

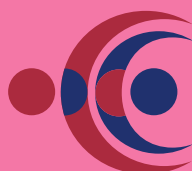
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Annual Report 2011



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

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Foreword



Paul Appleby, *Acting Director*

Pursuant to Section 16(1) of the Company Law Enforcement Act 2001, I am pleased to present Mr Richard Bruton, T.D., Minister for Jobs Enterprise and Innovation, with my Office's Annual Report for 2011.

The Companies Acts 1963 to 2009 establish a framework of duties, obligations and rights which sets out the manner in which companies, company directors, shareholders, creditors, auditors and other stakeholders interact with one another on a fair basis. It is the job of the ODCE to ensure as far as possible that the balance of responsibilities and rights distributed among company stakeholders operates as the law intends. We see ourselves:

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

2011 has been a particularly challenging and demanding year for the ODCE. In particular, significant resources were deployed on the most extensive investigation ever undertaken by the Office. We have also had to deal with high levels of corporate insolvency rates again last year. These exceptional demands have placed a considerable strain on Office resources and forced us to evaluate and prioritise the work being undertaken.

In the 'At a Glance 2011' Section of this Report, I have highlighted some of our important results this year. 2011 also marked the first ten years of the Office's existence, and I have included in this Report an 'At a Glance 2001-2011' which reflects some of our considerable achievements during that difficult period.

I want to take this opportunity to thank in particular the Ministers and staff of the Department of Jobs Enterprise and Innovation for their support of the Office at a difficult economic time.

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

I also want to acknowledge the continuing support given to the Office in 2011 by the Oireachtas, the Government, the Courts and those legal and accounting professionals who supported our work during the year.

My term as Director will conclude in 2012, and I hope that the important contribution which the Office has made in improving and upholding corporate standards over the last ten years will continue for the foreseeable future. I wish my colleagues and my successor every success in the future.

Paul Appleby

Acting Director of Corporate Enforcement

31 March 2012

At A Glance, 2011

Highlights of 2011 included:

- the submission of five extensive investigation files in the Anglo Irish Bank investigation to the Director of Public Prosecutions. This saw the completion of work on two of our five investigative strands and the substantial completion of our work on two others;
- the imposition of a term of imprisonment (of three years) on an accused which was the first occasion that such a penalty became effective in respect of a company law offence. The circumstances of the case included the filing of false information in the Companies Registration Office contrary to Section 242 of the Companies Act 1990;
- the successful prosecution of four other criminal cases resulting in convictions on 19 charges. Two of these cases are being appealed;
- the imposition of 18 disqualifications and two restrictions on company directors by the High Court arising from legal action taken by the ODCE;
- the imposition of a further nine disqualifications and 119 restrictions by the High Court arising from legal actions taken by liquidators supervised by this Office;
- the publication of 11 new or updated publications to help directors and other stakeholders learn of their duties and responsibilities under company law in an accessible way;
- our continuing public advocacy work which saw Office staff deliver more than 50 presentations to professional, business and social enterprise interests throughout the country;
- decisions on almost 1,950 reports and complaints to the Office. It is welcome that in our evaluation of many of these reports, no particular corporate compliance problem was detected. In a good number of the other cases, we were able to have the problem corrected without recourse to legal action;
- a wide range of policy contributions on company and criminal justice issues;
- total expenditure of €3.4 million, a 7.5% decrease on the previous year, for an office comprising just 40 staff (not counting the ten seconded Gardaí whose costs are primarily met by the Department of Justice and Equality).

Overall, the Director believes his staff delivered value for money again in 2011 given the wide range of activity which was undertaken by the Office last year.

At A Glance, 2001-2011

Highlights of the first ten years of the ODCE included:

- a number of demanding investigative and enforcement initiatives in cases like Anglo Irish Bank, National Irish Bank, DCC, Bovale Developments and Ansbacher (Cayman) to name a few;
- the successful prosecution of more than 100 companies, company directors and other persons on some 300 criminal charges in the company law area;
- the disqualification of over 100 company directors and other persons from involvement in a company for an average of about five years;
- the restriction of some 1,200 company directors for five years arising from liquidator applications made under the supervision of the ODCE;
- a success rate of over 90% with its legal actions;
- the voluntary rectification of non-compliance in the company law area in many hundreds of cases;
- decisions made by Office staff on more than 12,000 reports and complaints received;
- the important contribution made by ODCE staff as advocates of improved corporate governance. This work included the issue by the Office of over 80 new or revised company law guidance publications, the attendance of Office staff at over 600 conferences, exhibitions and similar events and a diverse range of policy contributions covering company law, criminal justice legislation, whistle-blowing and property management companies;
- a greater recognition of the importance of good corporate governance in society. Market research conducted during the period indicated the belief of 85% of directors that levels of compliance with company law had increased in the preceding five years;
- public recognition of the effectiveness of the Office. Market research conducted during the period indicated the belief of 75% of company directors that the Office was effective in its role;
- delivery of these results on a relatively modest spend of about €4 million per year.

Introduction

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

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

Consistent with this statutory framework, the present strategy of the Director comprises the following primary goals and related sub-goals:

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

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

Goal 2: Confronting Unlawful Company Law Behaviour

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

Goal 3: Providing Quality Services to Internal and External Customers

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

This Report reviews progress in 2011 by reference to each of these goals and sub-goals.

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

Introduction

Consistent with its overall strategy, the ODCE remains committed to the task of raising the awareness of individuals and companies to the obligations of company law. This work is multi-faceted and includes an array of different activities. These include the preparation and issue of publications where deemed necessary, the communication of the ODCE's message to interested groups and interaction with organisations and institutions, generally in the public and private sectors, in order to advance the compliance agenda. A summary of that work in 2011 is set out below.

Sub-Goal 1.1: Raising Standards of Compliance

Publications

The ODCE issued eleven new publications during 2011 (4 in 2010), including its End-of-Year Review and Annual Report for 2010. The full list is set out in **Appendix 1.1.1** to this Annual Report.

Seven publications represented updates of Information Books on the duties and obligations of various parties under Irish company law. Companies, directors, company secretaries and auditors are among the persons to whom these Books are directed.¹ These revised publications replaced Information Books which had been in use since 2002.² In redrafting these Books, the opportunity was also taken to publish for the first time Irish language versions. Copies in both languages are available on the ODCE website, www.odce.ie, and in hard copy form on request to the Office.

The Office also added a booklet on Audit Committees to its popular range of Quick Guides. This Guide covers the main obligations of audit committees in public interest entities such as listed companies, banks and insurance companies, and it also includes suggested good practice for the audit committees of other entities.³

The Office also published an Information Notice in 2011⁴. This consisted of a list of cases in 2010 where the ODCE had decided to relieve liquidators, either permanently or temporarily, of their obligation to take High Court restriction proceedings against the directors of the named insolvent companies. These decisions followed the evaluation of liquidator reports which had been submitted to the Office under Section 56 of the Company Law Enforcement Act 2001.

Over 20,000 hard copies of various Office publications were issued in 2011. The Companies Registration Office distributed about half of these documents⁵ to persons registering new companies. ODCE staff distributed the balance in response to public demand, including to persons attending exhibitions and events at which ODCE staff participated.

At the end of 2011, the Office had also made substantial progress in updating its Handbook on Apartments Owners' Management Companies to take account of recent legislative changes, primarily the Multi-Unit Developments Act 2011. Although this Act is not part of company law and the ODCE plays no role in enforcing it, it brought about significant changes to the establishment and governance of residential management companies which necessitated considerable redrafting of parts of the original Handbook. It is hoped to have the revised guidance issued early in 2012.

Seminars and Exhibitions

The ODCE remains available to speak, free of charge, to interested groups on the subject of company law and compliance. Such conferences and seminars provide opportunities for meeting directors and other company stakeholders who are interested in learning about the requirements of company law and good corporate governance.

53 presentations were delivered (52 in 2010) to over 2,500 interested persons on these and other relevant topics. The full list of presentations is at **Appendix 1.1.2**.

¹ Decision Notice D/2011/1.

² Decision Notice D/2002/1.

³ This new ODCE Guide and all other Quick Guides are available under General Publications on the ODCE website at www.odce.ie.

⁴ Information Notice I/2011/1.

⁵ The CRO typically issues the ODCE Quick Guide on Company Directors in its pack to new companies.



ODCE Legal Adviser, Adrian Brennan (extreme left), with staff from the DPP's Office, the GBFI and the Icelandic Special Prosecutor's Office.

In attending and speaking at events, the ODCE focuses on a number of key target audiences identified as critical in ensuring compliance. These include:

- persons considering setting up new businesses or who have recently done so;
- professional intermediaries, primarily accountants and solicitors, through whom a much larger number of companies and directors can be reached and informed of the importance of compliance;
- students currently in business programmes who represent the next generation of company directors and entrepreneurs and
- the community and voluntary sector which is often staffed by volunteer directors who tend to need guidance on corporate governance issues due to the small scale at which many of these entities operate.

Periodically, the Office speaks to an international audience which provides a valuable opportunity to learn of the practices and procedures in other jurisdictions. One such occasion arose in 2011 when the Office learned from the Special Prosecutor's Office in Iceland of the greater investigative powers available in that jurisdiction to investigate suspected major corporate crime. The visiting delegation also heard presentations from the Office of the Director of Public Prosecutions (DPP), the Garda Bureau of Fraud Investigation (GBFI) and the ODCE (see accompanying picture).

The Office also continued its policy of attending a range of exhibitions in 2011. Despite a reduction in the number of such events due to economic conditions, Office staff attended 15 events (19 in 2010), the list for which is contained at **Appendix 1.1.3**. Attendance at many of these events in 2011 carried no charge.

Media

The media can play an important role in highlighting both the value of compliance and the potential negative effects of acting in breach of the law, including penalties and a loss of reputation. The ODCE recognises the importance of the media in this respect, and in as much as it can, it strives to assist the media through responding to queries, in contributing to articles and by releasing statements on relevant matters. However, the Office acts at all times to respect the rights of individuals and other persons coming before the Courts, and it refrains from issuing updates on any investigation or enforcement activity if it could potentially prejudice any imminent or potential legal action. However, the Director occasionally issues a public statement where he believes that one is warranted including in situations where an enforcement case has concluded or where certain information has already entered the public domain.

Understanding the responsibilities of a company director



Q My brother is setting up a company and has asked me to be a director. He says it doesn't involve much, but, while I want to support him, I am a bit worried about it. What are the responsibilities of a director?
A This is a good question because many people don't understand that being a company director does in fact involve serious responsibilities. It is great news that your brother is getting started in business and that you are happy to support him. Every company must have at least two directors and I imagine in this case

Accountant Jim Doyle answering questions on company law in the Sligo Champion in 2011.

In all, nine press statements were issued in 2011, the details of which are at **Appendix 1.1.4**. Kevin Prendergast, the Office's designated media contact, also dealt with several hundred queries from the media during the year.

The ODCE is gratified by the increased focus of the media, at both national and local level, on the importance of compliance with company law. One example of a professional advice column to emerge in newspapers around the country is given above.

Advertising and Market Research

As a result of the elimination of non-essential expenditures with Government encouragement, the Office continued to strictly curtail spending on publicity, advertising and market research in 2011. This policy will inevitably have some adverse impact on the continuing ability of the Office to raise levels of awareness among company stakeholders in the long term.

Social Media

2011 saw an expansion of the Office's social media footprint. The ODCE can now be followed on Twitter, Facebook and Linked-In, and it also has a presence on Google+. This presence is used to raise awareness of developments in company law, to highlight ODCE enforcement activity and to make followers aware of any new publications as well as events and exhibitions at which the ODCE will be present. The Office had attracted over 220 followers across all platforms by the end of 2011.

Public Enquiries

The ODCE operates a query response service to address general questions relating to company law which members of the public may have. This service comprises firstly a comprehensive Frequently Asked Questions (FAQ) section on the ODCE website which is continually updated. As well as logging on to the website and contacting the Office by phone, the public can address their queries to info@odce.ie.

An increasing proportion of queries are now handled by ODCE reception staff, and the response may include referral to the FAQ section or other publications on the website, referral to another appropriate body or giving guidance of a general nature.

Where queries are received which require a more considered response, these are routed to the Office's compliance staff for consideration and reply. During 2011, the Compliance Unit dealt with 152 queries, and a sample of these is outlined in the following **Illustration 1.1.1**.

Sub-Goal 1.2: Deepening Our Relationship with Stakeholders

In addition to interacting with members of the public, the ODCE engages with a wide range of stakeholders, all of whom play a role in or assist the ODCE in its work of raising levels of compliance. Ultimately, the ODCE receives its powers and resources from the Oireachtas, the Government and the Department of Jobs Enterprise and Innovation (DJEI). The support in particular of the Department is crucial in helping the Office to fulfil its remit.

The Office also engages with a range of other stakeholders, many of whom are in the public sector and in bodies representing business and the wider economic community. These activities serve to lend support to the Office in its work. The extent of this interaction in 2011 is set out below.

Illustration 1.1.1: Sample of Public Enquiries dealt with by the Office in 2011

Nature of Query	Response Given
A private limited company was unable to hold annual general meetings (AGMs) due to quorum and other issues. The company's auditor enquired if he had a reporting obligation to the ODCE.	There is no reporting obligation on auditors in relation to the failure to hold AGMs. ⁶ However, the auditor should consider if there are any other offences by the company or any of its officers or agents that might be reportable. ⁷
A caller sought clarification in relation to a person who was a disqualified director in another jurisdiction and whether this disqualification had any implications for his Irish directorships.	A person who stands disqualified in another jurisdiction must disclose his or her disqualification to the Registrar of Companies on appointment as a director of an existing Irish registered company ⁸ or a newly incorporated company ⁹ . If s/he fails to do so, s/he is automatically disqualified from acting as a director in the State. ¹⁰ However where disclosure is made, s/he can act as a director unless and until s/he is later disqualified by the High Court. This may happen if the ODCE decides that the circumstances of the foreign disqualification warrant petitioning the Court for the person's disqualification in the State. ¹¹
A shareholder of a company listed on the Irish Stock Exchange enquired if s/he had a right to view the minutes of a directors' meeting.	Shareholders are entitled to inspect the minutes of all general meetings of the company. ¹² However, they have no automatic right of access to the minutes of directors' meetings, unless the Articles of Association of the company grant them that access.

Ministerial Meeting

In June 2011, the Director met with Minister Bruton and briefed him on the work of the Office (including the Anglo Irish Bank investigation and company insolvencies), and they exchanged views on general matters of relevance to the Office including the adequacy of legislation in addressing and deterring suspected misconduct.

The Minister also took the opportunity later in the year to meet the staff of the ODCE at its office in Parnell Square.

Department of Jobs Enterprise and Innovation

The support of the Department continued throughout 2011. There was one formal meeting in Autumn 2011 between senior ODCE management and their Departmental counterparts which usefully reviewed Office progress and future challenges. Senior officers of the ODCE also regularly attended Departmental management meetings and discussed operational issues as they arose. In addition, Office staff made weekly contributions to Departmental requests for general information.

DJEI Working Group on the future of Accounting Standards

The Office participated in a number of meetings of this Group which is considering the implications of the wider move towards the adoption of International Financial Reporting Standards and the consequent proposals for revised reporting standards by the Accounting Standards Board (ASB) which historically has set standards for this jurisdiction.¹³

⁶ Only suspected indictable offences under the Companies Acts are reportable by auditors to the ODCE. The failure to hold an AGM is not an indictable offence under Section 131 of the Companies Act 1963. However, the ODCE can direct the holding of an AGM at the request of a member/shareholder.

⁷ Section 194(5) of the Companies Act 1990.

⁸ Section 195(8) of the Companies Act 1963 as amended by Section 91(a) of the Company Law Enforcement Act 2001.

⁹ Section 3A of the Companies (Amendment) Act 1982 as amended by Section 101 of the Company Law Enforcement Act 2001.

¹⁰ Section 160(1A) of the Companies Act 1990.

¹¹ Section 160(2)(i) of the Companies Act 1990.

¹² Section 146 of the Companies Act 1963.

¹³ More information on the proposals for the future of financial reporting being considered by the ASB is available at <http://www.frc.org.uk/asb/technical/projects/gaap.cfm>.

