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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

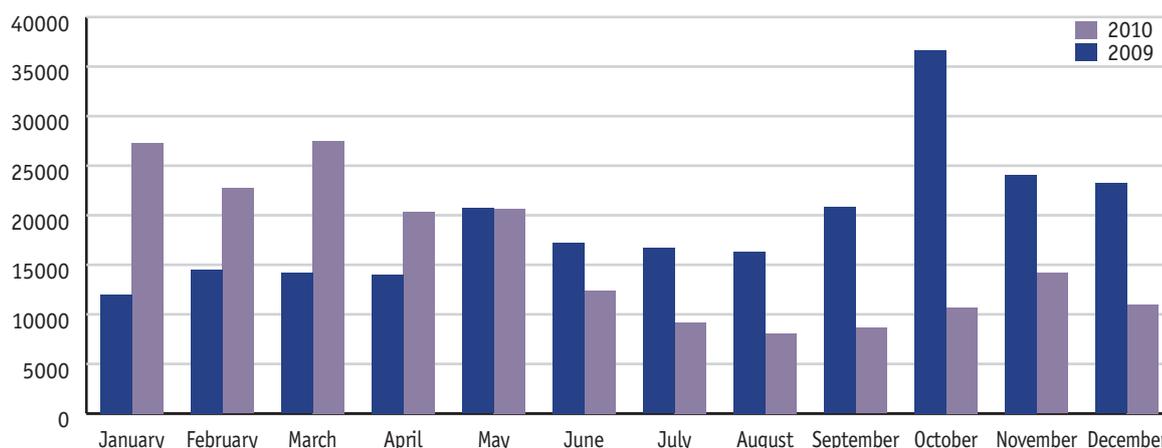
During 2010, the ODCE website at www.odce.ie attracted 192,712 visits which represented a 16% decline on the equivalent figure of 230,469 for 2009. The figure for 2009 was the highest recorded for the site. The number of unique visitors for 2010 was 73,972 of whom 63,238 visited the site more than once.

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.