with seven other charges taken into account.
Prosecution	Failure to keep proper books of account – McAnenly Fuels Ltd.	S. 202(10), 1990	1	Conviction, €500 in fines and costs and expenses of €233 imposed.
Application by ODCE	Production of banking and related documents	S. 7A, 1879/ S. 52, 2001	5	Granted
Application by ODCE	Search Warrant	S. 20, 1990	6	Granted

Appendix 2.2.3

Cases where Restriction Declarations were made against Directors by the High Court in 2009 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction starting	Court Outcome [See the Explanatory Notes at the end of this Table]
381439	1-Stop Recruitment Company Limited	Darley	Darren	30/11/2009	Full Restriction
		Lernihan	Aideen	30/11/2009	
376171	Abby Builders Merchants Limited	Hackett	Anthony	20/07/2009	Full Restriction
		Hilliard	Mark	20/07/2009	
382077	Above Board Publishing Limited	Earls	Paul	09/11/2009	Full Restriction
		McNally	Michael	09/11/2009	
282659	Ainsley Homes Limited	Fitzgerald	Padraic	09/03/2009	Full Restriction
		Hyland	Sandra	09/03/2009	
300321	Amusement Direct Company Limited	Donnelly	Brian	09/02/2009	Full Restriction
		O'Brien	Corona	09/02/2009	
351684	Ardline Aircon Limited	McDonald	David	12/01/2009	Partial Restriction
		Ryan	John	12/01/2009	
299973	Axicom Limited	Mellor	Ian	12/10/2009	Full Restriction
434438	Bermuda Triangle Limited	Monaghan	Marie	14/12/2009	Full Restriction
		Monaghan	Michael	14/12/2009	
311054	Big Picture Software Limited	Cooley	Paul	02/11/2009	Partial Restriction
307303	Borderfield Limited	McAuley	Peter	20/05/2009	Partial Restriction
389489	CGC Building Contractors Limited	Creaven	Conor	02/11/2009	Full Restriction
		Murray	Christopher	02/11/2009	
321230	Cherryfox Limited	Treacy	Tom	23/11/2009	Full Restriction
		Treacy	Eileen	23/11/2009	
309075	Cloverland Limited	Minogue	Paul	12/10/2009	Full Restriction
		Minogue	Monica	12/10/2009	
293752	Cottage Blinds and Home Limited	Byrne	Linda	18/05/2009	Partial Restriction
		Dunne	Ronald	18/05/2009	
373433	CPS Crime Prevention Solutions Limited	Doherty	John	14/12/2009	Full Restriction
388543	DAH Developments Limited	Hayden	David	02/11/2009	Full Restriction
		Hayden	Susan	02/11/2009	
318222	Daypol Limited	Cox	Anthony John	16/02/2009	Full Restriction
		Cox	Robert Frank	16/02/2009	

Appendix 2.2.3 (continued)

Cases where Restriction Declarations were made against Directors by the High Court in 2009 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction starting	Court Outcome [See the Explanatory Notes at the end of this Table]
270840	Deacon Skip Hire Limited	Deacon	Margaret	25/05/2009	Full Restriction
		Deacon	James	25/05/2009	
356931	DM Loughlin Developments	Loughlin	Martin Senior	23/11/2009	Full Restriction
		Loughlin	David	22/06/2009	
		Loughlin	Martin Junior	22/06/2009	
237266	Dublin Wholesale Bag Company	Lattin	Susan	15/06/2009	Full Restriction
368381	Ellen Plant and Machinery Hire Limited	Hackett	Anthony	20/07/2009	Full Restriction
		Hilliard	Mark	20/07/2009	
391073	Etonford Limited	Harran	Ronan	19/10/2009	Full Restriction
		Harran	Niall	19/10/2009	
423619	Feery's Workshop Limited	Feery	Suzanne	19/10/2009	Full Restriction
		Feery	Gerry	19/10/2009	
394286	Five Oaks Construction Limited	Bray	James	02/11/2009	Full Restriction
		Goonery	John	02/11/2009	
351867	Gafan Developments Limited	Fagan	Aine	23/11/2009	Full Restriction
		Fagan	Noel	23/11/2009	
401835	Harmark Developments Limited	Smith	Mark	14/12/2009	Partial Restriction
398309	Hillgar Doorways Enterprises Limited	O'Dea	Gary	24/07/2009	Full Restriction
390810	James Lavan and Associates Limited	Lavan	Jason	09/11/2009	Full Restriction
		Lavan	James	13/07/2009	
		Lavan	Michael	09/11/2009	
362930	Jason Davis Security Management Services Limited	Cashman	Catherine	02/03/2009	Full Restriction
		Russell	Vincent	02/03/2009	
267498	Jones Electrical Contractors Limited	Jones	Teresa	29/09/2009	Full Restriction
		Jones	Patrick	29/09/2009	
322461	KMC Architectural Services Limited	Murphy	Kevin	26/02/2009	Full Restriction
		Power	Martin	26/02/2009	
411062	L and L Autos Limited	Lyons	Stephen	02/11/2009	Full Restriction
		Lyons	Shane	12/10/2009	