Company Law Review Group (CLRG)

The Director is a statutory member of the CLRG. The Group is currently pursuing its 2010-2012 Work Programme¹⁴ and has established nine committees to progress various matters. ODCE staff are represented on five of these committees which are considering the following topics:

- the loss of fiduciary taxes arising from the abuse of limited liability;
- the adoption of the UNCITRAL model on cross border insolvency;
- the representation of a company before the courts;
- the OECD Convention on combatting the bribery of foreign public officials and
- certain offences under the Companies Acts.

Due to overlapping member commitments, not all committees could commence work immediately, but substantial progress was made by a number of them at the end of 2011. ODCE staff will continue to contribute to the work of the CLRG in 2012. The Group's Annual Reports are available on its website, www.clrg.org.

Irish Auditing and Accounting Supervisory Authority (IAASA)

The Director is a member and director of the Authority, and he attended the bulk of the scheduled Authority meetings in 2011. A copy of the Authority's Annual Report for 2011 will be available at www.iaasa.ie in mid-2012.

At an operational level, the ODCE and IAASA also engaged regularly on matters of mutual interest during 2011. These engagements included the disclosure of information relevant to each body's statutory remit. One formal meeting between the management of each body took place during the year.

Companies Registration Office (CRO)

The CRO plays an important role in assisting the ODCE in its investigative and enforcement activities. The CRO's extensive database of information on companies and company officers is in daily use in the Office. Where necessary, CRO staff also certify documents and swear affidavits in ODCE proceedings. The two Offices also collaborate from time to time on matters of mutual interest.

A success during 2011 was the introduction of improved arrangements to deter and detect the filing of company annual returns which had audit reports either signed by unqualified auditors or falsely bore the names of qualified auditors. Measures introduced in conjunction with the accountancy profession appear to have been successful in addressing the majority of misbehaviour. However, the ODCE continued to investigate instances of suspected misconduct up to and including criminal prosecution.

At the end of the year, the Office was also discussing with the CRO the legislative implications for good evidence in enforcement proceedings of a greater use of electronic filing.

Accountancy Bodies

The Director and his staff met the senior management of the major accountancy bodies twice in 2011 to discuss matters of mutual interest. Matters discussed included potential whistleblowing legislation, insolvency regulation, the Criminal Justice Act 2011, the Office's experience of audit performance and the potential impact of Commissioner Barnier's proposals on the future of audit.

The Office also worked with the accountancy profession through a technical liaison group which met on a number of occasions during the year. The main area of work was the finalisation of a protocol document outlining what is expected of both the Office and auditors when auditors make reports of suspected indictable offences under the Companies Acts to the ODCE. This will be published in 2012.

¹⁴ 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).

Auditing Practices Board – Irish Consultative Committee

During the year at the behest of the Auditing Practices Board (APB), Chartered Accountants Ireland (CAI) set up a formal Irish Consultative Committee to gather and communicate to the APB the views and concerns of all relevant parties with an interest in audit. The Committee on which the ODCE is represented met twice to consider, amongst other matters, the proposals for restructuring the Financial Reporting Council (FRC) in the UK and its implications for the APB.¹⁵

Garda Bureau of Fraud Investigation (GBFI)

The Office's investigative and enforcement work is greatly assisted by the permanent presence of some eight Detective Gardaí who are seconded from the GBFI, and there was of necessity very regular contact between ODCE and GBFI staff on matters of mutual interest during 2011. The ODCE and the GBFI met formally on a number of occasions to discuss, in particular, their joint investigation of events at the former Anglo Irish Bank.

Central Bank

The Central Bank and the ODCE continued to liaise closely throughout 2011 under the terms of their agreed Memorandum of Understanding. Formal communications of confidential or other information were made in respect of nine separate matters, one of which was the High Court Inspectors' Report into certain activities in Custom House Capital Ltd.¹⁶

In early 2011, the Office and a number of other relevant bodies participated in a Corporate Governance Roundtable hosted by the Central Bank to discuss its proposals for regulation in this area. Later in the year, staff from the Central Bank's newly expanded Enforcement Directorate attended the Office and gave an overview of their new structure and proposed modus operandi. This led to follow-up correspondence between the two authorities on particular matters arising from the presentation.

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 30 companies and former companies in 2011 (92 in 2010). 22 of these cases were sent on their own initiative by one Office to the other for possible further action.

This drop in information exchanges was primarily caused by a provision in the Finance Act 2011 of which the ODCE was regrettably unaware in advance of its enactment. This provision has served to restrict the amount of Revenue information which the ODCE can properly obtain and use, and this is having adverse implications for Office investigative and enforcement work. An ODCE submission seeking to have this legislative weakness resolved at an early date remained under consideration by Revenue and the Department of Finance at year-end.

International Association of Insolvency Regulators (IAIR)

The ODCE has been a member of the IAIR since 2003, and the Director now serves on its Executive Committee. The Director attended the Association's Annual Conference in Jersey in June which agreed its work programme for the year ahead. The Association resolved to update its communications with a view to achieving in particular a greater level of cooperation and engagement among members on policy and operational issues. Part of this strategy involves the development of a new website, and the associated work was underway at year-end.

Sub-Goal 1.3: Influencing Policy Development

The ODCE's experience in enforcing the provisions of the Companies Acts allows it to contribute valuable insight into the operational impact of legislation generally. In 2011, the Office commented substantively on a number of proposed policy and legislative developments.

¹⁵ More information on the proposed restructuring of the FRC is available at <http://www.frc.org.uk/about/frcreform.cfm>.

¹⁶ A copy of the report is available from the Central Bank at <http://www.centralbank.ie/press-area/press-releases/documents/custom-house-capital-final-report-redacted-website.pdf>.

ODCE Submissions on the Proposed Companies Bill¹⁷

The Department of Jobs Enterprise and Innovation made substantial progress in drafting the new Companies Bill (formerly the Companies Consolidation and Reform Bill) during 2011. The first part of the Bill which outlines the proposed law applicable to private companies is now available on the DJEI website.¹⁸

In 2011, the Office provided comments on the following:

- draft Part 11 (Winding Up). The ODCE made two separate submissions on this section, consisting of one detailed submission on the text of the proposed Part and a separate overarching submission setting out a number of proposals designed to improve the practical operation of the Bill;
- draft Part 6 (Financial Statements, Annual Returns and Audit). The ODCE's comments were brief and summary in nature due to the short period allotted to respond to the draft Part.

The ODCE intends to continue to provide substantive input to the drafting of the Bill with a view to ensuring that the ultimate legislation is fit for purpose.

Criminal Justice Act 2011

Prior to the Criminal Justice Act 2011 being enacted, the ODCE made a comprehensive submission on the draft Bill to the Department of Justice and Equality. The submission included a number of detailed points and suggestions relating to the proposed wording of certain sections of the Act. A provision of this Act in respect of which the Office contributed comment did assist the Office in its investigations of events at the former Anglo Irish Bank in late 2011.¹⁹

Central Bank Consultation Paper on Fitness and Probity

During the year, the Central Bank issued Consultation Paper CP 51 on the Fit and Probity Regime contained in Part 3 of the Central Bank Reform Act 2010.²⁰ In its response to the Consultation Paper, the ODCE felt that the proposed standards were overly rigorous, in particular in the context of corporate insolvency, and that a more careful consideration of the particular facts of any given case would be more appropriate. For instance, the Office disagreed with the provisions on financial soundness which suggested that involvement in any insolvent company (other than at 'a junior level') would result in a person being deemed unfit to be involved in a licensed entity. The Office also expressed concern about the application of a similar approach to persons who had been declared bankrupt at any time. In its submission, the ODCE argued that this proposed approach failed to distinguish between honest and dishonest or irresponsible business or personal financial failure.

Submission on the Central Bank (Supervision and Enforcement) Bill 2011²¹

In 2010, the Office had made a detailed submission on the draft Heads of the proposed Bill, and a number of that document's suggestions were incorporated into the Bill when published. In a further brief submission on the text in 2011, the Office discussed the provision relating to interaction between the Central Bank and other regulatory bodies, and comment was offered on instances where language used could be made consistent with other similar legislative requirements already in place or proposed in company law.

¹⁷ The proposed structure and Heads of the Bill are available from the Company Law Review Group at <http://www.clrg.org/companies-bill.aspx>.

¹⁸ The draft of this section of the Bill is available at <http://www.djei.ie/commerce/companylawreview/companiesbill.htm>.

¹⁹ The Criminal Justice Act was subsequently passed into law on 9 August 2011, and can be accessed at <http://www.irishstatutebook.ie/2011/en/act/pub/0022/index.html>.

²⁰ A copy of the Consultation Paper is available on the Central Bank website at <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP51%20The%20Fit%20and%20Proper%20Regime%20in%20Part%203%20of%20the%20Central%20Bank%20Reform%20Act%202010/CP51%20The%20Fit%20and%20Proper%20Regime%20in%20Part%203%20of%20the%20Central%20Bank%20Reform%20Act%202010.pdf>.

²¹ A copy of the Bill is available at <http://www.oireachtas.ie/documents/bills28/bills/2011/4311/B4311D.pdf>.

European Commission Green Paper on the EU Corporate Governance Framework²²

The ODCE's response to this Green Paper included the following comments:

- the Office did not support a graduated approach to corporate governance among listed entities;
- the Office recommended that certain corporate governance requirements should also apply to large private companies which make up a significant element of the Irish economic environment;
- the Office cautioned in the main against formally regulating in law too many corporate governance requirements in areas such as recruitment and diversity;
- the Office supported enhanced board evaluation and additional disclosure in areas such as remuneration;
- the Office supported boards being given formal responsibility for 'risk appetite' and for ensuring that risk management arrangements are appropriate. Additionally, auditors should report on the adequacy of these arrangements;
- finally, the Office cautioned against regulators being given a role in critiquing corporate governance statements for regulated entities having regard to the subjective nature of many statements, the need for specific expertise in a range of areas and the potential for a resultant significant additional workload.

Commission Services Discussion Paper on the Follow Up to the Green Paper on Auditing

In 2010, the Office made a detailed submission to the EC Green Paper on Audit Policy.²³ In its response to this Discussion Paper, the ODCE reiterated its comments concerning the need for current audit practices to improve rather than for auditors' remit to be expanded. The Office noted the significant challenges that requirements for pure audit firms, and also for joint audits, would create. The Office supported the mandatory rotation of auditors and also a requirement for International Standards on Auditing to be adopted in the EU. Finally, the Office agreed that less onerous requirements should apply in respect of the audit of non-public interest entities.

²² A copy of the Green Paper is available at http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf.

²³ See Illustration 1.1.1 in the 2010 Annual Report.

Sharman Inquiry Call For Evidence – Going Concern and Liquidity Risks: Lessons for Companies and Auditors²⁴

In the United Kingdom, Lord Sharman was tasked with considering this issue and responding with proposals. In the ODCE's response to the Inquiry's paper, it noted that the key in respect of any standards, either current or proposed, is their effective and consistent implementation. The Office noted that it had expressed concern to the accountancy profession on previous occasions concerning companies that had prepared financial statements on a going concern basis, where those companies had collapsed shortly thereafter owing large debts notwithstanding that the most recent financial statements had been the subject of a clean audit report. In particular, the Office had noted that there were often significant question marks over the valuation of assets in such circumstances.

The Office also recommended a move away from standard 'boilerplate' text in directors' reports on going concern and suggested that perhaps a separate 'funding statement' would be useful rather than the current position where the funding structure is incorporated into the current financial statements.

Later in the year, the Inquiry issued a Preliminary Report and requested comments. The ODCE was broadly supportive of its conclusions which reflected in part some of the ODCE's earlier comments.

Other Matters

In addition to its own formal responses, the Office contributed to a range of responses by the Department of Jobs Enterprise and Innovation on diverse subjects including Anti-Money Laundering Guidance issued by Chartered Accountants Ireland, EU proposals on micro-entities and an EC Discussion Paper on the Corporate Governance Framework.

²⁴ More information on the Sharman Inquiry is available at <http://www.frc.org.uk/about/sharmaninquiry.cfm>.

Conclusion

Despite the limits to its resources, 2011 represented another year of solid achievement for the Office in pursuing its compliance remit. The ODCE continued to emphasise the need for companies and directors to improve their levels of compliance, and it maintained that the easiest way for them to achieve this was by getting informed about their responsibilities and by ensuring that they stayed up-to-date with changes and developments as they occurred.

In a similar vein, the Office also advocated compliance through regular interaction with other stakeholders and where necessary and appropriate, by influencing those parties charged with developing policy in this area. The foregoing gives an indication of the range of activities which the Office undertook as part of its compliance programme in 2011.

However where companies, company directors and other stakeholders do not heed this message, then they risk being sanctioned. The next section of this Report sets out how the Office responded to complaints and reports of alleged misconduct during 2011.

Goal 2: Confronting Unlawful and Irresponsible Company Law Behaviour

Introduction

The difficult economic environment which generated a 31% increase in cases to the ODCE in 2010 continued into 2011. In broad terms, the number of issues received by the Office in 2011 was comparable to the preceding year.

Statistical Overview of Reports and Complaints

Almost 2,000 new cases were received during the year, which is similar in number to 2010. As outlined in **Appendix 2.1**, the single biggest component is the volume of initial reports (66% of all new cases) obtained from the liquidators of insolvent companies.

While the volume of new cases continues to present significant work and resource challenges, the Office successfully managed to conclude more than 1,900 cases in 2011, a 7% increase on 2010. The number of issues on hands at year-end was just over 1,000, similar to the preceding year. **Appendix 2.2** provides further information on the throughput of cases in 2011, 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 2011 were connected. 47% of them were in the construction and wholesale and retail sectors indicating that these types of businesses continue to be particularly hard hit by the current economic downturn.

As is evident from **Appendix 2.5**, the dominant sector for auditor reports and public and other complaints to the Office in 2011 was again real estate and renting which comprised 14% of the total. At the same time, this was a welcome reduction on the 33% of complaints recorded for that sector in 2010, although an increase in complaints was again evident towards the end of the year. The 13% of complaints classified in the 'not a company' category reflects the fact that many complaints relate to individual persons, business names, cooperatives, credit unions and sole traders.

Solvent and Insolvent Liquidations

As a result of the severe economic downturn, company failures continued at a high level in 2011. As is clear from the following table, this is the third consecutive year in which the number of insolvent liquidations (creditors' and Court liquidations) has exceeded 1,000. With many enterprises under continuing financial pressure, a return to the relative normality of 2008 when just over 600 insolvent companies went into liquidation seems some way off yet. Solvent liquidations (members' liquidations) increased by 17% last year from 899 to 1,054, returning to pre-2010 levels.

Insolvent Companies Nominally in Liquidation

For some years, the ODCE has monitored the incidence of insolvent companies which are nominally in liquidation but to which no liquidator has been appointed. As the first table on page 17 shows, the number of these cases fortunately fell back in 2011 to 67 companies.

Liquidations	2007	2008	2009	2010	2011
Creditors' Liquidations	308	530	1,124	1,258	1,311
Court Liquidations	36	83	121	128	99
Total Insolvent Companies	344	613	1,243	1,386	1,410
Members' Liquidations	1,057	1,051	1,158	899	1,054
All Liquidations	1,401	1,664	2,403	2,285	2,464

Year	Liquidation Notifications	Liquidators not Appointed	%
2008	613	24	4%
2009	1,243	106	9%
2010	1,386	92	7%
2011	1,466	67	5%

Prompted by the ODCE, the professional accountancy bodies have been reminding their members that they should not be involved in facilitating companies being put into liquidation unless they expect that a liquidator will be appointed. This may be the reason for the welcome drop in the 2011 figure. While the Office remains committed to taking legal action in suitable cases, it did make proposals to the Department of Jobs Enterprise and Innovation in early 2011 for legislative changes that would help to address the phenomenon on a comprehensive basis. It is hoped that these changes will be made in the forthcoming Companies Bill which will modernise and consolidate Irish company law. The Office remains 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

The large numbers of companies going into liquidation as a result of the economic downturn have been unsurprisingly accompanied by recent increases in the numbers being placed in receivership. Most receiverships are the result of financial institutions seeking to enforce secured charges, and many were engaged in property development activity in recent years. These companies 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. However, the following table suggests that only 6% of companies in receivership are now being put into liquidation.

