

Annual Report 2010



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 Richard Bruton, TD, Minister for Jobs Enterprise and Innovation, with my Office's Annual Report for 2010.

Reflecting a difficult economic situation, 2010 was another tough but rewarding year for the Office. We made good progress with our important Anglo Irish Bank investigations last year and submitted four Anglo files and reports to the Director of Public Prosecutions by year-end.

With some 800 cases already on hands at the start of 2010, we received a further 2,000 issues to deal with during the year (an increase of over 30% on 2009). While these issues included public complaints and auditor reports of alleged misconduct, the major contributor was the 50% increase in new liquidator reports which was primarily caused by the growing level of corporate insolvency rates in the economy.

Notwithstanding the scale of increase and the complexity associated with a number of the cases in question, we succeeded in concluding our evaluations on more than 1,800 issues in 2010 (up 26% on 2009). This additional throughput also supported liquidators in securing the imposition of eight disqualifications and 156 restrictions on defaulting directors (12 disqualifications and 108 restrictions in 2009).

Our extensive programme of 'outreach' events included participation in 71 seminars and exhibitions last year (79 in 2009). This programme was focused on the SME sector, prospective entrepreneurs, professional persons and the community and voluntary sector with the aim of giving stakeholders sufficient information to enable them interact with one another on a fair basis and in the manner required by law.

We also successfully hosted the Annual Conference of the International Association of Insolvency Regulators in Dublin Castle which was attended by over 50 delegates and speakers from over 20 countries around the world.

These headline results were essentially achieved with the same number of staff (50) as we had in 2009. At the same time, Office costs declined by 40% to €3.67 million due mainly to a sharp drop in external legal expenses.

The large increase in work and the restrictions on resources have forced us to assess and prioritise our work. Of necessity, most Office resources have had to be deployed on the Anglo investigations and on evaluating the hundreds of liquidator reports which must be dealt with within a statutory timetable.

In particular, our criminal and civil enforcement activity remained subdued in 2010. Eight criminal convictions and one disqualification were obtained in three cases last year (compared with six convictions and ten disqualifications in nine cases in 2009). Some 17 other cases were ongoing before the Courts at the end of 2010, most of them at either the High Court or Supreme Court.

The outlook for 2011 remains difficult. The focus on the Anglo investigations and on corporate insolvencies will continue, but having taken a number of internal initiatives, I expect to see some increase in enforcement activity this year.

I thank the Ministers and staff of the Department of Enterprise Trade and Innovation in 2010 for their financial and staffing support of the Office at a difficult economic time. I hope that our ongoing work is helping to repay the trust which they have invested in the Office.

My dedicated and hard working staff deserve a large amount of credit for their continuing commitment to our important work. Notwithstanding the pressures which they are bearing, they successfully maintained or increased throughput in many areas of the Office's remit.

I also want to acknowledge the continuing support given to the Office in 2010 by the Oireachtas, the Government, the Courts and those legal and accounting professionals who supported our work during the year.

I hope that this support will continue in the current year and that we will continue, in the public interest, to make a positive difference in upholding the importance of high corporate standards in the economy.

Paul Appleby
Director of Corporate Enforcement
31 March 2011

Introduction

Consistent with the statutory framework set out in the Company Law Enforcement Act 2001, the primary role of the Director of Corporate Enforcement and his staff is to:

- help those who want to comply with their obligations under the Companies Acts to do so;
- discourage misconduct by those who may be tempted not to comply and
- pursue those who may have breached their duties and obligations under the law.

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 and Irresponsible 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 2010 by reference to each of these goals and sub-goals.

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

Introduction

The ODCE continues to emphasise the importance of compliance with company law in communicating with company stakeholders. Notwithstanding that financial resources are limited for promoting compliance, the Office has continued to employ economical means to reach its target audience. These activities have included giving speeches, making presentations and maintaining a presence at seminars, exhibitions and events around the country. Other channels of communication for articulating the compliance message continue to be explored.

Sub-Goal 1.1: Raising Standards of Compliance

Publications – Overview

The ODCE issued four separate publications (14 in 2009), including its Annual Report for 2009. The full list is set out in **Appendix 1.1.1**. The Office successfully promoted during 2010 the new ODCE Quick Guides which were issued in 2009 on the duties and responsibilities of companies, directors and other stakeholders. However, the plan to add incrementally to this series of Guides during 2010 was not realised due to resource pressures most particularly in the legal area.

Some 24,000 copies of various Office publications were issued in 2010. These were made available to the public on request and at seminars, exhibitions and other events attended by ODCE staff.

During 2010, the ODCE arranged with the Companies Registration Office (CRO) that the persons registering new companies would in future receive the Quick Guides instead of the more extensive ODCE Information Books which had been issued for some years. It was decided that the accessible Quick Guides would constitute more practical introductory guidance to the roles of various company stakeholders including directors and company secretaries. The more comprehensive Information Books, originally issued as Decision Notice D/2002/1, are still available from the Office and its website.

Information Notices

The Office issued three Information Notices in 2010.

Relief Decisions on Liquidator Reports

The first of these was a list of all cases where liquidators were either permanently or temporarily relieved of their obligation to take restriction proceedings in respect of liquidators' reports submitted to the Office under Section 56 of the Company Law Enforcement Act 2001.¹ The purpose of this Notice was to inform the public that the directors of the named insolvent companies in liquidation would not face restriction proceedings arising from their stewardship of the company or that temporary relief had been granted pending receipt of a further liquidator's report.

Printing Directors' Names on Company Letterhead

In contributing to the Government's policy of reducing the administrative burden on business, the ODCE issued an Information Notice in 2010 clarifying the legal requirements relating to the printing of directors' names on company letterheads.² In particular, the Office identified that the law did not require companies to have directors' names pre-printed on company stationery. The Information Notice pointed out that by using standard software programmes, it was open to companies to arrange for the printing of current directors' names as a footer on company letterheads.

Work by the Department of Enterprise Trade and Innovation (DETI) had indicated a potentially significant cost to business in the frequent re-printing of company stationery which also resulted in the wasteful disposal of existing stationery stocks.³

Companies (Miscellaneous Provisions) Act 2009⁴

In 2010, the Office issued guidance on this new Act which in summary provided for:

- the continued use in Ireland by certain parent companies of US Generally Accepted Accounting Principles for a four year period ending not later than 31 December 2015;

¹ Information Notice I/2010/1 – List of 'Relief' Decisions issued in 2009 for Insolvent Companies in Liquidation.

² Information Notice I/2010/2 – Printing of Directors' Names on Company Letterhead.

³ This Departmental report is available at http://www.deti.ie/commerce/businessregulation/final_report_measuring_administrative_burden_15dec2009.pdf.

⁴ No 45 of 2009 which was signed into law on 23 December 2009.

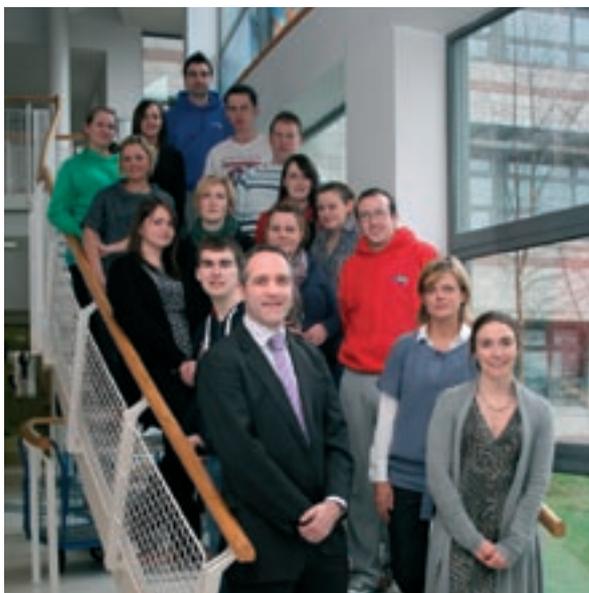
- the disclosure and other requirements pertaining to the purchase by a company of its own shares in overseas markets;
- the removal of certain financial ceilings with respect to the provision of security and the incurring of costs in connection with High Court investigations of a company's affairs;
- a means by which investment companies may under certain conditions migrate into or out of the State without needing to liquidate in one State and incorporate afresh in the other;
- clarification with respect to the delegation and exercise of the powers and functions of the Irish Auditing and Accounting Supervisory Authority (IAASA) under the Companies (Auditing and Accounting) Act 2003.

At end-2010, further ODCE publications were in preparation.

Communications

In line with the Government's direction on the curtailment of unnecessary spending, the ODCE kept its expenditure in check in 2010, and as a result, it undertook no advertising. This inevitably reduced the visibility of the compliance message.

However, the Office sought to compensate for any adverse effects by developing other communications channels on a selective basis. In an effort to harness the potential of new media, ODCE subscribed in 2010 to both a Facebook page and a Twitter account. It is intended to use these to publicise conferences, talks, exhibitions and other events at which ODCE will be in attendance and to give advance notice of any planned ODCE press statements.



Kevin Prendergast, Corporate Compliance Manager, ODCE, with staff/students from Letterkenny IT

Seminars and Exhibitions

The ODCE continued to attend conferences and seminars throughout the country in 2010. These provide opportunities for meeting directors and other company stakeholders who are interested in learning about the requirements of company law and good corporate governance. It was the Office's experience during the year that the tough economic environment reduced the incidence of these events. Nevertheless, 51 presentations were delivered (67 in 2009) to over 2,200 interested persons on the virtues of compliance. The full list of presentations is at **Appendix 1.1.2**.

The Office expanded its attendance at exhibitions in 2010 to 19 (12 in 2009), the list for which is contained at **Appendix 1.1.3**. The ODCE generally found the events to be popular and well attended, and the ODCE stand at each of these events was busy. Many of these events were aimed at existing and budding business entrepreneurs including the recently unemployed.

It will be evident that in attending events, the ODCE's continued focus is on:

- the SME sector and prospective entrepreneurs,
- professional persons, particularly accountants and solicitors, who play an important role in conveying to their clients the need to comply with the requirements of company law;
- third level and postgraduate business programmes which are educating the next generation of company directors and professional advisers and
- the community and voluntary sector which can lack the necessary professional skills and support to be aware of their legal obligations.

Media

The ODCE's civil and criminal enforcement role with respect to the Companies Acts necessarily places constraints on its ability to discuss ongoing investigations or legal actions. In particular, it is not normal practice for the Office to issue progress reports or other such statements in respect of specific cases. At the same time, the Office recognises the importance of the media in communicating its compliance message to a wider audience.

In 2010, Kevin Prendergast, the Office's designated media contact, dealt with several hundred queries in assisting the media in its work.

The Director also issued three press releases in 2010, the details of which are at **Appendix 1.1.4**.

Illustration 1.1.1: Sample of Public Enquiries dealt with by the Office in 2010

Nature of Query	Response Given
A caller to the Office sought clarification of the legal consequences of a company falling below the minimum number of seven members which applies in the case of many forms of company.	The caller was informed that every effort should be made by the members to rectify promptly any shortfall. All members of a company who are aware that it is operating with less than the legal minimum are severally liable for the company's debts where the deficiency has not been rectified after six months. ⁵
A caller enquired about an aspect of the law dealing with transactions between a company and one of its directors. The caller wished to know if a sole trader was precluded from providing consultancy services to the company of which he or she was a director.	The caller was advised that the director must disclose the relationship to the other directors. ⁶ Once disclosed, it was up to the directors to assess the potential for conflicts of interest (if any) and to take appropriate action.
A member of a property management company enquired about the requirements for changing a company's internal governance rules which are known as the Articles of Association. He stated that at a company general meeting, the matter was only introduced under Any Other Business and was not listed on the agenda itself.	The caller was told that any proposed change to the Articles of Association must be adopted by special resolution at a meeting of the company's members. ⁷ A special resolution means that 21 days' prior written notice must be given to each member of the scheduled meeting together with details of the terms of the intended alterations to the Articles. 75% of the votes cast at the meeting must be in favour before the change can be effective. ⁸

Public Enquiries

As part of its role to raise levels of compliance, Office staff are on hand to answer any general questions on company law that the public may have. While it is Office policy not to give legal advice, the Office regularly addresses questions of fact as to the requirements of the Companies Acts. Where appropriate, Office staff encourage callers to obtain independent legal advice to help address their particular grievances.

ODCE reception staff deal with many of the routine questions received by the Office over the phone or on email. In addition, the Office website, www.odce.ie, has a Frequently Asked Questions section which provides answers to many of the common questions received by staff. This was kept under review and updated in 2010.

Where more considered responses are required to individual questions, Compliance Unit staff prepare the replies. In total, the Office dealt with 226 such queries by phone and email in 2010. A sample of these is set out in **Illustration 1.1.1** above.

⁵ Section 36 (as amended) of the Companies Act 1963.

⁶ Section 194 (as amended) of the Companies Act 1963.

⁷ Section 15 of the Companies Act 1963.

⁸ Section 141 of the Companies Act 1963.

Sub-Goal 1.2: Deepening Our Relationship with Stakeholders

To be effective in discharging the Office's compliance and enforcement remit, the Director of Corporate Enforcement and his staff require the cooperation of many parties. The Oireachtas, the Government and the Department of Enterprise Trade and Innovation (DETI) provide the financial, legal and other resources which support the Office's endeavour. The ODCE's performance also depends to a great extent on the quality of its interaction with counterpart bodies and other stakeholders. In 2010, the Office continued to work constructively with all of its key stakeholders.

Joint Oireachtas Committee on Enterprise Trade and Employment

The Director and members of his senior management team appeared before the Joint Oireachtas Committee on 19 January 2010. The matters discussed with the Committee included the Office's work in the area of multi-unit developments, whistle-blowing in the context of company law, so-called 'phoenix companies' and the investigations initiated by the Office into Anglo Irish Bank and DCC⁹.

⁹ A transcript of the Committee meeting is at <http://debates.oireachtas.ie/BUJ/2010/01/19/00003.asp>.

Ministerial Meeting

The Director met with Mr Batt O’Keeffe TD, the Minister for Enterprise Trade and Innovation, in April 2010 and briefed him on the general activities of the Office, including both its compliance and enforcement functions.

Department of Enterprise Trade and Innovation

The Office is fortunate to have the strong support of the Department in the discharge of its functions. During the year, there was a formal meeting between the Director and his senior management team and senior officers from DETI to discuss operational and strategic matters. Senior managers from the Office also regularly participated in management meetings in the Department’s Company Law Division. As will be evident from the matters discussed in the following paragraphs, Office staff engaged with the Department on a weekly basis on policy and operational issues.

DETI Working Group on reducing Administrative Burdens for Business

The Government has set the ambitious target of reducing the administrative burdens on business by 25% by the end of 2011. Under the auspices of this Group, there were a number of simplification workshops and related follow-up meetings during the year which discussed possible measures to meet this challenging target. Although it is the Group’s view that the more onerous business burdens lie outside the area of company law, the ODCE has adopted a constructive approach in supporting the removal of any unnecessary regulation, whether within or beyond company law.

DETI Risk Based Enforcement and Inspection Discussion Group

The Office also participated in the work of this Group which is coordinating a cross-Departmental approach to information sharing among regulators and to the adoption by them of more risk-based inspection and enforcement regimes. Although the Office responds to allegations of corporate wrongdoing and does not, unlike other regulators, carry out routine inspections in discharging its statutory role, it has continued to contribute to the Group’s work which is expected to conclude in 2011.

Company Law Review Group (CLRG)

The Director is a statutory member of the CLRG. The Group published its report on its 2008-2009 work programme in early 2010.¹⁰

In the context of modernising company law, the CLRG considered extending audit exemption to small companies limited by guarantee and to dormant subsidiaries in groups. In its conclusions, the Group ultimately supported an extension in both areas, albeit with certain qualifications and on terms acceptable to the ODCE.

The CLRG Report also made a number of recommendations on issues relating to certain company law registration issues, partnership law, company distributions and capital maintenance.

The Group commenced work on a new work programme in late 2010¹¹. ODCE staff will continue to contribute to relevant parts of this programme in the coming year.

Irish Auditing and Accounting Supervisory Authority

The Director is a member of the board of IAASA and attended nine of its ten board meetings during the year. The Director’s principal commitment on board committees was as a member of an Enquiry Committee which examined compliance by Chartered Accountants Ireland with its Disciplinary Bye-Laws in considering a particular complaint against a member firm. The outcome of the Enquiry Committee’s work which lasted some 18 months was published by IAASA in March 2011. A copy of IAASA’s Annual Report for 2010 will be available at www.iaasa.ie in mid-2011.

IAASA and the ODCE continued to consult each other regularly at an operational level during the year. Although each is bound to maintain confidentiality in respect of the information in its possession, the bodies nevertheless shared information in accordance with law on a number of occasions during 2010. This is permitted where the information is relevant to the statutory functions of the other body.

Companies Registration Office (CRO)

The CRO is a valuable source of information for the Office in evaluating complaints and reports with respect to companies, directors and others. Where necessary, CRO staff certify documents and swear affidavits in ODCE proceedings.

The Office continued to work constructively with the CRO during 2010. The two bodies also engaged with the Department and the professional accountancy bodies during the year in attempting to find an acceptable technology-based solution to the identification of qualified auditors, and it is hoped that this will give rise to a successful outcome in 2011.

¹⁰ The report is available at <http://www.clrg.org/Annual-Report-2009.aspx>.

¹¹ The new work programme for the CLRG is available at [http://www.clrg.org/cuuploads/editor/file/CLRG Work Programme 2010-2012.pdf](http://www.clrg.org/cuuploads/editor/file/CLRG%20Work%20Programme%202010-2012.pdf).

