

Goal 4 – Sanctioning Improper Conduct with respect to Insolvent Companies

Introduction

With more companies facing financial difficulties in the present economic downturn, it is particularly important that company directors ensure that they act responsibly with respect to the interests of other company stakeholders and especially to those who may suffer financial losses in the event of an insolvent failure of the company. Directors would be well advised to take appropriate advice, including professional advice, on their options in order to act responsibly and on a timely basis to help save the company or, if this is not possible, to take steps to wind up the insolvent company in an orderly and appropriate manner.

Directors who fail to act responsibly may face Court sanctions in the future.

This part of the Report will outline in turn the ODCE's work in 2008 with respect to:

- insolvent companies in liquidation and
- unliquidated or dissolved insolvent companies.

Liquidation Trends

The following table shows the number of liquidations notified to the CRO in recent years.

| Liquidations | 2004 | 2005 | 2006 | 2007 | 2008 |
|----------------------------------|--------------|--------------|--------------|--------------|--------------|
| Creditors' Liquidations | 321 | 300 | 323 | 308 | 530 |
| Court Liquidations | 40 | 49 | 31 | 36 | 83 |
| Total Insolvent Companies | 361 | 349 | 354 | 344 | 613 |
| Members' Liquidations | 827 | 868 | 930 | 1,057 | 1,051 |
| All Liquidations | 1,118 | 1,217 | 1,284 | 1,401 | 1,664 |

The number of solvent liquidations stayed relatively constant between 2007 and 2008. However, there was a 78% rise to 613 in the number of insolvent companies placed in liquidation, and this large increase reflects the sharp decline in the national economy.

Many companies are facing significant challenges at present. The average number of insolvent liquidations rose from some 33 per month in the first quarter of 2008 to 60 per month in the final quarter. However, this level is expected to rise further in 2009.

Insolvent Companies in Liquidation by Economic Sector

A breakdown by economic sector of insolvent companies in liquidation by reference to the first reports received from liquidators in 2008 is provided in **Appendix 4.1**.

Unsurprisingly, construction accounted for over a third of all reported insolvent liquidations. Overall, there was an 81% increase from 78 to 141 in the number of such companies going into liquidation in 2008 relative to 2007 in the context of a general 42% increase across all sectors. Other comparable increases were recorded off smaller bases

in marketing and promotion (+138%), recruitment and security (+86%) and, less understandably perhaps, in the community and social sector (+79%).

Unliquidated/Dissolved Insolvent Companies

As indicated in previous Annual Reports, there are no definitive figures that capture the entire population of unliquidated and dissolved insolvent companies. At any one time, there may be several hundred unidentified insolvent companies on the Register of Companies that have ceased to trade and which have not been put into liquidation. However, many of these will come to be struck off the Register eventually.

CRO figures are available for the number of dissolved companies, but these comprise both solvent and insolvent companies. The number of companies dissolved in any year is also dependent on the activity of the relevant parties in pursuing strike-off. Bearing in mind these caveats, the following table summarises the number of struck-off companies for the years 2004 to 2008.

| Type of Dissolved Company | 2004 | 2005 | 2006 | 2007 | 2008 |
|--------------------------------------|-------|--------|-------|-------|--------|
| 'CRO Strike-off' ²³ | 1,401 | 9,514 | 5,255 | 4,085 | 5,804 |
| 'Revenue Strike-Off' ²⁴ | 1,599 | 794 | 444 | 149 | 223 |
| 'Voluntary Strike-Off' ²⁵ | 3,595 | 3,316 | 3,757 | 3,975 | 4,542 |
| Total | 6,595 | 13,624 | 9,456 | 8,209 | 10,569 |

Sub-Goal 4.1: Supervising Liquidators in the Proper Discharge of their Duties

Reporting under Section 56 of the Company Law Enforcement Act 2001

The process and scope of liquidator reporting are outlined in two ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1²⁵. In summary, the liquidator of a company in insolvent liquidation is required by law to report to the ODCE on its demise and on the conduct of any person who was a director of the company during the 12 months preceding its liquidation. The liquidator must also proceed to apply to the High Court for the restriction²⁶ of each of the directors, unless relieved of that obligation by the ODCE. The Office considers relief where the liquidator advances a coherent justification in support of a claim that the director has acted honestly and responsibly in conducting the company's affairs.

