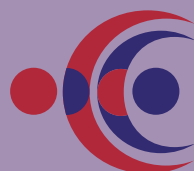


Annual Report 2008



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

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Foreword



Pursuant to section 16(1) of the Company Law Enforcement Act 2001, I am pleased to present Ms Mary Coughlan, T.D., Tánaiste and Minister for Enterprise Trade and Employment, with my Office's Annual Report for 2008.

Throughout 2008, the ODCE continued to pursue its objective of improving compliance with company law. The Office adopts a twin-pronged approach to its role. Firstly, it seeks to encourage and facilitate voluntary compliance by deepening and widening levels of knowledge among relevant company stakeholders about their rights and responsibilities. Secondly, the Office seeks to drive compliance through a range of actions that include encouragement to correct detected breaches through to criminal prosecutions for more serious breaches of law or duty.

Highlights for the ODCE in 2008 by primary activity included:

- the appointment of a High Court Inspector to DCC plc, S&L Investments Ltd. and Lotus Green Ltd. to investigate aspects of various purchases and sales of the shares of Fyffes plc in 1995 and 2000;
- the publication of a detailed Company Law Handbook/Guidance on Property Management Companies to help improve their governance;
- attendance at some 80 public events where ODCE staff gave presentations to and engaged with the public to urge compliance with the Companies Acts;
- a total of 32 convictions, 20 disqualifications and one restriction. A record amount of €46,600 in fines was also imposed. 12 of the 20 disqualifications arose from the Office's evaluation of dissolved insolvent companies;
- a 42% increase to 406 in the number of initial liquidator reports received. This reflected the declining performance of the national economy, and more than double the number of 2008 liquidations are expected in 2009. The Office also determined about 350 initial liquidator reports, a 22% rise on the 2007 outturn;
- a 15% increase to 584 in the number of cases of alleged breaches of the Companies Acts which were closed by the Office after investigation. In the majority of these cases, closure followed satisfactory rectification of the company law difficulty by administrative means. A further 78 cases were referred for investigation of possible legal action by the Office;

- a fourfold increase to €134 million in the amount of excessive directors' loans reported by auditors, many in construction and property companies. The Office is satisfied that its involvement resulted in compliance being achieved in many cases, while others remained under review at year-end;
- the first conviction of a company director for knowingly using company assets in breach of the legal restrictions on the giving of loans to directors;
- the first case of a company director being handed down a custodial sentence which was not suspended by the Court. However, the company director in question has appealed both the conviction and the sentence. The case involved a person acting as a director in breach of a High Court disqualification order.

I wish to express particular appreciation to the Department of Enterprise Trade and Employment for the four additional staff which were made available in 2008 in line with a Departmental commitment on increased staffing levels for the Office. Some of the increased throughput reported above was made possible by this increase.

Our expenditure outturn in 2008 was €4.34 million, a slight reduction on the €4.37 million spent in 2007. This reduction was achieved notwithstanding the expenditure associated with four additional staff and the initial cost of the DCC Inspection. These additional costs were largely met by curtailing advertising and publicity work in response to Government requests for cutbacks in uncommitted spending.

Our successful results in 2008 were achieved by a dedicated and hard working staff. I want to thank them for their continuing commitment to the work of the Office. Our collective efforts are helping business people, community interests and the general public to engage fairly and equitably with one another through corporate structures.

I also want to acknowledge the continuing support given to the Office by the Oireachtas, the Government and the Courts. Thanks is also due to those legal and accounting professionals who supported our work in 2008. I hope that this will continue for 2009 and that we will keep making a positive difference to improving corporate standards in the overall public interest.

Paul Appleby
Director of Corporate Enforcement
31 March 2009

Introduction

The present Strategy Statement of the Director of Corporate Enforcement identifies the following primary ODCE goals and related sub-goals:

Goal 1: Encouraging Compliance with the Companies Acts

- Sub-Goal 1.1: Publishing Accessible Company Law Information
- Sub-Goal 1.2: Promoting Compliance
- Sub-Goal 1.3: Improving Company Law and Associated Corporate Practices

Goal 2: Uncovering Suspected Breaches of Company Law

- Sub-Goal 2.1: Developing Detection and Reporting Arrangements for Suspected Breaches of the Companies Acts
- Sub-Goal 2.2: Identifying Suspected Breaches of the Companies Acts
- Sub-Goal 2.3: Commissioning/Supporting Formal Company Investigations

Goal 3: Prosecuting Detected Breaches of the Companies Acts

- Sub-Goal 3.1: Developing a Balanced Enforcement Policy
- Sub-Goal 3.2: Upholding the Disclosure Requirements of the Companies Acts
- Sub-Goal 3.3: Sanctioning Parties Disregarding Company or Other Interests
- Sub-Goal 3.4: Acting against Parties Denying Accountability under the Law

Goal 4: Sanctioning Improper Conduct relating to Insolvent Companies

- Sub-Goal 4.1: Supervising Liquidators in the Proper Discharge of their Duties
- Sub-Goal 4.2: Assessing Directors' Conduct in Insolvent Liquidation Situations
- Sub-Goal 4.3: Sanctioning Fraudulent or Abusive Behaviour

Goal 5: Providing Quality Services to Internal and External Customers

- Sub-Goal 5.1: Securing and Managing ODCE Resources
- Sub-Goal 5.2: Developing Staff
- Sub-Goal 5.3: Developing and Maintaining Quality Customer Services

This Report reviews progress in 2008 by reference to each of these goals and sub-goals.

Goal 1: Encouraging Compliance with the Companies Acts

Introduction

The Office undertook a notable amount of work in 2008 in furthering its compliance remit and achieved record results in a number of areas. Staff supporting the compliance function prepared and issued a number of significant publications, attended over 80 public events and handled over 400 company law compliance issues. The Office's Reception Team also successfully dealt with many more routine queries. In all, it was a very satisfactory year.

Sub-Goal 1.1: Publishing Accessible Company Law Information

The Office issued nine separate publications in 2008 (five in 2007). The full list is available at **Appendix 1.1.1** to this Report. The more significant of these publications are dealt with below.

In all, the Office circulated some 24,000 copies of its various publications in 2008. All of the newly published documents discussed below are available on the ODCE website at www.odce.ie.

Handbook on Residential Property Owners' Management Companies

The most extensive guidance document issued in 2008 was the Office's Company Law Handbook on Residential Property Owners' Management Companies¹. This major publication comprises more than 200 pages and was developed in order to improve the future performance of these companies. This form of company and the wider issue of multi-unit developments with which those companies have been associated have been a regular subject of public controversy in recent years. The ODCE Company Law Handbook is the latest in a series of publications by the Law Reform Commission², the National Consumer Agency³ and various other parties which have addressed aspects of the area.

1 Decision Notice D/2008/1. The Handbook is available on request from the Office or at www.odce.ie.

2 See the Law Reform Commission Report on Multi-Unit Developments (June 2008) which is available at www.lawreform.ie.

3 See the National Consumer Agency publications (September 2008) on the Conclusions and Outputs of its Multi-Unit Development Stakeholder Forum and on Buying and Living in a Multi-Unit Development Property in Ireland. Both documents are available at www.consumerproperty.ie.

The ODCE Handbook deals with the many and varied company law issues that pertain to property management companies. Among the key topics dealt with are:

- the key phases in the evolution of the management company;
- the voting power of members of the company;
- the predominant role of the company's directors;
- its annual general meetings;
- the legal rights of members to apply for relief to the High Court and
- the role and approach of the ODCE in dealing with management company issues.

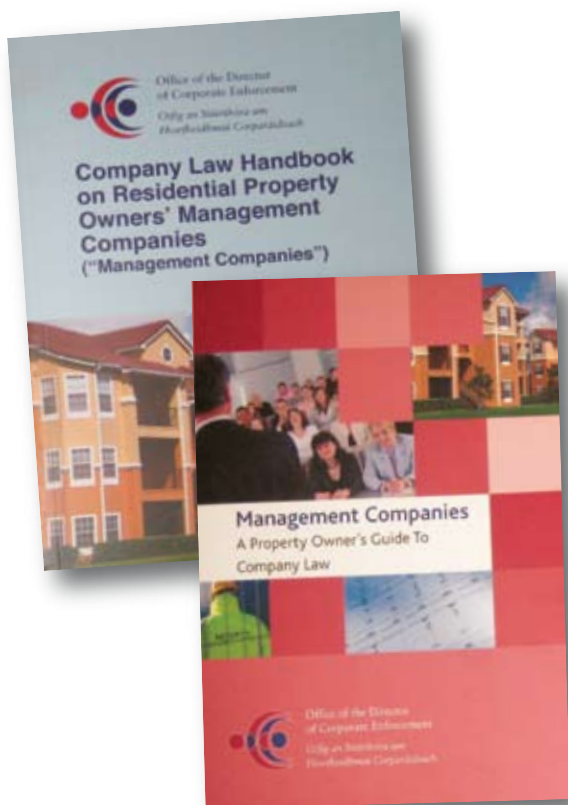
The Handbook was developed from an ODCE Consultation Paper⁴ which issued in December 2006. Almost 70 submissions were received from various interested parties, and the associated comments and suggestions significantly influenced the preparation of the final Handbook. A commentary on those submissions was also published in conjunction with the Handbook.

Management Companies Booklet – A Property Owners' Guide to Company Law

As a companion to the lengthy Handbook, the Office also issued a Booklet entitled "Management Companies – A Property Owners' Guide to Company Law." This summary guidance was prepared to give ordinary members of residential management companies (namely the property owners) an overview of their rights in company law. The Booklet was developed as an introduction to the area enabling those interested in learning more to consult the greater level of detail available in the Handbook.

The Booklet explains the concepts of the management company and the managing agent and outlines the respective roles of directors, members and the company secretary. It highlights the importance of the company's financial statements, the audit and the annual return and explains how company law can help members to assert their rights. The Booklet also defines the rather limited role of the ODCE in addressing the many problems which arise with management companies.

4 Consultation Notice C/2006/2 – Draft ODCE Guidance on the Governance of Apartment Owners' Management Companies.



Handbook and Summary Guide on Residential Property Owners' Management Companies

Consistent with its intended accessibility, the Booklet was produced in conjunction with the National Adult Literacy Agency and received the Plain English mark. Both the Handbook and the Booklet are available in Irish as well as English on the ODCE website at www.odce.ie. The website also contains for ease of reference a chapter-by-chapter version of the Handbook⁵.

Several thousand copies of the Booklet were issued to management companies, libraries, citizens' advice centres and public representatives following publication.

Consultation Paper on Whistle-blowing and Company Law

The Office issued three separate Consultation Papers during 2008. The first of these in June discussed the merits of a whistle-blowing provision in Irish company law⁶. ODCE staff primarily developed this Consultation Paper in late 2007/early 2008 as part of their contribution to the examination by the Company Law Review Group (CLRG) of the desirability of including a whistle-blowing provision in the new Companies Consolidation Bill⁷.

The Paper provides extensive analysis of whistle-blowing both within and beyond the company law context by reference to national and international experience. It contains a modest ODCE legislative proposal which was developed in an effort to establish a consensus on the inclusion of a whistle-blowing provision in Irish company law.

Unfortunately, this proposal failed to attract CLRG support. In reporting in its Annual Report to the Minister in March 2008⁸, the CLRG recommended that no company law-specific whistle-blowing provision should be included in the new Companies Bill. At year-end, it is understood that the Department of Enterprise Trade and Employment had accepted this CLRG recommendation.

Notwithstanding the CLRG recommendation, it was nevertheless decided in 2008 that the ODCE's valuable research and analysis of the topic of whistle-blowing should be published separate from the CLRG's own evaluation. Having regard to the circumstances giving rise to the publication of this Consultation Paper, no specific timeframe was set for receiving feedback on its content⁹.

Consultation Paper on the Draft ODCE Statement of Strategy, 2009-2012

The Office also issued in July a Consultation Paper on a new Statement of ODCE Strategy for the period 2009-2012¹⁰. The Paper contained a short statement summarising the Office's current strategy and outlined a series of questions to elicit helpful comments on the subject of the Office's medium and long term strategic direction. The consultation period closed on 30 September, and the Office received 13 submissions in total.

The Office also conducted a number of staff workshops and meetings in order to assess the relevance of the current strategy and the extent to which future changes were necessary.

The Director is considering all of the inputs into the new Strategy Statement, and the final document will endeavour to take full account of the significant changes to the external economic and regulatory environment which have occurred in recent months.

Consultation Paper for Stakeholders in Business Expansion Scheme Companies

In September 2008, the Office issued a Consultation Paper for the directors of and investors in companies benefiting from the Business Expansion Scheme and its sister scheme,

5 Available at www.odce.ie/en/media_general_publications_article.aspx.

6 Consultation Paper C/2008/1 – Discussion Paper entitled 'Whistle-blowing and Irish Company Law'.

7 Some background to this work is also available in the Office's Annual Report for 2007.

8 The CLRG Annual Report is available at www.clrg.org.

9 Comments may be made on the Whistle-blowing Consultation Paper to consultation@odce.ie.

10 Consultation Paper C/2008/2 – New ODCE Statement of Strategy.

the Seed Capital Scheme¹¹ in order to help mitigate occasional problems arising with these companies. While the primary source of guidance on these schemes is available from the Revenue Commissioners, the ODCE Consultation Paper focussed in particular on the rights and responsibilities of directors and investors under company law. It also explained the important role of auditors in helping to provide assurance to stakeholders.

The Office received eight responses to the Consultation Paper. Final guidance is currently being drafted, and it is intended to publish it in the first half of 2009.