Accountancy Bodies

The Director and his staff met the senior management of the major accountancy bodies twice in 2010 to discuss matters of mutual interest. The discussions covered the rise in insolvency reports to the Office and related matters, the potential future regulation of liquidators, the issue of unregistered auditors and the future of audit.

The Office also worked with the accountancy profession through a technical liaison group which meets as necessary in furtherance of an agreed work programme. Work continued in 2010 on the preparation of a document that will outline what is expected of the Office and auditors following the making to the ODCE by auditors of reports on suspected indictable offences under the Companies Acts.

Garda Bureau of Fraud Investigation (GBFI)

The Office's investigative and enforcement work is greatly assisted by the permanent presence of some eight seconded Detective Gardaí. In particular, the ODCE and the GBFI continued to work closely together in 2010 on their joint investigation of events at Anglo Irish Bank. The ODCE also consulted with GBFI and other senior members of An Garda Síochána before responding to the initiative of the Minister for Justice and Law Reform with respect to the problem of white collar crime (see below).

Central Bank/Financial Regulator

Throughout 2010, the ODCE was in regular communication with the Financial Regulator and the Central Bank. The main focus of engagement was the ODCE investigation of Anglo Irish Bank, but the Office and the Bank also liaised on a number of other matters relevant to each other's statutory remit.

Office of the Revenue Commissioners

The Revenue Commissioners continue to be an important partner for the Office in discharging its functions. In total, the two Offices shared information on some 92 companies and former companies (91 in 2009). While the majority of these constituted requests for information, 22 cases were sent on their own initiative by one Office to the other for possible further action.

There was also a useful meeting between ODCE and Revenue staff in November 2010 in relation to issues arising from the activities of both Offices in dealing with unliquidated insolvent companies.

International Association of Insolvency Regulators (IAIR)

The ODCE which has been an IAIR member since 2003 was honoured to host its Annual Conference in Dublin Castle in September 2010. IAIR membership comprises some 30 bodies involved in the regulation of personal



The delegates attending the 2010 IAIR Conference in Dublin Castle



From left: Paul Appleby, the Director of Corporate Enforcement, Mr Justice Frank Clarke of the High Court and Chris Lehane, the Official Assignee, Courts Service, at the 2010 IAIR Conference in Dublin

bankruptcies and corporate insolvencies throughout the world and is a valuable forum for sharing information and problem solving. 47 delegates from 21 countries attended the 2010 Conference whose theme was 'Insolvency – an Instrument for Recovery'.

Mr Sean Gorman, the Secretary General of DETI, opened the Conference. The ODCE was pleased that the eminent speakers who addressed delegates included:

- Mr Justice Frank Clarke who spoke about the High Court's supervision of corporate recovery (examinership) provisions in the Irish Companies Acts;
- Ms Patricia T Rickard-Clarke, Commissioner, Law Reform Commission, who dealt with its recent proposals on personal debt management and enforcement;
- Mr Inigo Urresti, Enterprise and Industry Entrepreneurship Unit, European Commission, who addressed the role of insolvency systems in fostering entrepreneurship in Europe;
- Mr Gordon Stewart, Head of the Global Restructuring Group at Allen & Overy, who compared the US and UK approaches to corporate workouts;
- Mr Mike Norris, Executive Director, Globalised Securitised Products, Max Recovery, a JP Morgan subsidiary, who discussed the recent experience of creditors particularly in the aftermath of the 2009 financial crisis, and

- Ms Sue Aspinall, UK Office of Fair Trading (OFT), who spoke about the OFT's recent study of the market for insolvency practitioners in the UK.

Together with the contributions made by national delegates and representatives from the World Bank and the European Bank for Reconstruction and Development, it made for a lively and stimulating Conference. A major part of the Conference success was its superb organisation for which particular thanks is due to the ODCE staff involved led by Conor O'Mahony.

NSAI/ISO Social Responsibility Standard

ISO26000 on Social Responsibility was formally launched on 1 November 2010¹². The international guidance took some five years to develop, and contributors came from almost 100 countries. The ODCE was a member of the Irish Mirror Committee which was chaired by the National Standards Authority of Ireland. The Office contribution to the development of the standard focused particularly on compliance with law and quality corporate governance.

¹² More information on ISO26000 is available at www.iso.org/iso/catalogue/management_and_leadership_standards/social_responsibility.htm.

Sub-Goal 1.3: Influencing Policy Development

As the primary body tasked with investigating and enforcing company law issues, the ODCE gains practical experience which is of value for policy formation. In 2010, the Office again sought to respond constructively to developing policy proposals.

ODCE Submissions on the Proposed Companies Consolidation and Reform Bill¹³

The ODCE continued to offer comments in 2010 on specific parts of the proposed Bill on which it was consulted by the Department of Enterprise Trade and Innovation (DETI). The mammoth Bill which will ultimately create a single modern Companies Act will likely be presented to the Oireachtas in 2012.

In 2010, the Office provided comments on the following:

- draft Part 5 (Duties of Directors and Other Officers). Here, the ODCE comments were short and relatively minor in character;
- draft Part 13 (Investigations). The ODCE's extensive series of comments included suggestions of a substantive nature to help improve the Part;
- the draft section replacing Section 56 of the Company Law Enforcement Act 2001 under which the liquidators of insolvent companies report to the ODCE. Here, the Office proposed an extensive reworking of the draft section proposed for inclusion in the Bill.

At the end of the year, the ODCE was also reviewing draft Part 11 (Winding Up).

European Commission Green Paper on Audit Policy¹⁴

In responding to the economic downturn, the European Commission has focussed inter alia on the role of audit in failing to deter imprudent corporate behaviour. To that end, the Commission issued for consultation late in 2010 a Green Paper which incorporated 38 separate questions on current and potential future EU audit policy. The ODCE submission answered many of the questions posed by the Commission and made a number of comments on the current performance of audit and how it might be improved. The main ODCE comments are set out in

Illustration 1.3.1.

Illustration 1.3.1: ODCE Submission to the European Commission on Audit Policy

The ODCE's main comments included the following:

- there are grounds for questioning the consistency and quality of audit work within the profession;
- the current approach of a standard audit report template may no longer be appropriate in circumstances where other narrative elements of the annual report of a company are required to be more expressive;
- providing more evidence of the exercise of auditors' professional scepticism would help to provide assurance that independent and robust audits are being undertaken. This could be achieved by extending the content of the annual transparency report imposed on certain audit firms to give, for instance, statistical information on the numbers of audit reports which were qualified and which were the subject of adverse opinions;
- audit needs to consolidate its focus on providing assurance that past events and some present and future risks have been accurately represented in company financial statements;
- it would be of assistance if there were more active shareholders which sought to influence the choice of the appointed company auditor. Perhaps the audit committee should consult more frequently with the company's major stakeholders in preparing its recommendation;
- a maximum period of eight years should apply to an audit engagement for most public interest entities. This could be extended to ten years for very large public interest entities in recognition of the additional complexity of the business;
- audit partner rotation should take place at least every five years;
- auditors should communicate directly and openly with regulators where the regulator may either be uninformed in relation to certain matters or to emphasise to the regulator the matters which the auditor considers need to be addressed in respect of the company.

The ODCE sent a copy of its audit policy submission to the DETI and IAASA.

¹³ The proposed structure and Heads of the Bill are available from the Company Law Review Group at <http://www.clrg.org/companies-bill.aspx>.

¹⁴ More information on the EC Green Paper is available at http://ec.europa.eu/internal_market/consultations/2010/green_paper_audit_en.htm.

Proposed Transposition of Directive 2009/109/EC – Third and Sixth Directives¹⁵

This Directive amends the Third and Sixth Directives on mergers and divisions by introducing greater simplicity to the process. The Office made a brief submission to DETI on some of the technical matters contained in the proposed transposition.

ODCE Submission on White Collar Crime¹⁶

The policy area of white collar crime was the subject of much comment during the year. In responding to a Discussion Document on Organised and White Collar Crime published by the Department of Justice and Law Reform (DJLR) in October 2010, the Office made a comprehensive submission in late November. The main suggestions made are summarised in **Illustration 1.3.2**.

Illustration 1.3.2: ODCE Submission to the DJLR on White Collar Crime

The ODCE's main comments included the following:

- extending criminal liability in the areas of reckless trading, fraudulent trading and the misuse of a false or misleading identity;
- creating new offences in respect of bank fraud, mail fraud, wire fraud and the making of false statements in loan and credit applications;
- raising the penalties for potentially serious white collar crime offences;
- extending the periods for investigating/prosecuting particular 'white collar crimes' where these periods are unrealistically short;
- requiring potential witnesses to give evidence which may be of use in seeking to determine whether a crime has been committed;
- clarifying the precise form of a corporation's criminal liability and the duties of its officers to prevent malpractice;
- clarifying the extent to which those accused can defend themselves on the basis of erroneous legal advice;
- improving the ability of An Garda Síochána and regulatory bodies to work together to fight white collar crime;
- introducing a more widespread use of administrative sanctions as an option in addition to criminal sanction and, in some cases, decriminalising minor regulatory obligations which are subject to administrative sanction;

- improving the investigation and prosecution of white collar crime by the use (or greater use), in appropriate cases, of immunity programmes, plea bargaining, deferred prosecution agreements, certificate evidence and hearsay evidence in criminal investigations and
- alleviating, where appropriate, the inhibiting impact of legal professional privilege and the exclusionary rule of evidence in white collar crime investigations and prosecutions.

Submission on the DJLR's Proposed Strategy Statement 2011-2013

The Office made a brief submission to DJLR highlighting the need to effectively tackle white collar crime and also suggesting that certain changes to the criminal justice system could streamline the investigation and prosecution processes and potentially save costs.

Multi-Unit Developments Act

By the end of 2010, the Multi-Unit Developments Bill which was sponsored by the DJLR had effectively completed its passage through the Oireachtas. Company law is one area that the Act addresses in seeking to resolve difficulties with the operation of property management companies.

The ODCE has made a number of policy contributions to the area in recent years, and the new Act¹⁷ should help to resolve problems which have been the subject of large numbers of complaints to this Office. Innovations include wide-ranging provisions allowing the High Court to make whatever orders it deems necessary to deal with legal issues arising from the mismanagement of a property management company and a proposed mechanism to re-register companies struck off the Register of Companies within the last six years.

Submission on the Revenue Commissioners' Proposed Strategy Statement 2011-2013

In its submission to the Revenue Commissioners in September 2010, the ODCE highlighted the need to effectively tackle the black economy. The Office also suggested that Revenue continue its important work in the area of insolvent companies and liquidations given its position as a major company creditor in many of these cases. In acknowledging the success of the Revenue's Large Cases Division, the Office suggested that a similar targeted Unit dealing with entities and associated persons regularly engaging in aggressive tax avoidance, tax settlements and corporate behaviour could be set up.

¹⁵ More information on this Directive is available at http://ec.europa.eu/internal_market/company/simplification/index_en.htm.

¹⁶ More information on the White Paper issued by the Department of Justice and Law Reform is available at http://www.justice.ie/en/JELR/Pages/WPOC_Discussion_Doc_3.

¹⁷ No 2 of 2011. A copy of the Bill as passed by Dáil Éireann is available at <http://www.oireachtas.ie/documents/bills28/bills/2009/3209/b32d09s.pdf>.

Central Bank Consultation Paper on Corporate Governance¹⁸

During the year, the Central Bank issued Consultation Paper CP41 on Corporate Governance Requirements for Credit Institutions and Insurance Undertakings. In its response to the Paper in June 2010, the ODCE highlighted a number of issues concerning the roles of the chairman, the board and committees of the board in such companies.

In discussing audit committees in its submission, the Office suggested that the Central Bank's proposals could benefit from reconsidering the comprehensive list of audit committee responsibilities contained in Section 205B of the Companies Act 1990 (as inserted by Section 42 of the Companies (Auditing and Accounting) Act 2003 but not yet commenced) and the shorter Regulation 91 of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010¹⁹.

Central Bank Consultation Paper on Related Party Lending²⁰

The Central Bank also issued Consultation Paper CP43 on the issue of related party lending by certain regulated institutions during the year. In responding in June 2010, the ODCE identified a number of potential weaknesses in the scope of the planned Code. The Office also commented on the particular role of non-executive directors and suggested that there should perhaps be a prohibition on their having any financial relationship with the relevant company.

Submission on the Proposed Central Bank Bill 2011

The ODCE made a relatively detailed submission to the Central Bank in September 2010 on the proposed Bill which is due to be introduced in 2011. Office comments included the following:

- the proposals for whistle-blowing protection and a 'safe harbour' for the waiver of legal privilege were welcome;
- the proposal that the Central Bank should have primacy over other creditors, including a liquidator or examiner, where the Central Bank had extended credit to a bank which was in financial difficulty. It was suggested that there might be difficulty in securing the services of, say, a liquidator if the recovery of the costs of the process was not secure.

Conclusion

The foregoing gives an indication of the ODCE's substantial commitment to fulfilling its compliance remit and to contributing to policy development, both nationally and internationally. Ensuring a clear understanding of company law obligations, together with a commitment to engage with stakeholders, are central elements to the work of the Office.

Allied to Office activity in the compliance area is a balanced and proportionate enforcement strategy to deter and, where necessary, sanction those who may be tempted to disregard their obligations. The next section of this Report sets out the Office's results in implementing that strategy in 2010.

18 A copy of this consultation paper is available at <http://www.financialregulator.ie/consultation-papers/Documents/CP41 - Corporate Governance Requirements/Corporate Gov Requirements.pdf>.

19 SI No 220 of 2010.

20 A copy of this consultation paper is available at <http://www.financialregulator.ie/consultation-papers/Documents/CP43 Code on Related Party Lending/CP 43.pdf>.

Goal 2: Confronting Unlawful and Irresponsible Company Law Behaviour

Introduction

2010 proved to be a difficult year on the economic front, and this was reflected in the volume of issues which were brought to the attention of the ODCE in 2010.

Statistical Overview of Reports and Complaints

Almost 2,000 new cases were received during the year, a 31% increase on 2009. As outlined in **Appendix 2.1**, the single biggest component was the 50% increase in initial reports obtained from the liquidators of insolvent companies.

Notwithstanding this large increase in new cases and significant work and resource challenges, the Office successfully managed to conclude more than 1,800 cases in 2010, a 26% increase on 2009. The number of issues on hands at year-end was just over 1,000, a 20% increase on the preceding year. **Appendix 2.2** provides further information on the throughput of cases during 2010 while **Appendix 2.3** identifies the primary basis on which the ODCE closed the cases.

Appendix 2.4 defines the economic sectors to which the insolvent companies reported to the ODCE in 2010 were connected. 51% of them were in the construction and

wholesale and retail sectors indicating that these types of businesses have been particularly hard hit by the current economic downturn.

The dominant sector for auditor reports and public and other complaints to the Office in 2010 was again real estate and renting which comprised 33% of the total. This was due in part to the performance of property management companies which continued to be a source of considerable public grievance. **Appendix 2.5** provides the detail involved. The 17% of complaints classified in the 'not a company' category reflects the fact that many complaints relate to individual persons, business names and sole traders.

Solvent and Insolvent Liquidations

Unsurprisingly, the severe economic downturn has resulted in a significant increase in company failures in recent years. The impact has been most dramatically illustrated by the fourfold increase in the number of insolvent liquidations (creditors' and Court liquidations) from 344 in 2007 to 1,386 in 2010. Correspondingly, the 899 solvent liquidations (members' liquidations) declined by 22% last year, and this number is the lowest for five years. The following table gives the numbers of insolvent and solvent liquidations notified to the CRO in the past five years.

Liquidations	2006	2007	2008	2009	2010
Creditors' Liquidations	323	308	530	1,124	1,258
Court Liquidations	31	36	83	121	128
Total Insolvent Companies	354	344	613	1,243	1,386
Members' Liquidations	930	1,057	1,051	1,158	899
All Liquidations	1,284	1,401	1,664	2,403	2,285

Insolvent Companies Nominally in Liquidation

The ODCE has recently been monitoring the incidence of insolvent companies which are nominally in liquidation but to which no liquidator has been appointed. As the following table illustrates, these cases have doubled in percentage terms in the last two years, and about 100 new companies now fall into this category every year.

Year	Liquidation Notifications	Liquidators not Appointed	%
2008	613	24	4%
2009	1243	106	9%
2010	1386	92	7%

Following discussions with the ODCE, the professional accountancy bodies have reminded their members that they should not be involved in facilitating companies being put into liquidation unless they expect that a liquidator will be appointed. The ODCE continues to examine its own legal and other options to tackle the issue. In addition, it put forward proposals to the Department of Enterprise Trade and Innovation in early 2011 for legislative changes that would help to address the situation. The Office is firmly of the view that an insolvent company should have its affairs formally wound up through the appointment of an independent liquidator.

Insolvent Companies in Receivership

In addition to increased numbers of companies going into liquidation as a result of the economic downturn, the numbers being placed in receivership have not surprisingly also increased. Most companies placed in receivership are the result of financial institutions seeking to enforce secured charges. These companies in receivership are also likely to have failed and to be insolvent. Notwithstanding the appointment of a receiver, the directors continue to have duties to the company, and in particular, they should ensure that any insolvent company is placed in liquidation on a timely basis. Only about one in eight companies in receivership are ever put into liquidation. The following table gives the relevant figures.

Year	Companies Placed in Receivership	Number Placed in Liquidation	%
2008	59	8	14%
2009	200	26	13%
2010	375	43	11%

The Office wrote to a number of receivers during 2010 reminding them of their statutory reporting duties to the Director of Public Prosecutions (DPP) in respect of criminal offences which may be detected during the exercise of their duties as receivers.²¹ This action was deemed necessary having regard to the absence of such reports being received from receivers. The ODCE expects all receivers to be vigilant in ensuring that such reporting is made where appropriate.