Details of the number of liquidator reports in 2008 are contained in **Appendix 4.1.1**. In all, 1,174 liquidator reports were received (1,007 in 2006). Of these, 406 were initial reports²⁷ (286 in 2007) from 102 liquidators, while the balance of 768 (721 in 2007) constituted further²⁸ or final²⁹ reports on company liquidations.

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.

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

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 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.

28 A further report is received from a liquidator usually after six months if 'relief at this time' was granted and after twelve months if a decision to grant relief or not has been made. In this way the ODCE monitors progress on an insolvent liquidation. As the principal decision on whether or not to relieve a liquidator of their obligation to take restriction proceedings will have been made based on the initial report the majority of decisions for further reports will be 'relief'. The exception to this is when 'relief at this time' has previously been granted to facilitate further investigations by the liquidator.

29 A final report is received from a liquidator four weeks prior to final meetings or final dissolution if the liquidation is a Court liquidation. This is a final monitoring exercise for the ODCE prior to dissolution of an insolvent company.

In 2008, the compliance rate for the timely production by liquidators of their first reports was 95% (96% in 2007). The Office also monitored liquidators' submission of their further and final reports. In respect of all reports due, the Office had cause to correspond formally with 54 liquidators on 110 occasions (121 occasions in 2007) indicating that they were in default with regard to their statutory reporting obligations.

The standard of liquidator reports received was again mostly satisfactory in 2008. This area is subject to ongoing review in order to maintain reporting quality.

Other Liquidator and Receiver Issues

The ODCE received four reports from two liquidators in 2008 under Section 299 of the Companies Act 1963 (as amended). No receiver made a Section 299 report. Such reports, when made, indicate a view that a past or present officer or member may be guilty of an offence in relation to the company for which he/she is criminally liable. In the case of one of these reports, restriction proceedings by the liquidator involved will arise in 2009. The three remaining cases are under consideration at year-end.

The ODCE received no reports in 2008 from prescribed professional bodies in respect of suspected liquidator or receiver misconduct pursuant to Section 58 of the 2001 Act.

The ODCE did not seek access to the records of a liquidator³⁰ or receiver³¹ in 2008.

ODCE Review of its Practices arising from a Recent Supreme Court Judgment

A Supreme Court Judgment in 2008 required the Director to review Office procedures in the small minority of cases where it decides not to accept a liquidator's recommendation that relief be given to the taking of restriction proceedings against one or more directors. The Judgment related to an appeal by a director of Tralee Beef and Lamb Ltd. (In Liquidation) against his restriction. The following **Illustration 4.1.1** provides more details about the case and the Supreme Court Judgment.

30 Under Section 57 of the Company Law Enforcement Act 2001.

31 Under Section 323A of the Companies Act 1963 (as inserted by Section 53 of the 2001 Act).

Illustration 4.1.1: Tralee Beef & Lamb Limited (In Liquidation)

Tralee Beef and Lamb Ltd. was a company with one executive director and three non-executive directors. After the company went into liquidation in 2002, the liquidator, Mr Tom Kavanagh, reported to the ODCE that the executive director and two of the three non-executive directors should be the subject of restriction proceedings. However, he recommended that the third non-executive director (Mr Simon Coyle who was appointed by the Business Expansion Scheme investors) should not face proceedings. Having considered the liquidator's report, the ODCE took the view that all of the directors should account to the High Court for their conduct.

Subsequently, the High Court restricted all of the company's directors. However, Mr Coyle proceeded to appeal the Court's decision.

On 1 February 2008, the Supreme Court set aside the High Court Order restricting Mr Coyle. In the course of his Judgment, Mr Justice Hardiman was quite critical of:

- the legislative framework for the restriction of directors, aspects of which were described as "*draconian*". Specific concerns were raised about the obligation in Section 56 on the liquidators of insolvent companies to seek restriction where the ODCE does not grant relief notwithstanding a recommendation for relief by the liquidator, the imposition in Section 150 of a reverse burden of proof on company directors to satisfy the Court as to their honesty and responsibility and the reputational consequence of restriction for "*a professional man*" like Mr Coyle relative to a "*cowboy*' director";
- the High Court's handling of the case. The restriction of Mr Coyle was considered to be unsafe, because the Court amplified existing law in order to restrict him without having discussed the proposed amplification or its terms at the hearing. There was also concern that the case against Mr Coyle was not well defined in the High Court in the absence of any criticism of him by the liquidator and any statement by the ODCE of the reasons for declining relief;
- the manner in which the ODCE discharged its role. The denial of the liquidator's request to relieve Mr Coyle, the failure to give reasons and non-attendance at both the High Court and Supreme Court hearings were criticised. (It would appear that the Supreme Court was not informed by the liquidator's legal advisers prior to the hearing that the ODCE was willing to take part in the hearing of the Supreme Court appeal.)