Year	Companies Placed in Receivership	Number Placed in Liquidation	%
2008	59	8	14%
2009	200	26	13%
2010	375	43	11%
2011	533	31	6%

A key consequence of the failure to appoint a liquidator to an insolvent company which is in liquidation or in receivership is that the standard of conduct of the directors of those companies is not generally being scrutinised to detect dishonest or irresponsible conduct which has caused collateral damage to other stakeholders.²⁵ From the preceding tables, it will be apparent that while the directors of about 1,410 insolvent companies to which liquidators were appointed in 2011 are being held to account, the conduct of the directors of a further 569 insolvent companies are not being subjected to the same level of scrutiny. This increasing trend may require legislative amendment to ensure that some form of enquiry and reporting is undertaken in respect of the behaviour of the directors of insolvent companies in receivership in order to apply comparable standards of scrutiny to the conduct of the directors of all insolvent companies.

The ODCE has reminded receivers in the past of their statutory reporting duties to the Director of Public Prosecutions (DPP) in respect of criminal offences which they detect during the exercise of their duties as receivers.²⁶ However, very few reports are ever received. The Office expects all receivers to be vigilant in ensuring that these reports are made in appropriate circumstances, and action will be taken in any suitable case where this does not appear to have occurred.

²⁵ Pursuant to Section 56 of the Company Law Enforcement Act 2001.

²⁶ Section 179 of the Companies Act 1990.

Type of Dissolved Company	2007	2008	2009	2010	2011
'CRO Strike-off' ²⁷	4,085	5,804	5,729	6,272	7,938
'Revenue Strike-Off' ²⁸	149	223	142	140	0
'Voluntary Strike-Off' ²⁷	3,975	4,542	5,428	5,488	5,653
Total	8,209	10,569	11,299	11,900	13,591

While this inconsistent approach to the phenomenon of insolvent companies is undesirable, some directors of unliquidated insolvent companies will subsequently face ODCE disqualification proceedings²⁹. This may arise where their companies are struck off the Register of Companies for failing to file annual returns, and they are unable to satisfy the High Court that the company has 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 above table gives details of all companies struck off in recent years, it does not distinguish between those that are solvent and insolvent.

Sub-Goal 2.1: Identifying Suspected Misconduct

ODCE work in 2011 was again dominated by its Anglo Irish Bank investigations and by the large number of insolvent companies requiring its review.

The Investigation of Events at Anglo Irish Bank

Anglo is the biggest and most complex company law investigation by far that the ODCE has undertaken to date, and it is likely to be one of the biggest criminal investigations that the State has ever been involved in. Throughout the year, some 16 Garda, legal and administrative staff within the ODCE continued to work full-time on this investigation. A significant number of additional Garda officers also remained deployed within the Garda Bureau of Fraud Investigation (GBFI). At end-2011, a large amount of work had been completed by both the ODCE and the GBFI in their respective investigations.

The following **Illustration 2.1.1** provides a graphic representation of the main aspects of the current ODCE and GBFI investigations and their status at end-2011.

Documentation and Data

The previous ODCE Annual Reports for 2009 and 2010 outlined at some length the scope and complexity of the investigations with respect to the acquisition, processing, evaluation and securing of millions of pages of Anglo documentation and data. Related work of this character continued throughout 2011.

²⁷ Section 311 of the Companies Act 1963 (as amended) and section 12 of the Companies (Amendment) Act 1982 (as amended).

²⁸ Section 882 of the Taxes Consolidation Act 1997.

²⁹ Pursuant to Section 160(2)(h) of the Companies Act 1990 (as amended).

Illustration 2.1.1: Anglo Investigation: Status of the Main Strands at end-2011

1)	Short-term back-to-back deposits of about €7.4 billion received by Anglo in late September 2008	GBFI	Investigation largely completed. Investigation files with the DPP
2)	Regular refinancing of certain Anglo directors' loans close to Anglo's end-year reporting date (Section 197 of the Companies Act 1990)	ODCE	Investigation largely completed. Report sent to the DPP in December 2010. Two investigation files to be sent in early 2012
3)	Provision by Anglo in 2008 of a loan to one of its directors (Section 297 of the Companies Act 1963)	ODCE	Investigation completed. Two investigation files sent to the DPP in December 2010 and December 2011
4)	Suspected failure by Anglo to maintain a register of loans to its directors (Section 44 of the Companies Act 1990)	ODCE	Investigation completed. Two investigation files sent to the DPP in August 2011 and December 2011
5)	Content of Anglo financial and other public statements in 2008	ODCE	Report sent to the DPP in December 2010. Initial investigation file to be sent in February 2012
6A)	Provision by Anglo of funds for the purchase of its shares in July 2008 (Section 60 of the Companies Act 1963)	ODCE	Investigation largely completed. Report sent to the DPP in December 2010. Two investigation files sent in March 2011 and December 2011
6B)	Provision by Anglo of funds for the purchase of its shares in July 2008 (possible market abuse aspect)	GBFI	Investigation largely completed. Investigation file with the DPP

Indeed in the case of the investigation of the refinancing of directors' loans (strand 2 above), new documentation and information became available in early 2011 which indicated that the practice of refinancing was more complex than originally thought. This gave rise to further analytical and investigation work which extended the timeframe of investigation for this strand.

'Reluctant Witnesses'

A critical feature of early 2011 was the unwillingness of certain witnesses to the events under investigation to provide statements to assist the ODCE's work. This hampered and delayed the investigation due to necessary and intensive engagements with the witnesses and their legal representatives on various matters. This was a particular problem with respect to the investigation of the provision by Anglo of funds for the purchase of its shares in July 2008 (strand 6A above).

However, a welcome provision (Section 15) in the Criminal Justice Act 2011 which came into effect in early August enabled a member of An Garda Síochána to apply to the District Court for an order requiring a person:

- to produce specified documents and
- to prepare answers to questions and/or produce a statement regarding information in the possession of that witness

relating to the commission of certain offences including a number which were relevant to the ODCE investigations.

This enabled the ODCE to begin a process of engaging afresh with all of the 'reluctant witnesses' and/or their legal representatives, drawing attention to the commencement of Section 15 and asking them to reconsider their earlier position. Favourable responses were received from some of the 'reluctant witnesses', but some others failed to give an immediate favourable response or indicated a continuing disinclination to engage with the investigators.

In consequence, a Garda Detective Inspector seconded to the ODCE made applications to the District Court in late September 2011 under the 2011 Act in respect of a certain person. An Order was made later that day by the District Judge requiring him to produce relevant documents and to prepare answers to specified questions or produce a statement and/or both. This Order was subsequently complied with.

Following the hearing, contact was again made with all of the other 18 'reluctant witnesses' and/or their legal representatives. This correspondence eventually resulted in the ODCE securing substantial cooperation with its investigations by the end of 2011. The remaining work was expected to be completed in early 2012.

General Developments

During 2011, progress was also made in areas which were relevant to one or more of the ODCE investigation strands. General developments included:

- the taking of some 75 statements/memoranda by officers of the Director;
- the arrest and detention of two former officers of Anglo by Gardaí on secondment to the ODCE;
- the execution of three further orders under the Bankers' Books Evidence Act 1879 as amended. Documentation also continued to be secured during the year pursuant to pre-existing bankers' books Orders as required;
- the agreement between the ODCE and Anglo of an almost complete list of legally privileged documents. This process will continue for as long as the investigations continue. When they are completed, it will be possible to agree a fully comprehensive list of privileged documents;
- the conduct of about ten formal meetings between senior officers of the ODCE and the GBFI to review progress on aspects of their respective investigations. There was also very regular contact during the year between both organisations to ensure cooperation and consistency in addressing the various strands of these investigations;
- the undertaking of a series of formal consultations with Counsel which has been complemented by regular requests for legal opinions and advices in relation to certain outstanding matters.

High Court Supervision of Anglo Data

As a result of the ODCE's seizure of a large volume of Anglo electronic data in September 2009 under provisions contained in the Companies (Amendment) Act 2009, the High Court receives regular updates on progress. An officer of the ODCE appeared before the High Court in May and July 2011, and a further hearing is scheduled for late January 2012. On each occasion, the Office secured an extension of time to enable it to continue to utilise this seized data.

Engagement with the DPP

At an early stage in the Anglo investigation, the Garda Authorities and the Director agreed with the DPP a special arrangement whereby each organisation could send 'not fully completed' investigation files to facilitate the early consideration by the DPP of the material. This has been helpful in securing comment and feedback from the DPP's staff and from Counsel.

In addition to the very regular communications with the DPP's staff and with Counsel, there were three formal meetings between the DPP, the Director, senior staff of both Offices and/or Counsel during 2011. These contacts proved to be helpful.

Of course, it is a matter for the DPP alone to determine the extent to which (if at all) charges may be warranted against any person in respect of one or more of the above investigation strands. The matters involved are complex and unprecedented, and it is hoped that the DPP will be in a position to begin making decisions in the case during 2012.

Insolvent Companies – The Liquidator Reporting Regime

In summary, the liquidator of a company in insolvent liquidation is required by law³⁰ 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 restriction³¹ of each of the directors, unless relieved of that obligation by the ODCE.³²

The essential aim of this reporting regime is to support responsible entrepreneurial endeavour. The purpose of each report is to distinguish the cases 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 consideration by the High Court those cases which do not warrant its attention.

At the same time, ODCE decisions of 'no relief' or 'partial relief' do not constitute a finding of honesty or responsibility for 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 2011

Details of the numbers of liquidator reports in 2011 are contained in **Appendix 2.1.1**. In all, 1,725 liquidator reports were received (1,688 in 2010). Of these, 1,287 were initial reports³³ (1,312 in 2010) in respect of recently liquidated companies. 438 further reports³⁴ (376 in 2010) were also submitted and arose primarily from earlier 'relief at this time' decisions.

This continuing high level of new liquidations reflects the difficult economic conditions. In addition, a number of these insolvent companies were also substantial entities in the construction or other sectors. This has added complexity to the ODCE evaluation of the relevant liquidator reports. The introduction of revised internal work practices has enabled the Office to improve its throughput of determined reports in recent years despite the large increase in reports, the complication associated with some of the businesses in question and staffing constraints generally. At the same time, the Office acknowledges that some decline in the timeliness of ODCE decision-making has occurred. However, every effort continues to be made by staff to deal with liquidator reports on a timely basis.

³⁰ Section 56 of the Company Law Enforcement Act 2001.

³¹ 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.

³² 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.

³³ 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.

³⁴ A further report is usually received from a liquidator six to nine months after receipt of his earlier report.

In monitoring the submission by liquidators of their initial and further reports, the Office had cause in 2011 to formally advise 109 liquidators on 339 occasions (303 occasions in 2010) 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, 95% of the first reports due during the year had been received – compared with 97% in the previous year. However like 2010, a small number of liquidators remain exposed to the risk of ODCE legal action in 2012 for failing to submit their overdue reports in 2011. This area will continue to be prioritised.

The Office considered the standard of liquidator reports in 2011 to be mostly satisfactory. However, the ODCE has concerns about the standard of reporting in some cases, and 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 high level of engagement by ODCE staff with liquidators during 2011 to clarify elements of their reports and to specify ODCE requirements. In some instances, individual liquidators were requested to attend at the ODCE to review their standard of reporting or their conclusions in specific cases. Prompted in part by an influx of new entrants and ODCE concerns about standards of reporting in the recent past, the relevant professional bodies are providing more training for insolvency practitioners which is a welcome development. 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 1,597 liquidator reports in 2011 (1,474 in 2010). Of these, 1,177 decisions were made in respect of initial reports, and 420 were in respect of further reports. The equivalent figures for 2010 were decisions on 1,240 initial and 234 further reports respectively.

The breakdown of decisions on initial reports in 2011 is outlined in the following table, along with the comparable figures for 2010:

Decision Type	2010	%	2011	%
Full relief ³⁵	871	70%	806	69%
No relief ³⁶	47	4%	59	5%
Relief 'at this time' ³⁷	306	25%	296	25%
Partial relief ³⁸	16	1%	16	1%
Total	1,240	100%	1,177	100%

35 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.

36 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.

37 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.

38 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.

25% of initial reports receive 'relief at this time' decisions, because the size and complexity of some of the current liquidation cases 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 2011 are available in ODCE Information Notice No. I/2012/1 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.³⁹ 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.⁴⁰

A similar reporting obligation applies to professional accountancy bodies in the discharge of their disciplinary functions⁴¹.

Auditor and Accountancy Body Reports in 2011

In 2011, the Office received 178 reports from auditors and accountancy bodies of suspected breaches of the Companies Acts (a drop of 8% on the 2010 figure of 194). 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 (77%), while a second (failure to keep proper books of account) comprised a significant minority (10%). **Appendix 2.1.2** identifies the incidence of the primary suspected offences reported in 2011 relative to 2010.

Unlawful Directors' Transactions

The auditor reports and other information available to the Office indicates that in 2011, directors improperly borrowed about €44 million from their companies.⁴² This was a welcome reduction on the 2010 figure of some €85 million which maintained a recent trend of decline. However as a result of more companies qualifying for and availing of audit exemption, it is likely that this trend is masking the scale of the phenomenon.

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 261 directors cautioned in 2011 as to their future conduct. The Office reserves the right to take enforcement action in any suitable case, and a small number were under active investigation at year-end.

³⁹ 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.

⁴⁰ 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.

⁴¹ 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.

⁴² Section 31 and related provisions of the Companies Act 1990 (as amended).

The accompanying **Illustration 2.1.2** outlines one case in 2011 where a company with directors' loans issues was put on a compliant footing without the need for ODCE enforcement action.

Illustration 2.1.2: Case relating to Accounting Deficiencies and Directors' Loans

The ODCE received a wide-ranging complaint from a director of a family-owned company operating in the North East. The company's auditors also made an indictable offence report with regard to directors' loans and other accounting deficiencies at the company. The company was also significantly in arrears in its filings to the Companies Registration Office.

Having examined the complaint, the ODCE engaged with the company and its professional advisers to help rectify the reported matters. This led the company to engage a firm of consultants to recommend how best it should conduct its affairs in future so as to remain compliant with the Companies Acts at all times. A series of measures came to be adopted which saw new financial controls and procedures being put in place, all outstanding filing returns being made to the Companies Registration Office and the directors' loans of about €350,000 plus interest being repaid to the company.

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.⁴³ The Office regularly cautions the relevant directors with a view to ensuring that similar deficiencies in the governance of their companies do not recur, and 37 directors were cautioned in 2011.

In a minority of cases where the Office considers it appropriate to do so, it proceeds to take enforcement action against the company and/or its directors. As indicated later in this Report, two cases were successfully prosecuted in 2011, one of which is under appeal.

Audit Quality

In its previous Annual Reports and in its engagements with the recognised accountancy bodies, the ODCE has expressed its disappointment on occasion with evident inadequacies in the performance of individual auditors. The Office attaches a high value to a good audit given the safeguards which it offers to a company's stakeholders. Where standards fall short of expectations, consideration is given to referring the matter to the auditor's professional body for evaluation. It is standard practice to copy any ODCE complaint to the Irish Auditing and Accounting Supervisory Authority for information.

In one recent case, the Office engaged with a company auditor about errors in the audit opinion for a financial year prior to the company going into receivership. The ODCE's dissatisfaction with the response prompted a report to his professional body whose examination concluded in 2011. The Office welcomes the fact that the body shared its dissatisfaction with the professional standards in question. The outcome is summarised in the following **Illustration 2.1.3**.

Illustration 2.1.3: Professional Body Finding on foot of an ODCE Complaint

The professional body found that its member had:

- failed to ensure that work undertaken on behalf of the client company was adequately resourced and supervised;
- failed to provide appropriate audit reports on the client company's accounts;
- failed to ensure that the accounts conformed to the requirements of the Companies Acts and Financial Reporting Standard 8 regarding related party transactions and
- failed to provide a complete and adequate explanation to the ODCE to enable it to understand the cause of the errors in the accounts presented to the Companies Registration Office.

The member in question was sanctioned, fined €2,000 and required to pay costs of €1,500 to the body.

⁴³ Section 202 of the Companies Act 1990.

Unqualified Persons acting as Auditors

As mentioned earlier in this Report, successful steps have been taken by the Companies Registration Office and the recognised accountancy bodies in particular to limit the incidence of unqualified persons acting as auditors. However, the ODCE continued to receive a small number of complaints from the recognised accountancy bodies and from individual auditors in 2011 in this area. Given its anxiety to ensure that audit quality is not undermined, the Office continued to investigate such cases. Five cases were resolved administratively in 2011. As indicated later, it was considered appropriate to prosecute a further three cases that resulted in convictions, one of which has been appealed. Other similar cases are currently under active investigation.