Of course, a key consequence of the failure to appoint a liquidator to an insolvent company which is in liquidation or in receivership is that the conduct of the directors of those companies is not generally being scrutinised.²² From the preceding two tables, it will be apparent that, in 2010 alone, the directors of more than 400 insolvent companies are not being subjected to the same accountability as directors of insolvent companies to which liquidators have been appointed.

However, a small number of the directors in question may subsequently face disqualification proceedings where their companies are struck off the Register of Companies for failing to file annual returns unless they can satisfy the Court that the company had no outstanding liabilities.

Dissolved Insolvent Companies

While the numbers of insolvent companies going into liquidation, receivership and examinership constitute the visible consequences of the economic downturn, there may be several hundreds or even thousands of insolvent companies on the Register of Companies at any one time that have ceased to trade but which have not been put into liquidation.

Most of these will come to be struck off the Register eventually but the process can take two or more years. In addition, the number of strike-offs in any year will be influenced by the level of activity by the CRO, Revenue and company directors in pursuing the strike-off option. While the following table gives details of all companies struck off in recent years, it does not distinguish between those that are solvent and insolvent.

²¹ Section 179 of the Companies Act 1990.

²² Pursuant to Section 56 of the Company Law Enforcement Act 2001.

Type of Dissolved Company	2006	2007	2008	2009	2010
'CRO Strike-off' ²³	5,255	4,085	5,804	5,729	6,272
'Revenue Strike-Off' ²⁴	444	149	223	142	140
'Voluntary Strike-Off' ²³	3,757	3,975	4,542	5,428	5,488
Total	9,456	8,209	10,569	11,299	11,900

Sub-Goal 2.1: Identifying Suspected Misconduct

The ODCE's work in 2010 was again dominated by its investigations of Anglo Irish Bank Corporation Ltd and by the large and growing number of insolvent companies requiring its review.

The Investigation of Events at Anglo Irish Bank

The continuing investigations of Anglo Irish Bank were a major priority in 2010. By year-end, the ODCE had transmitted to the DPP a substantially completed investigation file and three reports on four aspects of its investigations. Those aspects related to:

- the provision by Anglo in 2008 of a loan to one of its directors. (This issue was the subject of the investigation file);
- the non-disclosure of certain directors' loans in Anglo's published financial statements over a number of years and related issues;
- the provision by Anglo to a number of persons in 2008 of financial assistance for the purchase of its shares;
- the communication of possible false or misleading information in certain Anglo public statements in 2008.

In all, the material sent to the DPP by year-end comprised about 3,500 pages.

Another extensive draft file containing several thousand more pages of documents was well advanced at the end of 2010. This also deals with Anglo's provision of financial assistance for the purchase of its shares in 2008.

The ODCE is aware that the Garda Bureau of Fraud Investigation (GBFI) also provided papers to the DPP in late 2010 in respect of its elements of the Anglo investigations. The accompanying **Illustration 2.1.1** provides a graphic representation of the main aspects of the current ODCE and GBFI investigations.

Illustration 2.1.1: The Main Aspects of the Anglo Investigations

Aspect 1	GBFI	Short-term back-to-back deposits of about €7.4 billion received by Anglo in late September 2008
Aspect 2	ODCE	Regular transfer of certain Anglo directors' loans to another institution close to Anglo's end-year reporting date and related issues
Aspect 3A	ODCE	Provision by Anglo of funds for the purchase of its shares in July 2008 (possible breach of Section 60 of the Companies Act 1963)
Aspect 3B	GBFI	Provision by Anglo of funds for the purchase of its shares in July 2008 (possible market abuse aspect)
Aspect 4	ODCE	Content of Anglo financial and other public statements in 2008
Aspect 5	ODCE	Provision by Anglo in 2008 of a loan to one of its directors

Earlier in 2010, the DPP had engaged Counsel to support the investigations, and the Office availed of this external advice as required. Senior ODCE and Garda staff provided briefings to the DPP and Counsel on three occasions during the year on the progress of their respective investigations.

Acquisition of Documents and Information

The preparation of these files and reports was underpinned by a continuing evaluation of the many millions of Anglo and related documents which is in the possession of the ODCE. During 2010, the Office continued to acquire additional documentation either voluntarily or through the use of its legal powers. In the latter case, ODCE initiatives led to:

- the issue by the District Court of two search warrants;
- the making of two Orders by the District Court for the production of banking documentation, and

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

24 Section 882 of the Taxes Consolidation Act 1997.

- the making of four ODCE demands for the production of documents and information.

For the first time in the Anglo investigation, the ODCE also initiated four requests under the Criminal Justice (Mutual Assistance) Act 2008. These requests were approved. In consequence, ODCE staff traveled to the UK on a number of occasions to attend interviews and Magistrates Court hearings at which statements and documents were received. In all relevant cases, orders were made by the Magistrates Court permitting the handing over of the statements and documents which were then transmitted to the ODCE via the UK Home Office. A small amount of outstanding information on foot of one request was in preparation at year-end.

Garda officers seconded to the ODCE led some 280 interviews of witnesses and suspects in 2010. Each of these interviews required advance preparation and involved in many cases identifying relevant records in the ODCE's possession so that the interviewee could explain or otherwise address those records. Some of these interviews were conducted over an extended period due to the complexity of the matters at issue. In one case for instance, a lengthy witness statement took nine months to complete.

Processing of Documentation

The quality of interviews undertaken is assisted by the availability of a coherent, accessible and traceable record of the Anglo documents held by the ODCE. Throughout 2010, the Office was involved in processing the extensive volume of individual records contained in the Anglo electronic data. The primary processing tasks undertaken during the year were as follows:

- pre-processing – the identification and exclusion of irrelevant files such as system and application files;
- processing – the identification of individual message records, associated metadata and the other files attached to the various types of records;
- de-duplication – the elimination of duplicate copies of the same documents in, for example, the records of the senders and recipients of emails;
- indexing – to facilitate the searching of the data;
- manual intervention – to identify, for example, documents that may possibly be legally privileged and may therefore lie beyond the scope of the investigation.

The processing work has been time-consuming requiring considerable computing capacity as well as the deployment of expert ODCE staff to the task. Issues which arose from time to time in 2010 created processing difficulties and delays including, for example, the identification of files which were encrypted or password protected. The processing of these files had to await the receipt or detection of the password or encryption key.

In order to improve the speed of processing, the Office upgraded in August 2010 its hardware and software to expedite the processing and analysis of the many millions of seized Anglo electronic documents. While the processing of these records was substantially complete in 2010, the interrogation of the available documents by ODCE investigating staff was continuing at the end of the year in preparation for further planned interviews.

High Court Supervision of the Seized Anglo Data

In executing a search warrant on Anglo's premises in September 2009, the ODCE had acquired certain electronic data using a new extended power of seizure for the first time. Where this power is exercised, the ODCE's retention of the data is subject to High Court supervision. In particular, the law permits the High Court to extend:

- the three month period within which the relevant ODCE officer is to determine if the information is material to the commission of an offence under the Companies Acts and
- the seven day period within which the officer is to return the information following the taking of the decision that it is not material to the investigation.

In May 2010, the ODCE made application for extensions of time citing the large amount of materials in its possession which required examination. Following a number of temporary orders, the High Court granted on 2 July 2010 extensions of both time periods to 9 November 2010 on the lines sought by the Office.

On the basis of the further progress reported by the ODCE on 9 November 2010, the High Court extended the two time periods for a further six months in the manner sought.

Neither of the two search warrants executed in 2010 entailed the use of the extended power of seizure. Therefore, the documents seized on foot of those warrants do not require ongoing High Court supervision.

Legal Professional Privilege (LPP)

The ODCE investigation continued to deal with the LPP issue in respect of the seized documents and data in its possession. The Office received in early 2010 the report of the independent Assessor who was appointed by the ODCE and Anglo in 2009 to adjudicate on certain hard copy documents over which Anglo claimed privilege. Both parties abided by the decisions of the Assessor in respect of those documents, and the ODCE took steps to retain only the hard copy documents or parts of documents which had been cleared of privileged material.

Insofar as the continuing examination of Anglo's extensive electronic documentation was concerned, the ODCE collated in the first half of 2010 some 19 lever arch folders of documents which it considered to be potentially relevant to its investigations. Having received and examined the folders, Anglo only claimed legal privilege over a small number of them, claims which the ODCE decided not to contest. By year-end, the ODCE had identified a further large batch of potentially relevant electronic documents for LPP evaluation by Anglo.

In its supervision of the ODCE's retention of the seized Anglo electronic data, the High Court heard in June/July 2010 of the practical difficulties which the Anglo claims of privilege were causing for the ODCE investigation. Following a number of adjournments, the ODCE and Anglo reached agreement on the ODCE's use of the Anglo documents in any case in which a claim of privilege remained in place. The parties' agreement was scheduled to a High Court Order of 21 July 2010.

Resources

Some 16 Garda, administrative, legal, accounting and IT staff in the ODCE continued to work on progressing the Anglo investigations throughout 2010. Two additional Gardaí were temporarily assigned to assist the ODCE work in the latter part of the year.

The ODCE and An Garda Síochána continued to cooperate closely throughout 2010 in their respective Anglo investigations. The Director of Corporate Enforcement and the Garda Commissioner met twice during the year, and officers of the Director and the GBFI met on 16 other occasions. In addition, the Computer Crime Unit of the GBFI provided ongoing technical assistance to the ODCE as required.

Insolvent Companies – The Liquidator Reporting Regime

In summary, the liquidator of a company in insolvent liquidation is required by law²⁵ 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. The liquidator must also proceed to apply to the High Court for the restriction²⁶ of each of the directors, unless relieved of that obligation by the ODCE.²⁷

The essential aim of this reporting regime is to support responsible entrepreneurial endeavour. The purpose of each report is to distinguish the circumstances of honest and responsible business failure (which do not merit any form of sanction being applied on the company's directors) from those where directors knew or ought to have known that the company was insolvent or that they were otherwise conducting the company's affairs in a manner which was contrary to the interests of creditors, other parties or the general public interest.

In discharging its role, the Office expects liquidators to provide it with all of the information which is relevant to the making of an appropriate decision. It also encourages liquidators to make a suitable recommendation on relief by reference to the results of their investigations.

The ODCE considers relief where a liquidator advances a coherent justification in support of a claim that a director has acted honestly and responsibly in conducting the company's affairs. In making its decisions, the Office is 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. In practice, the ODCE acts as a filter to remove from the High Court consideration of those cases which do not warrant its attention.

²⁵ Section 56 of the Company Law Enforcement Act 2001.

²⁶ 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.

²⁷ The process and scope of liquidator reporting are outlined in three main ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1 and Information Notice I/2009/1. These documents are available at www.odce.ie.

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.

Liquidator Reports in 2010

Details of the numbers of liquidator reports in 2010 are contained in **Appendix 2.1.1**. In all, 1,688 liquidator reports were received (1,123 in 2009). Of these, 1,312 were initial reports²⁸ (876 in 2009) in respect of recently liquidated companies, the substantial 50% increase in reports reflecting the difficult economic conditions.

376 further reports²⁹ (247 in 2009) were also submitted and arose primarily from earlier ‘relief at this time’ decisions. The 52% increase was broadly in line with the increased level of liquidator reports generally.

The threefold increase in initial liquidator reports from 406 in 2008 to 1,312 in 2010 has posed a considerable challenge to the Office. Through revised internal work practices and some limited additional staffing resources, the Office has managed to increase its output in this area dramatically. Despite these efforts, it is regrettable that some decline in the timeliness of ODCE decision-making has occurred. The scale of increase in reporting and the tight staffing situation is continuing to cause strain. Management and staff in the Office are making every effort to deal with liquidator reports on a timely basis.

In monitoring the submission by liquidators of their initial and further reports, the Office had cause in 2010 to formally advise 90 liquidators on 303 occasions (172 occasions in 2009) that they were in default with regard to their statutory reporting obligations. Many of these defaults were promptly rectified, and at the end of the year, 97% of the first reports due during the year had been received – up from 95% the previous year. However, a small number of liquidators were facing legal action at year-end for failing to submit their overdue reports. This will continue to be an area of priority attention for the Office in 2011.

The Office considered the standard of liquidator reports received in 2010 to be mostly satisfactory. However, the ODCE had concerns about the standard of reporting in some cases. Where issues are arising, it is believed that these are largely attributable to one or more of the following factors:

- the strains within some liquidation firms arising from the volume of insolvency work being taken on;
- the delegation of insolvency work to relatively junior staff within larger firms;
- the influx of many new entrants (including professionals with extensive experience in other areas such as auditing or law) into the insolvency profession with often limited or no experience of insolvency work;
- the increasing level of complexity that is a feature of a higher proportion of recent liquidation cases.

This experience necessitated a greater level of engagement by ODCE staff with liquidators during 2010 to clarify elements of their reports and to specify ODCE requirements. The Office also raised these concerns with the relevant professional bodies, and it is understood that some of them have recently increased their training for insolvency practitioners which is most welcome. However, it is also understood that the bodies do not envisage any further development of their monitoring regimes for their insolvency practitioner members pending the development and implementation of a planned statutory licensing regime which is likely to be some years away.

The ODCE will continue to encourage high reporting standards in its ongoing engagements with the insolvency profession.

ODCE Relief Decisions

The ODCE made decisions on 1,474 liquidator reports in 2010, a dramatic 70% increase in output relative to the previous year’s figure of 872. Of these, 1,240 decisions were made in respect of initial reports, and 234 were in respect of further reports. The equivalent figures for 2009 were decisions on 625 initial and 247 further reports respectively. These figures exclude decisions on final reports, the submission of which has been phased out.

²⁸ 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.

²⁹ A further report is usually received from a liquidator six to nine months after receipt of his earlier report.

The breakdown of decisions on initial reports in 2010 is outlined in the following table, along with the comparable figures for 2009:

Decision Type	2009	%	2010	%
Full relief ³⁰	426	68%	871	70%
No relief ³¹	41	7%	47	4%
Relief 'at this time' ³²	149	24%	306	25%
Partial relief ³³	9	1%	16	1%
Total	625	100%	1,240	100%

The notable features of this table include the slight increase from 68% to 70% in the proportion of 'full relief' decisions between 2009 and 2010, the decrease from 7% to 4% in the incidence of 'no relief' decisions and the small increase in 'relief at this time' decisions from 24% to 25%.

The latter increase reflected the size and complexity of some of the current liquidation cases which has necessitated liquidators seeking extra time to enable the completion of their investigations. Similarly, the ODCE has found it necessary on occasion to postpone a definitive decision on relief due to the complexity of some of the reports requiring staff attention, the need to give liquidators time to respond to Office queries and the volume of reports on hands.

Complete lists of the companies in respect of which full relief and relief 'at this time' were granted in 2010 are available in ODCE Information Notice No. I/2011/1 on the ODCE website at www.odce.ie.

Auditor and Accountancy Body Reporting Regime

Auditors are required by law to report to the ODCE suspected indictable offences under the Companies Acts which arise during the course of their audit of a company.³⁴

30 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.

31 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.

32 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.

33 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.

34 Under Section 194(5) of the Companies Act 1990 as inserted by Section 74 of the Company Law Enforcement Act 2001 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.

The ODCE has produced guidance in conjunction with the recognised accountancy bodies on this reporting obligation in an effort to assist auditors perform this important public duty.³⁵

A similar reporting obligation applies to professional accountancy bodies in the discharge of their disciplinary functions³⁶.

Auditor and Accountancy Body Reports in 2010

In 2010, the Office received 194 reports from auditors and accountancy bodies of suspected breaches of the Companies Acts (a drop of 18% on the 2009 figure of 237). In line with the experience of previous years, auditors reported comparatively few offences. One offence (unlawful directors' transactions) again accounted for the majority of reports (70% in 2010) while a second (failure to keep proper books of account) comprised a significant minority (17% in 2010). **Appendix 2.1.2** identifies the incidence of the primary suspected offences reported in 2010 relative to 2009.

Unlawful Directors' Transactions

The auditor reports and other information available to the Office indicates that in 2010, directors irregularly borrowed nearly €85 million from their companies.³⁷ This was a welcome reduction on the 2009 figure of €162 million. 18 of the cases in 2010 had borrowings in excess of €1 million, and these accounted for €62 million of the total. However as not all companies are audited, it is likely that the figure of €85 million understated the actual scale of this phenomenon that year.

35 Decision Notice D/2006/2 – Revised Guidance on the Duty of Auditors to report Suspected Indictable Offences to the Director of Corporate Enforcement. This was more recently supplemented by Information Notice I/2009/4 – Reporting Company Law Offences: Information for Auditors.

36 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.

37 Section 31 and related provisions of the Companies Act 1990.

As in previous years, the Office acted in the interest of creditors to encourage directors to rectify the offending transactions by repaying monies to the company or otherwise bringing the outstanding amounts back within the limits permitted by company law. Most cases were successfully resolved in this fashion with 177 directors cautioned as to their future conduct. The Office reserves the right to take legal enforcement action against directors in any suitable case.

Failure to Keep Proper Books of Account

Where a report of a failure to keep proper books of account is received, the Office engages with company auditors in all cases with a view to establishing the gravity of the default.³⁸ The Office regularly cautions the relevant directors with a view to ensuring that similar deficiencies in the governance of their companies do not recur. More than 60 directors were cautioned in 2010.

In a minority of cases, the Office proceeds to take enforcement action against the company and/or its directors. As indicated later in this Report, one case was successfully prosecuted in 2010, and a second prosecution was initiated.