Following the Judgment and on foot of an application by Mr Coyle for his costs (in circumstances where there was insufficient funds in the liquidation to meet any such award of costs), the ODCE was invited to appear before a hearing of the Supreme Court in relation to this application. Following discussions between the various parties and in recognition of the particular circumstances of the case, the ODCE agreed to make a contribution towards the costs of Mr Coyle's appeal to the Supreme Court. On this basis, the Supreme Court made no order as to costs.

The Supreme Court Judgment is clearly an important one, but its significance for the operation of the regime for the supervision of liquidated insolvent companies generally has yet to be determined. The ODCE was nevertheless surprised at the Court's comment in this area as the relevant provision providing for the restriction of directors of insolvent companies would have been examined from a constitutionality perspective by the Attorney General's Office before its enactment. Moreover, restriction was specifically conceived as an appropriate sanction for moderate corporate misconduct. In allowing a restricted person to continue to act in a responsible position in a company once it was moderately capitalised, restriction was deemed to be consistent with the individual's general right to earn a living. At the same time, the rules of company capitalisation gave some protection to creditors and the general public if a failure of the restricted person's business occurred later.

In the implementation of the Section 56 regime, it is the case that about five out of six directors are not required to account for their conduct in the High Court due to the decisions of the ODCE to grant relief to the relevant liquidators on the basis of their reports. There has also been a high correlation for some years between the ODCE's relief decisions and the High Court's ultimate decisions on the merits of restriction. Accordingly, the ODCE is of the view that the operation of Section 56 is imposing no unwarranted burden on the directors of insolvent companies in liquidation.

Arising from the comments of the Supreme Court in relation to this case, the ODCE now outlines the reasons why it does not grant relief in the small number of cases where the Office does not accept a liquidator's recommendation to grant relief to a particular director (as was the position in relation to Mr Coyle). Notwithstanding the comments made by the Supreme Court, the Director is satisfied that his Office discharges its responsibilities in the area in accordance with both the letter and spirit of the law.

ODCE Review of its Practices with respect to Liquidator Reports

Having regard to its finite resources, the Office also undertook a review in 2008 to identify what procedural changes could be introduced to help manage the substantial and continuing rise in insolvent liquidations. At year-end, it was decided to drop the requirement on liquidators to produce further and final reports once the Office has made a definitive decision to grant or not to grant relief in relation to their statutory obligation to seek the restriction of the relevant directors. This decision should enable the Office to better deal with the large volume of initial liquidator reports expected in 2009. It will also reduce the future administrative burden on liquidators.

Sub-Goal 4.2: Assessing Directors' Conduct in Insolvent Liquidation Situations

The ODCE made decisions on 1,098 liquidator reports in 2008 of which 351 constituted initial reports and 747 were further or final reports.

ODCE Relief Decisions

In respect of the 351 initial reports, there was a material increase in the proportion of 'full relief' cases (from 65% to 71%) between 2007 and 2008 respectively and a significant decline in the proportion of 'no relief' cases (from 10% to 7%). The increasing number of 'full relief' decisions continues a trend that has been evident over recent years. The relief decisions in 2008 (relative to 2007) were of the following character:

| Decision Type | 2007 | % | 2008 | % |
|-------------------------------------|------------|-------------|------------|-------------|
| Full relief ³² | 189 | 65% | 251 | 71% |
| No relief ³³ | 30 | 10% | 23 | 7% |
| Relief 'at this time' ³⁴ | 63 | 22% | 70 | 20% |
| Partial relief ³⁵ | 7 | 3% | 6 | 2% |
| Other decisions | 0 | 0% | 1 | 0% |
| Total | 289 | 100% | 351 | 100% |

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

Complete lists of the companies in respect of which full relief and relief 'at this time' were granted in 2008 are available in ODCE Information Notice No. I/2009/2 on the ODCE website at www.odce.ie.

In preparing their reports, the ODCE encourages liquidators to make an appropriate recommendation with respect to relief by reference to the results of their investigations. For its part, the Office is anxious to ensure that in making its decisions with respect to relief, 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.