Public Complaints and Other Detections in 2011

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.

There was a decrease to 422 in the number of public complaints and other detections in 2011, a fall of 8% on 2010. Details of the type of reported defaults are contained in **Appendix 2.1.3**.

Unsurprisingly in the difficult economic climate, there were further large increases in complaints about unpaid debts (up 69% on 2010 following a similar increase on 2009). In many of these cases where there was no evident breach of company law, the ODCE urged the complainants to explore their own legal remedies to recover any monies due to them.

There was also a threefold increase in allegations of fraudulent or reckless trading in insolvent companies, but the evidence offered to support an instance of criminal behaviour was often very limited. However, a small number of such cases continue to be examined.

Illustration 2.1.4: ODCE Engagement with Aventine Resources plc

In late November 2011, Aventine Resources plc, formerly Minmet plc, (“the Company”) announced that it was holding an Annual General Meeting (“AGM”) on 22 December 2011 at 12 noon. This announcement which was placed on its website served as the notice to its shareholders of the Meeting. It indicated an intention to conduct substantive business at the AGM but proposed to do so without giving shareholders the opportunity to consider the Company’s accounts for the year ended 31 December 2010. Apparently, these accounts were only in the process of being audited.

In advance of the AGM, the ODCE wrote to the Company and its officers drawing attention to the fact that they were in default of their company law requirements by failing to provide the shareholders with a copy of the Company’s accounts for the year ended 31 December 2010 and the related directors’ and auditor’s reports at least 21 days in advance of the AGM. The Company and its officers were requested to rectify their defaults. The Office made it known that no substantive business should be conducted at the scheduled AGM.⁴⁴

Over the following days, the Director took into account the fact that many of the Company’s shareholders were not Irish and that those wishing to attend the AGM should be given the opportunity to avoid a potentially unnecessary and costly journey to Dublin. In the circumstances, he issued a public statement about his recent engagement with the Company relating to the forthcoming AGM and placed the statement on the ODCE website. Consistent with ODCE requests, the AGM was opened and adjourned on 22 December without any substantive business having been conducted.

⁴⁴ Section 150(9) and Section 159(1) of the Companies Act 1963 (as amended).

Many public complaints again varied in character and complexity. They are considered to be 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. Every effort is made to address adequately the notified concerns within the limits of the Office's remit.

Listed and Unlisted Public Companies

Particular attention is paid to companies and issues with a large potential impact, including companies which are or have been listed on a stock exchange. A number of such cases arose in 2011 which led to the exercise of the Director's powers. **Illustration 2.1.4** above outlines one case where the Office found it necessary to act at short notice to remedy evident non-compliance with company law in an unlisted public company.

Guarantee Companies

Many of the public complaints addressed in 2011 again concerned companies limited by guarantee. These are often companies formed for a particular social, community or public purpose. A number of property management company cases involved the restriction of the rights of members to attend general meetings or the failure to provide them with audited financial statements or access to the register of members. In these types of cases, the Office expects complainants to have engaged directly with the company and exhausted their own remedies before seeking assistance. The following **Illustration 2.1.5** deals with a case where a company incorrectly cited data protection legislation as the basis for denying access to its register of members.

A number of the property management company complaints in 2011 again raised issues which were beyond the remit of the Office. These included the level of service charges and the non-assignment of the common areas in the development to the management company. These issues have been addressed in the Multi-Unit Developments Act 2011. The Property Services Regulatory Authority has also been recently established under the Property Services (Regulation) Act 2011. Both legislative initiatives were promoted by the Department of Justice and Equality. The ODCE hopes that these developments will help to resolve these problems and bring about a decline in these complaints.

Illustration 2.1.5: Access to a Company's Register of Members

A member of a large property management company based in Dublin had concerns regarding the maintenance of the development and decided that the holding of an extraordinary general meeting (EGM) was the best way to address the issue with the company. To do so, he needed to obtain the support of 10% of the members for the requisition of an EGM.⁴⁵

In consequence, the complainant sought access to the register of members containing their names and addresses, but these requests were refused. In justification, the company's agent cited data protection issues as a reason for refusing the members' contact details. The complainant contacted the Office which drew his attention to the obligation on a company and its officers to permit access to the register of members.⁴⁶

Having renewed his request for access, the company supplied an incomplete register. Following receipt of a further complaint and the ODCE's direct engagement with the company, a complete copy of the register was given to the member.

Disqualified and Restricted Directors

In 2011, the ODCE continued to be alert to any situation where a disqualified or restricted director or a bankrupt acted as a director in breach of the law. Action is taken against defaulting directors in appropriate cases to maintain the integrity of the disqualification and restriction regimes in the interests of enterprise sustainability.

⁴⁵ Section 132 of the Companies Act 1963.

⁴⁶ Section 119 of the Companies Act 1963.

Dissolved Insolvent Companies

The ODCE remains 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 come to be struck off the Register of Companies for a failure to file their annual returns continued to receive ODCE attention in 2011. It is open to the ODCE to apply to the High Court for the disqualification of the directors of these struck-off companies⁴⁷. However, the law⁴⁸ 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 2011, some 70 cases involving more than 100 struck-off companies were investigated. Of these, 50 were deemed not to be suitable for legal action or remain under investigation. In the remaining 20 cases, disqualification proceedings were initiated or are being actively contemplated at year-end.

In 2011, the ODCE developed our relationships with, and obtained good cooperation from, a number of bodies and entities in relation to company debts. The entities involved included:

- the Construction Industry Monitoring Agency which investigates complaints of non-compliance with registered employment agreements in the construction industry. These agreements place a legal obligation on employers to register their workers and make contributions on their behalf;
- the Pensions Board and the Office of the Pensions Ombudsman with respect to unpaid pension contributions and
- the Department of Social Protection in relation to outstanding redundancy liabilities.

The information received has been of value in identifying unliquidated insolvent companies, and it has been used to engage with the former directors of those companies. In one disqualification case in 2011, one of these established debts formed part of the evidence of insolvency, and similar debts are expected to feature in other disqualification cases which will be heard in 2012 and beyond. Further details on the legal proceedings undertaken by the ODCE in 2011 are provided in the following section of this Report.

⁴⁷ Section 160(2)(h) of the Companies Act 1990 (as amended).

⁴⁸ Section 160(3A) of the Companies Act 1990 (as amended).

Where any company is struck off the Companies Register, its remaining assets are vested in the Minister for Public Expenditure and Reform in accordance with the provisions of the State Property Acts. In any case where a company appears to possess a significant asset at the time of strike-off, the ODCE brings this to the attention of the Department of Public Expenditure and Reform 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. Alternatively if the company has no assets or liabilities, the directors can arrange for voluntary strike-off.

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

Introduction

The ODCE undertakes both civil and criminal enforcement actions in the Courts. Significant events in 2011 with respect to company law proceedings included:

- a first criminal conviction by the Circuit Court for a company law offence which resulted in the offender starting a term of imprisonment (of three years);
- the imposition by the High Court of a nine year term of disqualification on a former bank director for breaches of law and duty (now under appeal by him);

- the determination by the Supreme Court of an appeal relating to a number of preliminary evidential issues in the ODCE's long running disqualification action against the directors of a company in the construction industry. This case was remitted back to the High Court for plenary hearing.

Further information on these cases is given below.

ODCE Enforcement Proceedings

In 2011, the Office was very successful in enforcing a number of instances of suspected serious defaults of law and duty with respect to the Companies Acts. The outcome gave rise to 44 convictions, disqualifications and other successful results, the highest number since 2008. The following table summarises the position and provides the equivalent detail for 2010.

In 2011, the Office participated in or contributed to 21 separate civil and criminal enforcement proceedings, of which three were in the Supreme Court, 13 in the High Court, one in the Circuit Court and four in the District Court. This compares with the total of ten enforcement proceedings in 2010.

The Office also made application for eight investigative orders and other reliefs, of which two were in the High Court and six at District Court level.

It is clear from the overview of the status and outcome of the civil and criminal enforcement proceedings in **Appendix 2.2.1** that the Office was again substantially successful in pursuing its Court actions.

Outcome of Successful Legal Enforcement Proceedings	2010	2011
Charges on which convictions were secured	8	20
Charges taken into account on conviction	2	2
Disqualifications	1	18
Restrictions	–	2
Other Decisions	–	2
Total	11	44

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 2011. Where a stay was placed on the effective date of the sanction, publication of the notice was postponed until the stay expired.

The redeployment of Garda and other Office resources to the Anglo Irish Bank investigation in particular has served to curtail the throughput of ODCE enforcement proceedings since 2009. However, counter-measures taken in recent years to limit this impact bore fruit in 2011 as is evident from the fourfold increase in successful results vis-à-vis 2010.

Civil Enforcement Actions

Some 15 ODCE actions were ongoing before the Superior Courts at the start of 2011, and a further ten were initiated during the year. The vast majority of these actions were disqualification proceedings,⁴⁹ while two were applications for High Court orders compelling liquidators to submit overdue reports on insolvent companies to the Office⁵⁰. 12 of these 25 cases were concluded in 2011.

Three of the seven appeals before the Supreme Court at the start of 2011 were completed or substantially heard in 2011, and of these, the Court:

- allowed an ODCE appeal against a High Court decision refusing to disqualify an accountant and auditor and imposed a two year term;
- indicated that it was minded to substitute a restriction for a nine year disqualification term imposed by the High Court on a former Executive Director of National Irish Bank Ltd. The case was ongoing at year-end, as the Supreme Court wished to hear representations on the impact of a restriction on the respondent in early 2012;
- rejected the appeals of both the ODCE and the Respondents in relation to preliminary evidential issues in the ODCE's long running disqualification action against the directors of a company in the construction industry.

The features of the first of these judgments were outlined in **Illustration 2.2.1** of the ODCE's Annual Report for 2010, because the main Supreme Court judgment was delivered in 2010 with only the period of disqualification to be determined early in 2011. As the remaining two judgments are similarly important, **Illustration 2.2.1** and **Illustration 2.2.2** below discuss aspects of each of these judgments. The latter disqualification case will now proceed to plenary hearing before the High Court.

⁴⁹ Under Section 160(2) of the Companies Act 1990 (as amended).

⁵⁰ Under Section 371 of the Companies Act 1963 (as amended).

Illustration 2.2.1: Director of Corporate Enforcement v. Barry Seymour

In July 2004, the Report of High Court Inspectors into bogus non-resident accounts and other improper practices at National Irish Bank Ltd (“NIB”) and National Irish Bank Financial Services Ltd was published. Having considered the Report’s findings of responsibility, the Director initiated High Court disqualification proceedings against nine former NIB senior management personnel in mid-2005. One of those persons, Mr Barry Seymour, had held the position of Executive Director from 22 April 1994 to 15 July 1996. The proceedings under Section 160(2)(b), (d) and (e) of the Companies Act 1990 (“the 1990 Act”) were vigorously defended by Mr Seymour.

Ultimately after a six day hearing in 2007, the High Court disqualified him for nine years and awarded the Director his costs. Mr Seymour then appealed the decision to the Supreme Court, and the disqualification and costs orders were stayed pending the outcome of the appeal.

On 6 December 2011, the Supreme Court unanimously allowed Mr Seymour’s appeal and ruled that a disqualification order was not appropriate in the case. The Court found that the High Court had failed to make clear findings against Mr Seymour in accordance with the applicable test for disqualification, save possibly for one ground. The Court held *inter alia*:

“It is difficult to see how the test as established in this jurisdiction could be found to support an Order, save, as mentioned earlier, in one respect to which I will return. I know of no authority, case law or academic writing which includes responsibility arising, ipso facto, by virtue of a person being an executive director, such as to generate, automatically, an ‘ultimate responsibility’ liability, and consequent disqualification order of such a draconian nature...”

Nevertheless, there remains the important issue of the failure to ensure the DIRT payments were properly returned to the Revenue Commissioners, in compliance with the Finance Act, 1986. This relates to both ‘bogus non-resident accounts’ and ‘Special Savings Accounts’. The evidence makes it clear that the figures were generated automatically by computer, at branch level, and then remitted to head office, and presented for signature with an averment that they were correct and accurate. These returns were never checked by the appellant as to their accuracy or correctness, even though it was clear that there were continuing failings in both non-resident accounts and special savings accounts, but were rather signed and presented on the assumption that they were correct, and were not so. They therefore, on their face, breached the specific terms of the 1986 Act. Although the appellant did not appreciate the possible retrospective tax issue, it was essential that such returns were not made on the basis of a representation to the Revenue that they were correct and accurate and in time. This was a grave failure.”

After a further hearing in early 2012, the Supreme Court exercised its discretion under Section 160(9A) of the 1990 Act and restricted Mr Seymour for five years effective from 6 December 2011. The Court also awarded the Director 50% of his High Court and Supreme Court costs in the case.

A further five appeals of former senior National Irish Bank managers were awaiting hearing at the end of the year, one of which was a new appeal initiated against a nine year disqualification term imposed by the High Court in 2011 against a former chief executive and director of the Bank.

A final disqualification case involving a former National Irish Bank manager was also still ongoing at High Court level at end-2011.

Illustration 2.2.2: Director of Corporate Enforcement v. Michael and Thomas Bailey

In 2006, the ODCE initiated High Court disqualification proceedings against Mr Michael Bailey and Mr Thomas Bailey, the directors of Bovale Developments. Prior to the hearing, the Respondents commenced a legal challenge to the admissibility of certain ODCE evidence which included reliance on certain findings in the Flood Tribunal Reports.

Following judgment by the High Court in 2007, the matter was appealed, and in July 2011, the Supreme Court gave judgment in the matter confirming, inter alia, that the findings of tribunals of inquiry could not be used in later litigation. In his judgment, Mr Justice Hardiman referred to the leading case of *Goodman International and Lawrence Goodman v. The Honourable Mr Justice Liam Hamilton, Ireland and the Attorney General* [1992] 2 IR 542 as follows:

“There is no doubt that the core of the passage from Finlay C.J. to which the Director of Corporate Enforcement objects is the statement that:

‘[the finding of a tribunal] either of the truth or the falsity of any particular allegation which may be the subject of existing or potential litigation, forms no part of the material which a court which has to decide that litigation could rely upon. It cannot either be used as a weapon of attack or defence by a litigant who in relation to the same matter is disputing with another party rights arising from some allegation of breach of contract or illegal conduct or malpractice.’

It is that passage, quite specifically, which prevents the deployment of the Tribunal’s findings as a weapon of attack in the hands of any litigant, here the Director of Corporate Enforcement.

Legal nature of a tribunal.

*In the words, not of Finlay C.J. but of Costello J. (as he then was) who gave the judgment of the High Court in **Goodman**, the finding of a Tribunal of Inquiry is:*

- *not imposing any liabilities or effecting any rights* (p.557),
- *its conclusions merely have the status of opinion and ‘this opinion is devoid of legal consequences’* (p.557),
- *a body whose findings are ‘sterile of legal effect’* 562 and
- *whose purpose is ‘merely to enquire and report’* (ibid).

Elsewhere it is found that the function of a tribunal of inquiry is:

‘To make a finding of fact, in effect, in vacuo and to report it to the legislature (590).’”

Nine other 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. Details of the cases which resulted in the imposition of a disqualification or restriction on one or more directors are contained within **Appendix 2.2.3** to this Report. The circumstances of one of the cases involved are contained in the following **Illustration 2.2.3**.

One set of ODCE disqualification proceedings was struck out after the directors in question reinstated two dissolved companies to the Register following the service of the proceedings and swore affidavits that another five dissolved companies had no debts. These affidavits exhibited audited financial statements for each of the companies in question.

At end-2011, a further five newly initiated disqualification actions were awaiting hearing.

Illustration 2.2.3: Director of Corporate Enforcement v. David, John and Matthew Hogan

In 2009, the ODCE received a complaint from a creditor of Shannonside Mushrooms Limited (“Shannonside”) relating to an unsatisfied judgment. Following investigation, it transpired that the directors of Shannonside were directors of other companies, all of which had been struck off the Register of Companies for failure to file annual returns. Prior to strike off, the latest accounts filed in the Companies Registration Office in respect of all four companies showed that each had outstanding creditors. ODCE enquiries revealed that the creditors included the Revenue Commissioners, the Department of Social Protection and other third parties, and the directors furnished no evidence to indicate to what extent the sums due were discharged at the time of strike off. Other aggravating factors were also placed in evidence before the Court, but it gave no obvious weight to these matters in its Judgment.