Audit Quality

In its engagements with the recognised accountancy bodies and in its previous Annual Reports, the ODCE has expressed disappointment with the continuing dominance of the above two offences in auditor reports notwithstanding the presence of more than 100 reportable offences in the Companies Acts. The Office has also occasionally found it necessary to challenge the adequacy of auditor reports in a minority of the cases which it has had cause to examine. The ODCE outlined this experience in addressing the question of audit quality posed by the European Commission in its recent Green Paper on Audit Policy. (This Paper is also discussed in the preceding section of this Annual Report.) **Illustration 2.1.2** contains the relevant extract from the ODCE's submission to the Commission on this topic.

Illustration 2.1.2: ODCE Comment on Audit Quality, December 2010

Our experience with auditors in the context of their legislative reporting obligations and our other engagements with their work does suggest that there are grounds for questioning the consistency and quality of audit work within the profession. As we have no direct supervisory role with respect to auditors and their work, we are not in a position to comment authoritatively on that work. We also acknowledge that the obligation in Irish company law which is placed on auditors to report a suspected serious breach of that law to the ODCE is a consequence (rather than the purpose) of that audit work. Nevertheless, we feel that the following observations will be of assistance to the Commission.

It has been our experience that:

- auditors report surprisingly few types of company law offence to us. Typically, over 75% of the 200 reports made to us annually relate to just one offence, namely directors illegally borrowing from their companies above the prescribed limits. A second offence (the failure to keep proper accounting records) usually comprises about 12% of reports. The balance comprises a handful of other offences. Yet, there are more than 100 reportable offences under the Companies Acts. In an effort to diversify the range of reported offences, we have published guidance in conjunction with the relevant accountancy bodies identifying some 13 types of offences which should be capable of being readily detected by auditors as part of their audit of a company's financial statements. To date, this guidance has not served to materially alter the reporting patterns of auditors to the ODCE;
- some audit firms appear to discharge their reporting obligations to us more frequently than other comparable audit firms. Having regard to the focus of the Green Paper, it will be of interest to the Commission to know that 'Big Four' firms submit surprisingly few reports. In 2010 to date, the number of reports received from 'Big Four' firms is ten approximately, representing about 5% of all reports received;
- in our evaluation of the reports submitted by liquidators on insolvent companies, it is not uncommon that the most recent audit report on the company is unqualified, notwithstanding what appears to be a lack of disclosure of or accounting for obvious business difficulties. Similarly, we have reason to doubt at times that auditors are sufficiently robust in challenging the appropriateness of the 'going concern' concept in the financial statements of companies which are clearly in financial difficulty.

Moreover, in the course of our general investigative work, we have on numerous occasions taken issue with the quality of audit work and audit reports issued by members of the profession. Occasionally, this has resulted in admissions of lapses, and where appropriate, in revised audit reports being issued. Where we have uncovered evidence of poor audit quality, our approach has been to inform the relevant recognised accountancy body, as well as the Irish Auditing and Accounting Supervisory Authority, of our concerns.

³⁸ Section 202 of the Companies Act 1990.

Unqualified Persons acting as Auditors

In 2010, the ODCE continued to receive a small number of complaints from the recognised accountancy bodies and from individual auditors about the practice of unqualified persons acting as auditors. Given its anxiety to ensure that audit quality is not undermined, the Office prioritised these complaints as far as possible. As indicated later, one of these cases was successfully prosecuted during the year, while in a second case, the sentencing of the accused was awaited at year-end.

Public Complaints and Other Detections

While liquidators, auditors and accountancy bodies are required by law to report to the ODCE in certain circumstances, the making of complaints by the public and other entities is entirely a voluntary process. Other State regulators may be facilitated in reporting by information-sharing provisions in their governing legislation. The Office itself also keeps watch for issues of relevance to its company law remit in, for example, its monitoring of media reports and other publications.

Public Complaints and Other Detections in 2010

The number of public complaints and other detections increased to 459 in 2010, a rise of 13% on 2009. There was little overall change in the type of reported defaults as will be evident from **Appendix 2.1.3**. Unsurprisingly in the difficult economic climate, there were large increases in complaints about directors' conduct (up 47% on 2009) and unpaid debts (up 68% on 2009). In the latter case, the ODCE urged complainants to explore their own legal remedies to recover any monies due to them where there was no evident breach of company law.

Many of the public complaints addressed in 2010 again concerned companies limited by guarantee. These are often companies formed for a particular social, community or public purpose. Of the 75 complaints received relating to property management companies for example, 33 cases involved the restriction of the rights of members to attend general meetings, and nine cases dealt with the failure to provide them with audited financial statements. A number of these complaints also raised issues which were beyond the remit of the Office such as the level of service charges and the non-assignment of the common areas in the property development to the management company. In all, 81 property management company complaints were closed in 2010.

Many public complaints again varied in character and complexity. The large category of complaints comprehended by the 'Other' category in **Appendix 2.1.3**

reflected the fact that the initial complaint was often very generally defined.

At the same time, public complaints are a rich source of real and perceived grievances relating to company performance and often provide a good picture of the adequacy of the Companies Acts at the level of the ordinary citizen. The following discussion of issues dealt with by the Office predominantly emanate from these complaints.

Deficiencies in the Circulation of Audited Financial Statements

As indicated above, the public regularly complain to the ODCE that audited financial statements are not submitted to the members of a company in advance of the company's annual general meeting (AGM) or that they are circulated to the members late. This often disadvantages the complainants in question as it restricts them from studying the financial statements and holding the directors to account at the AGM. **Illustration 2.1.3** is a case of a substantial company which sought in 2010 to justify its circumvention of the 21 day period of notice which is specified by law.

Illustration 2.1.3: Prior Circulation to Members of Audited Financial Statements

Section 159(1) of the Companies Act 1963 obliges company directors to ensure that the company's audited financial statements and certain other documentation are sent to members at least 21 days prior to the annual general meeting (AGM). This is an important provision which is designed to benefit and protect the company's members by ensuring that they receive the company accounts in sufficient time to study them.

This case concerned a complaint of a breach of law by a guarantee company with a substantial balance sheet of several million Euro. On investigation, the ODCE found that the members had not been given the requisite information on time. While Section 159(3) permits the members to validate a shorter period of notice by unanimous vote at the AGM, it was established that this had not occurred. The Office also rejected the company's claim that Section 159(1) was not breached, because the company's approved Articles of Association permitted the giving of a shorter period of notice.

The ODCE explained to the company that Section 159(1) could not be displaced by a majority vote of the members such that it would bind any and all future general meetings of the company and all of its future members. After further consideration, the company accepted the ODCE view and called a further general meeting in compliance with the applicable law.

Auditor Reporting Deficiencies

The ODCE is regularly surprised that auditors themselves occasionally make quite basic mistakes in completing their audit. While the ODCE will regularly seek clarification from the auditors of the matters at issue, it will also inform the auditor's professional body where it considers that audit quality may have been potentially compromised. In 2010, the Office referred 19 cases to professional bodies for their consideration (15 in 2009). **Illustration 2.1.4** is an example of one of these cases.

Illustration 2.1.4: Defective Audit Opinions on Company Financial Statements

Most residential property owners' management companies are public companies and therefore require to be audited by a suitably qualified practitioner. During the course of examining a complaint relating to a property management company in 2010, the ODCE became aware that an auditor was associating inadequate audit opinions with the financial statements of a number of management companies in the Dublin region.

Arising from the ODCE's investigations, it transpired that in some of these cases:

- the auditor was unaware that he was auditing a company limited by guarantee – he thought that it was a private company limited by shares;
- a statement was included in his audit opinion regarding the obligation on a company to convene an extraordinary general meeting in the event of a serious loss of capital. However, this is not relevant to a guarantee company;
- the audit opinion appended to the financial statements was incomplete in failing to state whether or not proper books of account had been kept.

Following engagement with the auditor, each default was rectified, and each of the companies was brought into compliance with the Companies Acts. However, the professional inadequacies disclosed by the ODCE investigation were considered sufficiently serious to warrant referral to the auditor's professional body. At end-2010, the body was examining the matter.

The Value of a Company Audit

In contrast, the value of a good audit in contributing to effective corporate governance should not be underestimated. In 2010, the ODCE concluded its deliberations on a company which had not been audited. Following the intervention of the Office and the completion of an audit, a very different state of affairs emerged at the company. **Illustration 2.1.5** provides the details.

Illustration 2.1.5: The Possible Consequences of Relying on Unaudited Accounts

Companies limited by guarantee have no entitlement to claim audit exemption and must therefore be audited on an annual basis. In 2010, the ODCE dealt with a guarantee company which had incorrectly filed unaudited accounts with the Registrar of Companies. This company was a charity and was in receipt of State funds.

The Office contacted the Company Secretary to have matters regularised. The resultant audit by a professional firm of auditors brought a number of matters to light. It was clear that the company's directors seriously misunderstood the financial position of the company. Following on from this development, a number of the directors resigned, and the disbursing grants agency intervened.

The main issues disclosed by the audit included:

- the audited accounts identified 'related party transactions' between the company and two of its directors. These directors were also directors of a second company which had successfully tendered for the construction of the premises of the guarantee company. The unaudited accounts had stated that there were no transactions with the directors during the relevant financial period;
- the auditors inserted an 'emphasis of matter' paragraph in their report, because there was no planning permission in place for the company's premises. The report indicated that while steps were being taken to rectify the matter, the outcome was uncertain. It also stated that no provision had yet been made in the accounts for any possible repayment of State grants. The unaudited accounts had been silent on this issue;
- various other identified discrepancies between the audited and unaudited accounts included revenue reserves being in deficit rather than in surplus, the level of debtors being lower than in the unaudited accounts and grant income being a fraction of that originally indicated.

Disqualified and Restricted Directors

During 2010, the ODCE again monitored the registers of disqualified and restricted directors to ensure that the persons in question were not continuing to act as directors in breach of the law. This continues to be a priority area of enquiry, and enforcement action is taken in appropriate cases to maintain the integrity of the disqualification and restriction regimes. Thankfully, no such initiative was necessary during the year.

Dissolved Insolvent Companies

The ODCE is particularly anxious to receive evidence of the existence of '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 2010. It is open to the ODCE to apply to the High Court for the disqualification of the directors of these struck-off companies³⁹. However, the law⁴⁰ also provides that the Court cannot disqualify 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 follow every struck-off company that is investigated by the Office. In some cases, the former directors regularise their position by restoring the struck-off company to the Register. This procedure involves the preparation and submission to the CRO of all outstanding annual returns with financial statements annexed, the payment of all late filing fees and, in cases where the company has been struck off for more than one year, the making of a formal application to the High Court for the restoration of the company.

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.

In 2010, some 79 cases involving many hundreds of struck-off companies were investigated. Of these, 51 were deemed not to be suitable for legal action or remain under investigation. In the remaining 28 cases, disqualification proceedings were initiated or are being actively contemplated at year-end. Further details are provided in the following section of this Report.

During the year, the ODCE also examined some 850 judgements against companies. Some 139 of these companies were determined to merit further investigation by the Office, and these too are the subject of ongoing enquiries with a view to possible disqualification proceedings against their directors in due course.

Where any company 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. The ODCE brings any company possessing significant assets at the time of strike-off to the attention of the Department of Finance for appropriate action.

In the light of the potential consequences for directors arising from the abandonment of insolvent companies, prudence requires that directors should seriously consider placing their company into liquidation or arranging for voluntary strike-off.

³⁹ Section 160(2)(h) of the Companies Act 1990 (as amended by Section 42(b)(ii) of the 2001 Act).

⁴⁰ Section 160(3A) of the Companies Act 1990 (as amended by Section 42(c) of the 2001 Act).

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

Introduction

In 2010, the Office took both civil and criminal enforcement action through the Courts in relation to a number of instances of suspected serious defaults of law and duty with respect to the Companies Acts. A significant event in this area was the Supreme Court Judgment allowing an appeal by the ODCE against a decision of the High Court in 2007 not to disqualify an auditor and director. Further information on this case is given in

Illustration 2.2.1 below.

ODCE Enforcement Proceedings

In 2010, the ODCE secured eight criminal convictions (with a further two charges taken into consideration) and one disqualification for breaches of company law and duty. This table summarises the position and provides the equivalent detail for 2009.

Outcome of Successful Legal Enforcement Proceedings	2009	2010
Charges on which convictions were secured	6	8
Charges taken into account on conviction	12	2
Disqualifications	10	1
Other Decisions	1	-
Total	29	11

In 2010, the Office participated in ten separate civil and criminal enforcement proceedings before the Courts, of which four were in the Supreme Court and three each in the High Court and the District Court.

The Office also made application for a further eight orders and other reliefs of which three were in the High Court and five at District Court level or its equivalent abroad.

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 was again substantially successful in these proceedings as in previous years.

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 2010.

The reduced throughput of enforcement cases is substantially due to the continuing redeployment of ODCE staffing resources to the investigation of certain events at Anglo Irish Bank and the examination of the large increase in liquidator reports which must be dealt with within a statutory timetable. In particular, the availability of Garda resources for ODCE criminal investigations was severely reduced by the Anglo work.

Civil Enforcement Actions

Some 13 ODCE disqualification actions⁴¹ were ongoing before the Superior Courts at the start of 2010. Four of these were concluded in 2010, and a further six proceedings were initiated. Five of these were against the directors of dissolved insolvent companies, while one was an application for a High Court order⁴² compelling a liquidator to submit an overdue report on an insolvent company in liquidation.

Three of the eight appeals before the Supreme Court were completed or substantially heard in 2010. One appeal against the disqualification of two directors was struck out resulting in the confirmation of those disqualifications made in the High Court. The second case involved an important judgment on the purpose and application of the disqualification regime and is discussed in more detail in **Illustration 2.2.1** below. The third involved an appeal by a former senior National Irish Bank executive director against his disqualification, the hearing of which will conclude in 2011. A further four appeals of former senior National Irish Bank managers were awaiting hearing at the end of the year as was a disqualification case involving the directors of a construction business.

⁴¹ All of these disqualification actions were under Section 160(2) of the Companies Act 1990.

⁴² Under Section 371 (as amended) of the Companies Act 1963.

Illustration 2.2.1: The Director of Corporate Enforcement v. Patrick McCann

On 30 November 2010, the Supreme Court unanimously found in favour of the ODCE in allowing its appeal against a High Court decision in 2007 to refuse an application to disqualify an accountant and auditor, Mr Patrick McCann. Mr McCann had acted as a director and auditor to Kentford Securities Ltd, a company through which Ansbacher-related monies were channelled in the late 1980s and early 1990s. He had also failed to co-operate with the enquiries made on behalf of the then Minister by the authorised officer, Mr Gerry Ryan, from 1999 to 2002.

A primary basis for making a disqualification order is a finding of fraud, breach of duty or unfitness. The High Court in 2007 found that all of the matters which the ODCE complained of had been proven but exercised its discretion not to disqualify Mr McCann. In doing so, the Court took account of a number of mitigating factors, including the length of time that had elapsed, the culture at the time, the fact that Mr McCann had played a relatively minor role in the events and the damage to his professional livelihood which would follow from the making of a disqualification order. In addition, the Court held that in considering whether or not to disqualify a person, the primary test was forward-looking, thereby requiring an assessment as to whether the person would pose a danger to the public in the future.

This finding was of great concern to the ODCE as it appeared to disregard past conduct (irrespective of how serious the misconduct was). If this decision stood, it would make it extremely difficult to get disqualification orders in the future. This would have diminished the prospect for appropriate and proportionate company law enforcement in the State. It would also have led to a divergence in legal practice with other comparable jurisdictions (such as Northern Ireland or England).

Fortunately, the Supreme Court determined that the cumulative effect of Mr McCann's actions was grave and that his disqualification was warranted. It acknowledged that if the approach of the High Court were to prevail, the effect of the existing disqualification regime would be significantly reduced. The Supreme Court said that Section 160 of the Companies Act 1990 contained a number of different elements, and past conduct is the best, if not the only, guide to the test for disqualification. Section 160 also manifestly contains a deterrent element, and another purpose is the improvement of corporate governance.

After hearing submissions in February 2011, the Supreme Court determined that a two year term of disqualification was warranted. It also awarded the ODCE its costs for the appeal.

This Judgment is very welcome because it puts the test for disqualification 'back on track' in circumstances where the original High Court decision was rather novel. The decision will accordingly serve as an important precedent case.

Three disqualification cases were concluded during the year at High Court level and involved the directors of dissolved insolvent companies which had been struck off the Register of Companies for failing to file outstanding returns. One set of proceedings was withdrawn after the directors restored the dissolved company to the Register of Companies and placed the company in liquidation. This was a very satisfactory result from the ODCE's perspective. A second case resulted in the disqualification of a director of three struck-off companies for six years. Further details on this case are given in **Illustration 2.2.2** below. In the third case, the Court exercised its discretion not to disqualify a director. The ODCE had earlier withdrawn its proceedings against a second director after assessing information which had been received following the commencement of the proceedings.

Two other disqualification cases involving former National Irish Bank managers were also still ongoing at High Court level at end-2010.

Illustration 2.2.2: Disqualification of Mr Shaun Blackburn, a director of RFS Group Ltd, Rybur Construction Ltd and Shankill Retail Trading Ltd prior to their dissolution by the Registrar of Companies

On 17 May 2010, the High Court disqualified Mr Shaun Blackburn for six years on foot of an ODCE application under Section 160(2)(h) of the Companies Act 1990. The Court also awarded costs to the ODCE. The Court took into account the aggravating circumstances of the case and the liabilities of almost €100,000. Those circumstances included the making of false representations to the ODCE in an effort to dissuade it from initiating the disqualification proceedings.