Tracking Court Decisions on the Restriction Applications

During 2008, the High Court reached decisions in 54 cases (78 in 2007) where no relief or partial relief had previously been decided by the ODCE. In those cases, the High Court restricted or disqualified one or more directors in 49 cases (75 in 2007), representing 91% (96% in 2007) of the total. No restriction orders were made in respect of the remaining five cases (three in 2007). These outcomes suggest that the ODCE is successfully identifying the cases meriting consideration by the High Court.

32 Full relief was granted in cases where the ODCE was satisfied, on the basis of information provided by the liquidator or otherwise, that all of the directors of the insolvent company had satisfactorily demonstrated that they had acted honestly and responsibly in the conduct of the company's affairs.

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

34 Relief 'at this time' was granted in cases where the ODCE was satisfied that the liquidator needed more time to investigate properly the circumstances giving rise to the company's demise. The ODCE requires such liquidators to submit a second report, after which a fresh relief decision is made.

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

In terms of individual directors, there were 76 directors restricted (69 in 2007), six directors disqualified³⁶ (seven in 2007) and two directors restricted and disqualified in 2008 (one in 2007). This represents 90% of the 92 directors that were the subject of restriction or disqualification proceedings during 2008.

A total of 81 new persons were restricted by the High Court in 2008, 78 of whom were restricted as a result of proceedings pursuant to Section 56. Of the remaining three individuals, one involved the director of an insolvent struck-off company while two were restricted arising from a longstanding liquidation which predated the ODCE's establishment.

Overall, there was a net decrease in the CRO's Register of Restricted Persons from 791 to 624 as some earlier restricted persons were removed from the Register in 2008 on the completion of their five-year restriction period. The following table indicates the number of persons on the Register of Restricted Persons at the end of each year since 2004.

Number of Directors standing restricted at end-2004 to end-2008 inclusive

| End-2004 | End-2005 | End-2006 | End-2007 | End-2008 |
|----------|----------|----------|----------|----------|
| 487 | 600 | 685 | 791 | 624 |

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.

In relation to restriction proceedings that concluded before the High Court in 2008, **Appendix 4.2.1** to this Report outlines the outcome of the cases where restrictions were made and the identity of the persons in question.

Appendix 4.2.2 identifies the five companies where the High Court concluded in 2008 that a restriction should not be made against any of their directors.

The Director welcomes the continuing willingness of a number of liquidators to bring disqualification proceedings in respect of serious detected misconduct. In 2008, successful proceedings were brought against eight directors of insolvent companies (eight in 2007). **Appendix 4.2.3** identifies the persons in question and their periods of disqualification. The accompanying **Illustration 4.2.1**

provides some information on these cases. The Director hopes that further similar cases will be taken in 2009.

Illustration 4.2.1: Insolvent Companies: Liquidator Disqualifications in 2008

An eight-year disqualification was imposed on Mr Colm Griffin, a director of Rosmuc Developments Ltd, a construction company. There was evidence of a failure to maintain proper books and records, a failure to prepare audited accounts, a disregard for compliance with tax obligations and statutory returns to the CRO and a fraudulent use of invoices to avoid payment of Relevant Contracts Tax (RCT).

A seven-year disqualification was imposed on Mr David Kavanagh, a director of freight transport companies Kamar Transport Ltd and Kamar Transport (Kilkenny) Ltd. The Court heard evidence of deliberate preferential payments and failures to maintain proper books and records, to remit taxes due and to separate the affairs of these and other associated companies.

Two directors of Devey Enterprises Ltd which provided plastering services to the residential construction sector were each disqualified for six years. There was evidence that the directors, Mr Mark Devey and Ms Jacinta Devey, had taken unlawful loans totalling €2.8 million from the company for personal purposes which were not repaid, had engaged in preferential payments prior to liquidation, had failed to maintain proper books and records and had failed to submit tax returns and statutory returns to the CRO over a number of years. Revenue liabilities on liquidation exceeded €1 million.

Mr Simon Bermingham, a director of Bermingham Construction Ltd, was disqualified for five years. The Court heard evidence that proper books and records had not been maintained, that audited accounts had not been prepared and that minimal efforts had been made to comply with tax obligations and statutory returns to the CRO. The Revenue tax liabilities were estimated at €500,000.

Mr Conor Govern and Ms Eimear Govern, the directors of Oakley Formwork Ltd which was engaged in the construction of various concrete formworks, were each disqualified for five years. There was evidence that proper books and records had not been maintained, that audited accounts had not been prepared, that incorrect and understated tax returns were filed with Revenue, that preferential payments were made to reduce personal guarantees and that statutory returns to the CRO were not filed for a number of years.