In December 2011, the Court disqualified three directors, John Hogan, David Hogan and Matthew Hogan, for five years with a stay on the order in respect of the former two directors for a period of twelve weeks. The Court also awarded the Director his costs to be taxed in default of agreement on a joint and several basis.

Two other ODCE cases against liquidators who had repeatedly failed to present overdue reports to the Office on the companies of which they were liquidators also concluded successfully. In both cases, the liquidators submitted their reports after the service of the proceedings but in advance of the High Court hearings.

Liquidator Restriction and Disqualification Applications

As mentioned earlier in this Report, liquidators are obliged to take restriction proceedings against the directors of insolvent companies in liquidation unless relieved of that obligation by the ODCE.⁵¹ Liquidators proceed with restriction or disqualification proceedings before the High Court in a minority of cases.

During 2011, the High Court reached decisions on 88 restriction applications (98 in 2010). One or more directors were restricted or disqualified in 82 cases (97 in 2010) representing 93% of the total (99% in 2010). No restriction orders were made in six cases (one in 2010), and these are identified in **Appendix 2.2.4**. These outcomes suggest that the ODCE has continued to successfully identify the cases meriting consideration by the High Court.

Arising from liquidator proceedings, 119 individual directors were restricted (156 in 2010); nine directors were disqualified (eight in 2010), and no orders were made against thirteen directors (six in 2010). This means that the Court made orders against 91% of the 141 directors (96% in 2010) that were the subject of restriction or disqualification proceedings during 2011.

In relation to the liquidator restriction proceedings that concluded before the High Court in 2011, **Appendix 2.2.5** to this Report outlines the outcome of the cases where restrictions were made and the identity of the persons in question.

Appendix 2.2.6 identifies the nine directors of insolvent companies who were disqualified by liquidator proceedings during 2011 and the related periods of disqualification. The accompanying **Illustration 2.2.4** provides brief outlines of the circumstances in these cases. The ODCE is gratified by the continuing willingness of some liquidators to bring disqualification proceedings in respect of serious detected misconduct, and the Director expects that further similar cases will be taken in 2012.

⁵¹ Section 56 of the Company Law Enforcement Act 2001.

Illustration 2.2.4: Insolvent Companies – Liquidator Disqualifications in 2011

Mr Michael Lynn, a director of Kendar Holdings Ltd, was disqualified for 12 years. The High Court heard evidence that Mr Lynn fraudulently gave multiple undertakings to financial institutions in order to obtain loans for property acquisitions, and they sustained large losses as a result. He used company funds to meet personal lifestyle costs and the significant marketing and advertising expenditure of his overseas companies. Mr Lynn acted to put assets beyond the reach of creditors. Hundreds of property buyers who paid large deposits have been unable to contact him or recover their funds as he has resided abroad since December 2007 in a bid to avoid serious civil and criminal proceedings. Mr Lynn was also struck off the Roll of Solicitors and ordered by the Court to pay €2 million in fines to the Incorporated Law Society.

A ten year disqualification was imposed on Mr Michael (Gerry) O'Shea, a director of Bacus Cafes Ltd. The High Court heard evidence that he sold company assets in the weeks prior to the company being wound up by Court Order which prevented the liquidator using these proceeds for the benefit of creditors. Mr O'Shea used over €100,000 of company funds to discharge the debt of another company of which he was a director. He also failed to maintain proper books and records in the company.

Mr Jas Kalsi, a director of MPS Global Ltd, was disqualified for eight years in respect of this property investment company. The Court held that Mr Kalsi was knowingly a party to the carrying on of the business in a reckless manner with intent to defraud creditors and ordered that he should be held personally liable for debts and liabilities to the maximum sum of €4,491,444. The liquidator was granted a 'freezing order' over Mr Kalsi's personal assets. The Court heard evidence that his failure to keep proper books of account contributed to the company's inability to pay all of its debts and resulted in substantial uncertainty as to the assets and liabilities of the company and substantially impeded the orderly winding up of the company's affairs.

Six and five year disqualifications were imposed on two directors of Acuspread Ltd, Mr David McWeeney and Mr Noel Mackin respectively. The High Court heard evidence that they ought to have known that the company was trading while insolvent well before its liquidation in May 2010 given the 16 judgements registered by its creditors as far back as mid-2008 and the incidence of bounced cheques. There was a large body of unsecured creditors with debts totalling over €528,000. A number of depositors for the company's spreader machines did not receive them, and their deposits were used to fund other company expenses. There was also poor accounting for many cash transactions and a failure to cooperate fully with the liquidation.

A disqualification order 'for such period as to the Court seems appropriate' was made against Mr Patrick Mahony, and a five year restriction was made against Mrs Ita Mahony, both of whom were directors of Boxform Ltd, a company in the construction sector. It is understood that a further Court application will be made by the liquidator to determine the appropriate period of disqualification of Mr Mahony. The Court held that the directors had made certain payments to a bank which were deemed to be a fraudulent preference of the company's creditors and consequently invalid. Both Patrick and Ita Mahony were declared by the same Court Order to be personally liable without any limitation of liability for all of the company's debts and liabilities pursuant to Section 297A of the Companies Act 1963 (as amended) which relates to fraudulent or reckless trading. However, the Court ordered that the personal liability attaching to Mrs Mahony would not be enforceable if she were to file a sworn statement of affairs demonstrating that she had no personal assets of substance and undertook to inform the liquidator of any change in her position within the period of three years from the date of her disqualification. It is understood that she has since furnished a sworn statement of affairs to the liquidator.

Mr Dermot Doran, a director of Eamonn Doran Ltd, was disqualified for five years. The High Court heard evidence that the company traded while significantly insolvent with losses in 2005, 2006, 2007 and 2008 and that it was unable to meet its Revenue liabilities from July/August 2007. The liquidator believed that bad debts of €332,000 related to loans made to Mr Doran by the company. The director also failed to keep proper books and records which precluded the monitoring of its financial position.

A five year disqualification was imposed on Mr David Casey, a director of Keylogues Fabrication Ltd. The High Court heard evidence that Mr Casey had falsely attributed a lodgement of €105,000 to himself when in fact it had come from a trade debtor. He also had outstanding loans from the company of €95,538 at end 2007 which grew by €54,000 a year later, and this negatively impacted on the company's prospects.

Mr Joseph Bruen, a director of Phone-Pak Ltd, was disqualified for five years. The High Court heard evidence that the liquidation resulted from the escalation of substantial arrears in the company's account with its main supplier. This major creditor was owed in excess of €1.6 million and petitioned the High Court to wind up the affairs of the company. Several assurances including incorrectly prepared financial statements had been given to the creditor that failed to materialise.

Number of Restricted Directors at end-2007 to end-2011 inclusive

End-2007	End-2008	End-2009	End-2010	End-2011
791	624	538	589	528

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-2011, 210 individuals stood disqualified on foot of High Court orders arising from company law breaches including five individuals who had been disqualified arising from their conviction for failure to notify their disqualification in another jurisdiction⁵² and four who were disqualified on the basis of their convictions for having acted as a director while restricted⁵³. A further 3,622 persons were listed on the Register of Disqualified Persons have been deemed to be disqualified by virtue of their having received a qualifying criminal conviction⁵⁴. Such convictions include, for example, convictions for fraud.

Overall, there was a decrease in the number of restricted persons from 589 to 528. This decline reflected the fact that the numbers who completed their mandatory five year restriction period in 2011 exceeded the numbers of newly restricted directors. The table above indicates the number of restricted persons at the end of each year since 2007.

Criminal Enforcement Actions

Five cases involving company law offences were successfully prosecuted in 2011 and resulted in convictions on 20 charges with a further two charges taken into account.

One of these cases resulted in the imposition of terms of imprisonment on the accused which was the first occasion that such a penalty was implemented. While a small number of company law convictions in the past had resulted in the imposition of penalties of imprisonment, these had all previously been suspended or overturned on appeal. **Illustration 2.2.5** below provides details of the case.

Illustration 2.2.5: Director of Public Prosecutions v. Kenneth Shanny

This investigation started following receipt of an extensive report from the Companies Registration Office (CRO). The CRO had received a defective company annual return which necessitated correspondence with the apparent presenter. However, the presenter denied that he had filed the return in question or had conducted the audit of the accompanying accounts. Following investigation, it transpired that Mr Shanny had filed the return and the false audited accounts. It was also discovered that there were instances of theft and fraud relating to the assets of the company involved.

This case was primarily investigated by the Gardaí seconded to the ODCE who were in a position, pursuant to Section 12(4) of the Company Law Enforcement Act 2001, to use both their normal Garda powers and those available to officers of the Director under the Companies Acts. Following referral of the investigation file to the DPP, Mr Shanny was ultimately charged with 16 offences, 13 under the Criminal Justice (Theft and Fraud Offences) Act 2001 and three under the Companies Act 1990. The company law offences related to Section 187 (qualification for appointment as auditor) and Section 242 (furnishing false information).

Following hearings in January and April 2011, Dublin Circuit Court convicted the defendant on two charges, one under each Act. Concurrent three year jail terms were imposed on each charge with the last year suspended on each. He will also be required to comply with a good behaviour bond for two years after his release.

⁵² Section 160(1A) of the Companies Act 1990 (as amended).

⁵³ Section 161(2) of the Companies Act 1990.

⁵⁴ Section 160(1) of the Companies Act 1990.

Two of the remaining five cases in 2011 related to companies failing to keep proper books of account⁵⁵ where convictions were obtained on a total of seven charges. One of these cases has since been appealed.

Another two prosecutions dealt exclusively with unqualified persons acting as auditors⁵⁶ and involved a total of 12 charges. The convictions imposed in one of these cases has since been appealed.

A sixth case involving charges of acting as an auditor while unqualified and providing false information to the Registrar of Companies was scheduled for hearing in early 2012.

Conclusion

As indicated earlier, the civil and criminal enforcement activity of the Office improved in 2011 notwithstanding the continuing redeployment of staffing resources to the investigation of certain events at Anglo Irish Bank and the large inflow of liquidator reports which must be dealt with within a statutory timetable.

This improvement resulted from the adoption of a number of measures in recent years to maintain a reasonable level of throughput in the enforcement area. These included in particular:

- a greater utilisation of general ODCE staff in taking witness statements in non-Anglo criminal investigations. Some 44 witness statements were taken in this manner in 2011. Garda staff continue to make themselves available for the interview of potential suspects;
- a re-distribution of responsibility among a small group of legal and other staff to profile and progress possible disqualification cases.

It is hoped that the 2011 level of enforcement activity can be maintained in 2012. However, the Anglo investigations will remain a significant priority for the year in terms of the completion of the Office's investigations and addressing any follow up requirements of the Director of Public Prosecutions in respect of the investigation files. Depending on the extent of such requirements, there may be some scope for the Office to refocus its resources on other priorities as the year progresses.

On the civil enforcement front and as mentioned earlier in this Report, a provision in the Finance Act 2011 has unwittingly affected the utility of information exchanges from Revenue to this Office. We are seeking to have this legal problem removed this year by way of a legislative amendment. In the absence of satisfactory change, this problem will curtail the Office's ability later in 2012 to identify dissolved insolvent company cases and ultimately to take disqualification actions with respect to their former directors in appropriate cases.

⁵⁵ Section 202(10) of the Companies Act 1990.

⁵⁶ Section 187(9) of the Companies Act 1990.

Goal 3: Providing Quality Services to Internal and External Customers

Introduction

As will be evident from the earlier parts of this Report, the ODCE continued to manage a challenging workload in 2011. Nevertheless, it maintained quality services to its external and internal customers during the year. The main developments with respect to Office resources and services are outlined below.

Sub-Goal 3.1: Securing and Prudently Managing our Resources

Financial Resources

The Office's administrative costs in 2011 were funded through Subhead A09 of Vote 34 (Minister for Jobs Enterprise and Innovation). The allocated and expended amounts for the main pay and non-pay headings in Subhead A09 are provided in the following table.

Subhead A09, Vote 34	2011 Allocation (€000s)	2011 Expenditure (€000s)
Pay	2,660	2,629
Non-Pay	3,307	768
Total Subhead A09	5,967	3,397
Subhead X02, Vote 34	491	0
Total Subheads A09/X02	6,458	3,397

The outturn of almost €3.4 million represented roughly a 7.5% decrease on the outturn of just under €3.7 million in 2010. Every effort continues to be made to limit ODCE spending and liabilities. A detailed breakdown of Office expenditure during the year relative to the two preceding years is at **Appendix 3.1.1**.

Overall, the Director is satisfied that having regard to its significant programme of work, value for money was again obtained for Office expenditures in 2011.

Staffing Resources

The Office's staffing complement at the end of 2011 was almost 50, including ten seconded Gardaí. This number was one less than at the end of 2010 due to a staff member's retirement. In all, two permanent staff left the Office last year, and we are grateful for the contributions made by Kevin Mahady and Stephen Pinson during their time here.

Overall, staff continued to be deployed on a flexible basis to cover the ODCE's work priorities. **Appendix 3.1.2** provides a breakdown of the Office's staff at year-end.

Externally Sourced Expertise

By virtue of the presence of accountants, legal advisers and solicitors on its staff, the ODCE is reasonably self-sufficient in the accountancy and legal areas. In 2011, the Office had no cause to engage either external accountancy or solicitor firms to assist with its work. However, it did engage Counsel to provide specialist legal advice on occasion and to represent the Director in litigation, principally in the Superior Courts. These legal costs were maintained below €200,000 during the year.

Because of its potential need to acquire external expertise in support of its work, the ODCE maintained its Legal and Accounting Panels in 2011. These contain the names of persons or firms wishing to be considered for appropriate expert assignments. These Panels remain open at all times to legal and accounting professionals who wish to have themselves considered for ODCE work.

Government Expenditure Review

In response to this Government initiative, the ODCE submitted to the Department of Jobs Enterprise and Innovation in May 2011 a detailed review of its own performance and expenditure. This included a number of additional minor measures to curtail expenditure further. We also suggested that it may be possible to achieve a small amount of additional savings in overheads if the ODCE were merged with the CRO. In December, the Department invited both Offices to undertake a more detailed assessment of the merits of a merger, and this work was underway at the year-end.

Risk Management Action Plan

In 2011, the ODCE reviewed and updated the Office's risk management plan in consultation with the Department of Jobs Enterprise and Innovation. No significant risks matured during the year.

Energy Consumption

Difficulties in accessing current electricity consumption information were resolved late in 2011, and from 2012 onwards these figures will be readily available. However, historic metrics are proving more difficult to obtain. The ODCE is responsible for approximately 44% of the energy consumed in its premises. About 60% of all electricity used in the entire building is for lighting and office equipment, while heating and air conditioning accounts for the remainder.

During 2011, the Office of Public Works gave access to an Energy Monitoring System which now allows us to monitor the building's gas usage. In 2011, gas consumption (which is primarily used for heating air and water) was 696,781 kilowatt hours (kwh), of which the ODCE was responsible for approximately 309,650 kwh.

While an ODCE Green Agenda has been in place since 2008, the Office sought advice during 2011 from the Sustainable Energy Authority of Ireland to help further improve its energy efficiency. A number of actions were suggested, and the Office is aiming to implement some of these recommendations during 2012 in conjunction with other tenants in the building.

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 120 days of training in 2011 (95 days in 2010). 26 training days were provided from internal ODCE resources to 31 staff during 2011. This included a presentation on the new Criminal Justice Act 2011 which has implications for ODCE investigations. In addition, the

Department of Jobs Enterprise and Innovation provided 92.5 days of training to ODCE staff. Three staff also benefited from a total of 1.5 training days offered by the National Procurement Service in the Office of Public Works.

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 11 instruments of delegation in 2011 formally delegating the exercise of one or more of his legal powers to designated Office staff. Ten of the instruments involved amendments to existing instruments, while one was given to a staff member newly designated to act on the Director's behalf.

Staff Flexibility and Efficiency

The deployment of staff is kept under continuous review having regard to work priorities. In 2011 after appropriate training, administrative staff in the criminal enforcement area extended their role in taking witness statements in order to help progress current cases to decision stage. This innovation will continue and be extended in appropriate cases.