'Corporate Compliance Matters'

The Office continued its collaboration with the Companies Registration Office in publishing the newsletter titled 'Corporate Compliance Matters'. The newsletter was issued in March 2008 and was distributed to the home addresses of some 240,000 company directors. The Office contributed three articles on the following subjects:

- areas for attention by company directors. This was based on the recent experience of the Office in dealing with cases of indicated non-compliance;
- practical debt management for company directors, and
- facing up to business difficulties.

Guidance Leaflets

The Office also published single page guidance leaflets for use as handouts at presentations, exhibitions and conferences attended by ODCE staff. The subjects covered were particularly suited for the present difficult economic conditions:

- rights of creditors;
- the corporate health check, and
- facing up to business difficulties.

Planned Publications

The Office also substantially completed work in 2008 in developing a number of summary booklets which will serve as companion publications to our more comprehensive Information Books¹² on the duties and powers of company directors, secretaries, shareholders, creditors, etc. These booklets have received the Plain English mark from the National Adult Literacy Agency and will be available shortly. Irish language versions of these publications will also be available.

11 Consultation Paper C/2008/3 – Draft Guidance for Investors and Directors in Companies availing of the Business Expansion and Seed Capital Schemes.

12 Decision Notice D/2002/1.

Sub-Goal 1.2: Promoting Compliance

Advocacy Work

With the benefit of an increase in staff, the Office was able to expand its work in informing company directors and other interested parties on key aspects of company law. The Office re-ran its radio advertising campaign in the first half of 2008 focussing on topics of relevance to directors and shareholders. Where relevant, the Office also placed occasional advertisements in various publications highlighting important company law issues as well as reinforcing the "Get Informed" message. However, expenditure on advertising and publicity was necessarily curtailed in the second half of the year in response to Government requests for cutbacks in uncommitted spending.

2008 also saw a significant expansion in the number of presentations given by ODCE staff to directors and other interested parties on company law issues and on the work of the Office. In all, Office staff delivered some 65 presentations to over 3,100 people (45 presentations in 2007). A full list of these presentations is at **Appendix 1.2.1**.



Minister for Foreign Affairs, Mr Micheál Martin, TD, meets ODCE staff at the BT Small Business Show in Cork on 16/17 May 2008.

As well as private company directors and professionals such as accountants and solicitors, the Office also focussed on the community and voluntary sector whose members are often constituted in company form in order to avail of public funding. Many of these company directors are unremunerated volunteers who need information on the importance of their role as directors and on their associated legal obligations.

Office staff attended sixteen exhibitions, conferences and events (seven in 2007). The list of events attended is at **Appendix 1.2.2**. Staff provided information on company law as well as copies of guidance booklets to the many thousands of people who attended these events. Where relevant, complaints were received for investigation.

Public Enquiries

Throughout the year, the Office continued to deal with company law queries of a general and specific nature. ODCE reception staff dealt with general queries such as requests for copies of guidance or questions concerning the remit of the Office.

Where a more considered response was considered necessary, relevant staff responded to the queries. In total,

the Office dealt with some 400 queries in this fashion. A sample of these queries is at **Illustration 1.2.2**. While those contacting the Office had questions covering a wide range of company law topics, the issues which regularly arose included director disputes and how to resolve issues such as board deadlock, the rights of members and directors in residential property management companies and the extent to which specific company law enactments had yet been commenced by Statutory Instrument.

2008 was also notable for an increase in the number of callers with questions concerning insolvency and the non-payment of debts. As indicated above, the Office responded to the upsurge in these queries by developing articles and guidance leaflets containing some helpful information for company directors in particular.

Illustration 1.2.2: Sample of Public Enquiries dealt with by the Office in 2008

A person called in relation to an unsatisfied debt by a company that ceased trading. The director subsequently transferred the company's assets to a new business and continued to trade as a sole trader.	The caller was informed that debt recovery is a civil matter between the parties and that independent legal advice should be sought. He was also directed to the ODCE website to view recent guidance on the "Rights of Creditors".
A member of a management company complained that the company was not being managed properly. The complex was poorly maintained even though high service charges were imposed. The management company members were not aware of company annual general meetings (AGMs) having been held, and therefore they had no say in the election of directors. They had never received copies of company financial statements. In addition, they complained about the poor performance of the managing agent.	The caller was told that the company must hold an AGM every calendar year and that each AGM must not be more than 15 months apart. Members have a right to 21 days' notice of the meeting and its agenda as well as copies of its financial statements. The caller was referred to the ODCE website to view information guides on the duties of companies and directors. He was also invited to submit a complaint form on the failure of the company to hold AGMs. He was advised that the performance of the managing agent was ordinarily a contractual matter between the management company and its agent.
A member of a company indicated that a Company Secretary had refused a request for a copy of the register of members on the basis that the company was not allowed under the Data Protection Acts to release the details without the members' prior consent.	The person was informed that they have a right to a copy of the register under Section 119 of the Companies Act 1963. If the company fails to comply with the request, a complaint should be submitted to the ODCE.
A company director sought assistance in relation to an internal dispute between two directors who were also shareholders. One director had assumed the role of decision maker and had totally excluded the other from any aspect of company management. What can the director do?	The caller was informed that the responsibility for resolving the dispute lies with both directors. If necessary, independent legal advice should be sought. Ultimately, the High Court could direct the winding up of the company.

Media Contacts

The Director issued five formal press statements in 2008 as outlined in **Appendix 1.2.3**. The Office also dealt with well in excess of 100 media queries.

The Director undertook from time to time a number of media interviews to promote the Office's compliance work. The publication of the guidance on management companies was a case in point.

In addition, ODCE staff wrote or contributed to a number of media articles, dealing with issues such as the ongoing work of the Office and the company law implications of the current economic difficulties. In all, the Office featured in almost 500 press and media articles with particular reference to the Office's enforcement work.

Sub-Goal 1.3: Improving Company Law and Associated Practices

The Office made two formal responses to consultation papers in 2008.

The first of these was made to the Director of Public Prosecutions (DPP) relating to their Discussion Paper on Prosecution Policy on the Giving of Reasons for Decisions¹³. In its submission, the Office concurred in general with the DPP's proposal to give reasons in certain circumstances to affected parties where a decision was made not to prosecute a case. In terms of detail, the Office stated that where appropriate a full statement of the reasons supporting a decision not to prosecute should be supplied, unless such disclosure would compromise a person's right to their good name or to the presumption of innocence.

The Office's second policy submission was in response to a Consultation Paper issued by the Department of Enterprise Trade and Employment (DETE) in relation to the transposition of Directive 2006/46/EC of the European Parliament and Council¹⁴. The Directive provides for new requirements with regard to, for instance, disclosures about corporate governance, clarification of board responsibility for financial statements and key non-financial information, transparency in intra-group relations and transactions with related parties. The DETE Paper asked a series of questions relating to national implementation of the Directive. Broadly, the Office was supportive of enhanced disclosure requirements and argued against the introduction of any increase of thresholds that would allow companies to limit such disclosures.

¹³ More information on the DPP Discussion Paper and on the results of the consultation exercise is available at www.dppireland.ie/publications/reasons_project/.

¹⁴ The full text of the Directive is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0046:EN:HTML>.

The Office also made some comments to DETE in regard to the response of the Institute of Directors in Ireland to the Draft Criminal Justice (Money Laundering) Bill 2008¹⁵. The Office indicated its support for the retention of the current powers of the Garda Síochána in this area, as well as outlining the difficulties occasionally encountered in obtaining certainty regarding the identity of rogue directors under the law as it stands.

Company Law Review Group

The Director is a member of the Company Law Review Group, and in that position, he attended a number of meetings of the Group during 2008 which began consideration of its new two year work programme up to the end of 2009.

Late in 2008, the CLRG published its Annual Report for 2007 which outlined the thinking behind its recommendations with respect to the issues arising under its 2006/2007 work programme. A copy of the CLRG Report is on its website at www.clrg.org. Further information on the proposals in which the ODCE had an interest is contained in the ODCE's Annual Report for 2007.

NSAI – ISO 26000 on Corporate Social Responsibility

The International Standards Organisation (ISO) made significant strides in developing a global standard in the area of Corporate Social Responsibility in 2008. The ODCE continued to contribute in an appropriate manner to developments as a member of the Irish 'Mirror Committee' which is managed by the National Standards Authority of Ireland (NSAI) and is tasked with reviewing the work of the ISO on behalf of the State. As the standard is currently at a preliminary Committee Draft stage, it is not available for public inspection.

Irish Auditing and Accounting Supervisory Authority (IAASA)

The Director is a director of the board of IAASA as well as being a member of its Remuneration Committee, and he continued in 2008 to work with his fellow directors in developing the remit of the Authority. At year-end, he was appointed as a member of an IAASA Enquiry Committee which will investigate in 2009 allegations which were made against the Institute of Chartered Accountants in Ireland in a newspaper article some time ago. A copy of IAASA's Annual Report will be available from its website at www.iaasa.ie in mid-2009.

¹⁵ More information on this Bill is available at www.justice.ie/en/JELR/Pages/PB08000277.

International Association of Insolvency Regulators (IAIR)

The ODCE is a member of the IAIR and actively participates in its annual work programme. At its Annual Conference in St Petersburg in June, ODCE staff introduced the results of two research studies which the ODCE had undertaken on behalf of the Association.

One study dealt with the value of information-sharing among national insolvency regulators in a world where commerce increasingly extended beyond national borders. The research provided in particular a directory of information sources for IAIR members by which they could seek to cooperate with one another in dealing with transnational insolvencies or domestic insolvencies that have an international dimension. This research was undertaken in cooperation with the Office of the Superintendent of Bankruptcy in Canada.

The second study explored the extent to which sanctions imposed on individuals for past misconduct in insolvency situations are mutually recognised in IAIR jurisdictions. The study suggested that further work would be beneficial in strengthening our respective regulatory frameworks. The reports of both studies are available in the publications section of the IAIR website at www.insolvencyreg.org.

At the invitation of the IAIR, the ODCE undertook to host its 2010 Conference in Dublin.

OECD Peer Review of Bribery Convention

In the ODCE's Annual Reports for 2006 and 2007, reference was made to the Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (1997).¹⁶ In connection with Ireland's implementation of its obligations under this Convention of the Organisation for Economic Cooperation and Development (OECD), the Government established a Senior Officials' Compliance Committee during 2007, and a staff member of the ODCE serves on this Committee.

In June 2008, an examination team (composed of lead examiners from Estonia and New Zealand, as well as officials from the OECD Secretariat) visited Dublin to enquire into Ireland's progress with the implementation of its obligations under the Convention. The examiners had discussions with a large number of relevant bodies, including with officials of the ODCE. The resulting OECD evaluation report on Ireland's implementation of the Convention was published in December 2008.¹⁷

¹⁶ Information on the Convention is available at www.oecd.org and www.anticorruption.ie.

¹⁷ www.oecd.org/dataoecd/33/6/41869600.pdf

Engagement with the Law Reform Commission (LRC)

As noted in our 2007 Annual Report, the ODCE responded to the LRC's Consultation Paper on Multi-Unit Developments. During the first half of 2008, the ODCE had further engagement with the Commission concerning property management companies.

Following on from the Consultation Paper, the LRC published a Report entitled 'Multi-Unit Developments'¹⁸ in June 2008. This Report made inter alia various recommendations for legal change, and **Appendix 2** to the Report contains a draft Multi-Unit Developments Bill intended to implement the Report's recommendations. The ODCE was gratified by the favourable comments in the Commission's Report concerning the ODCE's guidance work with respect to property management companies.

High Level Inter-Departmental Committee on Multi-Unit Developments

Following publication of the LRC's Consultation Paper on Multi-Unit Developments, the Government decided in 2007 to establish a High Level Inter-Departmental Committee comprising representatives of relevant Departments and Offices to assist in the development of a coherent and comprehensive legislative response to the Commission's analysis and recommendations. An ODCE official served as a member of this Committee throughout the period of its activities.

In August 2008, the Committee concluded its deliberations and delivered its Report to the Cabinet Committee on Multi-Unit Developments (following publication of the June 2008 LRC Report referred to above).

Conclusion

The Office's compliance work is a primary driver in its attempts to support a growing culture of compliance in the State. However to be effective, this important work must be supported by a credible regime of balanced but effective actions which encourage the correction of defaults or sanction wrongdoing where appropriate. The following sections of this Report set out how the Office carried out this work in 2008.

¹⁸ LRC 90 – 2008, available at www.lawreform.ie.

Goal 2: Uncovering Suspected Breaches of Company Law

Introduction

In its assessment of suspected company law breaches, the ODCE is anxious to improve corporate conduct and foster a culture of compliance with the Companies Acts. The Office is particularly motivated to secure the correction of unlawful behaviour where that results in those who are culpable for the defaults actually or potentially deriving an unfair competitive or other advantage over other company stakeholders. On occasion of course, the conduct in question may merit legal action in which case a formal investigation is undertaken.

Sub-Goal 2.1: Developing Detection and Reporting Arrangements for Suspected Breaches of the Companies Acts

In 2008, the Office again received a large number of auditor reports and public complaints alleging breaches to the Companies Acts. However, a feature of 2008 was the incidence of financial statement defaults which were detected following the ODCE's decision to focus some attention on the financial statements of companies limited by guarantee in particular.

The cases which emerged in 2008 derived from the following main business sectors.

Complaints/Reports by Business Sector in 2008	% of Complaints/Reports
Real Estate, Renting and Associated Business Activities	26%
Community and Personal Services	17%
Construction	9%
Wholesale, Retail and Motor Trades	7%
Transport and Communications	6%
Manufacturing	6%
Financial Intermediation	3%
Hotels and Restaurants	3%
Other Business Sector	9%
Unknown Business Sector	9%
Not a company	5%
Total	100%

Number/Sources of Issues Examined

In all, some 627 cases were opened in 2008, a 7% decline on the 674 cases for 2007. **Appendix 2.1.1** contains further details on these figures.