Mr Blackburn was a director of Shankill Retail Trading Ltd, RFS Group Ltd and Rybur Construction Ltd when they were struck off the Register of Companies for failing to file annual returns while insolvent. In response to an ODCE statutory warning letter inviting him to make representations on its intended disqualification proceedings, Mr Blackburn indicated that he had only acted as a formation agent for the companies. He also submitted accounts for two of the companies which contained the signatures of his co-directors in circumstances where they had not authorised the accounts. Moreover, the accounts for one of the companies suggested that it had not traded by virtue of the absence of any assets or liabilities on its balance sheet at the time of strike-off, a position which Mr Blackburn maintained during the early part of the Court proceedings. However, he eventually accepted that he had in fact an involvement in the running of this company, that it had traded and that it had liabilities at the time of strike-off.

Criminal Enforcement Actions

Four prosecutions with respect to breaches of company law were pursued in 2010. Two related to companies failing to keep proper books of account⁴³, and a conviction was obtained in one of these during the year. The second case was awaiting hearing at year-end.

The other two prosecutions dealt with unqualified persons acting as auditors⁴⁴. **Illustration 2.2.3** discusses the circumstances of one of these cases which resulted in the individual's conviction on seven charges. The remaining case also involved a series of other charges including the provision of false information⁴⁵. Although the case had been heard at year-end, a separate sentencing hearing was scheduled for 2011.

Illustration 2.2.3: The Director of Corporate Enforcement v. Brian Byrne

In February 2008, the Institute of Certified Public Accountants in Ireland made a report to the ODCE which notified a finding of the Institute's Disciplinary Tribunal to the effect that one of its former members, Mr Brian Byrne, had acted as an auditor without being authorised to do so. The report disclosing this breach of Section 187 of the Companies Act 1990 identified the two companies concerned.

The ODCE's investigations of this alleged breach included the following:

- the taking of a detailed witness statement from the Secretary of the Institute. This confirmed that from July 2005 to January 2008, Mr Byrne was not accredited to act as a registered auditor;
- the detection, in cooperation with the Companies Registration Office (CRO), of Mr Byrne's provision of audit services to a number of other companies;
- the taking of witness statements from the directors of a number of Mr Byrne's client companies which had been 'audited' by him;
- the taking of statements from officials of the Irish Auditing and Accounting Supervisory Authority and the then Department of Enterprise Trade and Employment;
- the interview of Mr Byrne on a number of occasions and
- the acquisition of necessary documentary and certificate proofs from the CRO and the six recognised accountancy bodies.

The ODCE summary proceedings alleged that Mr Brian Byrne, carrying on business under the name and style of Byrne and Associates, Certified Public Accountants, had acted as the auditor of seven companies at a time when he was not qualified under Section 187 to do so.

The case was heard in Wicklow District Court on 22 June 2010 when, on a plea of guilty, the Court convicted Mr Byrne on seven of the charges and imposed fines totalling €3,500. The remaining two charges were taken into consideration by the Court.

Liquidator Restriction and Disqualification Applications

Mention has been made earlier in this Report of the ODCE's role in relieving liquidators from their statutory duty to take restriction proceedings against the directors of insolvent companies in liquidation. Where the Office issues 'no relief' or 'partial relief' decisions, the liquidators are legally obliged to initiate restriction proceedings in the High Court.

During 2010, the High Court reached decisions on 98 restriction applications (68 in 2009). One or more directors were restricted or disqualified in 97 cases (62 in 2009) representing 99% of the total (91% in 2009). No restriction orders were made in one case (six in 2009)⁴⁶. These outcomes suggest that the ODCE has continued to successfully identify the cases meriting consideration by the High Court.

In terms of individual directors, 156 directors were restricted (108 in 2009); eight directors were disqualified (12 in 2009), and no orders were made against six directors (11 in 2009). This means that the Court made orders against 96% of the 170 directors (92% in 2009) that were the subject of restriction or disqualification proceedings during 2010.

In relation to the restriction proceedings that concluded before the High Court in 2010, **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.

2010 saw the Supreme Court issue a very important judgement relating to the operation of the restriction regime. The case involved an appeal against a restriction order made by the High Court in 2005 against directors of the Mitek group of companies. **Illustration 2.2.4** outlines this Supreme Court Judgment which provided a comprehensive analysis of the law relating to Section 150 of the Companies Act 1990.⁴⁷

43 Section 202(10) of the Companies Act 1990.

44 Section 187(9) of the Companies Act 1990.

45 Section 242(1) of the Companies Act 1990.

46 *Yellowstone C&D Ltd* (Company Number 396076).

47 A copy of the Judgment in this case is available at www.courts.ie.

Illustration 2.2.4: Re Mitek Holdings Ltd, Mitek Pharmaceuticals Ltd, Mitek Ltd (formerly known as Antigen Holdings Ltd, Antigen Pharmaceuticals Ltd and Antigen Ltd respectively) and Castleholding Investment Company Ltd

On foot of a Judgment of Ms Justice Finlay Geoghegan on 21 February 2005, the High Court restricted Dr Jack Kachkar and Mr Robert McClennan Carrigan for five years on 10 May 2005. The respondents subsequently appealed their restriction to the Supreme Court.

In its Judgment of 13 May 2010, the Supreme Court comprehensively analysed the law relating to restriction and specifically considered the company director's role especially where there was a group of companies or where a company was in 'strained financial circumstances'.

In summary, the Court concluded that while each case of directorial responsibility must be considered on its own facts, executive and non-executive directors have two basic sets of duties by which responsible conduct will be judged.

Firstly, their compliance with the statutory duties of the Companies Acts (including the proper maintenance of the company's books and records) will be considered.

Secondly, compliance with their common law duties will be assessed. This will particularly include the extent to which the directors have properly managed the commercial business of the company such that they have ensured that they are properly informed about its state of affairs and that they make appropriate decisions based upon this information. It will also include the extent to which the directors have recognised the rights of creditors and ensured the proper distribution of company assets, especially in circumstances of insolvency.

The Court accepted that there was usually a real difference between the duties of executive and non-executive directors. The latter will usually be dependent on the former for information about the company's affairs and finances, a fact that imposes correspondingly larger duties on the former. Non-executive directors must in particular inform themselves about company business and their duties as directors.

While there are instances of non-executive directors having little role or influence, this did not apply in the present case given the inter-relationships of companies and directors in the group as a whole. Accordingly, the Court affirmed the High Court's conclusion that the directors had not acted responsibly in creating a debenture as security and in allowing certain transfers to be made while the companies were insolvent.

Appendix 2.2.4 identifies the eight directors of insolvent companies who were disqualified by liquidator proceedings during 2010 and the related periods of disqualification. The accompanying **Illustration 2.2.5** provides brief outlines of the circumstances in these cases. The ODCE welcomes the continuing willingness of a number of liquidators to bring disqualification proceedings in respect of serious detected misconduct, and he is confident that further similar cases will be taken in 2011.

Illustration 2.2.5: Insolvent Companies – Liquidator Disqualifications in 2010

Ms Halina Ubermanowicz, a director of Advanced Cosmetic Surgery Ltd, was disqualified for eight years. Her co-director, Ms Deborah Ashdown, was restricted for five years. The Court heard evidence of payments of over €2 million from company funds to one of the directors and a former partner of the director and breaches by the directors of their fiduciary duties to the company's creditors. The directors also permitted the company to trade for several years without medical malpractice insurance or adequate provision against malpractice claims in breach of their duties to patients.

A disqualification of seven years was imposed on Mr David Tevlin, a former Finance Director of International Screen Ltd. The Court heard evidence that Mr Tevlin had circulated falsified financial information to his three fellow directors which concealed the company's true trading performance and falsified numerous VAT and PAYE/PRSI tax returns over a period of four years. He also falsified the audited accounts for two accounting years, forged the signatures of the company's auditor and directors on the versions filed with the Registrar of Companies and forged the directors' signatures on the related annual returns accompanying those accounts.

Mr Paul De Brit and Ms Bronwyn O'Dea, directors of Wix Wood Ltd, were each disqualified for six years. The Court heard evidence of irregular accounting practices at the company. While the directors promptly recognised sales revenue, they deferred recognising the matching costs to later accounting periods thereby distorting the company's financial performance. When turnover later fell, the unaccrued costs could not be met from the falling sales revenue. In all, the company was estimated to owe close to €500,000 to trade creditors at the time of liquidation with one creditor being owed about €118,000. The directors had also maintained that the company owed them €125,000 when in fact they owed the company €15,000. The directors had also asserted that its tax liabilities were a mere €1,000 at liquidation when they were closer to €125,000.

Messrs Richard and William McCafferty, directors of McCafferty Developments Ltd, were each disqualified for six years. The Court heard evidence that the directors used company monies to fund their personal lifestyle and transferred its funds into personal bank accounts. For example, a car costing €77,000 was purchased with company funds and registered in the name of the principal director. The directors ignored their tax obligations and continued to trade when they should have known that the company was insolvent. The liquidator was unable to quantify the taxation liability as tax returns had not been made, nor had audited or management accounts been kept. The directors also failed to cooperate with the liquidation and failed to prepare a statement of affairs even when ordered to do so by the High Court.

A six year disqualification was also imposed on Mr Mark Ralph, a director of Del Val Taverns Ltd. The Court heard evidence that the company had failed to maintain proper books and records, file tax returns or pay its liabilities. There were in excess of 360 payments totalling over €760,000 made from the company's bank account for which no details were made available to the liquidator.

Mr Ciaran Brady, a director of Owen Crinigan Motors Ltd, was disqualified for five years. The Court heard evidence of significant personal expenditure by Mr Brady on the company's credit card, a reduction in his director's loan account amounting to a preferential payment, a transfer of a car owned by Mr Brady to the company at a value that resulted in a loss of €57,000 to the company and the improper recording of certain other transactions in its records.

Disqualifications and Restrictions Generally

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.

At end-2010, 244 individuals stood disqualified on foot of High Court orders arising from company law breaches including six individuals who have been disqualified arising from their conviction for failure to notify their disqualification in another jurisdiction⁴⁸ and five who were disqualified on the basis of their convictions for having acted as a director while restricted⁴⁹. A further 3,200 persons were listed on the Register of Disqualified Persons have been deemed to be disqualified by virtue of their having received a qualifying criminal conviction⁵⁰. Such convictions would include, for example, convictions for fraud.

Overall, there was an increase in the number of restricted persons from 538 to 589. The following table indicates the number of restricted persons at the end of each year since 2006.

Number of Restricted Directors at end-2006 to end-2010 inclusive				
End-2006	End-2007	End-2008	End-2009	End-2010
685	791	624	538	589

Conclusion

As indicated earlier, the civil and criminal enforcement activity of the Office was necessarily restricted in 2010 as a result of the continuing redeployment of staffing resources to the investigation of certain events at Anglo Irish Bank and to the examination of the large increase in liquidator reports 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 pressures, the Office adopted a number of measures during 2010 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 delays by liquidators in reporting to the Office.

The benefit of these decisions will become apparent in 2011 and will help to turn around the recent decline in enforcement activity. However, enforcement activity will necessarily remain subdued for the duration of the Anglo investigation.

48 Section 160(1A) of the Companies Act 1990.

49 Section 161(2) of the Companies Act 1990.

50 Section 160(1) of the Companies Act 1990.

Goal 3: Providing Quality Services to Internal and External Customers

Introduction

In 2010, the ODCE continued to make the provision of quality services to the general public and to staff a priority. The main developments with respect to the execution of the Office functions and the provision of Office services are outlined below.

Sub-Goal 3.1: Securing and Prudently Managing our Resources

Staffing

At the start of 2010, the Office had 49.7 staff (full time equivalents) in place compared with the sanctioned level of 51. Following a request from the Director to the Garda Commissioner for extra Gardaí to support the Anglo Irish Bank investigation, two additional Gardaí were temporarily seconded to the Office in mid-2010.

When account is taken of the retirement of one staff member during the year, actual staffing at 31 December 2010 was 50.8 (full-time job equivalents). **Appendix 3.1.1** provides a breakdown of the Office's staff at year-end.

Financial Resources

The Office's administrative costs in 2010 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 are provided in the following table together with the provision for ODCE legal costs in Subhead X02.

Subhead A09, Vote 34	2010 Allocation (€000s)	2010 Expenditure (€000s)
Pay	2,579	2,625
Non-Pay	3,507	1,049
Total Subhead A09	6,086	3,674
Subhead X02, Vote 34	34	-
Total Subheads A09/X02	6,120	3,674

The outturn of almost €3.7 million represented roughly a 37% decrease on the outturn of just over €5.8 million in 2009. However, the high level of Office expenditure in 2009 was primarily due to two large amounts of legal

costs⁵¹, and no similarly large expenditure recurred in 2010. A detailed breakdown of Office expenditure during the year relative to the two preceding years is at **Appendix 3.1.2**.

The Office again successfully curtailed spending in many areas in response to the Government's request that non-essential expenditure like advertising be limited as much as possible. Faced with funding pressures, the Office has sought to find new and innovative ways to discharge its compliance and enforcement role in a cost effective manner. An example is the Office subscription to Facebook and Twitter during 2010.

The Office also carefully considers in advance if the cost of attending any forthcoming event represents good value for money. Moreover, Office staff assess each event following its conclusion to determine if attendance is to be recommended at any comparable event next year.

Overall, the Director is satisfied that having regard to its significant programme of work, value for money was again obtained for Office expenditures in 2010.

Energy Consumption

At the initiative of the Department of Communications, Energy and Natural Resources, all public bodies must now start providing particulars of energy consumption in their annual reports. The ODCE has had a Green Agenda in place since 2008 to reduce energy, materials and water consumption, and staff continued in 2010 to respond constructively to this programme. For example, every effort is made to switch off all lights and office machinery (apart from fax machines) every evening, and the schedule for air-conditioning and heating has been altered to reduce unnecessary heating/cooling of office space.

Staff are encouraged to participate in the tax-efficient scheme for purchase of annual public transport tickets, and the Office has a policy of using public transport for official business where feasible. Some Office staff also avail of the Dublin Bikes Scheme in going to and from meetings.

In addition, the Office publishes some of its materials in electronic form only to save on paper and printing materials and the associated costs. An example is this Annual Report.

⁵¹ These related to the investigation costs incurred by the High Court Inspector appointed at the ODCE's request to inquire into certain matters at DCC plc, Lotus Green Ltd. and S&L Investments Ltd. and to costs awarded against the Office by the Supreme Court in a disqualification action arising from the National Irish Bank Inspectors' Report.

In 2010, the ODCE registered its MPRN and GPRN numbers for electricity and gas usage respectively with the Sustainable Energy Authority of Ireland (SEAI). At present, the available metering for energy use only records usage for the entire building in which the ODCE and a number of other State tenants are accommodated. During 2010, the ODCE sought in consultation with the Office of Public Works (OPW) who lease the premises to install energy use meters for the individual tenants, but this was not achieved at year-end. Until this is done, specific information on ODCE energy usage is not available. Consultations with the OPW and SEAI are ongoing in the matter.

Organisational Development

In 2010, the ODCE maintained its Legal and Accounting Panels which contain the names of persons or firms wishing to be considered for appropriate expert assignments. During the year, the Office published a new call for Expressions of Interest on its website, and a number of additional persons were added to the Panels during the year⁵². These Panels remain open at all times to applicants who wish to provide legal and accounting services to the Office.

Risk Management Action Plan

In 2010, the ODCE reviewed and updated the Office's risk management plan in consultation with the Department of Enterprise Trade and Innovation.

Sub-Goal 3.2: Developing our Staff

Training and Performance Management

Performance Management applies across all Government Departments and Offices and is implemented each year by the ODCE. It seeks to ensure that the roles of individual staff are clear and that they are aligned with overall Office objectives. It also directly links Office training programmes and expenditure to the role of each staff member.

ODCE staff received 95 days of training in 2010 (120 days in 2009). 46 training days were provided from internal ODCE resources to 12 staff during 2010. In addition, the Department of Enterprise Trade and Innovation provided a further 49 days of training to 26 ODCE staff.

In 2010, the ODCE examined ways to reduce training costs without compromising quality. It was conscious that the Office's legal and accounting staff have minimum Continuous Professional Development (CPD) requirements

prescribed by their respective professional bodies which must be adhered to in order to maintain their professional expertise. The Office also recognised that there were equivalent legal staff in the Department, CRO, IAASA and the Competition Authority, all of whom had similar CPD requirements.

On receipt of an ODCE proposal which identified suitable CPD training for all of these legal staff, the Department's Training Unit arranged for the delivery of a dedicated course in June 2010 which was attended by professionals from the five bodies. This initiative served to reduce overall State expenditure on the CPD training requirements of these staff in 2010.

Team-Based Working

Multi-disciplinary teams within the ODCE continued 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**.

Under Section 13(1) of the Company Law Enforcement Act 2001, the Director made five instruments of delegation in 2010 formally delegating the exercise of one or more of his legal powers to designated Office staff. Two of the instruments involved amendments to existing instruments while three 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 2010 to commit considerable resources to the development and use of technology in its provision of services to its customers. These services included:

- information on company law and related matters via the Office's website, publications, etc;
- talks, seminars and other compliance initiatives provided by Office staff, the details of which were outlined earlier in this Report;
- the facility of 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;

⁵² See http://www.odce.ie/en/media_general_publications_article.aspx?article=f15eaa1b-4201-4c43-baf4-44f170a1795e.

- general assistance offered to Office clients via telephone queries, letters, email, etc. For instance, some 464 requests to the Office's info@odce.ie account were promptly answered during the year (586 in 2009). As reported earlier in this Report, 226 of these requests were of a compliance character.

In an effort to harness the potential of new media, the ODCE subscribed in 2010 to both a Facebook page which can be found at 'Office of the Director of Corporate Enforcement' and a Twitter account which is at 'ODCE'. To date, a comparably small number of persons have used these media (e.g., 33 followers in the case of Twitter), although usage is expected to grow as these communication tools are developed. The value of these media will be kept under review.