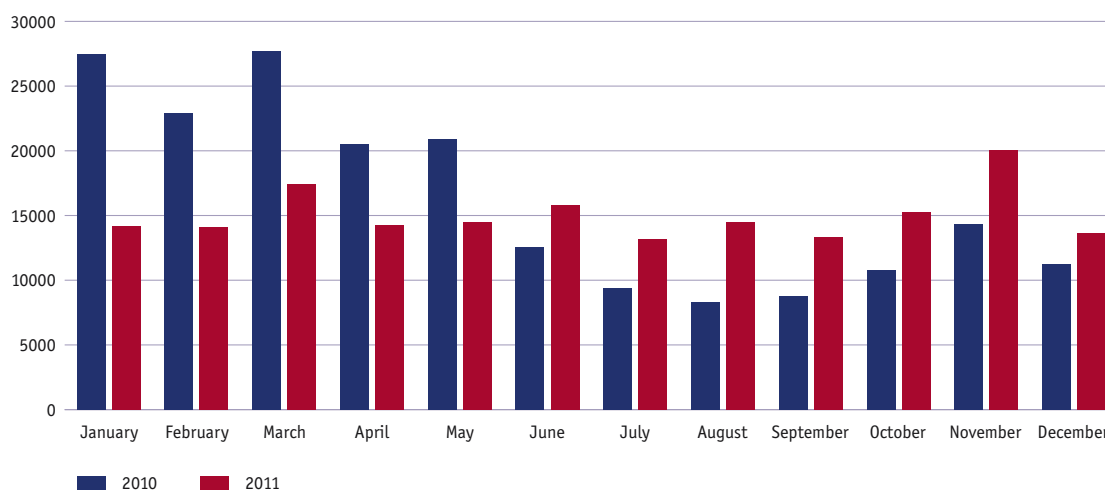
Sub-Goal 3.3: Improving our Customer Services

Services Offered

The ODCE continued in 2011 to commit considerable resources to the development 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;

Website Visits in 2011 in comparison with 2010



- statute-based services, whereby auditors, liquidators and other interests are required to report in certain circumstances to the Office;
- general assistance offered to Office clients via telephone queries, letters, email, etc. For instance, some 404 requests to the Office's *info@odce.ie* account were promptly answered during the year (464 in 2010). As reported earlier in this Report, 152 of these requests were of a compliance character.

Website

During 2011, the ODCE website at *www.odce.ie* attracted 177,872 visits, an average of 487 per day. This represented a decrease of 8% on the equivalent figure of 192,712 for 2010. The number of unique visitors for 2011 was 79,623 (73,972 in 2010).

Appendix 3.3.1 lists the 20 pages most frequently viewed by visitors to the website in 2011. In all, some 892,083 page-views were recorded during the year. Almost 3% of website traffic was to the Irish language pages of the website which are accessible at *www.osfc.ie*. In 2010, this figure was under 2%.

New material posted to the website in 2011 included the following:

- the eleven new or updated 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 civil and criminal enforcement cases which the Director prosecuted under the Companies Acts.

At end-2011, some 953 customers were registered to be notified of new information being published on the website (926 at end-2010).

Freedom of Information (FOI) Acts

All records of the Office (other than records concerning its general administration) are exempt from the FOI Acts. During 2011, the ODCE received three requests for Office records pertaining to its work. Of these, one was granted in full, one was part granted (the balance of the records requested did not exist), and the third was withdrawn by the requester.

Data Protection Acts

In 2011, 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. These obligations are consistent with the Office's own strict confidentiality requirements in Section 17 of the Company Law Enforcement Act 2001.

During 2011, an individual queried the mention of his name in correspondence issued by the Office. Although the matter and the individual's name were already in the public domain at the time, the Office reported the complaint to the Office of the Data Protection Commissioner as a potential breach of the Acts. That Office was satisfied that the ODCE took all reasonable steps to protect data and to prevent a recurrence of such a disclosure.

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 2011 attracted interest penalties under the Prompt Payment of Accounts Act.

Compliance with Agreed Customer Service Standards

Within the constraints of a demanding workload, the ODCE remained committed in 2011 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 formal complaints services on the website are part of this process.

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 outcome of the Office's deliberations (for example, where an individual makes a complaint, but that complaint is outside our company law remit). Overall however, the Director considers that satisfactory compliance with our Customer Service Standards was achieved during the year.

Official Languages Act 2003

In anticipation of the expiry of the Office's three-year Language Scheme in July 2011, the Office drafted a second Scheme during the year. This is currently being examined by the Department of Arts Heritage and the Gaeltacht and should be agreed in 2012. Pending approval, the commitments made under the first Scheme continue to have effect.

An audit by Oifig an Coimisinéir Teanga in 2011 found that the ODCE was broadly in compliance with both the Act and its Scheme commitments. However, it made recommendations for improving compliance in our initial phone engagement with customers and in the printing of Office booklets.

Conclusion

Taking account of the continuing difficulties which the Office and the State as a whole faced in 2011, 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

The outlook for 2012 remains challenging.

The Anglo investigations will remain a significant priority for the year in terms of the completion of the Office's investigations and addressing any follow up requirements of the Director of Public Prosecutions in respect of the investigation files. Depending on the extent of such requirements, there may be some scope for the Office to refocus its resources on other priorities as the year progresses.

It is undoubtedly the case that in the current difficult economic situation, unscrupulous commercial conduct continues to be a significant issue. It is in the public interest that large scale commercial misconduct is sanctioned. Accordingly, the Office needs to continue to apply a substantial proportion of its investigative and enforcement resources to such difficult cases. The ODCE's experience in 2011, as in earlier years, is that very high burdens of evidential proof must be met before a Court sanction will be imposed. The ODCE welcomes the legislative changes implemented to date to tackle white collar crime, and it hopes to see further initiatives in this area in 2012.

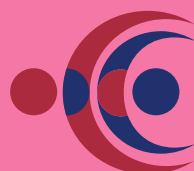
The number of corporate insolvencies is likely to remain high in 2012. This will give rise to continuing pressures arising from the Office's evaluation of liquidator reports. Some internal measures have been taken in early 2012 to try to mitigate these difficulties, but there is unlikely to be any reduction in the intensity of work in the area given the size and complexity of some of the companies in question.

As more creditors and other company stakeholders come under pressure, it is likely that complaints from these sources about alleged company law misconduct will continue to arise. Responding appropriately to these complaints will also place considerable demands on the Office. The provision of accessible self-help guidance which will assist company creditors and others to protect their commercial interests as much as possible plays an important part in addressing difficulties in this area.

The ODCE welcomes the plans for the modernisation of the law in a number of areas that are relevant to its sphere of activity, including the consolidated Companies Bill, the Whistleblowing Bill and the Personal Bankruptcy legislation. These changes should help position the economy to better address the difficult challenges now facing the country. In this regard, the recently introduced Legal Services Regulation Bill can also play an important role. The ODCE has recently made a submission to the Minister for Jobs Enterprise and Innovation in regard to this Bill. In its submission, the ODCE has highlighted proposed changes to the Bill that it believes are necessary and appropriate to facilitate reductions in the level of legal fees currently arising and thereby contribute to the objective of improving our economic competitiveness.

Through its compliance, investigation and enforcement work, the ODCE intends to continue to play its part in 2012 in encouraging high standards of corporate governance in the State. Such standards support both the creation of new indigenous businesses as well as the attraction of foreign direct investment. In this manner, the work of the Office makes a positive contribution to the Government's strategy on jobs.

Appendices



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach
Office of the Director
of Corporate Enforcement

Appendix 1.1.1

List of Publications issued by the ODCE in 2011

Date	Name of Publication
6/1/2011	Summary Review of ODCE Activity in 2010
7/2/2011	Information Notice I/2011/1 – Section 56 Reports
2/6/2011	ODCE Annual Report 2010
9/11/2011	Decision Notice D/2011/1 – Seven Information Books on the Duties of the following under the Companies Acts 1963-2009 <ul style="list-style-type: none">■ Companies■ Company Directors■ Company Secretaries■ Members and Shareholders■ Auditors■ Creditors■ Liquidators, Receivers and Examiners
30/12/2011	Audit Committees – Quick Guide

Appendix 1.1.2

ODCE Presentations in 2011

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
11/1/11	Burtenshaw Kenny Associates	Presentation	Corporate Healthcheck	Clonliffe College, Dublin	18	Kevin Prendergast
3/2/11	Genesis Programme	Presentation	Corporate Healthcheck	Cork Institute of Technology	13	Kevin Prendergast
8/2/11	South Tipperary Childcare Committee	Presentation	Corporate Healthcheck	Hugh's Mill, Tipperary	16	Kevin Prendergast
16/2/11	Kilkenny County Childcare Committee	Presentation	Corporate Healthcheck	Danesford Community Centre, Kilkenny	45	Kevin Prendergast
4/3/11	D1 Business Network Group	Presentation	Issues for Accountants in Corporate Enforcement	CA House, Pearse Street, Dublin	8	Kevin Prendergast
22/3/11	NUI Galway Business Society	Presentation	An Evening with the Director	NUI Galway	20	Paul Appleby
23/3/11	Nova UCD	Presentation	Corporate Healthcheck	UCD, Dublin	12	Kevin Prendergast
24/3/11	Sheriffs' Association	Presentation	Role of the ODCE	Merrion Hotel, Dublin	13	Kevin Prendergast
31/3/11	Institute of Certified Public Accountants	Presentation	Issues for Accountants in Corporate Enforcement	Elm Park Golf Club, Dublin	60	Kevin Prendergast
1/4/11	UCD Diploma in Business Studies	Presentation	The ODCE – Setting the Standard	Smurfit Business School, Dublin	40	Kevin Prendergast
11/4/11	Fingal Citizens' Information Centre	Presentation	Corporate Governance/ Directors' Responsibilities	Fingal CC Offices, Swords	14	Kevin Prendergast
11/4/11	Waterford Institute of Technology	Presentation	Corporate Healthcheck	Waterford IT, Carrigmore Campus	14	Kevin Prendergast

Appendix 1.1.2 (continued)

ODCE Presentations in 2011

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
4/5/11	Business Network Group, Castlebar	Presentation	Issues for Accountants in Corporate Enforcement	Galway/Mayo IT, Castlebar	9	Kevin Prendergast
12/5/11	Annual Conference of Town Clerks	Presentation	Corporate Healthcheck	Minella Hotel, Clonmel	85	Kevin Prendergast
25/5/11	Chartered Accountants Ireland	Presentation	Directors' Duties/Conduct of Meetings	Royal College of Physicians, Dublin	12	Kevin Prendergast
31/5/11	Donegal County Enterprise Board	Presentation	Corporate Healthcheck	Enterprise Board Office, Letterkenny	16	Kevin Prendergast
8/6/11	Carlow IT	Presentation	Corporate Healthcheck	Carlow IT	12	Kevin Prendergast
24/6/11	Chartered Accountants Ireland	Presentation	Insolvency Role of ODCE	Pearse Street, Dublin	40	Adrian Brennan
21/7/11	Waterford Law Society	Presentation	Current Company Law Issues	Ramada Hotel, Waterford	22	Kevin Prendergast
30/8/11	Chief State Solicitor's Office	Presentation	The Role and Functions of the ODCE	Chief State Solicitor's Office, Dublin	70	Adrian Brennan
1/9/11	Dublin City Council Law Department	Presentation	Current Company Law Issues	Dublin City Council, Wood Quay, Dublin	18	Kevin Prendergast
15/9/11	Irish Times Training	Presentation	The ODCE – Encouraging Compliance/ Enforcing the Law	Irish Times Building, Dublin	15	Kevin Prendergast
20/9/11	Garda Bureau of Fraud Investigation	Presentation	The Role and Functions of the ODCE	Westmanstown Co Dublin	25	Brian Mahon and Michael Prendergast
28/9/11	Chartered Accountants Ireland	Presentation	The ODCE – Current Focus, Future Direction	Faithlegg House Hotel, Waterford	55	Kevin Prendergast

Appendix 1.1.2 (continued)

ODCE Presentations in 2011

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
29/9/11	Irish Company Secretaries Group	Presentation	ODCE Focus and Priorities	Deloitte, Earlsfort Terrace, Dublin	50	Paul Appleby
29/9/11	Letterkenny Institute of Technology	Presentation	The ODCE – Encouraging Compliance, Enforcing the Law	Letterkenny IT, Co Donegal	23	Kevin Prendergast
6/10/11	RAPID	Presentation	Corporate Governance/ Role of Company Directors	City Hall, Limerick	24	Kevin Prendergast
7/10/11	IT Tallaght	Presentation	The Role of the ODCE	IT Tallaght	17	Kevin Prendergast
11/10/11	DCU Masters in Business Studies	Presentation	The ODCE – What is it and what does it do?	DCU Campus, Dublin	75	Kevin Prendergast
12/10/11	Law Society of Ireland	Presentation	The Role and Functions of the ODCE	Law Society of Ireland, Dublin	200	Adrian Brennan
19/10/11	South Tipperary Development	Presentation	Corporate Healthcheck	Company Office, Cahir, Co Tipperary	10	Kevin Prendergast
20/10/11	Sunday Business Post	Conference	Get Informed	RDS, Dublin	220	Kevin Prendergast
2/11/11	Chartered Accountants Ireland	Presentation	Certificate in Directors' Duties	CA House, Pearse Street, Dublin	16	Kevin Prendergast
9/11/11	Lavelle Coleman	Presentation	ODCE Update	Earlsfort Terrace, Dublin	45	Kevin Prendergast
10/11/11	Law Society, Finuas Skillnet	Presentation	The Role of the ODCE	Ashling Hotel, Dublin	45	Kevin Prendergast
14/11/11	Fifth ACOI Compliance in Finance Conference	Presentation	2011 Criminal Justice Act: Compliance Implications	Radisson Blu Hotel, Dublin 8	200	Paul Appleby

Appendix 1.1.2 (continued)

ODCE Presentations in 2011

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
14/11/11	UCD Quinn School (1)	Presentation	The ODCE – Setting the Standard	UCD Belfield, Dublin 4	70	Kevin Prendergast
14/11/11	UCD Quinn School (2)	Presentation	The ODCE – Setting the Standard	UCD Belfield, Dublin 4	30	Kevin Prendergast
22/11/11	Institute of Certified Public Accountants	Presentation	ODCE Update	Bunratty Castle, Co Clare	50	Kevin Prendergast
23/11/11	Chartered Accountants Ireland	Presentation	ODCE – Current Focus, Future Direction	Radisson Hotel, Rosses Point, Sligo	75	Kevin Prendergast
24/11/11	Institute of Certified Public Accountants	Presentation	ODCE Update	Kilashee House Hotel, Kildare	35	Kevin Prendergast
25/11/11	Central Bank of Ireland	Presentation	Issues relating to Legal Proceedings	Central Bank, Dublin	3	Ann Keating
25/11/11	Omnipro	Conference	Compliance and Regulatory Landscape – A look ahead	Crowne Plaza Hotel, Dublin	25	Kevin Prendergast
29/11/11	Chartered Accountants Ireland	Presentation	ODCE – Current Focus, Future Direction	Radisson Hotel, Galway	95	Kevin Prendergast
1/12/11	Chartered Accountants Ireland	Presentation	ODCE – Current Focus, Future Direction	Thomond Park, Limerick	75	Kevin Prendergast
2/12/11	Law Society of Ireland	Presentation	Corporate Governance, Why, When and Where	Law Society of Ireland, Dublin	150	Kevin Prendergast
8/12/11	University of Ulster Diploma in Corporate Governance	Presentation	The Role of the ODCE	Marino College, Dublin	16	Kevin Prendergast

Appendix 1.1.2 (continued)

ODCE Presentations in 2011

Date	Promoter	Event Type	Subject	Venue	Audience (approx.)	Speaker
9/12/11	Omnipro	Seminar	Review by the ODCE	Citywest Hotel, Saggart	95	Kevin Prendergast
12/12/11	Omnipro	Seminar	Review by the ODCE	The Strand Hotel, Limerick	50	Kevin Prendergast
13/12/11	Omnipro	Seminar	Review by the ODCE	Radisson Hotel, Little Island, Cork	50	Kevin Prendergast
15/12/11	Chartered Accountants Ireland	Presentation	The ODCE – Current Focus, Future Direction	Cork International Airport Hotel	95	Kevin Prendergast
16/12/11	DPP's Office/ Special Prosecutor's Office, Iceland	Presentation	The Role and Functions of the ODCE	GBFI Office, Dublin	4	Adrian Brennan
16/12/11	Omnipro	Seminar	Review by the ODCE	The Sheraton Hotel, Athlone	65	Kevin Prendergast

Appendix 1.1.3

List of Exhibitions/Events attended by ODCE in 2011

Date	Event Type	Name of Event	Venue	Promoter	Attendees
25-26/2/11	Exhibition	Irish Franchise Association Expo	Croke Park Dublin	Ulster Bank/ Irish Franchise Association	Eileen McManus and Maria Leavy
5/5/11	Exhibition	Start Your Own Programme	Central Library, ILAC Centre, Dublin	Business Information Centre, ILAC	Eileen McManus
18/5/11	Conference	ICSA Annual Conference	Royal College of Physicians, Dublin	Institute of Chartered Secretaries and Administrators	Eileen McManus
20/5/11	Conference	CPA Annual Conference	Westgrove Hotel, Clane, Kildare	Institute of Certified Public Accountants	Eileen McManus
16-17/9/11	Exhibition	CPA Practitioners Conference	Druids Glen, Wicklow	Institute of Certified Public Accountants	Kevin Prendergast
20-22/9/11	Exhibition	National Ploughing Championship	Cardenton, Athy, Co Kildare	National Ploughing Association	See footnote ⁵⁷
22/9/11	Exhibition	IICM Credit Management	Concert Hall RDS, Dublin	Irish Institute of Credit Management	Eileen McManus
27/9/11	Conference	SFA Annual Conference	Dublin Castle	Small Firms Association	Eileen McManus
29/9/11	Conference	South East Women in Business	Ballykisteen House Hotel, Tipperary	Kilkenny County Enterprise Board	Eileen McManus
30/9/11	Conference	National Enterprise Conference	Park Hotel, Clonmel	Clonmel Chamber of Commerce	Eileen McManus
6/10/11	Exhibition	Start Your Own Programme	Central Library, ILAC Centre, Dublin	Business Information Centre, ILAC	Eileen McManus

⁵⁷ Kevin Prendergast, Dermot Morahan, Patricia Moran, Eileen McManus, Aoife Raftery, Maria Leavy.