Most of this reduction was attributable to an 11% decline in public complaints which dropped to 295 cases from 331 in 2007. However, an 8% rise from 204 in 2007 to 221 in 2008 was also evident in the number of reports received from auditors, recognised accountancy bodies and others who are required to report suspected breaches of the Companies Acts to the ODCE. This increase in cases was primarily due to auditor reports which grew by 11%.

Much of the balance was due to an ODCE 'campaign item' which in 2008 focused attention on the detection of deficiencies in the financial statements of companies limited by guarantee in particular. The corresponding 'campaign item' in late 2007 was an examination of compliance with new disclosure obligations in the European Communities (Companies) (Amendment) Regulations 2007.

Cooperation between Regulatory Authorities

In the face of limited company document and premises inspection powers, the Office must rely to a large extent on public information and on third parties to identify possible misconduct. It is important therefore that its information sources for possible company law breaches should be wide-ranging, and that is why the Office seeks on an ongoing basis to encourage other regulators to report possible non-compliance with the Companies Acts. These mutually supportive information-sharing arrangements are sometimes formalised in bilateral Memoranda of Understanding (MOUs).

ODCE/Accountancy Body Contacts

The ODCE enjoys a constructive relationship with the professional accountancy bodies, and there were regular meetings in 2008 at plenary and technical levels to review the reporting arrangements from auditors and the bodies themselves to the ODCE and from the ODCE to the bodies in turn. Work commenced on developing revised guidance for auditors to assist them in reporting suspected indictable offences under the Companies Acts. The Director has expressed his concern on a number of occasions at the relatively narrow range of offences that are typically reported by auditors, and it is hoped that the guidance, when finalised, will lead to a wider variety of detected defaults from the profession.

In November 2008, new protocols were also put in place regarding the referral of issues from the ODCE to the bodies relating to individual members of the accountancy profession. The spur for these protocols was a sequence of referrals made by the ODCE to the bodies and to the Irish Auditing and Accounting Supervisory Authority (IAASA) arising from the ODCE's detection of financial statement defaults primarily in companies limited by guarantee in particular. The ODCE welcomes the fact that the bodies in question have reminded their members that companies limited by guarantee are ineligible for audit exemption. Hopefully, this will serve to improve compliance with this statutory obligation in the future.

Work was also undertaken during the year in reviewing the wording of the obligation in Section 202 of the Companies Act 1990 under which companies and directors must keep proper books of account. The purpose of this review is to clarify the intent and scope of the obligation in the current commercial environment. It is intended that any revised wording will be forwarded for consideration as part of the proposed Companies Consolidation and Reform Bill in due course.

ODCE/IAASA Contacts

Regular contacts took place at staff level between both bodies in 2008. In addition to the financial statement default issues identified above, cases involving unqualified persons acting as auditors was also a cause of regular contact.

ODCE/Revenue Contacts

There were extensive contacts during the year with the Revenue Commissioners on company law related issues. The contacts focused in particular with respect to the Office's work in addressing the area of unliquidated insolvent companies where Revenue would often be a substantial creditor. In all, information on some 80 companies and former companies was shared.

ODCE/Financial Regulator Contacts

The relationship between the ODCE and the Financial Regulator developed during the year as contacts became more frequent. Late in 2008, the Director and the Chief Executive of the Financial Regulator met to agree revisions to their existing Memorandum of Understanding (MOU), and a revised MOU was signed.

ODCE/Pensions Board Contacts

A preliminary meeting took place between the ODCE and the Chief Executive of the Pensions Board to formalise cooperation with respect to cases involving insolvent

companies which had deducted pension contributions from employees but had failed to remit them to the pensions provider. The ODCE forwarded a draft MOU to the Pensions Board for consideration, and its finalisation will be pursued in 2009.

ODCE/Garda Bureau of Fraud Investigation (GBFI) Contacts

Regular contacts also took place between in particular the Garda members seconded to the ODCE and their colleagues in GBFI and elsewhere in the Force.

At the invitation of GBFI, the Director attended in late 2008 a presentation given in Dublin by members of the Federal Bureau of Investigation from the United States of America. Other regulators and financial entities were also represented.

ODCE/Companies Registration Office (CRO) Contacts

The staff of the CRO again provided valuable assistance to the Office in 2008, particularly in retrieving and certifying filed original documentation for use by the ODCE in Court enforcement proceedings.

Sub-Goal 2.2: Identifying Suspected Breaches of the Companies Acts

In general, it was readily apparent from auditor reports and from the Office's own detection work what were the issues of detected non-compliance. Where it was necessary to establish if the issues raised actually concerned breaches of company law, ODCE staff engaged with the relevant complainants.

Nature of Issues identified in Auditor and Other Mandatory Reports

The 221 mandatory reports received in 2008 contained seven main suspected offences. **Appendix 2.2.1** to this Report identifies the types of offences reported.

Consistent with previous years, the following two issues represented 87% of the reported defaults:

- 161 cases involved excessive directors' transactions where directors used company funds contrary to the restrictions in Section 31 of the Companies Act 1990. This figure represented a 17% increase on the 138 reports received in 2007;
- 32 instances of a suspected failure to keep proper books of account contrary to Section 202 of the Companies Act 1990 were received in 2008. This was a welcome decrease on the 40 reports received in 2007.

Directors' Loans

Previous ODCE Annual Reports have highlighted the phenomenon of directors' transactions, and unfortunately, events in 2008 kept this issue in the public eye.

With regard to 161 reported cases of excessive directors' transactions, the associated loan amounts grew to €134 million in 2008, a fourfold increase on the €33.7 million reported by auditors in 2007. A particular feature was the incidence of loans taken by directors from companies in the construction and property development sectors where some 47 auditor reports were received involving about €98 million in loans. This figure represents approximately 73% of all transactions reported by auditors in 2008.

Having regard to the high burden of proof required for the prosecution of these defaults, the Office continued in 2008 with its established policy of encouraging directors to return the loans in question to the company and warning them of the future consequences of repeating this default. In all, company directors repaid some €164 million, and the Office cautioned 423 directors during the year, the vast bulk of which were cases notified to us by auditors. At year-end, 43 cases including one quite significant case remained on hands.

A new feature to emerge in late 2008 was an apparent failure to make adequate disclosure of the amount of directors' transactions in company financial statements. This issue particularly surfaced in Anglo Irish Bank Corporation plc ("Anglo") and directly led to the resignation of its chairman and another director who had been beneficiaries of these loans. This issue was the subject of detailed scrutiny by ODCE staff at year-end.

Sections 41 to 46 of the Companies Act 1990 set down the disclosure obligations which were the subject of previous ODCE Guidance¹⁹. In essence, information involving transactions between companies and their directors or between companies and other parties connected to the directors must be disclosed in the notes to company financial statements. Special disclosure provisions in Sections 43 and 44 in particular apply to licensed banks. Having regard to the developments in Anglo, the ODCE decided in late December to write to some 40 licensed banks in the State to assess the extent to which they were compliant with their obligations under Sections 43 and 44.

Nature of Issues Identified in Voluntary Reports and Other Detections

Appendix 2.2.2 outlines in summary form the character of the various public complaints and other detected issues which came to attention in 2008.

Property Management Companies

A further 61 complaints about management companies were made to the ODCE in 2008. As in previous years, some of these complaints dealt with issues which fell outside the remit of the Office (such as the level of service charges and the non-assignment of the common areas to the management company). The relevant company law issues in these complaints primarily related to failures to:

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

Illustration 2.2.1 provides an example of a management company case in an apartment block in Dublin City which was the subject of recurring problems but which was satisfactorily resolved by the Office on an administrative basis.

Illustration 2.2.1: Residential Property Management Company Case

In 2008, the ODCE received a number of complaints from the members of a property management company whose concerns centred on the failure to convene its AGM and to supply members with unabridged audited company accounts. The complainants satisfied the Office that they were indeed members of the company and that they had engaged in extensive correspondence with the company secretary over some time seeking to have their concerns addressed. The company secretary had apparently promised on more than one occasion to rectify the identified deficiencies.

The ODCE proceeded to write to the company's directors seeking certain information with respect to the fulfilment of their statutory duties, and it transpired that the directors had entrusted the running of the company to the company secretary and the managing agents. In response to the ODCE's intervention, the directors then:

- convened an AGM in accordance with the Companies Acts;
- confirmed that the company's auditor was in place and
- undertook to grant the members access to the company's books and records.

The members subsequently participated at the AGM and received copies of the company's audited financial statements in advance.

¹⁹ The Guide to Transactions involving Directors (November 2003) is available at www.odce.ie. Section 9 of the Guide deals with the applicable disclosure obligations.

Financial Statement Defaults

In its investigations of complaints in recent years, the ODCE had occasionally detected in its examination of the financial statements of companies limited by guarantee incorrect claims for filing and audit exemption and other financial statement defaults. Companies limited by guarantee are usually 'not-for-profit' companies that are formed for some charitable, community or social purpose. By virtue of their character, the law requires that the assets managed by them must be subject to the assurance of an independent audit.

In a focused campaign in 2008, the ODCE examined the financial statements of 264 companies. In 68 cases (some 25% of the companies examined), it was evident from the company financial statements that there was non-compliance with the Companies Acts to a greater or lesser extent. In all, over 100 deficiencies were detected, and the primary defaults were the following:

- on 64 occasions, the auditors certified that they were satisfied that the directors were entitled to lodge abridged accounts and the companies then filed abridged accounts, notwithstanding the fact that companies limited by guarantee are not entitled to file abridged accounts²⁰;
- in 30 cases, the auditors reported a deficiency of capital notwithstanding the fact that companies limited by guarantee have no issued share capital²¹;
- on eight occasions, the auditors failed to provide a complete audit opinion in accordance with the statutory requirement²², and
- in a small number of other cases, no audit was undertaken.

Following ODCE contact with the company auditors and/or directors concerned, all of the defaults in question were rectified. As indicated earlier, the auditors' professional bodies and IAASA were advised of the professional lapses in question so that they could take appropriate remedial action. **Illustration 2.2.2** provides an example of a company which had improperly claimed audit exemption for many years.

Illustration 2.2.2: West of Ireland Community-Based Company

A community-based company had owned and managed property for many years. It had been inappropriately claiming audit exemption for some time. Having recently disposed of assets, it had received substantial funds as a result.

Following ODCE contact with the company, the directors took steps to appoint an auditor, to prepare audited financial statements and to file them in the CRO.

Outstanding Debts

In 2008, a significant number of complaints alleged a failure on the part of companies to pay outstanding debts was also received. In the absence of any evident breach of company law, the ODCE suggested to the complainants that they explore their own legal remedies to recover any monies due to them.

Throughput of Cases

Appendix 2.2.3 provides details of case throughput. Of the 950 or so cases on hands in 2008, some 584 cases were closed. This represents a 15% increase on the 507 cases closed in 2007. This result was due in part to a concerted effort on the part of Office staff in 2008 to clear a large number of the Office's outstanding cases.

Appendix 2.2.4 provides information on the manner of disposal of these 584 cases:

- 56% of the cases were closed having secured a remedy of the company law default and/or having adopted a compliance approach to the default. In many cases, the ODCE issued a caution to the relevant persons warning of the consequences of a repetition of the detected default. Over half of these cases involved excessive directors' transactions;
- 25% of them were concluded on the basis that there was insufficient evidence of default under the Companies Acts to warrant further action. As a general rule, the allegations were considered to be irrelevant or peripheral to the Companies Acts and/or the remit of the ODCE. A typical case type would be a complaint about service charges in a property management company;

²⁰ Only private companies are entitled to file abridged accounts under the Companies (Amendment) Act 1986 (as amended).

²¹ The requirement on auditors to make such a report under Section 40 of the Companies (Amendment) Act 1983 is only relevant to companies which have a share capital.

²² As required by Section 193 of the Companies Act 1990 (as amended).

- 12% were closed on the basis that it was more appropriate that the complainants pursued their own legal or other remedies to advance their interests. The accompanying **Illustration 2.2.3** involves a case in which a prominent company asked the ODCE in 2008 to consider taking disqualification or restriction proceedings against two of its former directors;
- the remaining cases were generally considered to be a matter for primary evaluation by other authorities, e.g., the Pensions Board in respect of a failure to remit pension contributions to the pensions provider.

Illustration 2.2.3: Request to the ODCE to consider Disqualification Proceedings

On the instruction of his Board of Directors, a Company Secretary complained to the ODCE in 2008 that there had been a gross dereliction of duty by two former directors. The Company had taken emergency legal action in the form of injunctive relief to protect its interests, and it was said to be considering further unspecified legal action against the former directors and related parties. Acting on legal advice, the Board had formed the opinion that both former directors were not fit persons to be directors of any limited liability company and that they ought to be disqualified or restricted. The ODCE was asked to consider taking appropriate action on foot of the complaint.

In reply, the ODCE sought all relevant documents evidencing the Board's contentions and further information in relation to the legal action already taken and now being contemplated and the timescale for making that decision. The reply also asked the Company to address the following issue:

"The legal advice made available to your Company will no doubt have pointed out that under Section 160(4) of the Companies Act [1990], it is open to any member or officer of your Company to apply to the High Court for the disqualification of any of its former officers in the indicated circumstances of this case. Accordingly, I have to ask why your Company should be asking this Office to consider exercising its right to make a disqualification application when the same right of action is available to you."

The Company did not avail of the opportunity to pursue its complaint with the Office, and no information is available to suggest that it launched its own disqualification proceedings against the former directors in question.

In addition to the 584 closed cases, a further 78 cases were deemed appropriate for more detailed investigation. This included a number of auditor reports where the Office considered that legal action may be warranted if relevant evidence of misconduct were obtained and certain property management company cases where the directors had failed to respond positively to ODCE attempts to secure rectification of the identified defaults.