The intention with these is to highlight in particular the Office's compliance and enforcement activities by publicising conferences, talks, exhibitions, and other events

at which ODCE will be in attendance and by providing information on scheduled and completed Court cases.

Website

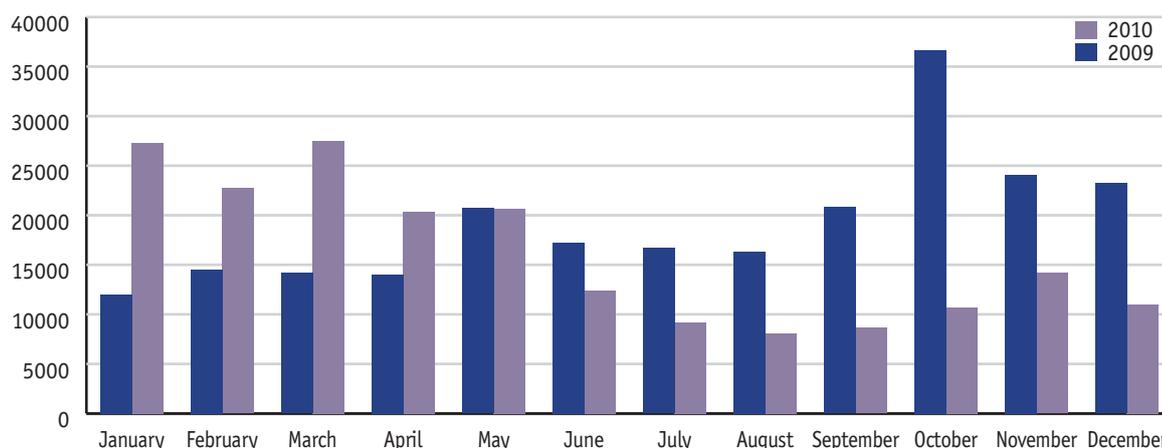
During 2010, the ODCE website at www.odce.ie attracted 192,712 visits which represented a 16% decline on the equivalent figure of 230,469 for 2009. The figure for 2009 was the highest recorded for the site. The number of unique visitors for 2010 was 73,972 of whom 63,238 visited the site more than once.

Appendix 3.3.1 lists the 20 pages most frequently viewed by visitors to the website in 2010. In all, some 587,862 page-views were recorded during the year. Less than 2% of website traffic was to the Irish language pages of the website which are accessible at www.osfc.ie.

The search facility on the site was used 17,855 times by visitors to the website.



ODCE Website Visits 2009/2010



New material posted to the website in 2010 included the following:

- the four new Office publications outlined at **Appendix 1.1.1** to this Report;
- new statutory instruments relevant to Irish company law;
- copies of certain presentations made by Office staff to business, professional and related interests;
- press statements, articles, announcements, 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.

At end-2010, some 926 customers were registered to be notified of new information being published on the website (891 at end-2009).

Freedom of Information (FOI) Acts

All records of the Office (other than records concerning its general administration) are exempt from the FOI Acts. During 2010, the ODCE received four requests for Office records pertaining to its work. Of the two requests which were properly made under the FOI Acts, one request was granted in full. The second request was withdrawn after the Office informed the requester that only its administrative records fell within the scope of the Acts. The remaining two requests were not accompanied by the prescribed fee and could not therefore be dealt with under the FOI Acts.

At the request of the Department of Enterprise Trade and Innovation, the Office also provided some statistical information on the Office's administration to the Department which enabled it to respond to four requests under the FOI Acts.

Data Protection Acts

In 2010, the ODCE maintained its registration as a data controller with the Office of the Data Protection Commissioner. The Data Protection Acts 1988 to 2003 and associated statutory instruments 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.

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 business, Government policy is to pay suppliers within 15 days of receipt of an invoice.

The Office policy of settling all invoices in a timely manner was adhered to within the required 15 days. Accordingly, no ODCE payments in 2010 attracted interest penalties under the Prompt Payment of Accounts Act.

Compliance with Agreed Customer Service Standards

The nature of the ODCE's work is such that complainants and others with whom it has cause to engage may not welcome that engagement or be satisfied with the Office's overall decision-making. Nevertheless, 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.

The Office only received a small number of customer service complaints in 2010 of which two merit mention. In one case, an individual who had been disqualified from acting as a director and whose period of disqualification had recently expired complained that he was still named in an article on the ODCE website which dealt with his case. The Office promptly removed the complainant's name from the relevant website article. It also decided to regularly review its website to anonymise Office narrative on the outcome of old High Court cases where the relevant restriction and disqualification periods for the individuals in question have expired. However, the Office is not changing references to the outcome of these cases in old ODCE Annual Reports on the basis that these were formal documents prepared for the Minister and laid before the Oireachtas as required by law.

In the second instance, the Office received an email from a member of the public whose phone call had not been answered. On investigation, the Office found that there was a technical problem with its switchboard. The problem was rectified, and the customer was informed of the outcome. The welcome feedback on its customer service performance in this case was especially beneficial as it notified the Office of a technical problem of which it was not aware.

Official Languages Act 2003

In accordance with commitments by the ODCE made in its Scheme under the Official Languages Act, the amount of information in Irish on the ODCE's website which is accessible at www.osfc.ie was increased during 2010 in order to improve services to those customers who wish to conduct their business through the Irish language.

Overall, the demand for ODCE services through the Irish language remains low notwithstanding compliance by the ODCE with its commitments under the Act.

Conclusion

Taking account of the difficult challenges which the Office and the State as a whole faced in 2010, the Director is satisfied that the Office has again delivered very good value for the State's investment in company law compliance and enforcement.

Outlook

2011 will be every bit as demanding as 2010.

The Anglo investigations will remain a major focus for the rest of the coming year.

The number of liquidator reports on the performance of insolvent companies is expected to be as large, if not larger, than 2010. Indeed, the size and complexity of some of the companies in question seem to be increasing. This will pose additional challenges for liquidators and ODCE staff in discharging their legal duties.

It is also intended to maintain, at a minimum, the Office's level of compliance, detection and general enforcement work and to continue to manage prudently the Office's existing financial and staffing resources.

At a time of great economic challenge for the State, the ODCE is hopeful that some planned modernisation of the law will be progressed to restore the nation's confidence and capacity to meet the challenges ahead. Three particular measures are worthy of mention.

Firstly, the planned publication in 2011 for consultation purposes of draft 'Part A' of the Companies Consolidation Bill will be welcome. To see the intended legal reforms affecting private companies limited by shares will help companies, professionals and regulators like the ODCE to begin assessing the value and practicality of the modernisation measures in the draft Bill.

Secondly, the Minister for Justice Equality and Defence has promised legislative reform in the area of white collar crime. The Office looks forward to examining his proposals as there is scope for reducing the investigative and evidential burdens in these types of cases without compromising individual fundamental rights.

Thirdly, the need for reform of the law relating to personal bankruptcy, as recently advocated by the Law Reform Commission, has never been more evident. In their role as company directors, entrepreneurs are often free to develop a new business once their conduct in the failed company has been assessed for honesty and responsibility under the Companies Acts. However if, as a result of personal guarantees given to help found that failed company, the entrepreneur is made bankrupt, he or she may be precluded from starting a new business regardless of their culpability for failing to repay these personal debts. In summary, the introduction of an 'honesty and responsibility' test in personal bankruptcy law would help to support fresh entrepreneurial endeavour which itself will be a key condition for national economic renewal.

As it has previously done in advocating whistle-blowing and directors' compliance statement provisions in national legislation, the ODCE will continue to play its part in encouraging high standards of corporate governance in the State. Recovering our national reputation in all areas of economic management is now more important than ever.

Appendices



Oifig an Stiúirhóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

Appendix 1.1.1

List of Publications issued by the ODCE in 2010

Date	Name of Publication
March 2010	Information Notice I/2010/1 – Section 56 Reports
May 2010	ODCE Annual Report for 2009
June 2010	Information Notice I/2010/2 – Printing of Directors' Names on Company Letterhead
December 2010	Information Notice I/2010/3 – Companies (Miscellaneous Provisions) Act 2009

Appendix 1.1.2

ODCE Presentations in 2010

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
14/01/10	Genesis Programme	Presentation	Corporate Health Check	Cork	15	Kevin Prendergast
26/01/10	ODCE Internal	Presentation	Company Law Changes	ODCE Office Dublin 1	13	Kevin Prendergast
27/01/10	Northern Trust	Presentation	Corporate Health Check	Townsend Street, Dublin 2	30	Kevin Prendergast
04/02/10	ODCE Internal	Presentation	Company Law Changes	ODCE Office Dublin 1	12	Kevin Prendergast
15/02/10	SEEP Programme	Presentation	Corporate Governance	WIT, Carrigmore Campus	15	Kevin Prendergast
09/03/10	Nova UCD	Presentation	Corporate Health Check	UCD, Belfield	20	Kevin Prendergast
18/03/10	Colaiste Dhulaigh	Presentation	Overview of ODCE	ODCE Office Dublin 1	23	Kevin Prendergast
23/03/10	Monaghan Integrated Development	Presentation	Corporate Health Check	Castleblayney Co.Monaghan	14	Kevin Prendergast
24/03/10	Grant Thornton	Workshop	Corporate Governance	Grant Thornton, City Quay, Dublin 2	150	Kevin Prendergast
24/03/10	Jordans	Presentation	Corporate Governance and Company Law in Ireland	Clontarf Castle, Dublin 2	33	Paul Appleby
30/03/10	Institute of Directors	Presentation	Reflections on First Eight Years of the ODCE	The Westbury Hotel, Dublin 2	60	Paul Appleby
12/04/10	UCD Bachelor of Commerce Degree Course	Presentation	The ODCE – Setting the Standard	UCD, Belfield Dublin 4	160	Kevin Prendergast
12/05/10	Ennis Chamber of Commerce	Presentation	Corporate Health Check	Ennis Business College, Co. Clare	10	Kevin Prendergast

Appendix 1.1.2 (continued)

ODCE Presentations in 2010

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
13/05/10	Chartered Accountants Ireland	Presentation	Certificate in Directors' Duties	CA House, Pearse Street, Dublin 2	16	Kevin Prendergast
26/05/10	Laois Support Services	Presentation	Corporate Health Check	Portlaoise, Co. Laois	12	Kevin Prendergast
02/06/10	Carlow Institute of Technology	Presentation	Corporate Health Check	Institute of Technology, Carlow	12	Kevin Prendergast
17/06/10	Louth Leader Partnership	Presentation	Corporate Health Check	Ardee Business Park, Drogheda	22	Kevin Prendergast
03/07/10	Irish Women Lawyers Association	Conference	Company Law and White Collar Crime	Law Society of Ireland, Dublin 7	75	Kevin Prendergast
05/07/10	Dublin City Council	Presentation	Corporate Health Check	Civic Offices, Dublin	40	Kevin Prendergast
07/08/10	Fraud Investigation Course	Presentation	Role and Functions of the Director of Corporate Enforcement	GBFI, Harcourt Street	20	Adrian Brennan, Detective Garda Karl Moriarty
19/08/10	Department of Justice	Seminar	Corporate Health Check	Department Offices, Dublin 2	17	Kevin Prendergast
01/09/10	Aisling Network Association	Presentation	The ODCE and Accountants/ Auditors	Ashling Hotel, Dublin	12	Kevin Prendergast
15/09/10	Institute of Chartered Secretaries and Administrators	Presentation	Company Law – Ongoing obligations	Gresham Hotel, Dublin	120	Kevin Prendergast
16/09/10	MSc in Executive Leadership – Irish Times Training	Presentation	The ODCE – Encouraging Compliance Enforcing the Law	Irish Times, Tara Street, Dublin 2	14	Kevin Prendergast

Appendix 1.1.2 (continued)

ODCE Presentations in 2010

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
22/09/10	Chartered Accountants Ireland (Young Professionals)	Conference	Forensic Accounting	CA House, Pearse Street, Dublin 2	140	Kevin Prendergast
30/09/10	South Tipperary Skillnet	Presentation	Corporate Health Check	Clonmel Chamber	18	Kevin Prendergast
01/10/10	Institute of Technology	Presentation	The Role of the ODCE	IT, Tullaght	22	Kevin Prendergast
01/10/10	Diploma in Insolvency	Presentation	Insolvency functions of the ODCE	CA House, Pearse Street, Dublin 2	25	Adrian Brennan
06/10/10	Brothers of Charity	Presentation	Corporate Health Check	Roscommon	9	Kevin Prendergast
12/10/10	Law Society of Ireland	Presentation	The Role and Functions of the Director of Corporate Enforcement	Law Society of Ireland, Dublin	100	Adrian Brennan
12/10/10	Law Society of Ireland	Presentation	The Role and Functions of the Director of Corporate Enforcement	Law Society of Ireland, Dublin	100	Adrian Brennan
14/10/10	ACCA Munster Connaught Members Network	Presentation	Accountability and Responsibility of a Company Director	Waterford City	31	Dermot Madden
18/10/10	HPSU Skillnet	Presentation	Corporate Health Check	Ballybane Enterprise Centre, Galway	12	Kevin Prendergast
19/10/10	Chartered Institute of Management Accountants	Presentation	Corporate Governance – a Basis for Sound Enterprise	Royal College of Physicians, Kildare Street	140	Paul Appleby

Appendix 1.1.2 (continued)

ODCE Presentations in 2010

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
20/10/10	Law Society of Ireland	Presentation	The Role and Functions of the Director of Corporate Enforcement	Law Society of Ireland, Cork	60	Adrian Brennan
21/10/10	ACCA Munster Connaught members Network	Presentation	Corporate Governance – Best Practice	Galway City	51	Dermot Madden
26/10/10	HPSU Skillnet	Presentation	Corporate Health Check	Sligo IT, Sligo	2	Kevin Prendergast
27/10/10	School of Restaurant and Kitchen Management	Presentation	Corporate Health Check	Abbeyleix Manor Hotel, Abbeyleix, Laois	6	Kevin Prendergast
03/11/10	Garda Bureau of Fraud Investigation	Presentation	Role and Function of the ODCE	Garda HQ, Dublin	26	Liam Fahy, Karl Moriarty
04/11/10	Chartered Accountants Ireland	Presentation	Certificate in Directors Duties	CA House, Pearse St., Dublin	20	Kevin Prendergast
05/11/10	HPSU Skillnet	Presentation	Corporate Health Check	Laois Civic Offices, Portlaoise	8	Kevin Prendergast
09/11/10	DCU MBSA	Presentation	Role of the ODCE	DCU, Dublin	70	Kevin Prendergast
11/11/10	Cork Business Network Group	Presentation	ODCE and Accountants/ Auditors	Clarion Hotel, Cork	45	Kevin Prendergast
15/11/10	North Dublin CC	Presentation	Corporate Health Check	Ballymun Civic Centre, Dublin	25	Kevin Prendergast
16/11/10	Letterkenny IT	Presentation	Role of the ODCE	Letterkenny, Donegal	22	Kevin Prendergast
18/11/10	UCD, Quinn School	Presentation	The ODCE – Setting the Standard	UCD, Belfield, Dublin	60	Kevin Prendergast

Appendix 1.1.2 (continued)

ODCE Presentations in 2010

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
19/11/10	UCD, Carysfort	Presentation	The ODCE – Setting the Standard	UCD, Blackrock, Dublin	50	Kevin Prendergast
22/11/10	The Institute of Bankers School of Professional Finance	Presentation	The Role of the ODCE	Citibank, Dublin	130	Kevin Prendergast
22/11/10	UCD, Quinn School	Presentation	The ODCE – Setting the Standard	UCD, Belfield, Dublin	40	Kevin Prendergast
23/11/10	William Fry Solicitors	Presentation	Company Law – Where are the problems?	William Fry Offices, Wilton Place, Dublin 2	160	Kevin Prendergast
02/12/10	Chartered Accountants Ireland	Presentation	Current Issues at the ODCE	Chartered Accountants House, Pearse Street, Dublin 2	80	Paul Appleby
03/12/10	UUJ/ICSA	Presentation	The Role of the ODCE	ODCE Offices	20	Kevin Prendergast

Appendix 1.1.3

List of Exhibitions/Events attended by ODCE in 2010

Date	Event Type	Name of Event	Venue	Promoter	Stand Attendees
19-20/02/10	Exhibition	Irish Franchise Association Expo 2010	Hogan Suite, Croke Park Dublin 3.	Ulster Bank	Kevin Prendergast Eileen McManus Marian McDermott Maureen Carroll
22/04/10	Information Evening	Start Your Own Business Programme	Central Public Library, Ilac Centre, Dublin 1.	Dublin Business Library	Eileen McManus
23-24/04/10	Exhibition	The Entrepreneur Show	RDS, Dublin 4.	The Entrepreneur Show Ltd.	Kevin Prendergast Eileen McManus Maria Leavy Marian McDermot Pat Houlihan
02/06/10	Exhibition	Bank of Ireland Enterprise Evening	Bewley's Hotel, Dublin Airport.	Bank of Ireland	Eileen McManus
15/09/10	Exhibition	ICSA Annual Conference	Gresham Hotel, Dublin	ICSA	Eileen McManus
16/09/10	Exhibition	Small Firms Association Conference	Dublin Castle, Dublin 2.	SFA	Eileen McManus
21-23/09/10	Ploughing Championship	National Ploughing Championships	Athy, Co. Kildare	National Ploughing Association	Note ⁵³
22/09/10	Conference	Forensic Accounting	CA House, Pearse St, Dublin.	Young Chartered Accountants/ Young Solicitors	Kevin Prendergast
24/09/10	Exhibition	Irish Institute of Credit Management	Red Cow Hotel, Dublin	IICM	Eileen McManus
27/09/10	Exhibition	Enterprise Week	Europa Academy Swords.	Fingal CEB	Eileen McManus
08/10/10	Exhibition	Start and Grow Enterprise Expo	Heritage Hotel, Portlaoise, Co. Laois.	Laois County Enterprise Board	Eileen McManus Marie Breen

53 Aoife Raftery, Maria Leavy, Eileen McManus, Angela Nolan, Marie Breen, John Knightly, Dermot Morahan and Kevin Prendergast.