Appendix 1.1.3 (continued)

List of Exhibitions/Events attended by ODCE in 2011

Date	Event Type	Name of Event	Venue	Promoter	Attendees
20/10/11	Exhibition	Out on Your Own – SBP	RDS, Dublin	Sunday Business Post	See footnote ⁵⁸
11/11/11	Conference	ISME Annual Conference	RDS, Dublin	Irish Small and Medium Enterprise	Eileen McManus
17/11/11	Exhibition	National Women's Enterprise Day	Heritage Hotel, Portlaoise	Limerick County Enterprise Board	Eileen McManus and Marie Breen
18/11/11	Exhibition	Start & Grow Enterprise Expo	Tullamore Court Hotel	Offaly County Enterprise Board	Eileen McManus and Marie Breen

58 Eileen McManus, Maria Leavy, Angela Nolan.

Appendix 1.1.4

Press Statements issued by the ODCE in 2011

Date	Subject
6/1/2011	ODCE Annual Review 2010
31/1/2011	Four Individuals Disqualified from acting as Directors
22/3/2011	Anglo Investigation: "Further Substantial Investigation File Sent to the DPP"
2/6/2011	ODCE Annual Report 2010
7/6/2011	Mr Jim Lacey Disqualified for Nine Years by the High Court Today
26/9/2011	Naas District Court orders Witness to assist Anglo Investigations
29/9/2011	ODCE Submits Further Anglo Investigation File to the DPP
9/12/2011	Anglo Investigation – Arrest
19/12/2011	Statement in relation to Aventine Resources plc

Appendix 2.1

Breakdown of New Cases in 2011 (v. 2010) by Source

Source of New Cases	2010	2011
Liquidator Reports		
Initial Reports on Insolvent Companies	1,312	1,287
Reports by Liquidators of Possible Criminal Liability	0	1
Sub-Total	1,312	1,288
Unliquidated Insolvent Company Cases	28	70
Public Complaints and Other Detections		
Public Complaints	344	304
Reports from Public Authorities in the State	28	29
Reports from Public Authorities outside the State	2	2
Other Detections	85	87
Sub-Total	459	422
Auditor and Similar Reports		
Indictable Offence Reports from Auditors	191	169
Indictable Offence Reports from Professional Bodies	3	9
Sub-Total	194	178
Total of New Reports and Detections in Year	1,993	1,958

Appendix 2.2

Throughput of Reports and Complaints in 2011

Throughput of Cases	2010	2011	% Change
Cases on hands at 1 January	838	1,007	+20
New Cases	1,993	1,958	-2
Cases Concluded	1,824	1,949	+7
Cases on hands at 31 December	1,007	1,016	+1

Appendix 2.3

Cases Concluded in 2011 (v. 2010) by Primary Manner of Closure

Basis for Closure	2010	2011
Definitive relief decisions on liquidator reports	1,093	1,277
A company law default which was rectified	184	156
A company law default where warnings as to future conduct were issued	169	109
Insufficient evidence of default	163	170
Not a company law matter	142	137
A company law matter which others should pursue	70	95
ODCE legal enforcement	3	5
Total	1,824	1,949

Appendix 2.4

Reports on Liquidated Insolvent Companies in 2011 (v. 2010) – Sectoral Distribution

Liquidated Insolvent Companies by Business Sector	Liquidator Reports			
	2010		2011	
Construction	339	26%	319	25%
Wholesale & Retail	330	25%	286	22%
Manufacturing	166	13%	161	13%
Hotels, Bars & Catering	141	11%	142	11%
Community, Social & Other	65	5%	103	8%
Marketing and Promotion	76	6%	63	5%
Real Estate and Renting	82	6%	96	7%
Transport and Distribution	40	3%	44	3%
Recruitment and Security Services	27	2%	22	2%
Technology and Telecommunications	19	1%	16	1%
Financial and Leasing	12	1%	16	1%
Agriculture, Mining & Marine	15	1%	19	1%
Total	1,312	100%	1,287	100%

Appendix 2.5

New Reports and Complaints (other than Liquidated and Unliquidated Insolvent Companies) in 2011 (v. 2010) – Sectoral Distribution

Entities (other than Liquidated and Unliquidated Insolvent Companies) by Business Sector	Reports and Complaints			
	2010		2011	
Real Estate and Renting	218	33%	85	14%
Wholesale and Retail	54	8%	69	12%
Construction	66	10%	53	9%
Financial and Leasing	20	3%	44	6%
Health and Social Work	9	1%	35	6%
Marketing and Promotion	0	0%	35	6%
Manufacturing	38	6%	31	5%
Community, Social and Personal	25	4%	29	5%
Hotels, Bars and Catering	29	4%	23	4%
Technology and Telecommunications	0	0%	13	2%
Transport and Distribution	19	3%	12	2%
Agriculture, Mining and Marine	10	2%	8	1%
Recruitment and Security Services	0	0%	5	1%
Other Business Sectors	12	2%	35	8%
Unknown Business Sector	44	7%	45	7%
Not a Company	109	17%	78	13%
Total	653	100%	600	100%

Appendix 2.1.1

Liquidator Section 56 Reports at 31 December 2011 – Reports Progressed

Classification	Initial Reports	Further Reports	Total Reports
Liquidator Reports received			
Reports brought forward from 2010	478	233	711
Reports received in 2011	1,287	438	1,725
Reports due and not received in 2011	69	44	113
Compliance Rate	95%	91%	94%
Liquidator Reports determined			
Decisions due in 2011	1,247	451	1,698
Decisions issued in 2011	1,177	420	1,597
Conclusion Rate	94%	93%	94%
Decisions where full relief was granted ⁵⁹	806	170	976
Decisions where partial relief was granted ⁶⁰	16	13	29
Decisions where relief at this time was granted ⁶¹	296	176	472
Decisions where relief was not granted ⁶²	59	61	120
Liquidator Reports carried forward to 2012	588	251	839

⁵⁹ 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.

⁶⁰ Cases of Partial Relief are those in which relief was granted in respect of some, but not all, of the company's directors.

⁶¹ 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.

⁶² 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 2011 – Character of Primary Default

Type of Indicated Primary Default	2010	2011
Directors' Loan Infringements	146	143
Failure to Keep Proper Books of Account	36	19
False Statements to Auditors	6	1
Non-Qualification for Appointment as Auditor	6	9
Falsification of Documents	3	3
Non-holding of Extraordinary General Meetings	2	1
Other	11	10
Total	210	186

Appendix 2.1.3

Public Complaints and Other Detections in 2011 – Character of Primary Default

Type of Indicated Issue	2010	2011
Auditing Deficiency	59	57
Directors' Conduct – Miscellaneous	44	48
Annual/Extraordinary General Meetings	35	47
Unpaid Debt	32	54
Reckless/Fraudulent/Insolvent Trading	30	94
General Shareholder Rights Issue	25	24
Forgery/False Information	23	10
Trading while struck off the Companies Register	18	13
Other	193	75
Total	459	422

Appendix 2.2.1

Overview of ODCE-Related Proceedings in 2011 (v. 2010)

Proceedings by Case Type	2010		2011	
Investigative				
Successful	8		8	
Unsuccessful	–		–	
Ongoing	–		–	
Sub-Total		8		8
Civil Enforcement				
Successful	2		11	
Unsuccessful	1		–	
Withdrawn	1		–	
Struck Out	–		1	
Ongoing	15		13	
Sub-Total		19		25
Criminal Enforcement				
Successful	2		3	
Unsuccessful	–		–	
Ongoing	2		3	
Sub-Total		4		6
All Proceedings				
Successful	12		22	
Unsuccessful	1		–	
Withdrawn	1		–	
Struck Out	–		1	
Ongoing	17		16	
Total		31		39

Appendix 2.2.2

Details of ODCE Legal Proceedings heard in 2011 or earlier and ongoing in 2011

Type	Subject Matter	Section/Act involved ⁶³	Case Nos.	Case Status/Result
Superior Courts				
Appeal by ODCE	Disqualification for alleged breach of duty and unfitness re Kentford Securities Ltd	S. 160(2)(b) and (d), 1990	1	Appeal allowed and disqualification of two years imposed – see Appendix 2.2.3
Appeal by ODCE	Disqualification on foot of Inspectors' Report re National Irish Bank Ltd	S. 160(2)(b), (d) and (e), 1990	2	Ongoing
Appeal by Respondents	Disqualification on foot of Inspectors' Report re National Irish Bank Ltd	S. 160(2)(b), (d) and (e), 1990	4	Ongoing. Appeal of disqualification for nine years initiated
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. Appeals rejected. Costs awarded for each successful defence
Application by ODCE	Disqualification on foot of Inspectors' Report re National Irish Bank Ltd	S. 160(2)(b), (d) and (e), 1990	1	Ongoing
Application by ODCE	Disqualification for alleged fraud, breach of duty and unfitness re Läßle Ireland Ltd	S. 160(2)(a), (b) and (d), 1990	1	Ongoing
Application by ODCE	Disqualification arising from filing defaults resulting in one or more companies being struck off the Companies Register while insolvent	S. 160(2)(h), 1990	8	16 disqualifications for terms of four to seven years and two five year restrictions imposed. Orders for costs made in favour of the ODCE, a number to be taxed in default of agreement – see Appendix 2.2.3
Application by ODCE	Disqualification arising from filing defaults of seven companies being struck off the Companies Register, some of which were insolvent	S. 160(2)(h), 1990	1	Struck out. In reply to the proceedings, the Respondents reinstated two companies and gave affidavit evidence that five companies had no debts

⁶³ The Acts referred to in this Appendix are the Bankers' Books Evidence Act 1879, the Companies Acts of 1963 and 1990, the Criminal Justice (Theft and Fraud Offences) Act 2001 and the Criminal Justice Acts of 1984 and 2011 in their amended form.

Appendix 2.2.2 (continued)

Details of ODCE Legal Proceedings heard in 2011 or earlier and ongoing in 2011

Type	Subject Matter	Section/Act involved ⁶³	Case Nos.	Case Status/Result
Application by ODCE	Disqualification arising from filing defaults resulting in companies being struck off the Companies Register while insolvent	S. 160(2)(h), 1990	4	Ongoing
Application by ODCE	Failure by Thomas Clarke and John Mooney to deliver liquidator reports to the ODCE	S. 371(1), 1963	2	Struck out – after compliance. Orders in favour of the ODCE to tax costs in default of agreement
Application by ODCE	Investigation of former Anglo Irish Bank Corporation Ltd	S. 20(2G)(c), 1990	2	Extra time granted for the examination of seized documents
Circuit Court				
Prosecution by DPP	Unqualified auditor, failing to comply with a demand for evidence of audit qualifications, providing false information to the Registrar of Companies – Kenneth Shanny	S. 187(6), S. 187(12)(a), S. 242(1), 1990 ⁶⁴	1	Convicted on one S. 242 charge. Three years' imprisonment imposed with last year suspended. Good behaviour bond applies for two years after release
District Court				
Application by ODCE	Production of banking documentation	S. 7A, 1879	4	Granted
Application by ODCE	Warrant for arrest	S. 10, 1984	1	Granted
Application by ODCE	Compelling reluctant witness to furnish evidence	S. 15, 2011	1	Granted
Prosecution by ODCE	Acting as auditor while unqualified – Darren Barlow	S. 187(6), 1990	1	Convicted on five charges. Fines of €3,750 imposed plus costs of €1,115
Prosecution by ODCE	Acting as auditor while unqualified	S. 187(6), 1990	1	Ongoing. Conviction on seven charges being appealed

⁶⁴ The DPP prosecuted 13 charges under the Criminal Justice (Theft and Fraud Offences) Act 2001. Mr Shanny was convicted on one of these charges, and an identical concurrent sentence was imposed.