Sub-Goal 2.3: Commissioning/ Supporting Formal Company Investigations

On occasion, it is necessary for the ODCE to consider undertaking a thorough fact-finding investigation of a company's activities in order to identify if misconduct has occurred. In circumstances suggesting fraud, illegality or prejudicial conduct, the Companies Acts permit the ODCE to require the production of specified books and documents of a company for examination.

High Court Inspection

On foot of an application by the ODCE, the High Court appointed Mr Bill Shipsey SC in July 2008 as Inspector to DCC plc, S&L Investments Ltd and Lotus Green Ltd to investigate aspects of various purchases and sales of the shares of Fyffes plc in 1995 and 2000. This was the first occasion in which the Office had applied to the High Court for the appointment of an inspector to a company.

The ODCE's successful petition to the Court followed:

- the Office's examination of the High Court and Supreme Court Judgments in the civil proceedings with respect to alleged insider dealing in 2000 which were initiated by Fyffes plc against DCC plc, S&L Investments Ltd, Lotus Green Ltd and James Flavin and
- its own investigations which raised questions about the legal validity of certain related share transactions in 1995.

The Inspector commenced work in Autumn 2008, and the known cost of the Inspection was some €180,000 up to the end of 2008.

Ongoing Investigations

At the start of 2008, the Office had four ongoing examinations of company books and documents in hand. One of these related to DCC plc and related companies, and it concluded following the High Court's decision in July to appoint an Inspector to the companies.

Previous Annual Reports have referred to the ODCE's examination of the books and documents of Cologne Reinsurance Ltd. It is understood that some related legal proceedings in the USA involving a number of parties may have concluded in 2008, and the Office was awaiting confirmation of the details from the US authorities at year-end prior to considering what ODCE action, if any, may be appropriate.

Two further company examinations which had been initiated prior to 2008 remained ongoing at year-end.

New Company Investigations

Other than the Inspection of DCC plc, S&L Investments Ltd and Lotus Green Ltd, no new fact-finding examination of a company's books and documents was initiated in 2008.

Departmental Company Examinations

In 2008, the Department of Enterprise Trade and Employment kept the Director informed of developments in relation to the examinations of the books and documents of College Trustees Limited, Guinness and Mahon (Ireland) Limited and Hamilton Ross Company Limited.

Conclusion

Having regard to the volume of cases examined and closed, 2008 was a very busy year for the Office in evaluating possible company law defaults. As the year ends however, it is clear that the events disclosed at Anglo will dominate Office attention in 2009. This will place a considerable strain on its available resources and will inevitably pose challenges in managing the normal throughput of detection work in parallel. In those circumstances, it is unlikely that a similarly large number of cases will be dealt with in 2009.

The large volume of directors' loans which emerged in the property and construction industry in 2008 in the face of a sharp decline in the sector's performance suggests that creditors may find it difficult to recover some or all of these sums in 2009. If this eventuality arises, then the directors of those property and construction companies will be at risk of sanction from the courts. Every effort should be made by those directors to repay all of the outstanding monies due to their companies so as to minimise the liabilities of creditors, and the ODCE will continue to encourage this.

Goal 3: Prosecuting Detected Breaches of the Companies Acts

Introduction

In the preceding section of the Report, reference was made to the successful application made to the High Court to have an Inspector appointed to investigate a number of companies. In this section, we discuss the legal proceedings taken in the enforcement area where a number of important developments also occurred in 2008. Highlights included:

- the first conviction of a company director for knowingly using company assets in breach of the legal restrictions on the giving of loans to directors. The relevant Court imposed significant penalties in the case;
- the first case of a company director being given a custodial sentence which was not suspended by the Court. However, the director has appealed both the conviction and the sentence;
- the useful interpretation by the Supreme Court of the phrase “*persistently in default*” in Section 160(2)(f) of the 1990 Act.

A number of these cases are discussed in greater detail later in this Report.

Legal Proceedings

In 2008, the ODCE secured a total of 32 convictions, 20 disqualifications and one restriction for breaches of company law duties and obligations. The table below provides the equivalent detail in respect of 2007.

Number/Nature of Successful Enforcement Results	2007	2008
Charges on which convictions were secured	28	32
Charges taken into account on conviction	16	1
Charges thought proven (Probation of Offenders Act 1907)	5	-
Disqualifications	14	20
Orders made in compliance proceedings	2	-
Restrictions	-	1
Other Decisions	3	1
Total	68	55

In all, the Office was involved in some 52 legal proceedings of which 27 were in the Supreme Court or the High Court,

24 in the District Court and one in the Circuit Criminal Court. It is clear from the overview of the status and outcome of these cases in **Appendix 3.1** that the Office was generally successful in its proceedings.

Appendix 3.2 gives a more detailed breakdown of the type of civil and criminal enforcement proceedings which arose in the various Courts together with a summary of the outcomes of the cases involved.

Details of the parties who were held by the relevant Court to have breached their duties and obligations under the Companies Acts, together with the relevant offences and penalties, are contained in **Appendix 3.3**. In accordance with ODCE practice, a summary of each case result was placed on its website at www.odce.ie during 2008.

Civil Enforcement Actions

Of the 20 disqualifications and one restriction obtained in 2008, all but five of the disqualifications were the result of civil enforcement actions. Details of these civil proceedings were as follows:

- the High Court disqualified twelve persons for periods ranging from four to seven years in respect of directors whose companies had been struck off the Register of Companies for failing to file outstanding annual returns and who failed to show to the High Court that the companies involved had no outstanding liabilities. The Court also declined to disqualify one individual who was the subject of ODCE proceedings. In the majority of these cases, the persons disqualified were the directors of multiple insolvent struck-off companies. Two of these disqualifications have since been appealed to the Supreme Court;
- a company director who was involved with three struck-off companies was restricted for five years;
- the High Court also disqualified three persons for six, four and three years respectively as a consequence of ODCE applications based on the adverse findings in the High Court Inspectors’ Report on National Irish Bank Ltd (NIB) and National Irish Bank Financial Services Ltd (NIBFS). These disqualification orders were stayed by the Court on certain conditions pending the outcome of appeals which have since been lodged in the Supreme Court. The ODCE was unsuccessful in a disqualification application initiated in respect of a fourth individual, and this is now the subject of an appeal.

The Office failed to secure a positive result in only one set of disqualification proceedings last year. However in this case and as indicated in the Introduction above, the Supreme Court usefully interpreted the phrase “*persistently in default*” in Section 160(2)(f) of the 1990 Act. See **Illustration 3.4.1** below for a summary of this case.

The ODCE had some sixteen proceedings before the High Court and the Supreme Court at year-end. Eight of these cases relate to proceedings deriving from the NIB/NIBFS Report, while another six deal with the directors of insolvent companies which had been struck off the Register of Companies for failing to file outstanding annual returns. The remaining two cases involve other types of disqualification action which are awaiting appeal.

Criminal Enforcement Actions

Reference was made in the Introduction above to two significant criminal cases, one of which involved a company director receiving a custodial sentence which was not suspended by the Court. This penalty was imposed on an individual for acting as a company director during his period of disqualification. However, the individual in question has since appealed his conviction and the associated penalties which also included a fine of €1,500 and a further disqualification period of five years.

The second significant case involved the first conviction of a company director for knowingly using company assets in breach of the legal restrictions on the giving of loans to directors. The issues in this case are outlined in **Illustration 3.3.1** below.

Other successful criminal enforcement proceedings which concluded in 2008 were taken in respect of the following offences:

- acting as a director while restricted and in breach of the statutory conditions relating to company capitalisation. In 2008, the ODCE prosecuted three cases in this category resulting in five convictions (with one charge taken into account) against the three directors involved. As a consequence of their convictions, these directors are now also disqualified for periods ranging from two years to five years. The Office will continue to monitor compliance by disqualified and restricted persons with the requirements of the law in the interests of protecting company stakeholders and in order to underpin the integrity of the restriction regime;
- acting as auditor while unqualified. In 2008, the ODCE successfully prosecuted one individual in respect of all five charges before the Court. A further similar case was ongoing at year-end. In the view of the ODCE, it is important that the status of a company’s

financial statements does not mislead creditors and other stakeholders particularly in circumstances where the statements are erroneously represented as having been audited by a qualified person. In pursuing unqualified auditors, ODCE actions curb this risk and provide assurance to the users of audited financial statements that those statements are credible;

- failing to keep proper books of account. The ODCE prosecuted four of these cases in 2008 which resulted in seven convictions of companies and directors. The Office places a high priority on the maintenance by companies and directors of adequate accounting and other records, because they help business people to maintain an accurate reflection of the company’s financial standing;
- provision of false information. The Office successfully prosecuted a case in 2008 involving the provision of false information of a material character to the CRO. **Illustration 3.2.1** below deals with the circumstances of the case.

Other Enforcement Proceedings

The ODCE was involved in four other proceedings, two of which were of some significance. One intervention respectfully invited the High Court to consider of its own motion the possible disqualification of one or more persons arising from the civil insider dealing action successfully taken by Fyffes plc against DCC plc and a number of other parties. However, the Court did not adopt such a course of action before these insider dealing proceedings concluded. Subsequently, the Director initiated his successful application for a High Court Inspection of certain share dealings in DCC plc and two other companies.

The second case dealt with the issue of costs in a successful appeal brought by the director of an insolvent company against a restriction imposed on him in the High Court. See the **Illustration 4.1.1** in the next section of the Report.

Enforcement Cases

Appendix 3.4 provides statistical information on the throughput of criminal cases in 2008. In taking concerted action during the year to close almost 260 cases which had no viable prosecution merit, the ODCE is now potentially better able to focus its attention on a smaller number of priority investigations. Some 125 cases were on hands at year-end, the majority of which comprised the 75 new cases received in 2008.

Appendix 3.5 sets out the broad offence categories of the 75 new cases. Most of these cases related to persons who had allegedly acted as auditor or director while precluded

from doing so and companies which were suspected of failing to keep proper books of account.

Sub-Goal 3.1: Developing a Balanced Enforcement Policy

The Office continued in 2008:

- to help the majority of people who want to comply with company law to do so and
- to discourage misconduct by those who may be tempted not to comply.

Depending on the nature of the offence and the seriousness of the indicated misconduct, the ODCE's graduated approach to its regulatory responsibilities ranges from:

- securing rectification of a default, to
- taking direct ODCE enforcement action of some character, to
- referring an indictable offence case to the Director of Public Prosecutions for a decision as to whether the matter should be tried before a judge and jury.

The result of this tiered regulatory approach is that only a minority of cases result in formal legal action. The Director envisages that this broad approach will continue for the foreseeable future with such refinements as are necessary in response to case developments over time.

Sub-Goal 3.2: Upholding Disclosure Requirements

Persons benefiting from incorporation and the privilege of limited liability under the Companies Acts are required to adhere to certain consequential duties and obligations. These include the requirements:

- that companies trading in the State be registered,
- that certain company particulars, (e.g., location of registered office, identity of directors, etc.) be kept up to date and
- that information on the company's financial and operating performance be maintained accurately and promptly.

A purpose of these requirements is market transparency so that members, creditors and other stakeholders can make an informed decision on the risks of engaging with the entity by examining the filed information made available in the CRO.

Disclosure defaults in the form of the failure by companies and company directors to keep proper books of account once again featured on the ODCE's work programme in

2008 when four cases were successfully prosecuted resulting in the conviction of four companies and two directors.

A potentially more serious offence is that of the falsification of company books and records. **Illustration 3.2.1** records the background to a conviction secured in April 2008 against a person who sought to remove his co-director from a small company by having a false return filed in the CRO.

Illustration 3.2.1: Furnishing of False Information to the Registrar of Companies

The background to this case was that the ODCE received a complaint from the director of a company called Gortlee Stores Limited in which it was alleged that a 'B10' form filed in the CRO had falsely indicated her resignation as a director of the company.

Following investigation, the ODCE successfully proved to the relevant Court that the CRO filing was predicated on what was purported to have been a letter of resignation addressed to the company's professional advisers by the complainant director. However, the Court was satisfied that the defendant, Mr Patrick McFadden, had forged the complainant's signature in order to secure the illegal removal of his business partner as a director.

Having pleaded guilty to a single charge, the Court convicted Mr McFadden and imposed a fine of €500.

Sub-Goal 3.3: Sanctioning Parties Disregarding Company and Other Interests

For reasons of public protection, the Companies Acts contain a number of provisions, which preclude unqualified or disqualified persons from acting as a company auditor, director or liquidator either generally or in certain defined circumstances. As indicated earlier, the ODCE successfully prosecuted five persons under this general heading in 2008.

In the interests of company creditors and other stakeholders, company directors must also preserve the assets of their companies, and the law specifically precludes the excessive lending of those assets to the directors and to connected persons. Previous Annual Reports have consistently highlighted the significant work done by the ODCE in this area over the years. A detailed ODCE Guide to Transactions Involving Directors remains available at www.odce.ie.

As indicated earlier, 2008 saw the first conviction on indictment of a company director for knowingly using company assets in breach of the applicable legal restrictions. The following **Illustration 3.3.1** discusses the circumstances associated with the relevant Circuit Court conviction.

Illustration 3.3.1: Conviction on Indictment of a Director for knowingly availing of Excessive Loans from his Company

In July 2003, Mr Stuart Fogarty, a director of Aubrey Fogarty Associates Ltd (“AFA”), pleaded guilty to 16 separate charges of having authorised or permitted the company to lend him sums while he knew or had reasonable cause to believe that the company was thereby contravening the law. Having thought the charges proven, the Court gave the defendant the benefit of the Probation of Offenders Act 1907 and dismissed the charges having noted his contribution of €3,000 to charity.

In December 2005, the auditors of AFA reported to the ODCE that Mr Fogarty had again benefited from significant company loans in breach of the applicable law.