Appendix 2.2.3 (continued)

Cases where Restriction Declarations were made against Directors by the High Court in 2009 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction starting	Court Outcome [See the Explanatory Notes at the end of this Table]
401385	Lillies Fashions Limited	O'Reilly	Patricia	09/02/2009	Full Restriction
296153	Lynch Plastering Limited	Lynch	Liam Joseph	23/02/2009	Full Restriction
		Lynch	Liam James	23/02/2009	
127561	Man Brothers Trading Company Limited	Man	Pauline	03/02/2009	Full Restriction
		Man	Paul	03/02/2009	
399711	MDN Rochford Construction Limited	Rochford	Michael	16/10/2009	Full Restriction
		Rochford	David	16/10/2009	
299457	Michael Hoban Building Limited	Barry	Rosaleen	30/11/2009	Full Restriction
		Hoban	Michael	30/11/2009	
361585	Mitchell and Son Plant Hire Ltd	Mitchell	Ursula	29/06/2009	Full Restriction
		Mitchell	Sean	29/06/2009	
326774	O.C.B. Plant Hire Limited	O'Connor	Justin	16/03/2009	Full Restriction
		O'Connor	Wendy	16/03/2009	
341606	O'Mahony Civil Engineering Limited	O'Mahony	Elizabeth	27/04/2009	Full Restriction
		O'Mahony	Martin	27/04/2009	
307156	P and A Plant Hire Limited	McCaul	Patrick	20/07/2009	Full Restriction
		McCaul	Adrian	20/07/2009	
323895	Parkmore Properties Limited	Johnston	Keith	19/10/2009	Full Restriction
419342	PASP Imports Limited	Nolan	Peter	19/10/2009	Full Restriction
388343	Pat O'Brien Developments Limited	O'Brien	Eileen	30/03/2009	Full Restriction
		O'Brien	Patrick	30/03/2009	
277535	Project Magic Limited	Nolan	Kierman	02/11/2009	Full Restriction
		Nolan	Michelle	02/11/2009	
307707	Quinn Sheet Metal Fabrication Limited	Quinn	John	09/11/2009	Full Restriction
		Quinn	Esther	09/11/2009	
338013	RJD Surveys Limited	Dorran	James	02/11/2009	Full Restriction
		Dorran	Ray	02/11/2009	
373614	SGCI Limited	Connolly	Sharon	15/06/2009	Full Restriction
		Connolly	Denis	15/06/2009	

Appendix 2.2.3 (continued)

Cases where Restriction Declarations were made against Directors by the High Court in 2009 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction starting	Court Outcome [See the Explanatory Notes at the end of this Table]
359077	S.S. Lazio Limited	Manzo	Domenica	12/01/2009	Full Restriction
		Santoro	Luigi	12/01/2009	
311014	Senor Rico Limited	Fellah	Rachid	20/07/2009	Full Restriction
		Moran	Paula Mary	20/07/2009	
258598	Shine Construction (Athlone) Limited	Shine	Damien	30/11/2009	Full Restriction
		Shine	Fergal	30/11/2009	
		Shine	Natasha	30/11/2009	
368910	Sweco Limited	Baalack-Christof	Marie	09/03/2009	Full Restriction
		Ola Baalack	Anders	09/03/2009	
406881	The House Renovation Company Limited (These proceedings were taken under Section 161(5) of the Companies Act 1990)	O'Shea	Stephen	22/07/2009 to 15/10/2011	Partial Restriction
405019	The Irish Fire and Flood Restoration Company Limited	Kelly	Kevin	27/04/2009	Full Restriction
351659	The Mezzanine Floor Company Limited	Daly	Stephen	12/01/2009	Full Restriction
		Moore	Brendan	12/01/2009	
165262	Triangle Developments Limited	Wadding	George	15/06/2009	Full Restriction
		Wadding	Susan	15/06/2009	
342777	Western Decor Limited	Austin	Marie	23/11/2009	Full Restriction
		Cox	James	12/10/2009	
		Hyland	Cyril	23/11/2009	
		Monroe	Garry	12/10/2009	
		O'Toole	Jim	12/10/2009	

Note: "Full Restriction" in the table above indicates an outcome where the Court restricted or disqualified all of the directors against whom the liquidator took restriction or disqualification applications pursuant to Section 150 or 160 of the 1990 Act where the ODCE had not relieved the liquidator under Section 56 of the 2001 Act.