Appendix 2.2.2 (continued)

Details of ODCE Legal Proceedings heard in 2011 or earlier and ongoing in 2011

Type	Subject Matter	Section/Act involved ⁶³	Case Nos.	Case Status/Result
Prosecution by ODCE	Acting as an auditor while unqualified and providing false information to the Registrar of Companies	S. 187(6) and S. 242(1), 1990	1	Ongoing
Prosecution by ODCE	Failure to keep proper books of account – Mandarin Healthcare (Ireland) Ltd	S. 202(10), 1990	1	Convicted on two charges. Fines of €3,000 imposed plus costs of €1,250
Prosecution by ODCE	Failure to keep proper books of account	S. 202(10), 1990	1	Ongoing. Conviction on five charges being appealed

Appendix 2.2.3

Disqualifications and Restrictions secured by the ODCE in 2011

Company Name	Company Number	Persons Sanctioned (Disqualification applies unless Restriction indicated)	Start Date	End Date
Aluminium Castings (Cork) Ltd	137498	Thomas Carroll Anthony Carroll	31/1/2011	30/1/2016
Kerins & Sons Construction Ltd	402184	William Kerins Kathleen Kerins	31/1/2011	30/1/2016
Kentford Securities Ltd	70096	Patrick McCann	1/2/2011	31/1/2013
Maurmart Ltd	441444	Maurice Doolan Martina Fogarty	28/3/2011	27/3/2018
National Irish Bank Ltd; National Irish Bank Financial Services Ltd	65780 30478	Nine year disqualification order granted on 7/6/2011. Stay placed on the order pending an appeal	n.a.	n.a.
F. Worthington & Company Ltd	38109	Kenneth Worthington Andrea Worthington	18/7/2011	17/7/2016
Halcyon Construction Ltd; Long Bullogue Developments Ltd	386476 418872	Trevor Gargan	24/10/2011	23/10/2016
Long Bullogue Developments Ltd	418872	David Cullen	24/10/2011	23/10/2015
Rosgorran Ltd; Hogan Brothers (Ballaghderreen) Ltd; Shannonside Mushroom Marketing Ltd	262359 169761 175469	Matthew Hogan	5/12/2011	4/12/2016
Bradrock Ltd; Rosgorran Ltd; Hogan Brothers (Ballaghderreen) Ltd; Shannonside Mushroom Marketing Ltd	289902 262359 169761 175469	John Hogan David Hogan	27/2/2012	26/2/2017
Michael O'Halloran Construction Ltd	412419	Michael O'Halloran Marie O'Halloran	12/12/2011	11/12/2016
Camlin Electric Ltd; Tarmonbarry Hydroelectric Ltd	91186 382815	Benedict McGowan	19/12/2011	18/12/2016
Camlin Electric Ltd	91186	Mary McGowan (Restriction only)	19/12/2011	18/12/2016
Tarmonbarry Hydroelectric Ltd	382815	Keith McGowan (Restriction only)	19/12/2011	18/12/2016

Appendix 2.2.4

Cases where No Restriction or Disqualification Order was made against Directors by the High Court in 2011 arising from a Liquidator's Section 56 Report

Company Number	Company Name	Date of Court Order
42527	Ferguson Chemists Limited	5/5/2011
406605	Hyland Transport & Warehousing Ltd	14/3/2011
131364	Keldol Limited	21/3/2011
408595	MS Team Contracting Limited	24/10/2011
394808	Murphy's Rock Limited	7/11/2011
383639	Tom McEvaddy Property Co Limited	7/7/2011

Appendix 2.2.5

Cases where Restrictions were made against Directors by the High Court in 2011 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)
461472	Another Chance Limited	Donovan	Alan	17/10/2011	Full Restriction
		O'Neill	Robert	17/10/2011	Full Restriction
		Purnell	David	10/10/2011	Full Restriction
143748	Auldcarn Limited	Stokes	Christian	7/3/2011	Full Restriction
		Stokes	Simon	7/3/2011	Full Restriction
290545	B & R Homes Limited	Berns	Louise	25/7/2011	Full Restriction
		Berns	Richard	25/7/2011	Full Restriction
286798	Balbradagh Developments Limited	O'Grady	Michael	10/2/2011	Full Restriction
		Pratt	Kenneth	10/2/2011	Full Restriction
192866	Balmain Inn Limited	Heagney	Daragh	21/3/2011	Full Restriction
		O'Grady	Dara	21/3/2011	Full Restriction
301135	Bandon Double Glazing Co Limited	Kelly	Patrick	10/10/2011	Full Restriction
127526	Ben Healy (Sales) Limited	Healy (Jr)	Benjamin	4/7/2011	Full Restriction
315703	Blackrock Ambulance Services Limited	Spain	Joseph	11/7/2011	Full Restriction
		Whyte	Oliver	11/7/2011	Full Restriction
340468	Boxform Limited	Mahony	Ita	29/3/2011	Full Restriction
450418	C2K Cherrywood Restaurant Limited	Barrett	Noel	17/10/2011	Full Restriction
		Keenan	Mark	17/10/2011	Full Restriction
419916	Calmorey Limited	Kramp	Christian	6/5/2011	Full Restriction
		Rissman	Ivonne	6/5/2011	Full Restriction
384953	Castle Drylining & Insulation Services Limited	O'Neill	Thomas	7/3/2011	Full Restriction
376359	Clare River Developments Limited	Rabbitte	Martin	28/11/2011	Full Restriction
		Rabbitte	Nuala	28/11/2011	Full Restriction
415601	Colindale Construction Limited	Fallon	Martin	17/10/2011	Full Restriction
		Fallon	Pauline Majella	17/10/2011	Full Restriction

Appendix 2.2.5 (continued)

Cases where Restrictions were made against Directors by the High Court in 2011 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)
366256	Cork City Investment FC Ltd	Coughlan	Tom	2/12/2011	Full Restriction
420784	Crazy Clowns Limited	Curran	Enda	7/11/2011	Full Restriction
404143	Cronin Carpentry Limited	Cronin	Emmet	12/12/2011	Full Restriction
		Cronin	Annette	12/12/2011	Full Restriction
302686	Croydon Engineering Ltd	Scully	Karl	4/2/2011	Partial Restriction
399838	CSM Essentials Limited	McDonald	Susan	10/10/2011	Full Restriction
		Waters	Michael	10/10/2011	Full Restriction
31213	Discount Electrical Company Limited	O'Donoghue	Geraldine	19/12/2011	Full Restriction
		O'Donoghue	Michael	19/12/2011	Full Restriction
347137	Doolans Bar and Lounge Limited	Kelly (née Dawdry) Kelly	Nicola	24/10/2011	Full Restriction
			John	24/10/2011	Full Restriction
352987	Eamonn Doran Limited	Doran	Clare	7/2/2011	Full Restriction
371018	Esker Bus & Coach Limited	McGee	Helena	31/1/2011	Full Restriction
		McGee	Danny	31/1/2011	Full Restriction
323695	Essential Management Limited	Cullen	Martin	24/10/2011	Full Restriction
		Donovan	Alan	17/10/2011	Full Restriction
		O'Neill	Robert	17/10/2011	Full Restriction
200881	Gymfit Limited	Dennis	Anthony	5/12/2011	Full Restriction
		Kinsella	Sharon	5/12/2011	Full Restriction
90234	Future Print Limited	Jameson	Christopher	10/10/2011	Full Restriction
		Jameson	Jacqueline	10/10/2011	Full Restriction
376615	Halgreg Limited	Halpin	Gregory	24/1/2011	Full Restriction
		Halpin	Craig	24/1/2011	Full Restriction

Appendix 2.2.5 (continued)

Cases where Restrictions were made against Directors by the High Court in 2011 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)
361256	Happy Employees Limited	Heagney	Daragh	21/3/2011	Full Restriction
		O'Grady	Dara	21/3/2011	Full Restriction
440601	Healy Power Limited	Power	Peter	24/10/2011	Full Restriction
446763	Henrima Limited	Henderson	Shaun	24/1/2011	Full Restriction
		Henderson	Martina	24/1/2011	Full Restriction
393486	J & B Lynch Plant Hire Ltd	Lynch	John	24/10/2011	Full Restriction
		Lynch	Brendan	24/10/2011	Full Restriction
450186	Janitorial Direct Ireland Ltd	Hickey	Maxine	10/10/2011	Full Restriction
		Hickey	Paul	10/10/2011	Full Restriction
344911	J. Strand & Co. Limited	Farrell	Kevin	10/12/2011	Full Restriction
		McDonald	Noel	10/12/2011	Full Restriction
336341	Keylogues Fabrication Ltd	O'Donnell	Willis	19/11/2011	Full Restriction
84661	Kingsland Chinese Restaurant Limited	Cheung	Jonathan	3/2/2011	Full Restriction
		Lau	Benny	3/2/2011	Full Restriction
412296	KMS Capital Limited	Brady	Sharon	4/2/2011	Full Restriction
		McGovern	Barry	4/2/2011	Full Restriction
306302	KVC Manufacturing Limited	Crowe	Martin	31/1/2011	Full Restriction
		McGee	Danny	31/1/2011	Full Restriction
412666	Leo Getz Trading Limited	McGinley	Kevin	3/11/2011	Partial Restriction
304652	Liberty Tours Limited	Martin	Sean F.	24/1/2011	Full Restriction
414373	Liscarton Motor Company Limited	Darcy	Joseph	7/6/2011	Full Restriction
		Simpson	Alan	7/6/2011	Full Restriction
348542 110310	Little Bird Development Ltd Little Bird Limited	Lehane	Frank	28/3/2011	Partial Restriction

Appendix 2.2.5 (continued)

Cases where Restrictions were made against Directors by the High Court in 2011 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)
442036	M.J. Roche Construction (Clarecastle) Limited	Roche	Martin	1/2/2011	Partial Restriction
335705	Martin Tate Limited	Tate	Diane	24/10/2011	Full Restriction
		Tate	Martin	24/10/2011	Full Restriction
353978	McCabe Scaffolding & Safety Services Limited	McCabe	Aiden	4/7/2011	Full Restriction
		McCabe	Janet	4/7/2011	Full Restriction
266844	Mayfair Properties Limited	Stokes	Christian	7/3/2011	Full Restriction
		Stokes	Simon	7/3/2011	Full Restriction
336184	McColgan Steel Limited	McColgan	Michael	19/12/2011	Full Restriction
		McColgan	Florence	19/12/2011	Full Restriction
430120	Metro Inns Limited	Purnell	David	10/10/2011	Full Restriction
		Purnell	Christopher	10/10/2011	Full Restriction
456523	MPD Marine Limited	Coughlan	Patrick	14/2/2011	Full Restriction
		McNamara	Karl	14/2/2011	Full Restriction
239131	Munster Homes Construction Limited	Nixon	Karen	30/5/2011	Full Restriction
		Nixon	Ivan	30/5/2011	Full Restriction
356797	Navan Tile Design Limited	Doheny	Gerard	7/3/2011	Full Restriction
		Doheny	Mary	7/3/2011	Full Restriction
403891	Okohaus Limited	Drumm	Ken	9/12/2011	Full Restriction
		Steiner	Josef	9/12/2011	Full Restriction
118196	O'Leary Office Supplies Ltd	O'Leary	Kieran	28/3/2011	Full Restriction
315166	Omegatwo Limited	Walsh	Mary	28/3/2011	Full Restriction
		Walsh	Michael	28/3/2011	Full Restriction
343247	O'Regan O'Brien Development Ltd	O'Brien	Alan	5/12/2011	Full Restriction
		O'Regan	Derek	5/12/2011	Full Restriction

Appendix 2.2.5 (continued)

Cases where Restrictions were made against Directors by the High Court in 2011 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)
413906	Performed Offsite Design Systems Ltd	Hornibrook	Brian	7/11/2011	Full Restriction
		Hornibrook	Colin	7/11/2011	Full Restriction
355593	PJT Insurance Services Ltd	Dumbrell	Claire	5/4/2011	Full Restriction
353471	PRC Architects (Ireland) Limited	Cahalane	Con	14/2/2011	Full Restriction
		Rutter	Peter	14/2/2011	Full Restriction
412310	Richmond Ambulance Service Limited	Spain	Joseph	11/7/2011	Full Restriction
		Whyte	Oliver	11/7/2011	Full Restriction
334432	Roberts Civil Engineering Limited	Roberts	Paul	7/11/2011	Full Restriction
426749	RW Grahams Hotels Limited	Doyle	Leonard	23/5/2011	Full Restriction
		Gunn	Peter	18/7/2011	Full Restriction
		McCarthy	Lorraine	23/5/2011	Full Restriction
356666	Silvergate Developments Limited	Conlon	Sean	17/10/2011	Full Restriction
		Hegarty	Kenneth	17/10/2011	Full Restriction
347758	Strigxis Limited	Hanley	Anne	24/10/2011	Full Restriction
		Hanley	Paul	24/10/2011	Full Restriction
271347	Summertime Limited	Sheehan	James	28/3/2011	Full Restriction
		Sheehan	Anne	28/3/2011	Full Restriction
459169	SV Imaging Limited	O'Reilly	Bernadette	21/2/2011	Full Restriction
		O'Reilly	James	21/2/2011	Full Restriction
432886	Sweeney & Roulston Construction Limited	Roulston	David	4/4/2011	Full Restriction
		Sweeney	Patrick James	4/4/2011	Full Restriction
371916	The Seanachie Cottages Limited	Hurley	John	16/5/2011	Full Restriction
		Hurley	Margaret	16/5/2011	Full Restriction
420920	The Stonewarehouse Limited	Fleming	Richard	21/2/2011	Full Restriction
		Hunter	Cathal	21/2/2011	Full Restriction

Appendix 2.2.5 (continued)

Cases where Restrictions were made against Directors by the High Court in 2011 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)
420153	Thomas Kearns Developments Limited	Kearns	Thomas	4/2/2011	Full Restriction
320632	Tikonito Limited	Hayden	Paul	30/5/2011	Full Restriction
		Hayden	Wayne	30/5/2011	Full Restriction
		Hayden	Thomas	30/5/2011	Full Restriction
403440	Tobrico Limited	McQuaid	Michael	17/10/2011	Full Restriction
		McQuaid	Susan	17/10/2011	Full Restriction
426856	Voice Provincial Newspapers Limited	Sheils	John	1/7/2011	Full Restriction
429798	Westgate Fitness & Leisure Centre Limited	Byrne	Paul	14/2/2011	Full Restriction
198099	Zuger Limited	Boyle	John (also known as Sean/David)	23/5/2011	Full Restriction
		Boyle		23/5/2011	Full Restriction
			Norma		
369230	Zodiac Security Providers Limited	Coss	Matthew	7/11/2011	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 2.2.6

Cases where Disqualification Orders were made against Directors by the High Court in 2011 as a consequence of a Liquidator's Section 56 Report

Company Name	Company Number	Disqualified Directors		Date Disqualified From	Date Disqualified To
Acuspread Limited	440553	Mackin	Noel	27/6/2011	26/6/2016
		McWeeney	David	27/6/2011	26/6/2017
Bacus Cafes Ltd	414121	O'Shea	Michael (Gerry)	5/4/2011	4/4/2021
Boxform Limited	340468	Mahony	Patrick	29/3/2011	To be decided
Eamonn Doran Ltd	352987	Doran	Dermot	25/3/2011	24/3/2016
Kendar Holdings Limited	372488	Lynn	Michael	10/10/2011	9/10/2023
Keylogues Fabrication Limited	336341	Casey	David	19/12/2011	18/12/2016
MPS Global Ltd	415326	Kalsi	Jas	26/4/2011	25/4/2019
Phone-Pak Limited	161462	Bruen	Joseph	2/3/2011	1/3/2016

Appendix 3.1.1

Breakdown of Expenditure against Allocation in 2011 and previous years

Source of Allocation/Expenditure	2009		2010		2011	
	€000s	€000s	€000s	€000s	€000s	€000s
Allocation						
Exchequer Grant		5,535.0		6,086.0		5,967.0
Expenditure						
Salaries, Wages and Allowances	2,663.5		2,625.2		2,629.0	
Advertising and Publicity	50.3		41.2		34.0	
Office Premises	307.7		278.7		270.7	
DCC Investigation ⁶⁵	990.1		153.6		–	
Supreme Court Appeal Costs ⁶⁵	845.5		–		–	
Other Legal Expenses ⁶⁵	338.0		224.5		191.6	
Consultancy Services	134.5		70.6		69.6	
Computerisation	46.4		79.3		37.9	
Printing	99.9		56.3		53.6	
Incidental Expenses	8.0		11.8		5.4	
Travel and Subsistence	19.2		17.3		19.5	
Telecommunications	45.5		56.2		41.4	
Postal/Courier Services	25.2		18.3		22.6	
Office Machinery and Photocopying	22.8		21.2		17.9	
Human Resource Development	8.0		19.9		3.7	
Total Expenditure		5,604.6		3,674.1		3,396.9
Amount Surrendered (Extra Funds Provided)		(69.6)		2,411.9		2,570.1

⁶⁵ 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 3.1.2

Approved versus Actual Staffing Complement by Grade at end-2011

Year-end	Approved	Actual
2009	51	49.7
2010	52	50.7
2011	52.1	49.8

Grade	Approved	Actual
Accountant Grade I	2	2
Accountant Grade III	1	0
Assistant Principal	4	4
Clerical Officer ⁶⁶	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	8.7
Legal Adviser	3	3
Principal Officer	2	2
Principal Solicitor	1	1
Solicitor	2	2
Superintendent	0.1	0.1
Total	52.1	49.8

⁶⁶ 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 3.2.1

Principal Relationships between Certain ODCE Staff and Functional Areas



Appendix 3.3.1

20 Most Visited Pages on the ODCE Website in 2011

Rank	Page	Visits
1	Home Page	48,045
2	General Publications Page	17,979
3	Company Overview Page	10,405
4	Companies/Directors/Secretaries Responsibilities Page	8,321
5	Press Releases Page	6,900
6	Contact us Page	6,037
7	Search	5,803
8	About Our Role Page	5,640
9	Court Investigations Page	5,422
10	Functions – Compliance Page	4,496
11	FAQ Main Page	3,751
12	FAQ Winding Up/Insolvencies	3,469
13	How to use Forms Page	3,338
14	Court Winding Up/Insolvencies Page	3,282
15	Decision Notices Page	3,202
16	Liquidators/Receivers/Examiners/Legal Responsibilities Page	3,092
17	Information Notices Page	2,816
18	FAQ Directorship of a Company	2,730
19	Companies Acts Page	2,656
20	Court Disqualifications Page	2,564