Following investigation, the ODCE initiated summary proceedings against Mr Fogarty in mid-2007. The proceedings involved 13 charges relating to separate transactions totalling €426,338 between September 2003 and December 2005. The Director took the view that summary proceedings were appropriate because the loans were refunded to the company, there were no outstanding tax liabilities and no loss was sustained by any party arising from the breach of law.

In the event, the District Judge declined jurisdiction, and the matter was dealt with on indictment. The ODCE prepared the book of evidence, and the Director of Public Prosecutions prosecuted the case. In May 2008 on a plea of guilty, Mr Fogarty was convicted in the Circuit Criminal Court on all 13 charges, and fines totalling €34,000 were imposed. The Court also imposed a two year suspended sentence in relation to one of the offences, and in relation to another two offences, the Court subsequently ordered him to do 240 hours of Community Service.

As Mr Fogarty was convicted on indictment of an offence in relation to a company, he would be deemed to be disqualified under Section 160(1) of the 1990 Act for a period of five years unless that period was, on the application of the prosecutor, varied by the Court. On the application of the DPP made with the support of the ODCE, the Court disqualified Mr Fogarty for six months from 28 May to 27 November 2008. Mr Fogarty resigned his directorship of some 20 companies for the period in question as a result of this case.

Sub-Goal 3.4: Acting against Parties Denying Accountability under the Law

The Director continues to pursue cases where company directors persistently act in disregard of the law. The following **Illustration 3.4.1** deals with one such case which the ODCE initiated in 2003. While the ODCE appeal

failed in May 2008, the Supreme Court Judgment is significant in interpreting the phrase “*persistently in default in relation to the relevant requirements*” in Section 160(2)(f) of the 1990 Act and in endorsing the ODCE view that deterrence is a legitimate element to be taken into account when a Court exercises its discretion in a disqualification application.

Illustration 3.4.1: Disqualification Proceedings against Directors who were “persistently in default”

The case circumstances were that by 2003, the directors of Wood Products (Longford) Limited, Mr Patrick McGowan and Ms Patricia McGowan, had failed since 1991 to file their company annual returns with the Registrar of Companies. This persistent failure led to the company being struck off the Register and dissolved in 1999.

In May 2001, the company was restored to the Register by Order of the High Court. That Order required the directors to deliver all outstanding annual returns as well as certain outstanding tax returns. The directors failed to comply with that Order.

In November 2003, the ODCE initiated disqualification proceedings against both directors under inter alia Section 160(2)(f) on the grounds that they had been “*persistently in default in relation to the relevant requirements*”. Subsequently, the Respondents filed the outstanding annual and tax returns; Ms McGowan resigned as a director, and a replacement director was appointed.

In February 2005, the High Court took the view that the Respondents could not be held to be persistently in default as their inaction had not occurred in the teeth of intervention on the part of the Courts on more than one occasion. Accordingly, the Court concluded that the Respondents should not be disqualified.

On appeal, the Supreme Court also decided in May 2008 not to disqualify the Respondents on the basis of its view that disqualification would not at that stage serve any useful purpose and would probably disrupt the company’s business. However, the Court held inter alia that:

- the Respondents had failed annually for 13 years to comply with their legal obligations to file prescribed returns with the Registrar. Each failure constituted the commission of a criminal offence. They had repeatedly breached a mandatory obligation which lay upon them as company directors, and they had committed criminal offences by doing so. Moreover, they had failed to comply with a High Court Order. That amply met the requirement of “*persistently in default*” under the Act;
- while the principal purpose of disqualification is not to punish but to protect the public, there should be an element of deterrence in the exercise by a Court of its discretion. It is part of the policy of Section 160 to improve corporate governance. Courts have become increasingly vigilant and less tolerant in relation to lax standards and disregard of the law.

Conclusion

The ODCE secured an increase in the numbers of convictions and disqualifications in 2008, and a number of the Court decisions broke new ground in company law enforcement proceedings.

At year-end, the Office had a number of significant cases underway or in hand, and it is clear that the forthcoming year will be a particularly busy one in pursuing detected corporate misconduct. We will continue to pursue any priority issues in the company law area which impede transparency, threaten the fair and equitable conduct of commercial relations among company stakeholders and undermine market confidence.

Goal 4 – Sanctioning Improper Conduct with respect to Insolvent Companies

Introduction

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

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

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

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

Liquidation Trends

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

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

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

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

Insolvent Companies in Liquidation by Economic Sector

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

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

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

Unliquidated/Dissolved Insolvent Companies

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

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

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

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

Reporting under Section 56 of the Company Law Enforcement Act 2001

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

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

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

24 Section 882 of the Taxes Consolidation Act 1997.

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

26 Where an individual is restricted, s/he may only act as the director or secretary of a company for a period of five years thereafter if that company meets certain minimum capitalisation requirements. In the case of a private company, a minimum called up share capital of €63,487 is required. In the case of a public limited company, the corresponding figure is €317,435. Moreover, the called up share capital must be fully paid for in cash. Restriction permits individuals to continue to avail of the benefits of limited liability. However if a restricted person breaches the capitalisation conditions, s/he may potentially be convicted of an indictable offence, fined and disqualified for five years.

27 An initial report is the first report received from a liquidator within six months of his appointment and in the majority of cases the decision to grant relief or not is made based on this report. In some cases 'relief at this time' is granted to facilitate further investigations by the liquidator.

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

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

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

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

Other Liquidator and Receiver Issues

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ODCE Review of its Practices with respect to Liquidator Reports

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

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

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

ODCE Relief Decisions

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

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

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

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

In preparing their reports, the ODCE encourages liquidators to make an appropriate recommendation with respect to relief by reference to the results of their investigations. For its part, the Office is anxious to ensure that in making its decisions with respect to relief, no director needlessly bears the burden of a High Court hearing where he or she has clearly demonstrated that they behaved honestly and responsibly in the conduct of the affairs of the failed enterprise.

Tracking Court Decisions on the Restriction Applications

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

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

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

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

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

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

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

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

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

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

The Registrar of Companies maintains up-to-date registers of restricted and disqualified persons, and an on-line public search facility of these registers is available at www.cro.ie.

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

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

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

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

Illustration 4.2.1: Insolvent Companies: Liquidator Disqualifications in 2008

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

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

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

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

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

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

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

Relief from Restriction

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

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

Tracking Directors in breach of their Disqualification or Restriction Terms

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

Deemed Disqualifications

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

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

Sub-Goal 4.3: Sanctioning Fraudulent or Abusive Behaviour

Introduction

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

other practices that typically result in a new company assuming the assets and business (but not the liabilities) of a failed company such that:

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

'Struck-off' Companies

Insolvent companies which are abandoned by their directors and which subsequently come to be "struck off" the Register of Companies for a failure to file their annual returns continued to receive ODCE attention in 2008. It is open to the Director to apply to the High Court for the disqualification of the directors of such struck-off companies³⁹. However, the law⁴⁰ also provides that the High Court cannot impose a disqualification on a person who demonstrates to the Court that the company had no liabilities at the time of strike-off or that those liabilities were discharged before the initiation of the disqualification application. In considering the penalty to be imposed, the Court may instead restrict the directors where it adjudges that disqualification is not warranted.

However, Court actions do not arise in respect of every struck-off company that is investigated by the Office. In some cases, the former directors are able to satisfy the ODCE that all liabilities had been settled at the time of strike-off or prior to the issue of the intended Court proceedings. This usually requires the preparation and submission of appropriate accounts, often stretching back several years, showing the company's trading since the last set of accounts were submitted to the CRO or since incorporation in cases where accounts were never submitted to the CRO. The former directors are also required to show that all creditors have been paid or those debts settled, and independent verification of this from individual creditors is frequently sought.

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

37 Section 152 of the Companies Act 1990.

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

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

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

Director did not proceed with disqualification proceedings in these cases.

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

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

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

Conclusion

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

Goal 5 – Providing Quality Services to Internal and External Customers

Introduction

The ODCE continued to prioritise the provision of quality services for all its customers in 2008. The Office's customers include both the public and Office staff, and one object of this Goal is to enable the effective and efficient execution of the functions of the Office. The main developments with respect to ODCE operations and services during the year are outlined below.

Sub-Goal 5.1: Securing and Managing ODCE Resources

Staffing

The ODCE's staffing level improved from 40.6 to 44.8 full-time staff during 2008. This increase represented the second and final phase of a commitment made by the Department of Enterprise Trade and Employment in 2007 to provide an extra eight staff to the Office. **Appendix 5.1.1** provides a breakdown of the Office's staff at year-end. As will be clear from earlier chapters of the Report, this increase in staffing enabled the Office to increase its activity in various areas during 2008.

The Director wishes to acknowledge the valuable contributions made by Michael Cumiskey, Joan Howley, Barry Harte, Jean Kelly and Deirdre Mitchell to the work of the Office during their times here. All five left the Office in 2008 to take on new challenges, some having been involved in the Office since its inception.

Financial Resources

The Office's administrative costs in 2008 were funded through Subhead A09 of Vote 34 (Minister for Enterprise Trade and Employment). A summary of the allocated and expended amounts for the main Pay and Non-Pay headings is provided in the following table. A more detailed breakdown of the 2008 figures is contained in **Appendix 5.1.2**.

Subhead A09, Vote 34	2008 Allocation (€000s)	2008 Actual Expenditure (€000s)
Pay	2,681	2,411
Non-Pay	2,276	1,932
Total	4,957	4,343

The outturn of just over €4.343 million in 2008 was a slight decrease on the €4.378 million spent in 2007. The 2008 outturn represented just 88% of the initial allocation of €4.957 million for the year. In accordance with public accounting procedures, the surplus of €0.613m was surrendered to the Exchequer.

The slight reduction in expenditure was achieved notwithstanding a 10% increase in staff and the cost of the High Court's appointment in July 2008 of an Inspector to investigate certain share transactions in DCC plc and two related companies. On the other hand, expenditure on certain initiatives such as advertising and publicity was curtailed in response to Government requests for cutbacks in uncommitted spending.

While some programmes of ODCE work will continue to be curtailed in 2009 due to Government cutbacks, the overall level of expenditure is expected to rise because the ODCE budget in 2009 will bear a substantial portion of the cost of the DCC Inspection.

Accommodation

The Office occupied additional accommodation in its building in early 2008 which catered for the higher staff numbers assigned in 2007 and 2008.

Organisational Development

In 2008, the ODCE again engaged external expertise to assist in undertaking its investigative and enforcement work in particular. The ODCE maintained and once again canvassed interest in its Legal and Accounting Panels by way of public advertisement. These Panels contain the names of persons or firms wishing to be considered for appropriate expert assignments. These Panels remain open at all times to applicants who wish to provide such services to the Office.

Risk Management Action Plan

The ODCE again co-operated with the Department of Enterprise Trade and Employment during 2008 in reviewing and further updating the Office's risk management plans. This was originally put in place as a result of the recommendations of the Mullarkey Report which dealt with accountability issues in the areas of internal financial controls, internal audit arrangements and risk management.

Green Agenda

In 2008, the Office formally initiated a number of environmentally friendly policies in order to use the resources assigned to it in the most effective and cost-efficient way possible. All staff participated in information sessions on the topic and are actively following guidelines to reduce the Office's consumption of energy, materials and water and to better manage Office waste. Certain operational changes have been implemented that are reducing the Office's carbon footprint as well as reducing associated costs.

Sub-Goal 5.2: Developing Staff

Performance Management

The Performance Management and Development System which applies across all Government Departments and Offices continued to be implemented in 2008 by the ODCE. It is directly related to the annual Business Plan of the Office, and it serves to clarify staff members' roles and contributions to the Business Plan as well as identifying staff training requirements.

Over 140 training and information days were availed of by ODCE staff during 2008, 88 of which were provided from ODCE resources. The Department of Enterprise Trade and Employment provided a further 47 days of training to twelve ODCE staff. The Companies Registration Office also allowed four ODCE staff to participate in its own staff training programmes covering a total of eight training days.

The training undertaken in 2008 included the following:

- management staff participation in the Department's Leadership Programme;
- continuing professional development training;
- information technology training and
- Irish language training for the Office's reception staff in particular.

The information days and in-house seminars covered various topics relating to the work of the Department, the Office and the public service generally. An ODCE-specific induction programme was provided for all of the new staff who joined the Office in 2008. Information sessions were also made available for all staff on the Official Languages Act and the Green Agenda initiative as a result of their application to the Office in 2008.

Team-Based Working

Multi-disciplinary teams continued to operate within the ODCE in order to handle the Office's extensive volume of casework in the detection, enforcement and insolvency areas.



The Office Management Committee, chaired by the Director and representative of all staff, met quarterly in 2008 to deal with policy and organisational issues affecting the Office's continuing development and direction.

During the year, the Director made fourteen new or amended instruments delegating his powers to certain staff under section 13 of the Company Law Enforcement Act 2001. The affected individuals included three new members of staff.