Appendix 1.1.3 (continued)

List of Exhibitions/Events attended by ODCE in 2010

Date	Event Type	Name of Event	Venue	Promoter	Stand Attendees
12/10/10	Conference	Out on Your Own	U.C.C, Cork	Sunday Business Post	Kevin Prendergast
14/10/10	Exhibition	Financing Your Business	Ilac Centre, Dublin 1.	Dublin Business Library	Eileen McManus
15-16/10/10	Conference	CPA Industry Conference	Carrigaline Court Hotel, Cork	C.P.A.	Kevin Prendergast
20/10/10	Conference	Out on Your Own	RDS, Dublin 4	Sunday Business Post	Eileen McManus Aoife Raftery
22-23/10/10	Conference	CPA Industry Conference	Crowne Plaza, Blanchardstown Dublin 15	C.P.A.	Eileen McManus
12/11/10	Conference	ISME Annual Conference	Crowne Plaza Hotel, Northwood, Santry, Dublin	ISME	Eileen McManus
18-19/11/10	Enterprise Day	National Women's Enterprise Day	The Strand Hotel, Limerick	City and County Enterprise Boards	Eileen McManus Aoife Raftery
25/11/10	Conference	CPA Finance Conference	Carrigaline Court Hotel, Cork	C.P.A.	Kevin Prendergast

Appendix 1.1.4

Press Releases issued by the ODCE in 2010

Date	Subject
19/01/10	Inspector's Report into the Affairs of DCC plc, Lotus Green Ltd and S&L Investments Ltd.
27/05/10	ODCE Annual Report for 2009
20/09/10	Annual Conference of the International Association of Insolvency Regulators in Dublin

Appendix 2.1

Breakdown of New Cases in 2010 (v. 2009) by Source

Source of New Cases	2009	2010
Liquidator Reports		
Initial Reports on Insolvent Companies	876	1,312
Reports by Liquidators of Possible Criminal Liability	1	0
Sub-Total	877	1,312
Unliquidated Insolvent Company Cases	n.a. ⁵⁴	28
Public Complaints and Other Detections		
Public Complaints	341	344
Reports from Public Authorities in the State	20	28
Reports from Public Authorities outside the State	1	2
Other Detections	43	85
Sub-Total	405	459
Auditor and Similar Reports		
Indictable Offence Reports from Auditors	235	191
Indictable Offence Reports from Professional Bodies	2	3
Sub-Total	237	194
Total of New Reports and Detections in Year	1,519	1,993

⁵⁴ No comparable figure for 2009 is available.

Appendix 2.2

Throughput of Reports and Complaints in 2010

Throughput of Cases	2009	2010	% Change
Cases on hands at 1 January	765	838	+ 9%
New Cases	1,519	1,993	+ 31%
Cases Concluded	1,446	1,824	+ 26%
Cases on hands at 31 December	838	1,007	+ 20%

Appendix 2.3

Cases Concluded in 2010 (v. 2009) by Primary Manner of Closure

Basis for Closure	2009	2010
Definitive relief decisions on liquidator reports	715	1,093
A company law default which was rectified)	184
A company law default where warnings as to future conduct were issued) 351	169
)	
Insufficient evidence of default	222	163
Not a company law matter	96	142
A company law matter which others should pursue	51	70
ODCE legal enforcement	11	3
Total	1,446	1,824

Appendix 2.4

New Reports on Liquidated Insolvent Companies in 2010 (v. 2009) – Sectoral Distribution

Liquidated Insolvent Companies by Business Sector	Liquidator Reports			
	2009		2010	
Construction	268	31%	339	26%
Wholesale and Retail	189	22%	330	25%
Manufacturing	111	13%	166	13%
Hotels, Bars and Catering	89	10%	141	11%
Real Estate and Renting	34	4%	82	6%
Marketing and Promotion	50	6%	76	6%
Community, Social and Other	32	4%	65	5%
Transport and Distribution	37	4%	40	3%
Recruitment and Security Services	17	2%	27	2%
Technology and Telecommunications	28	3%	19	1%
Agriculture, Mining and Marine	12	1%	15	1%
Financial and Leasing	9	1%	12	1%
Total	876	100%	1,312	100%

Appendix 2.5

New Reports and Complaints (other than Liquidated and Unliquidated Insolvent Companies) in 2010 (v. 2009) – Sectoral Distribution

Entities (other than Liquidated and Unliquidated Insolvent Companies) by Business Sector	Reports and Complaints			
	2009		2010	
Real Estate and Renting	232	36%	218	33%
Construction	72	11%	66	10%
Wholesale and Retail	57	9%	54	8%
Manufacturing	38	6%	38	6%
Hotels, Bars and Catering	22	3%	29	4%
Community, Social and Personal	52	8%	25	4%
Financial and Leasing	24	4%	20	3%
Transport and Distribution	34	5%	19	3%
Agriculture, Mining and Marine	3	0%	10	2%
Health and Social Work	0	0%	9	1%
Technology and Telecommunications	1	0%	0	0%
Marketing and Promotion	0	0%	0	0%
Recruitment and Security Services	0	0%	0	0%
Other Business Sectors	14	2%	12	2%
Unknown Business Sector	42	7%	44	7%
Not a Company	52	8%	109	17%
Total	643	100%	653	100%

Appendix 2.1.1

Liquidator Section 56 Reports at 31 December 2010 – Reports Progressed

Classification	Initial Reports	Further Reports	Final Reports	Total Reports
Liquidator Reports received				
Reports brought forward from 2009	405	93	1	499
Reports received in 2010	1,312	376	0	1,688
Reports due and not received in 2010	46	22	n.a. ⁵⁵	68
Compliance Rate	97%	94%	n.a.	96%
Liquidator Reports determined				
Decisions due in 2010	1,262	304	1	1,567
Decisions issued in 2010	1,240	234	1	1,475
Conclusion Rate	98%	77%	100%	94%
Decisions where full relief was granted ⁵⁶	871	102	1	974
Decisions where partial relief was granted ⁵⁷	16	14	n.a.	30
Decisions where relief at this time was granted ⁵⁸	306	86	n.a.	392
Decisions where relief was not granted ⁵⁹	47	32	n.a.	79
Liquidator Reports carried forward to 2011	480	235	0	715

⁵⁵ 'n.a.' denotes 'not applicable'.

⁵⁶ 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.

⁵⁷ Cases of Partial Relief are those in which relief was granted in respect of some, but not all, of the company's directors.

⁵⁸ 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.

⁵⁹ 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 2010 – Character of Primary Default

Type of Indicated Primary Default	2009	2010
Directors' Loan Infringements	185	146
Failure to Keep Proper Books of Account	33	36
False Statements to Auditors	4	6
Non-Qualification for Appointment as Auditor	4	6
Falsification of Documents	3	3
Non-holding of Extraordinary General Meetings	2	2
Other	6	11
Total	237	210

Appendix 2.1.3

Public Complaints and Other Detections in 2010 – Character of Primary Default

Types of Indicated Issues	2009	2010
Auditing Deficiency	53	59
Directors' Conduct – Miscellaneous	30	44
Annual/Extraordinary General Meetings	45	35
Unpaid Debt	19	32
Reckless/Fraudulent/Insolvent Trading	30	30
General Shareholder Rights Issue	31	25
Forgery/False Information	26	23
Trading while struck off the Companies Register	36	18
Other	135	193
Total	405	459

Appendix 2.2.1

Overview of ODCE-Related Proceedings in 2010 (v. 2009)

Proceedings by Case Type	2009		2010	
Investigative				
■ Successful	11		8	
■ Unsuccessful	-		-	
■ Ongoing	-		-	
Sub-Total		11		8
Civil Enforcement				
■ Successful	6		2	
■ Unsuccessful	1		1	
■ Withdrawn	-		1	
■ Ongoing	13		15	
Sub-Total		20		19
Criminal Enforcement				
■ Successful	4		2	
■ Unsuccessful	-		-	
■ Withdrawn	-		-	
■ Ongoing	-		2	
Sub-Total		4		4
Judicial Review and Others				
■ Successful	4		-	
■ Unsuccessful	-		-	
■ Ongoing	-		-	
Sub-Total		4		-
All Proceedings				
■ Successful	25		12	
■ Unsuccessful	1		1	
■ Withdrawn	-		1	
■ Ongoing	13		17	
Total		39		31

Appendix 2.2.2

Details of ODCE Legal Proceedings heard in 2010 or earlier and ongoing in 2010

Type	Subject Matter	Section/Act involved ⁶⁰	Case Nos.	Case Status/Result
Superior Courts				
Application by High Court Inspector	Investigation of DCC plc, Lotus Green Ltd and S&L Investments Ltd	S. 11(3), 1990	1	Orders made for the distribution and publication of the Inspector's Report
Applications by ODCE	Investigation of Anglo Irish Bank Corporation Ltd	S. 20(2G)(a), 1990	2	Extra time granted for the examination of seized documents
Appeal by ODCE	Disqualification for alleged breach of duty and unfitness re Kentford Securities Ltd	S. 160(2)(b) and (d), 1990	1	Ongoing in respect of the disqualification term only at year end
Appeal by Respondents and ODCE Cross-Appeal	Disqualification for alleged fraud, breach of duty and unfitness re Bovale Developments	S. 160(2)(a), (b) and (d), 1990	1	Ongoing. ODCE application for priority hearing of appeals granted
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	3	Ongoing
Applications 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 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	Appeals by two respondents struck out
Application by ODCE	Disqualification of a director arising from filing defaults resulting in a company being struck off the Companies Register while insolvent	S. 160(2)(h), 1990	1	Refused for one director. The case against a second was withdrawn after assessing information received in response to the proceedings

⁶⁰ The Acts referred to are the Bankers' Books Evidence Act 1879, the Companies Acts of 1963 and 1990 and the Criminal Justice (Mutual Assistance) Act 1998 in their amended form.

Appendix 2.2.2 (continued)

Details of ODCE Legal Proceedings heard in 2010 or earlier and ongoing in 2010

Type	Subject Matter	Section/Act involved	Case Nos.	Case Status/Result
Superior Courts (continued)				
Application by ODCE	Disqualification of a director, Mr Shaun Blackburn, arising from filing defaults resulting in RFS Group Ltd, Rybur Construction Ltd and Shankill Retail Trading Ltd being struck off the Companies Register while insolvent	S. 160(2)(h), 1990	1	Disqualification term 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 a director arising from filing defaults resulting in a company being struck off the Companies Register while insolvent	S. 160(2)(h), 1990	1	Withdrawn. In response to the ODCE proceedings, the company was reinstated to the Register and had a liquidator appointed
District Court or equivalent abroad				
Applications by ODCE	Production of banking documentation relevant to the Anglo investigation	S. 7A, 1879	2	Granted
Applications by ODCE	Search Warrants relevant to the Anglo investigation	S. 20, 1990	2	Granted
Prosecution	Acting as an auditor while unqualified – Mr Brian Byrne	S. 187(9), 1990	1	Convictions (7) and two charges taken into account. €3,500 in fines imposed
Prosecution	Acting as an auditor while unqualified and providing false information	Ss. 187(9) and 242(1), 1990	1	Ongoing in respect of sentencing at year end
Prosecution	Failure to keep proper books of account – Pop Construction Ltd	S. 202(10), 1990	1	Conviction. €300 in fines and €200 in expenses imposed
Request initiated by the ODCE	Mutual Assistance in the acquisition abroad of evidence relevant to the Anglo investigation	S. 62, 1998	1	Granted

Appendix 2.2.3

Cases where Restriction Declarations were made against Directors by the High Court in 2010 pursuant to Section 56

Company Number	Company Name	Restricted Directors		Five Year Restriction Starting	Court Outcome [See the Explanatory Notes at the end of this Table]
422235	A & P Transport Limited	Reddy	Frances	29/11/2010	Full Restriction
		Reddy	Peter	29/11/2010	Full Restriction
72429	A.P. Tobin Construction Limited	Murphy	Michael	26/07/2010	Partial Restriction
		Tobin	Andrew	26/07/2010	Partial Restriction
275689	Advanced Cosmetic Surgery Limited	Ashdown	Deborah	11/10/2010	Full Restriction
302690	AMS Construction Limited	Miller	Adrian	19/07/2010	Full Restriction
		Shortt	Michael	19/07/2010	Full Restriction
371501	APX Limited	McKenna	Eugene	05/03/2010	Full Restriction
		McKenna	Seamus	05/03/2010	Full Restriction
431751	Ark Fashions (Jervis) Limited	Khan	Kamran	15/11/2010	Full Restriction
		Khan	Rakhshanda	15/11/2010	Full Restriction
259224	Armston Limited	Dunne	James	12/07/2010	Full Restriction
260468	Ashfield Builders Limited	Fannin	William	25/01/2010	Partial Restriction
441832	ASMJ Contracting Limited	Dunney	Anita	06/12/2010	Full Restriction
		McLaughlin	Shaun	06/12/2010	Full Restriction
363922	Asphalt Roof Technology Limited	Kirwan	William	01/03/2010	Full Restriction
		Norris	Patricia	01/03/2010	Full Restriction
		Sharpe	Garry	01/03/2010	Full Restriction
399261	Ballyregan Construction Limited	Green	Mary	12/04/2010	Full Restriction
		Green	Niamh	12/04/2010	Full Restriction
202040	Belew Limited	Gleeson	Tim Tony	19/07/2010	Full Restriction
		McCann	Martin	19/07/2010	Full Restriction
380320	Bilberry Construction Limited	Clarke	Padraic	15/02/2010	Full Restriction
		Cooney	Sharon	15/02/2010	Full Restriction
341759	Briddock O'Sullivan Group Limited	Briddock	Neil	22/03/2010	Full Restriction
		O'Sullivan	Noirín	22/03/2010	Full Restriction

Appendix 2.2.3 (continued)

Cases where Restriction Declarations were made against Directors by the High Court in 2010 pursuant to Section 56

Company Number	Company Name	Restricted Directors		Five Year Restriction Starting	Court Outcome [See the Explanatory Notes at the end of this Table]
19332	Castleholding Investment Company Limited	Kachkar	Jack	13/05/2010	Partial Restriction
		McClennan Carrigan	Robert	13/05/2010	Partial Restriction
218715	Central Skip Hire Limited	Finnegan	Brenda	22/03/2010	Full Restriction
		Finnegan	Brian	22/03/2010	Full Restriction
132091	Computer Integrated Manufacturing Systems Ltd	Molloy	John	26/04/2010	Full Restriction
		Ryan	Fionnan	01/02/2010	Full Restriction
353592	Contact Technologies Limited	Mckenna	Michael	12/04/2010	Full Restriction
373433	CPS Crime Prevention Solutions Limited	Slattery	Patrick	25/01/2010	Full Restriction
433984	D and M Utilities & Civil Engineering Limited	O'Connell (Shadow)	Dan	10/05/2010	Partial Restriction
368469	Daly Construction & Civil Engineering Limited	Daly	Cornelius	22/02/2010	Full Restriction
		Long	Siobhan	22/02/2010	Full Restriction
325065	Dawnview Construction Limited	Hobson	Richard	18/01/2010	Full Restriction
379150	Ducci Limited	Creed	John	18/10/2010	Full Restriction
		Keegan	Neville	18/10/2010	Full Restriction
342090	Eamonn Hassett & Co. Limited	Hassett	Eamonn	26/10/2010	Full Restriction
		Murphy	Blaithin	26/10/2010	Full Restriction
375313	Eden Sunrooms & Conservatories Limited	Jones	Erin	03/02/2010	Partial Restriction
		Jones	Ian	03/02/2010	Partial Restriction
320298	Engtek Limited	Browne	Tony	27/10/2010	Full Restriction
		Moloney	Michael	27/10/2010	Full Restriction
343540	Ennellbrook Engineering Limited	Raleigh	Deirdre	01/11/2010	Full Restriction
		Raleigh	John	01/11/2010	Full Restriction
389128	Freightlink Logistics (Ireland) Limited	Dunne	Paul	08/03/2010	Full Restriction
		O'Loughlin	Adrian	08/03/2010	Full Restriction

Appendix 2.2.3 (continued)

Cases where Restriction Declarations were made against Directors by the High Court in 2010 pursuant to Section 56

Company Number	Company Name	Restricted Directors		Five Year Restriction Starting	Court Outcome [See the Explanatory Notes at the end of this Table]
364672	Grove Car Sales Limited	Hession	Gabriel	22/03/2010	Full Restriction
		Hession	Karen	22/03/2010	Full Restriction
366669	Hayes Steel Fabrications Limited	Hayes	Kris	06/12/2010	Full Restriction
		Hayes	Ted	06/12/2010	Full Restriction
353551	Higgins & McCartney Construction Limited	Higgins	Michael	26/07/2010	Full Restriction
		McCartney	Thomas	26/07/2010	Full Restriction
289285	Horan Homes [Castlemaine] Limited	Horan	Elizabeth	22/03/2010	Full Restriction
		Horan	John	22/03/2010	Full Restriction
211822	Howley Civil Engineering Limited	Howley	Michael	13/12/2010	Full Restriction
436260	Infuzion Foods Limited	Burke	Pauric	28/06/2010	Full Restriction
		Gallagher	Gerry	28/06/2010	Full Restriction
348700	J. Higgins Civil Engineering & Stone Works Limited	Higgins	Doreen	26/07/2010	Full Restriction
		Higgins	James	26/07/2010	Full Restriction
279901	James Farrell Electrical Limited	Farrell	James	13/12/2010	Full Restriction
72082	James Murphy & Sons Sales (Dundalk) Limited	Murphy	Ann	10/05/2010	Full Restriction
		Murphy	Francis	10/05/2010	Full Restriction
413424	Jennings Commercials Limited	Jennings	Conor	22/11/2010	Full Restriction
		Jennings	Mary	22/11/2010	Full Restriction
		Jennings	Paraic	22/11/2010	Full Restriction
341595	Jim Langan Furniture Value Limited	Langan	Jim	15/02/2010	Full Restriction
278154	K.R. Farm Machinery Limited	Ryan	Karl	14/06/2010	Full Restriction
268716	Keetech Engineering Limited	Keegan	Barry	11/10/2010	Full Restriction
		Keegan	Paul	11/10/2010	Full Restriction
422335	Kehoe Hanlon Limited	Hanlon	Eamonn Kehoe	10/05/2010	Full Restriction
		Sloyan	Seamus	10/05/2010	Full Restriction