Mr Gary Keating, a director of Keating Interiors Ltd, was disqualified for four years and restricted for five years. There was evidence that the signature of other directors had been forged on the company's financial statements and that Revenue indebtedness was in excess of €900,000.

³⁶ If disqualified by the High Court, a person is prohibited from being appointed or acting as an auditor, director or other officer, receiver, liquidator or examiner and from being in any way, whether directly or indirectly, concerned in or part of the promotion, formation or management of any company or any society registered under the Industrial and Provident Societies Acts. A disqualified person who breaches the Court order is liable to be convicted and disqualified for ten years.

Relief from Restriction

A restricted director may apply to the High Court for relief, in whole or in part, from a restriction within a period of one year from the making of the restriction declaration. The High Court may, if it deems it just and equitable to do so, grant such relief on whatever terms and conditions it sees fit³⁷.

The ODCE monitors planned relief applications and seeks to intervene in appropriate cases in order to maintain as far as possible the coherence of the present statutory restriction regime. Insofar as the Office is aware, no applications for relief were made in 2008. However, three restrictions are known to be under appeal to the Supreme Court.

Tracking Directors in breach of their Disqualification or Restriction Terms

As indicated earlier in this Report, ODCE investigations have suggested from time to time that a number of disqualified and restricted individuals continue to act in companies in breach of the law. The Office will continue to pursue such persons in order to help alleviate the business risks for genuine corporate activity.

Deemed Disqualifications

The law³⁸ provides that where a person is convicted on indictment of any indictable offence in relation to a company, or involving fraud or dishonesty, s/he is deemed to be disqualified for a period of five years from the date of the conviction or for such other period as the court, on the application of the prosecutor, may order. **Illustration 3.3** in the preceding section of this Report is a case of one director who was disqualified under this provision in 2008.

Up to 2,700 persons (2,200 at end 2007) are now listed on the Register of Disqualified persons although some duplication of entries would appear to exist. Some 2,444 of these are deemed to be disqualified; 163 stand disqualified by Order of the High Court; 36 have been disqualified arising from their failure to notify their disqualification in another jurisdiction, and 12 were disqualified on the basis of their having acted as a director while restricted.

Sub-Goal 4.3: Sanctioning Fraudulent or Abusive Behaviour

Introduction

In its previous Annual Reports, the ODCE has indicated that it is particularly anxious to investigate 'phoenix' or

other 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 has the potential to achieve 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.

'Struck-off' Companies

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 2008. It is open to the Director to apply to the High Court for the disqualification of the directors of such struck-off companies³⁹. However, the law⁴⁰ also provides that the High Court cannot impose a disqualification on a person who demonstrates to the Court that the company had no liabilities at the time of strike-off or that those liabilities were discharged before the initiation of the disqualification application. In considering the penalty to be imposed, the Court may instead restrict the directors where it adjudges that disqualification is not warranted.

However, Court actions do not arise in respect of every struck-off company that is investigated by the Office. In some cases, 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.

By way of example, the directors of four associated companies that had been struck off made payments of approximately €50,000 in 2008 in settlement of the companies' liabilities to the Revenue Commissioners. The

37 Section 152 of the Companies Act 1990.

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

39 Section 160(2)(h) of the Companies Act 1990.

40 Section 160(3A) of the Companies Act 1990.

Director did not proceed with disqualification proceedings in these cases.

In a small number of the cases investigated by the Office, the former directors have sought to regularise their position by formally restoring the struck-off company to the Register. This procedure involves the preparation and submission of all outstanding annual returns to the CRO, the payment of all late-filing fees and the making of a formal application to the High Court for the restoration of the company, in cases where the company has been struck off by more than one year.

As indicated in the preceding section of this Report, the Office secured in 2008 the disqualification of 12 directors of struck-off companies (12 in 2007 also) for periods ranging from four years to seven years and the restriction of one director for the mandatory five-year period. **Appendix 3.3** to this Report details the 12 disqualifications and one restriction achieved. At the end of 2008, five more cases were awaiting hearing in the High Court. Many additional cases remain open at year-end, and it is anticipated that several more cases will be initiated in 2009.

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

Conclusion

As a result of ODCE supervision of insolvent companies in 2008, some 96 directors were either restricted or disqualified in 2008. The ODCE will continue in 2009 to address this area in collaboration with liquidators and the Courts in order to deter irresponsible or unlawful conduct in this area.