Sub-Goal 5.3: Developing and Maintaining Quality Customer Services

Services Offered

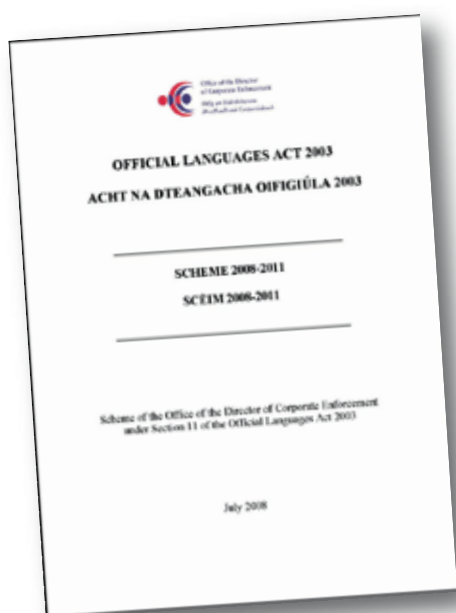
The ODCE continued in 2008 to commit considerable resources to the development and use of technology to provide information to its customers, to receive input from customers and to enhance efficiencies in work practices. The services offered by the Office to the public and professionals include:

- information on company law and related matters via the Office's website, publications, etc. In this context, some 817 customers were registered at end-2008 with a view to being notified of new information being placed on the website. 48 of these were newly registered in 2008;

- talks, seminars and other compliance initiatives provided by Office staff. For instance, the Office took a trade stand at the BT Small Business Show in Cork for the first time;
- the facility permitting the public to make complaints of suspected corporate misconduct;
- statute-based services whereby auditors, liquidators and other interests are required to report suspected company law offences to the Office;
- general assistance offered to Office clients by phone, correspondence, e-mail, etc. For instance, some 468 requests to the info@odce.ie account were promptly answered during the year.

Official Languages Act 2003

During the year, the Office finalised with the Department of Community Rural and Gaeltacht Affairs its Draft Scheme of commitments to the provision of English and Irish language services under the Act. The Scheme was launched in July and is available on the ODCE website at www.odce.ie.



In addition to the staff training undertaken in 2008, the Office compiled a glossary of useful terms and expressions to help staff deal with citizens who wish to conduct their business with the Office through Irish. Further language training is planned in 2009 to help improve the Office's capacity to offer services of comparable quality through both Irish and English.

Publications

Nine formal publications were prepared and published during 2008 as indicated in **Appendix 1.1.1** to this Report. In accordance with our commitments made pursuant to the Official Languages Act, four of these were published bilingually. In addition to the agreed Scheme under the Official Languages Act, the publications in question were the ODCE's Annual Report for 2007, the Company Law Handbook on Residential Property Owners' Management Companies and a companion Guidance Booklet on Management Companies.

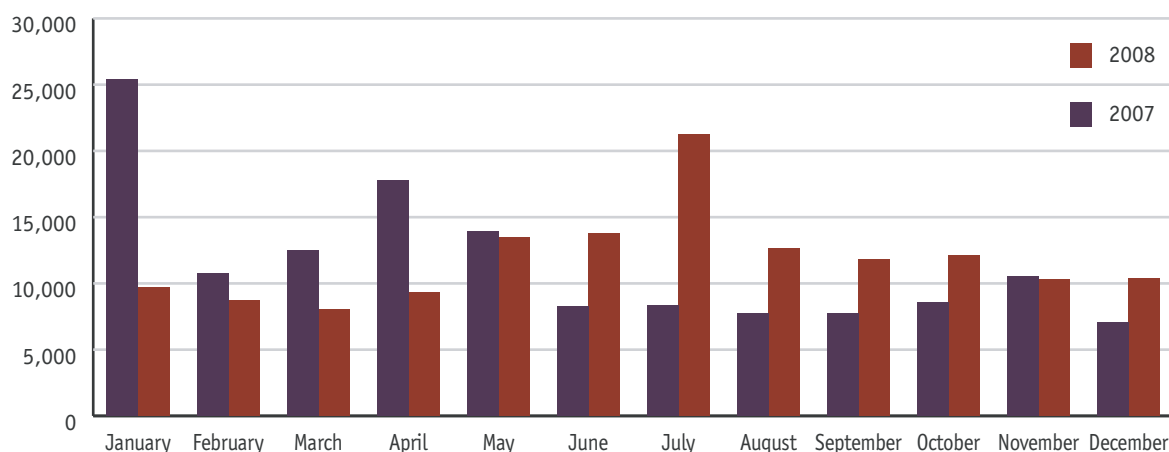
As indicated earlier, the Director also issued a number of press statements, and several ODCE staff contributed papers and presentations to the national and professional media and to business and other groups. Staff also participated in national and local media interviews on request.

Website

The ODCE website at www.odce.ie was continually updated during 2008 with new information on the ODCE's work and associated corporate governance developments. All new publications, press statements, articles, etc. were made available on the site as were the results of Court enforcement proceedings in which the Director was involved and other Court decisions of relevance in a company law context.

The website once again attracted large numbers of people interested in corporate governance matters. During the year, some 141,557 visits were made, up by 2% on the figure of 138,604 for 2007. The chart shows that while numbers remained similar to 2007, the number of visits to the site was down on 2007 from January to May, increasing over the following seven months. There was a particularly busy period in July, coinciding with the appointment by the High Court of the Inspector to DCC plc, S&L Investments Ltd. and Lotus Green Ltd., the launch of the Scheme under the Official Languages Act and the Consultation Paper on the ODCE Strategy Statement for 2009-2012.

In early 2008, the Office put in place an on-line survey of website users to help ascertain their satisfaction with the services offered. While the response rate to the survey was low, the feedback given was positive.



Freedom of Information (FOI) Acts

The FOI Acts permit the disclosure of records concerning the general administration of the Office only. During 2008, the ODCE received no requests under the Acts for records. The Office updated its FOI Manual and made it available (in both Irish and English) on its website.

Data Protection Acts

The ODCE is registered with the Office of the Data Protection Commissioner as a Data Controller. The Data Protection Acts 1988 and 2003 protect against the improper use or disclosure of any information held about an individual. In 2008, the ODCE updated its registration with the Data Protection Commissioner and continued to comply with its own strict confidentiality duties as outlined in the Company Law Enforcement Act 2001.

During 2008, with the assistance of the Department of Enterprise Trade and Employment, data security was further enhanced by encrypting data held on mobile devices used by Office staff such as laptops and memory sticks.

Prompt Payment of Accounts Act 1997

The Prompt Payments of Accounts Act provides for the payment of interest to suppliers whose invoices are unpaid at the prescribed date. Despite the Office's policy of arranging that all invoices are settled in a timely manner, the ODCE incurred one interest surcharge on payments in 2008. The amount charged was €351.06.

Compliance with Agreed Customer Service Standards

The ODCE is committed to providing a quality customer service to all members of the public who have dealings with it as well as to its own staff, and during 2008, the Office kept its service standards under regular review. A small number of formal complaints were received and dealt with during the year. The Feedback Form on the ODCE website provides a permanent opportunity for the public to comment to us on the information available on our website and on our services more generally.

Every effort is made to assist persons who contact the Office even when the issue at hand is not directly related to the work of the Office. We regularly refer matters to other authorities where we feel that the issue in question is more appropriately dealt with by them. For instance in late March, the High Court concluded a case in which the Pensions Board successfully prosecuted a company for failing to remit workers' pension contributions to the relevant pensions scheme. The ODCE had previously informed the Pensions Board of a complaint it received in the matter.

Within the constraints of a demanding workload, the Director considers that his Office achieved satisfactory compliance with our Customer Service Standards during 2008.

Conclusion

As we start 2009, we can look back on a good year of achievement in 2008 with satisfactory results achieved under all of our goals. As the Report indicates, we broke new ground in quite a number of areas.

The challenges ahead look to be quite demanding. The serious downturn in the economy will pose difficulties for the budgets of all public service organisations. While additional State funds have been provided to us in 2009 to meet the cost of the DCC High Court Inspection, the ODCE's general budget will be tight particularly if any significant costs award were to be made against us in Court proceedings.

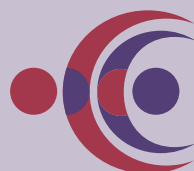
The Office has a number of major cases on its hands. This is already giving rise to new and unique difficulties which we are continuing to address with the assistance of the Department where resource issues arise.

The deteriorating economic conditions are also seeing a significant and unwelcome increase in the number of businesses failing. Given our statutory role with respect to insolvent companies, we are expecting a further significant increase in liquidator reports to the Office in the short term. New reports are likely to exceed 900 in 2009 which compares with 406 and 286 in 2008 and 2007 respectively. While some compensatory measures have been taken to make room for this doubling of work in 2009, it will represent a serious challenge to the staff and resources of the Office.

With more businesses under pressure, there is also a risk that standards of compliance with company law and other legislative requirements will decline as company directors give attention to more immediate business concerns. We will have to redouble our efforts to maintain a coherent and credible message with respect to compliance with the Companies Acts. The limitations placed on ODCE expenditure for advertising and similar publicity will mean that alternative communications channels will have to be identified and deployed to reach our business, community and professional audiences.

However, the Office has faced difficult challenges before and has successfully overcome them, and we can do so again. The reputation of Ireland has suffered as a result of recent events, and it is important that we demonstrate a commitment to the maintenance of a stable and reliable legal environment for companies in the State. If we continue to play our part, it will greatly assist entrepreneurship and competitiveness at company level which will be important in creating jobs and restoring confidence. Our aim is to continue to create a better environment for business and community enterprise in the State.

Appendices



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

Appendix 1.1.1

Publications issued by the ODCE in 2008

Title	Subject	Date of Issue
ODCE Review of 2007	Summary of ODCE Activity in 2007	January 2008
Corporate Compliance Matters	Joint CRO/ODCE Publication on Topical Company Law Issues	Spring 2008
ODCE Annual Report 2007	Detailed Report on ODCE Activity in 2007	May 2008
Consultation Paper C/2008/1	Whistle-blowing and Irish Company Law	June 2008
Scheme under the Official Languages Act 2003	ODCE Commitments for the Provision of English and Irish Language Services for the period 2008-2011	July 2008
Consultation Paper C/2008/2	Draft ODCE Statement of Strategy	July 2008
Consultation Paper C/2008/3	Business Expansion and Seed Capital Schemes	September 2008
Decision Notice D/2008/1	Company Law Handbook on Residential Property Owners' Management Companies	December 2008
Summary Guide	Management Companies – A Property Owner's Guide to Company Law	December 2008

Appendix 1.2.1

List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
15/01/08	Dublin City Council	Presentation	Corporate Governance and Directors' Responsibilities	Dublin City Council Offices, Wood Quay	14	Kevin Prendergast and Adrian Brennan
25/01/08	NetWorks	Presentation	Corporate Health Check for Company Directors	Lusty Beg Island, Fermanagh	16	Kevin Prendergast
11/02/08	Waterford SEEPP	Presentation	Corporate Health Check for Company Directors	Waterford IT, Carriganore Campus	18	Kevin Prendergast
11/02/08	Garda Bureau of Fraud Investigation	GBFI Fraud Course	ODCE Role and Functions	Harcourt Square	20	Mick Prendergast
15/02/08	Smurfit School of Business	Presentation	ODCE – What is it and what does it do?	Smurfit Business School, Blackrock	15	Paul Appleby
26/02/08	Dublin City Council Housing Department	Presentation	Corporate Governance and Directors' Responsibilities	Civic Offices, Wood Quay, Dublin	15	Kevin Prendergast
04/03/08	University of Limerick	Presentation	ODCE – What is it and what does it do?	University of Limerick Campus	130	Kevin Prendergast
11/03/08	Jordan Publishing Ltd.	Conference	Update on ODCE's Compliance and Enforcement Work	Clontarf Castle, Dublin	80	Paul Appleby
12/03/08	West Training and Development Ltd	Presentation	Corporate Health Check for Company Directors	Mayoralty House, Merchants Road, Galway	10	Kevin Prendergast
13/03/08	Nova UCD	Presentation	Corporate Health Check for Directors of Private Limited Companies	UCD, Dublin	30	Kevin Prendergast
19/03/08	A & L Goodbody	Presentation	ODCE – Insolvency, Restriction and Disqualification	A & L Goodbody Offices, IFSC	60	Kevin Prendergast
01/04/08	Payback Solutions	Presentations	Corporate Health Check for Company Directors	Muckross Park Hotel, Killarney	16	Kevin Prendergast
09/04/08	Dundalk IT	Presentation	Role of the ODCE	CRO Offices	9	Kevin Prendergast

Appendix 1.2.1 (continued)

List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
09/04/08	Plato	Presentation	Corporate Health Check for Company Directors	Shamrock Foods, Ballymount, Dublin	9	Kevin Prendergast
14/04/08	Enviro Skillnet	Presentation	Corporate Health Check for Company Directors	Cork	12	Kevin Prendergast
15/04/08	Fingal County Childcare	Presentation	Corporate Governance and Directors' Responsibilities	Swords Business Park, Dublin	8	Kevin Prendergast
16/04/08	CRO	Presentation	The Role of the ODCE	Dublin	40	Kevin Prendergast
16-18/04/08	Institute of Internal Auditors	Conference	Company Law Compliance and Enforcement – where do we stand?	Knightsbrook Hotel, Trim, Co. Meath	150	Paul Appleby
17/04/08	Centre for Independent Living	Presentation	Corporate Health Check for Company Directors	Letterkenny, Co. Donegal	5	Kevin Prendergast
17/04/08	Abbey Arts Centre	Presentation	Corporate Health Check for Company Directors	Ballyshannon, Donegal	15	Kevin Prendergast
23/04/08	Institute of Chartered Secretaries and Administrators	Conference	Update on the ODCE's Compliance and Enforcement Work	National College of Ireland	60	Paul Appleby
28/04/08	Irish Institute of Continuing Professional Development	Presentation	The ODCE – Civil and Criminal Aspects of Company Law	Metropole Hotel, Cork	21	Kevin Prendergast
28/04/08	South and Mid West Community Development Support Agency	Presentation	Corporate Health Check for Company Directors	Mahon Community Centre, Cork	18	Kevin Prendergast
06/05/08	South and Mid West Community Development Support Agency	Presentation	Corporate Health Check for Company Directors	Ashbourne Business Park, Limerick	14	Kevin Prendergast

Appendix 1.2.1 (continued)