Appendix 2.2.3 (continued)

Cases where Restriction Declarations were made against Directors by the High Court in 2010 pursuant to Section 56

Company Number	Company Name	Restricted Directors		Five Year Restriction Starting	Court Outcome [See the Explanatory Notes at the end of this Table]
355211	Larionovo Limited	Brett	Andrew	12/07/2010	Full Restriction
		Burke	James	12/07/2010	Full Restriction
		Hennessy	Barry	12/07/2010	Full Restriction
		Norton	Helen	12/07/2010	Full Restriction
		Norton	Raymond	12/07/2010	Full Restriction
372415	Liam Daly Building & Civil Contractors Limited	Daly	Liam	01/03/2010	Full Restriction
		Daly	Sheila	01/03/2010	Full Restriction
339124	Limestone Construction Limited	McNulty	Colm	22/02/2010	Full Restriction
		McNulty	Martina	22/02/2010	Full Restriction
359913	M & A Bathroom Supplies Limited	Corcoran	Michael	15/11/2010	Full Restriction
397667	M & E Flynn Construction Limited	Flynn	Michael Francis	20/12/2010	Full Restriction
345116	M.D.K. Motors Limited	Kavanagh	Darragh	26/07/2010	Full Restriction
		Kavanagh	Michael	26/07/2010	Full Restriction
385840	M.J. Roche Construction (Galway) Limited	Roche	Martin	10/05/2010	Full Restriction
		Roche	Tracey	10/05/2010	Full Restriction
370693	M.J. Roche Construction Limited	Roche	Martin	10/05/2010	Full Restriction
		Roche	Tracey	10/05/2010	Full Restriction
351991	Marino Print Solutions Limited	Browne	Paul	21/04/2010	Partial Restriction
278421	Millenium Sales Limited	Lynskey	Ann	15/03/2010	Full Restriction
		Lynskey	Michael	15/03/2010	Full Restriction
151826	Mitek Holdings Limited	Kachkar	Jack	13/05/2010	Partial Restriction
		McClennan Carrigan	Robert	13/05/2010	Partial Restriction
119677	Mitek Limited	Kachkar	Jack	13/05/2010	Full Restriction
		McClennan Carrigan	Robert	13/05/2010	Full Restriction

Appendix 2.2.3 (continued)

Cases where Restriction Declarations were made against Directors by the High Court in 2010 pursuant to Section 56

Company Number	Company Name	Restricted Directors		Five Year Restriction Starting	Court Outcome [See the Explanatory Notes at the end of this Table]
11651	Mitek Pharmaceuticals Limited	Kachkar	Jack	13/05/2010	Partial Restriction
		McClennan Carrigan	Robert	13/05/2010	Partial Restriction
349471	Miza Ireland Limited	Kachkar	Jack	13/05/2010	Full Restriction
		McClennan Carrigan	Robert	13/05/2010	Full Restriction
359497	Mooney Brothers Limited	Mooney	Mary	19/04/2010	Full Restriction
		Mooney	Patrick	19/04/2010	Full Restriction
299188	Motor Network Ltd	Jennings	Conor	22/11/2010	Full Restriction
		Jennings	Mary	22/11/2010	Full Restriction
		Jennings	Paraic	22/11/2010	Full Restriction
297291	Motorhome Depot Limited	Lindsay	Lynda Kathleen	26/04/2010	Full Restriction
		Walker	Lancelot William	26/04/2010	Full Restriction
344929	NJ Boyle Limited	Boyle	James	19/07/2010	Full Restriction
		Flannery	Noel	19/07/2010	Full Restriction
307926	Numridge Trading Limited	Brady	Brendan	18/10/2010	Full Restriction
		Brady	Jeanette	18/10/2010	Full Restriction
380958	P.D.S. Logistics Limited	McKee	David	19/04/2010	Full Restriction
		Reddy	Peter	29/11/2010	Full Restriction
287330	Pacebury Limited	Carroll	Raymond	13/12/2010	Full Restriction
		O'Reilly	James	13/12/2010	Full Restriction
		Turner	Eileen	13/12/2010	Full Restriction
312638	PC Scaffold Limited	Cronin	Paul	20/12/2010	Full Restriction
		Cronin	Sandra	20/12/2010	Full Restriction
376850	PLK Plant & Equipment Hire Limited	Killeen	Peter	10/06/2010	Full Restriction
		Killeen	Simon	10/06/2010	Full Restriction
380796	Premium Logistics Limited	Coote	Edward	12/07/2010	Full Restriction

Appendix 2.2.3 (continued)

Cases where Restriction Declarations were made against Directors by the High Court in 2010 pursuant to Section 56

Company Number	Company Name	Restricted Directors		Five Year Restriction Starting	Court Outcome [See the Explanatory Notes at the end of this Table]
85249	Quickfit Insulation Services Limited	Murphy	Kay	08/11/2010	Full Restriction
		Murphy	Troy	08/11/2010	Full Restriction
340402	R. Canning Brothers Limited	Canning	Bernadette	15/05/2010	Full Restriction
		Canning	Ronan	15/05/2010	Full Restriction
393148	Red Ribbon Direct limited	Harris	George Joseph	20/12/2010	Full Restriction
		Roberts	Ferdinand Augustine	20/12/2010	Full Restriction
		Roberts	Siobhan Geraldine	20/12/2010	Full Restriction
362800	Robe Construction Limited	Murphy	Brendan	12/07/2010	Full Restriction
		Murphy	Caroline	12/07/2010	Full Restriction
353290	Roche Carpentry Services Limited	Roche	Tracey	10/05/2010	Full Restriction
		Roche	Martin	10/05/2010	Full Restriction
296108	Roundel Associates Limited	Deasy	Patrick	20/12/2010	Full Restriction
399981	Ryan & Kearney Construction Limited	Kearney	Dermot	17/05/2010	Full Restriction
		Ryan	John	17/05/2010	Full Restriction
406734	Sandra Loftus Childcare Services Limited	Loftus	Edward	14/06/2010	Full Restriction
		Loftus	Sandra	14/06/2010	Full Restriction
405222	Sandyford Trading Limited	Aziz	Anwar	05/07/2010	Full Restriction
		Aziz	Farhana	05/07/2010	Full Restriction
405746	Seabourne Properties Limited	Curran	Patrick	22/11/2010	Full Restriction
		Walsh	John Paul	22/11/2010	Full Restriction
411949	Seamus O'Connor & Sons [Construction] Limited	O'Connor	Joseph	26/04/2010	Full Restriction
		O'Connor	Seamus	26/04/2010	Full Restriction
435846	Slainte Off-Licence Limited	Breen	John	22/11/2010	Full Restriction
		Cassidy	Gavin	22/11/2010	Full Restriction
285993	Slattery Precast Limited	Slattery	Declan	06/12/2010	Full Restriction
		Slattery	Paddy	06/12/2010	Full Restriction

Appendix 2.2.3 (continued)

Cases where Restriction Declarations were made against Directors by the High Court in 2010 pursuant to Section 56

Company Number	Company Name	Restricted Directors		Five Year Restriction Starting	Court Outcome [See the Explanatory Notes at the end of this Table]
350471	Spy Limited	O'Donoghue	Deirdre	29/11/2010	Partial Restriction
		O'Donoghue	Edward	29/11/2010	Partial Restriction
356600	Style Tile & Bathrooms Limited	Connolly	Joan	12/10/2010	Full Restriction
		Connolly	John	12/10/2010	Full Restriction
387088	Tara Contracts Limited	Crawley	Pricilla	04/03/2010	Partial Restriction
265202	Thermal Timber Homes Limited	Joyce	Patrick V	15/11/2010	Full Restriction
397584	Tom Dickinson & Son Limited	Dickinson	Mary	15/02/2010	Full Restriction
		Dickinson	Tom	15/02/2010	Full Restriction
376363	Ultra Secure Limited	Fergus	James	22/06/2010	Partial Restriction
431122	Val-U Kitchens Limited	Caffrey	Peter	14/06/2010	Full Restriction
		McEnroe	James	14/06/2010	Full Restriction
433122	Verock Limited	Melia	Patrick	19/04/2010	Full Restriction
		Melia	Veronica	19/04/2010	Full Restriction
123095	W.F.S.Limited	Kenny	Patrick	22/02/2010	Full Restriction
		Kenny (formerly Morgan)	Patricia	22/02/2010	Full Restriction
305745	Watkins Brothers Limited	Anderson	James	26/07/2010	Full Restriction
		Mahon	Eamon	26/07/2010	Full Restriction
290419	Web It Limited	Busher	David	26/07/2010	Full Restriction
417077	Woodford Quay Developments Limited	Butler	Alan	22/04/2010	Full Restriction
		Jones	Nigel	22/04/2010	Full Restriction
		Laburn	William	22/04/2010	Full Restriction

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 Disqualification Orders were made against Directors by the High Court in 2010 in consequence of a Liquidator's Section 56 Report

Company Name	Company Number	Disqualified Directors		Date Disqualified From	Date Disqualified To
Advanced Cosmetic Surgery Limited	275689	Ubermanowicz	Halina	11/10/2010	10/10/2018
Del Val Taverns Limited	437932	Ralph	Mark	10/05/2010	09/05/2016
International Screen Limited	164943	Tevlin	David	19/04/2010	18/04/2017
McCafferty Developments Limited	377156	McCafferty	Richard	30/07/2010	29/07/2016
		McCafferty	William	30/07/2010	29/07/2016
Owen Crinigan Motors Limited	418120	Brady	Ciaran	08/02/2010	07/02/2015
Wix Wood Limited	352412	De Brit	Paul	15/03/2010	14/03/2016
		O'Dea	Bronwyn	15/03/2010	14/03/2016

Appendix 3.1.1

Approved versus Actual Staffing Complement by Grade at end-2010

Year-end	Approved	Actual
2008	46	44.8
2009	51	49.7
2010	52.1	50.8

Grade	Approved	Actual
Accountant Grade I	2	2
Accountant Grade III	1	0
Assistant Principal	4	4
Clerical Officer ⁶¹	6	8.3
Corporate Compliance Manager	1	1
Detective Garda	7	7
Detective Inspector	1	1
Detective Sergeant	2	2
Director	1	1
Executive Officer	9	6.7
Higher Executive Officer/Systems Analyst	10	9.7
Legal Adviser	3	3
Principal Officer	2	2
Principal Solicitor	1	1
Solicitor	2	2
Superintendent	0.1	0.1
Total	52.1	50.8

61 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

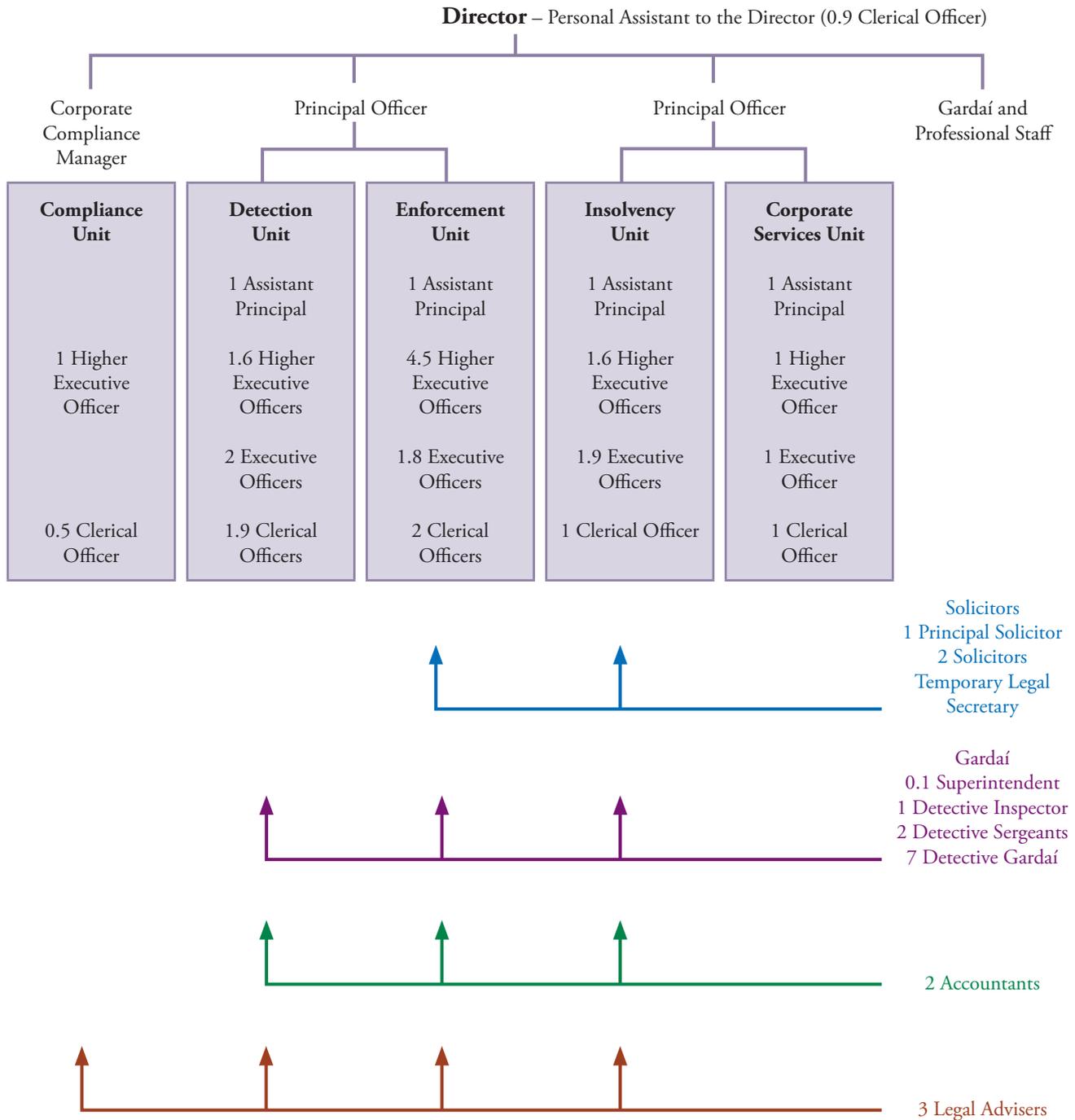
Breakdown of Expenditure against Allocation in 2010 and previous years

Source of Allocation/Expenditure	2008		2009		2010	
	€000s	€000s	€000s	€000s	€000s	€000s
Allocation						
Exchequer Grant		4,957.0		5,535.0		6,086.0
Expenditure						
Salaries, Wages and Allowances	2,411.5		2,663.5		2,625.2	
Advertising and Publicity	304.1		50.3		41.2	
Office Premises	353.2		307.7		278.7	
DCC Investigation ⁶²	183.7		990.1		153.6	
Supreme Court Appeal Costs ⁶²	-		845.5		-	
Other Legal Expenses ⁶²	446.7		338.0		224.5	
Consultancy Services	169.3		134.5		70.6	
Computerisation	61.6		46.4		79.3	
Printing	141.9		99.9		56.3	
Incidental Expenses	27.1		8.0		11.8	
Travel and Subsistence	32.0		19.2		17.3	
Telecommunications	88.8		45.5		56.2	
Postal/Courier Services	75.1		25.2		18.3	
Office Machinery and Photocopying	25.0		22.8		21.2	
Human Resource Development	23.0		8.0		19.9	
Total Expenditure		4,343.1		5,604.6		3,674.1
Amount Surrendered (Extra Funds Provided)		613.9		(69.6)		2,411.9

⁶² As exceptional costs arose in 2009, the figures for Legal Expenses have been broken down into 'DCC Costs', 'Supreme Court Appeal Costs' and 'Other Legal Expenses'. Prior to 2009, all Legal Expenses were reported in a single category.

Appendix 3.2.1

Principal Relationships between Certain ODCE Staff and Functional Areas



Appendix 3.3.1

20 Most Visited Pages on the ODCE Website in 2010

Rank	Page	Visits
1	Home Page	38,976
2	Company Overview Page	10,262
3	Companies'/Directors'/Secretaries' Responsibilities Page	7,542
4	Press Releases Page	7,008
5	General Publications Page	6,193
6	About Our Role Page	5,623
7	Court Investigations Page	5,032
8	Contact Us Page	4,796
9	Functions – Compliance Page	4,433
10	How to Use Forms Page	3,164
11	FAQ Main Page	3,132
12	Decision Notices Page	2,903
13	Liquidators'/Receivers'/Examiners' Responsibilities Page	2,732
14	Court Windings Up/Insolvencies Page	2,694
15	Companies Acts Page	2,526
16	Information Notices Page	2,301
17	Auditors' Responsibilities Page	2,258
18	Articles Page	2,230
19	Court Disqualifications Page	1,902
20	Functions of the Director Page	1,770