"Partial Restriction" in the table above indicates an outcome where the Court restricted or disqualified one or more but not all of the directors against whom the liquidator took restriction or disqualification applications pursuant to Section 150 or 160 of the 1990 Act where the ODCE had not relieved the liquidator under Section 56 of the 2001 Act.

Appendix 2.2.4

Cases where Restriction Declarations or Disqualification Orders were not made against Directors by the High Court in 2009 pursuant to Section 56

Company Name	Company Number	Date of Court Order
Eamon Mooney Developments Limited	359501	20/04/09
Furniture Directory Limited	407460	25/05/09
Hocroft Developments Limited	240639	09/12/09
Keohane and Co Limited	154025	24/02/09
Professional Construction Company Limited	239789	27/02/09
Wexford Fabrics of Ireland Limited	347837	07/12/09

Appendix 2.2.5

Cases where Disqualification Orders were made against Directors by the High Court in 2009 as a consequence of a Liquidator's Section 56 Report

Company No.	Company Name	Disqualified Directors		Date Disqualified From	Date Disqualified To
237266	Dublin Wholesale Bag Company Limited	Lattin	Brian	15/06/2009	14/06/2011
391073	Etonford Limited	Harran	Martin	19/10/2009	18/10/2013
307884	FAI Finance Corporation Limited	Youngerman	Terence	15/06/2009	14/06/2014
362930	Jason Davis Security Management Services Limited	Davis	Jason	02/03/2009	01/03/2017
402747	Marhug Engineering Services Limited	O'Neill	Hugh	15/06/2009	14/06/2014
347237	P.S.K. Construction Limited	Killeen	Peter	07/12/2009	06/12/2016
		Higgins	Lorraine	07/12/2009	06/12/2014
356750	Prestige Recycling Co. Limited	Hartigan	Sean	09/11/2009	08/11/2016
373455	Rodaka Limited	Brierton	Anthony	19/01/2009	18/01/2015
		Dillon	John	19/01/2009	18/01/2015
		Kane	Glen	19/01/2009	18/01/2015
373614	SGCI Limited	McArthur	Paul	15/06/2009	14/06/2014

Appendix 3.1.1

Approved versus Actual Staffing Complement by Grade

Year-end	Approved	Actual
2007	46	40.6
2008	46	44.8
2009	51	49.7

Grade	Approved	Actual
Accountant Grade I	2	2
Accountant Grade III	1	0
Assistant Principal	4	4
Clerical Officer ⁶²	6	8.1
Corporate Compliance Manager	1	1
Detective Garda	5	5
Detective Inspector	1	1
Detective Sergeant	2	2
Director	1	1
Executive Officer	9	7.7
Higher Executive Officer/Systems Analyst	11	9.7
Legal Adviser	3	3
Principal Officer	2	2
Principal Solicitor	1	1
Solicitor	2	2
Total	51	49.5

⁶² The indicated number includes a Legal Secretary who is employed on a contract basis. The fractional figures here and elsewhere indicate work-sharing patterns.

Appendix 3.1.2

Breakdown of Expenditure against Allocation in 2009 and Previous Years

Source of Allocation/Expenditure	2007		2008		2009	
	€000s	€000s	€000s	€000s	€000s	€000s
Allocation						
Exchequer Grant		4,823.0		4,957.0		5,535.0
Expenditure						
Salaries, Wages and Allowances	2,140.2		2,411.5		2,663.5	
Advertising and Publicity	326.8		304.1		50.3	
Office Premises	286.6		353.2		307.7	
DCC High Court Inquiry ⁶³	-		183.7		990.1	
Supreme Court Appeal Costs ⁶³	-		-		845.5	
Other Legal Expenses ⁶³	913.2		446.7		338.0	
Consultancy Services	268.7		169.3		134.5	
Computerisation	74.1		61.6		46.4	
Printing	157.0		141.9		99.9	
Incidental Expenses	14.8		27.1		8.0	
Travel and Subsistence	31.0		32.0		19.2	
Telecommunications	43.7		88.8		45.5	
Postal/Courier Services	69.6		75.1		25.2	
Office Machinery & Photocopying	33.6		25.0		22.8	
Human Resource Development	18.9		23.0		8.0	
Total Expenditure		4,378.2		4,343.1		5,604.6
Amount Surrendered (Extra Funds Provided)		444.8		613.9		(69.6)

⁶³ As exceptionally large legal costs arose in 2009, the two main contributing factors, namely the cost of the DCC Inquiry and the cost of the Supreme Court disqualification appeal case in which the Respondent was successful, have been shown separately in the 2009 figures above. In previous years, all Legal Expenses were reported as a single category.

Appendix 3.2.1

Principal Relationships between Certain ODCE Staff and Functional Areas