List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
07/05/08	South and Mid West Community Development Support Agency	Presentation	Corporate Health Check for Company Directors	Tralee CDP, Tralee	18	Kevin Prendergast
07/05/08	CLRG	Presentation	Offences and Enforcement	Buswells Hotel, Dublin	30	Adrian Brennan
05/06/08	Thursday Network Group	Presentation	Current Work of the ODCE	O'Brien Hartnett Offices, Haddington Road, Dublin	12	Kevin Prendergast
06/06/08	Governance Forum Event	Presentation	Duties of the Company Secretary	IPA, Lansdowne Road, Dublin	40	Kevin Prendergast
20-26/06/08	International Association of Insolvency Regulation	Conference	Company Liquidation Trends in Ireland	St. Petersburg	60	Paul Appleby
08/07/08	Irish Institute of Continuing Professional Development	Presentation	The ODCE – Civil and Criminal Aspects of Company Law	Royal College of Physicians, Kildare Street, Dublin	35	Kevin Prendergast
11/07/08	UCD Masters in Management Studies	Presentation	The ODCE – Setting the Standard	Smurfit Business School, Carysfort, Co. Dublin	55	Kevin Prendergast
18/07/08	UCD Masters in Management Studies	Presentation	The ODCE – Setting the Standard	Smurfit Business School, Carysfort, Co. Dublin	75	Kevin Prendergast
12/09/08	Laois County Enterprise Board	Presentation	Corporate Health Check for Company Directors	Laois Enterprise Centre	8	Eileen McManus
16/09/08	Department of Community Rural and Gaeltacht Affairs	Presentation	Corporate Governance and Directors' Responsibilities	Croke Park	180	Kevin Prendergast
17/09/08	Irish Times Training	Presentation	Encouraging Compliance, Enforcing the Law	Morgan Hotel, Dublin	16	Kevin Prendergast

Appendix 1.2.1 (continued)

List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
24/09/08	Law Society of Ireland	Launch of Law Society's Diploma in Company Law	Value of the Diploma Course	Law Society, Blackhall Place	50	Paul Appleby
25/09/08	Small Firms Association	Conference	Company Regulation	Dublin Castle	200	Paul Appleby
29/09/08	Garda Bureau of Fraud Investigation	GBFI Fraud Course	ODCE Role and Functions	Harcourt Square	20	Mick Prendergast
03/10/08	Irish Small and Medium Enterprise	Conference	Regulation or Strangulation	Jury's Hotel, Croke Park	250	Paul Appleby
07/10/08	ACCA CPD	Presentation	Duties and Responsibilities of Company Directors and Secretaries	Radisson SAS, Dublin	60	Dermot Madden
16/10/08	Corporate Governance Association of Ireland	Presentation	Future Direction of ODCE	The Kildare Street and University Club, Dublin	60	Paul Appleby
16/10/08	Law Society of Ireland	Presentation	Company Law Compliance	Law Society, Dublin	100	Adrian Brennan
22/10/08	UCD Commercial Law Centre	Seminar	Restriction and Disqualification – A View from the ODCE	UCD, Belfield	30	Paul Appleby
28/10/08	Dublin City University	Presentation	The Role of the ODCE	DCU, Glasnevin	50	Kevin Prendergast
03/11/08	Law Society of Ireland	Presentation	Corporate Law Compliance	Law Society, Cork	95	Adrian Brennan
03/11/08	ICAI	Presentation	Certificate in Directors' Responsibilities	ICAI Offices, Burlington House	32	Kevin Prendergast
04/11/09	Carlow CEB	Presentation	Corporate Health Check for Company Directors	Seven Oaks Hotel	20	Adrian Brennan
05/11/08	Leader Chair Conference	Presentation	Corporate Governance and Directors' Responsibilities	Europe Hotel, Killarney	50	Kevin Prendergast

Appendix 1.2.1 (continued)

List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
06/11/08	UCD Master of Accounting	Presentation	The Role of the ODCE	Smurfit Graduate Business School, Blackrock	140	Kevin Prendergast
10/11/08	Institute of Bankers	Presentation	Corporate Enforcement	Institute of Bankers, Dublin	85	Kevin Prendergast
12/11/08	Local Development Companies	Presentation	Corporate Health Check for Company Directors	Heritage Hotel, Portlaoise	30	Kevin Prendergast
13/11/08	Co-Operation Fingal	Presentation	Corporate Health Check for Company Directors	BeaT Centre, Balbriggan	20	Kevin Prendergast
18/11/08	Law Society of Ireland	Presentation	The Role of the ODCE	Law Society of Ireland, Blackhall Place, Dublin 7	200	Adrian Brennan
19/11/08	Athlone Institute of Technology	Presentation	The ODCE – what is it and what does it do?	Athlone Institute of Technology	30	Paul Appleby
19/11/08	Dublin Business Innovation Centre	Presentation	Corporate Health Check for Company Directors	Guinness Enterprise Centre, Dublin	8	Kevin Prendergast
19/11/08	Local Development Companies	Presentation	Corporate Health Check for Company Directors	Downhill Hotel, Ballina	35	Kevin Prendergast
20/11/08	Local Development Companies	Presentation	Corporate Health Check for Company Directors	Clayton Hotel, Galway	40	Kevin Prendergast
26/11/08	Local Development Companies	Presentation	Corporate Health Check for Company Directors	Seven Oaks Hotel, Carlow	32	Kevin Prendergast
28/11/08	ACCA, Athlone Members Network	Presentation	Role and Responsibilities of Company Directors and Secretaries	Shamrock Lodge, Athlone	15	Dermot Madden
29/11/08	South and East Cork Area Development	Presentation	Community Groups – Your Legal Responsibilities	Douglas/ Carrigaline/ Ballincollig	50	Kevin Prendergast
01/12/08	Fingal Citizens Information Service	Presentation	The Role of Company Directors	Carnegie Court Hotel, Swords	14	Eileen McManus

Appendix 1.2.1 (continued)

List of ODCE Presentations in 2008

Date	Promoter	Event Type	Subject	Venue	Audience (Approx)	Speaker
03/12/08	William Fry Solicitors	Presentation	Disqualification and Restriction under the Companies Acts	Office of William Fry Solicitors, Dublin	25	Adrian Brennan
05/12/08	Local Authority Solicitors Bar Association	Presentation	Directors' Responsibilities and the Work of the ODCE	Dublin City Hall	35	Kevin Prendergast and Dermot Morahan
09/12/08	Coláiste Dhúlaigh	Presentation	Role of the ODCE	ODCE offices	20	Kevin Prendergast
11/12/08	ACCA Ireland (Drogheda Members Network)	Presentation	Role and Responsibilities of Company Directors and Secretaries	Boyne Valley Hotel, Drogheda	10	Dermot Madden

Appendix 1.2.2

List of Exhibitions/Events attended by the ODCE in 2008

Date	Event	Venue
31/01/08	Dun Laoghaire Enterprise Expo	Dun Laoghaire
12/03/08	Extreme Business Makeover	The Osprey Hotel, Naas
23/04/08	ICSA Annual Conference	IFSC, Dublin
07/05/08	Skillnets	Croke Park Conference Centre, Dublin
9-10/05/08	BT Small Business Show	RDS, Dublin
13/05/08	National Business Forum	Druids Glen, Wicklow
16-17/05/08	BT Small Business Show	Silver Springs Hotel, Cork
20/06/08	Farmfest Exhibition	Teagasc Centre, Athenry, Galway
23-25/09/08	National Ploughing Championship	Cuffes Grange, Kilkenny
25/09/08	Fingal Day of Enterprise	Swords, Co. Dublin
03/10/08	ISME National Conference	Croke Park Conference Centre, Dublin
09/10/08	National Construction Conference	Croke Park Conference Centre, Dublin
10/10/08	Limerick City Business Event	Marriott Hotel, Limerick
16/10/08	South East Spirit of Enterprise	Hotel Kilkenny, Kilkenny
21-22/11/08	The Irish Franchise Exhibition	RDS, Dublin
26/11/08	Women's Enterprise Day	Mullingar Park Hotel, Mullingar

Appendix 1.2.3

List of ODCE Press Statements – 2008

Date	Subject
07/01/08	End-of-Year Review of ODCE Activity in 2007
28/05/08	ODCE Application to appoint a High Court Inspector to investigate a discrete issue relating to the affairs of DCC plc and two associated companies
28/05/08	Launch of the ODCE Annual Report for 2007
11/09/08	Draft Guidance for Directors and Investors in Companies availing of the Business Expansion and Seed Capital Schemes
17/12/08	New Guidance on Property Management Companies

Appendix 2.1.1

Breakdown of New Investigation Cases in 2008 by Source (v. 2007)

Source of New Investigation Cases	2007	2008
Voluntary Reports and Detections		
- Public Complaints	331	295
- Reports from Public Authorities in the State ⁴¹	19	3
- Reports from Public Authorities outside the State	3	5
- ODCE Campaign Items	86	71
- Other Detections	31	32
Total Voluntary Reports and Detections	470	406
Mandatory Reports		
- Indictable Reports from Auditors	186	207
- Reports from the CRO	10	7
- Indictable Reports from Professional Bodies	7	3
- Reports from Liquidators	1	4
Total Mandatory Reports	204	221
Total Reports and Detections	674	627

⁴¹ Typically, the ODCE receives these reports from a variety of sources including the Department of Social and Family Affairs, the CRO, the Garda Síochána, the Revenue Commissioners and other Departments and regulatory agencies.

Appendix 2.2.1

Mandatory Reports in 2008 – Character of Possible Company Law Defaults (v. 2007)

Types of Indicated Default	Total 2007	Total 2008
Directors' Loan Infringements	138	161
Failure to Keep Proper Books of Account	40	32
No Director Resident in the State	3	7
False Statements to Auditors	1	6
Falsification of Documents	2	6
Non-Qualification for Appointment as Auditor	4	2
Non-holding of Extraordinary General Meetings	2	1
Other	15	21
Total Defaults in Mandatory Reports	205	236

Appendix 2.2.2

Voluntary Reports and Other Detections in 2008 – Character of Issues Involved (v. 2007)

Types of Indicated Issues	2007	2008
Financial Statement Deficiencies	-	68
Reckless/Fraudulent/Insolvent Trading	52	49
Annual/Extraordinary General Meetings	45	48
Debt Issues	38	35
Shareholder Issues	65	29
Director Issues	23	27
Trading while struck off the Companies Register	29	18
Forgery/False Information	27	15
Auditor Issues	11	8
Communications Regulations	86	3
Unclear/Other Issues	94	106
Total	470	406

Appendix 2.2.3

Throughput of Cases at Detection Stage in 2008 (v. 2007)

Assessment of Cases	2007	2008
Cases on hands at 1 January	267	323
New Cases	674	627
Cases Closed	507	584
Cases for Further Consideration by the ODCE	111	78
Cases on hands at 31 December	323	288

Appendix 2.2.4

Cases Concluded at Detection Stage by Primary Manner of Disposal in 2008

Character of Decisions	Voluntary Reports	Mandatory Reports	Total 2008
Insufficient Evidence of Default	148	6	154
Default Appropriate for Civil Action	67	-	67
Cases Concluded by Remedy of Default/Warning	160	169	329
Matters not directly relevant to the ODCE	24	7	31
Other	3	-	3
Total Cases Closed	402	182	584
Cases Referred for Possible Enforcement	16	47	63
Cases Referred for Insolvency Examination	11	4	15
Total Cases Referred for Further Consideration	27	51	78

Appendix 3.1

Overview of ODCE Proceedings in 2008 (v. 2007)

Proceedings by Case Type	2007	2008
Investigative		
■ Successful	13	13
■ Unsuccessful	-	-
■ Ongoing	-	-
Sub-Total	13	13
Civil Enforcement		
■ Successful	11	4
■ Unsuccessful	-	1
■ Ongoing	15	16
Sub-Total	26	21
Criminal Enforcement		
■ Successful	8	9
■ Unsuccessful	1	-
■ Withdrawn	-	1
■ Ongoing	7	3
Sub-Total	16	13
Judicial Review and Others		
■ Successful	3	1
■ Unsuccessful	-	1
■ Settled	3	2
■ Ongoing	3	1
Sub-Total	9	5
All Proceedings		
■ Successful	35	27
■ Unsuccessful	1	2
■ Settled	3	2
■ Withdrawn	-	1
■ Ongoing	25	20
Total	64	52

Appendix 3.2

Breakdown of Legal Proceedings in 2008 involving the Director

Type	Subject Matter	Section/Act involved ⁴²	Case Nos.	Case Status/Result
Superior Courts				
Application by ODCE	Appointment of Inspector to three companies	S. 8(1), 1990	1	Granted
Appeal by Respondents/ Cross-Appeal by ODCE	Disqualification on foot of a company investigation – preliminary issues	S. 160(2)(a), (b) and/or (d), 1990	1	Ongoing
Appeal by ODCE	Disqualification for misconduct	S. 160(2)(b) and/or (d), 1990	1	Ongoing
Appeal by ODCE	Disqualification on foot of Inspectors' Report	S. 160(2)(b), (d) and/or (e), 1990	1	Ongoing
Appeal by Respondent	Disqualification on foot of Inspectors' Report	S. 160(2)(b), (d) and/or (e), 1990	1	Ongoing
Application by ODCE	Disqualification on foot of Inspectors' Report	S. 160(2)(b), (d) and/or (e), 1990	6	Four cases decided (all since appealed) leading to three disqualification decisions and one refused application; two cases ongoing
Application by ODCE	Disqualification on foot of Inspectors' Report - retention of papers	S. 12, 1990	1	Granted
Applications by ODCE and Respondent	Disqualification on foot of Inspectors' Report – preliminary issue re cross-examination	S. 160(2)(b), (d) and/or (e), 1990	1	Settled

⁴² The Acts referred to are the Bankers' Books Evidence Act 1879, the Companies Acts 1963 and 1990 and the Criminal Justice (Theft and Fraud Offences) Act 2001.

Appendix 3.2 (continued)

Breakdown of Legal Proceedings in 2008 involving the Director

Type	Subject Matter	Section/Act involved	Case Nos.	Case Status/Result
Superior Courts (continued)				
Appeal by ODCE	Disqualification for persistent default	S. 160(2)(f), 1990	1	Refused
Application by ODCE	Disqualification for defaults resulting in company strike-off	S. 160(2)(h), 1990	10	Five cases decided (one since appealed) and one case partially determined leading to 12 disqualifications, one restriction and one refused application; ongoing (six cases)
Intervention by ODCE	Participation in application for costs	S. 150, 1990	1	Settled
Intervention by ODCE	Jurisdiction of Court to make a disqualification order of its own motion	S. 160(2), 1990	1	Noted
Circuit Criminal Court				
Prosecution ⁴³	Excessive directors' transactions	S. 40, 1990	1	Convictions (13) and Disqualification
District Court				
Application by ODCE	Production of banking and other documents	S. 7A, 1879/ S. 52, 2001	5 ⁴⁴	Granted
Application by ODCE	Search Warrant	S. 20, 1990	1 ⁴⁵	Granted

⁴³ This prosecution was taken by the Director of Public Prosecutions following an ODCE investigation.

⁴⁴ Ten production orders were secured in these five cases.

⁴⁵ Two search warrants were secured in this one case.

Appendix 3.2 (continued)

Breakdown of Legal Proceedings in 2008 involving the Director

Type	Subject Matter	Section/Act involved	Case Nos.	Case Status/Result
District Court (continued)				
Prosecution	Acting as an auditor while unqualified	S. 187, 1990	2	One case decided leading to five convictions; one case ongoing
Prosecution	Acting as a director while disqualified	S. 161, 1990	1	Conviction and disqualification (since appealed)
Prosecution	Acting as a director while restricted and in breach of the statutory conditions	S. 161, 1990	3	Two cases decided leading to five convictions and three disqualifications; one prosecution withdrawn
Prosecution	Failure to keep proper books of account	S. 202, 1990	5	Four cases decided leading to seven convictions; one case ongoing
Prosecution	Provision of false information to the CRO	S. 242, 1990	1	Conviction

Appendix 3.3

Details of Successful ODCE Enforcement Actions in 2008⁴⁶

Parties Sanctioned/ Reason for Sanction	Company Number	Penalty/Decision	Costs/Expenses
Acting as an auditor while unqualified			
Donal Sweeney	-	Convictions (5), €2,500 in fines	€1,065
Acting as a director while disqualified			
Donal Harrington	407161	Conviction, Custodial sentence of six months, Disqualification for five years, €1,500 fine ⁴⁷	€228
Acting as a director while restricted and in breach of the statutory conditions			
Sean Crowe Gary O'Brien	400396	Convictions (2), Disqualifications for two years (2), €1,000 in fines	€228
Brian Keogan Jnr	372308 375424 403679	Convictions (3), TIC (1), Disqualification for close to four years, €750 in fines	€684
Excessive directors' transactions			
Stuart Fogarty	24806	Convictions (13), Custodial sentence of two years (suspended), Disqualification for six months, Community service of 240 hours, €34,000 in fines	-

⁴⁶ This Appendix only contains information on enforcement proceedings initiated by the ODCE, where there was a successful result in 2008. It excludes other proceedings with a favourable outcome in which we participated. See Appendix 3.2 for these cases and the relevant text of the Annual Report.

⁴⁷ This case is under appeal.

Appendix 3.3 (continued)

Details of Successful ODCE Enforcement Actions in 2008

Parties Sanctioned/Reason for Sanction	Company Number	Penalty/Decision	Costs/Expenses
Failure to keep proper books of account			
D & N Joinery Limited	360990	Conviction, €1,500 fine	€228
Georgian Antiques Limited	295671	Conviction, €850 fine	€228
John Nolan Plant Hire (Swinford) Limited, John Joseph Nolan, John Patrick Nolan	300602	Convictions (3), €3,000 in fines	€684
Papswood Limited	284808	Convictions (2), €1,000 in fines	€228
Provision of false information to the CRO			
Patrick McFadden	181430	Conviction, €500 fine	-
Unfitness to act as a company officer due to failure to file annual returns leading to the company being struck off the Register of Companies			
Ronan Barry	257276 311990	Disqualification for five years	To be taxed in default of agreement
Terence Mullen	257276 311990	Disqualification for five years	No Order as to costs
Ruth Phelan	311990	Disqualification for five years	Contribution of €2,000
Anthony Dominic Collins, Patricia O'Connell	222019 320899	Disqualifications for five years (2) ⁴⁸	To be taxed in default of agreement
Mathew Collins	310770	Disqualification for five years	To be taxed in default of agreement

⁴⁸ This case is under appeal, but no stay was granted.

Appendix 3.3 (continued)

Details of Successful ODCE Enforcement Actions in 2008

Parties Sanctioned/Reason for Sanction	Company Number	Penalty/Decision	Costs/Expenses
Unfitness to act as a company officer due to failure to file annual returns leading to the company being struck off the Register of Companies (continued)			
William Collins	304339 310770 364532	Restriction for five years	To be taxed in default of agreement
Nigel Weir	364532	Disqualification for five years	To be taxed in default of agreement
Valerie Cummins	331912	Disqualification for four years	No Order as to costs
William Fitzsimons	342765 376455 389367	Disqualification for six years	Contribution of €1,500
Michelle O'Keeffe	342765 376455	Disqualification for five years	Contribution of €1,500
Liam O'Keeffe	342765	Disqualification for four years	Contribution of €1,500
John Quinn	225238	Disqualification for seven years	Contribution of €10,000
Unfitness to act as a company officer in consequence of an Inspectors' Report			
Frank Brennan	30478 65780	Disqualification for six years ⁴⁹	To be taxed in default of agreement
Patrick Byrne	30478 65780	Disqualification for four years ⁴⁹	To be taxed in default of agreement
Michael Keane	30478 65780	Disqualification for three years ⁴⁹	To be taxed in default of agreement

⁴⁹ These cases are under appeal. A stay on each order was granted pending the outcome of the appeal.

Appendix 3.4

ODCE Throughput of Possible Criminal Enforcement Cases in 2008 (v. 2007)

Cases for Possible Criminal Prosecution	2007	2008
Cases on hands with ongoing criminal proceedings at 1 January	1	8
Other cases on hands for possible enforcement at 1 January	290	310
New cases received for possible enforcement	81	75
Total Cases	372	393

Treatment of Cases during the Year	2007	2008
Cases where criminal proceedings were withdrawn	-	1
Cases where criminal proceedings were determined	9	10
Cases where criminal proceedings were adjourned	-	-
Other cases closed	45	258
Cases on hands with ongoing legal proceedings at year end	8	3
Cases on hands for possible enforcement at year end	310	121
Total Cases	372	393

Appendix 3.5

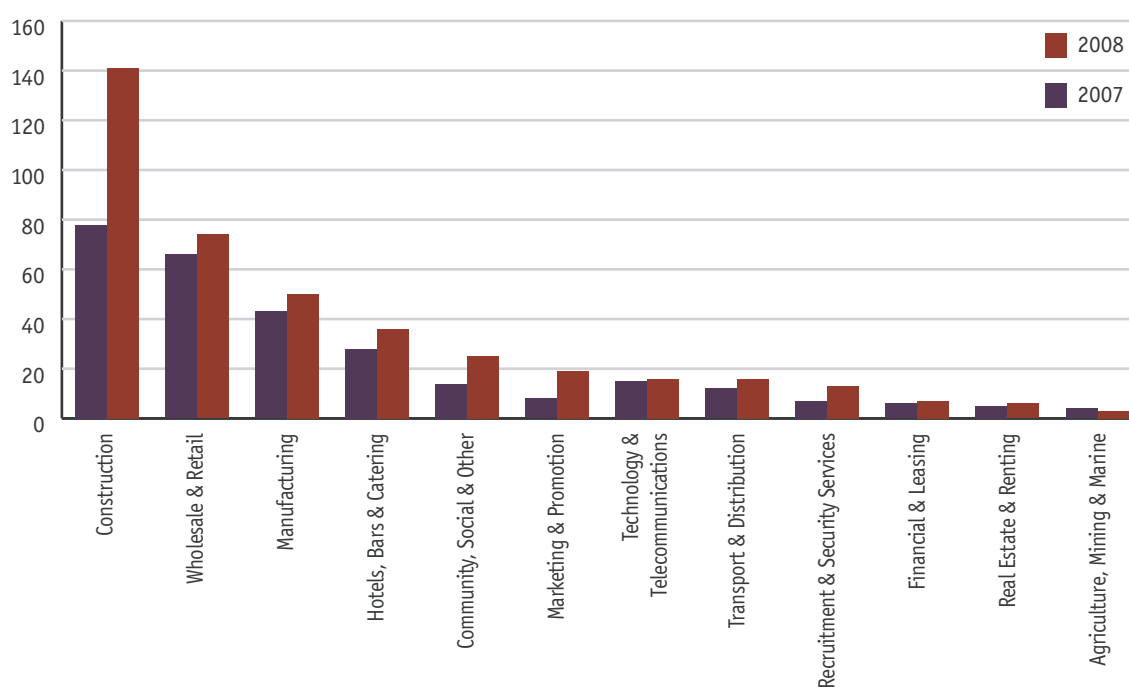
Breakdown of New Cases for Possible Enforcement by Character in 2008

New Cases by Character	Number
Failure to keep proper books of account	34
Restricted/disqualified Person acting as Director while not permitted	9
Person acting as Auditor while not permitted	9
Failure of company directors to furnish information/explanations required by its auditors	6
Falsification, etc. of company books and documents	4
Excessive Directors' Transactions	4
Other Suspected Offences	9
Total Cases	75

Appendix 4.1

Liquidator Reports at 31 December 2008 - Sectoral Analysis

Insolvency by Sector	Section 56 Reports			
	2007		2008	
Construction	78	27%	141	35%
Wholesale & Retail	66	23%	74	18%
Manufacturing	43	15%	50	12%
Hotels, Bars & Catering	28	10%	36	9%
Community, Social & Other	14	5%	25	6%
Marketing & Promotion	8	3%	19	5%
Technology & Telecommunications	15	5%	16	4%
Transport & Distribution	12	4%	16	4%
Recruitment & Security Services	7	2%	13	3%
Financial & Leasing	6	2%	7	2%
Real Estate & Renting	5	2%	6	1%
Agriculture, Mining & Marine	4	1%	3	1%
TOTALS	286	100%	406	100%



Appendix 4.1.1

Liquidator Reports at 31 December 2008 – Reports Progressed

Classification	First Reports	Further Reports	Final Reports	Total Reports
Section 56 Reports received				
Reports brought forward from 2007	99	89	74	262
Reports received in 2008	406	479	289	1,174
Reports due and not received in 2008	23	18	1	42
Compliance Rate	95%	96%	N/A ⁵⁰	97%
Section 56 Reports determined				
Decisions due in 2008	360	450	307	1,117
Decisions issued in 2008	351	440	307	1,098
Conclusion Rate	98%	98%	100%	98%
Decisions where full relief was granted ⁵¹	251	386	307	944
Decisions where partial relief was granted ⁵²	6	5	N/A	11
Decisions where relief at this time was granted ⁵³	70	35	N/A	105
Decisions where relief was not granted ⁵⁴	23	14	N/A	37
Other Decision made	1	-	N/A	1
Reports carried forward to 2009	154	128	56	338
No. of Liquidators Involved in Section 56 Reports	102	134	79	194
No. of Directorships Involved in Section 56 Reports	988	1,257	762	2,724

⁵⁰ N/A denotes 'not applicable'.

⁵¹ 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.

⁵² Cases of Partial Relief are those in which such circumstances apply in respect of some, but not all, of the company's directors.

⁵³ 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.

⁵⁴ 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 4.2.1

Cases where Restriction Orders were made against Directors by the High Court in 2008 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction commencing	Court Outcome [See Explanatory Note at end of this Table]
353038	Alden Interiors Limited	Phelan	Denise	23/06/2008	Full Restriction
		Phelan	Alan	23/06/2008	
381231	All Fine Foods Limited	Cassidy	Gavin	17/11/2008	Full Restriction
		Dunne	Jude	17/11/2008	
125166	Alloy Access Limited	Fanning	Joseph	14/01/2008	Full Restriction
		Fanning	Robert	14/01/2008	
373134	Applied Optotech Limited	Bradell	Jules	02/06/2008	Full Restriction
400338	Avondale Tool Hire Limited	Porter	John	10/03/2008	Full Restriction
		Porter	Jason	10/03/2008	
318573	Bilcon Construction Limited	Conway	William	31/03/2008	Full Restriction
384353	Blarney Builders Providers Limited	Barrett	James	21/11/2008	Full Restriction
		O'Sullivan	Paul	21/11/2008	
392589	Bray Scaffolding Services Limited	Currums	Glen	15/12/2008	Full Restriction
		Currums	Michelle	15/12/2008	
387470	Common-Castle Construction Limited	Quinn	Ivan	30/06/2008	Full Restriction
		Quinn	Gerard	30/06/2008	
375654	Computational Analytics Limited	Fitzgerald	Patrick	03/11/2008	Full Restriction
403532	Damal Catering Limited	Sheridan	Damien	14/01/2008	Partial Restriction
227855	First European Textile Group Limited	Hartung	Erwin	20/10/2008	Full Restriction
		Hartung	Dieter	20/10/2008	
233773	Futon Ireland Limited	Mealy	Richard	31/03/2008	Full Restriction
		Mealy	Philip	31/03/2008	
260911	Gorenberg Limited	Gore	Gillian	14/01/2008	Full Restriction
		Gore	Noel	14/01/2008	
375192	Henco Café Limited	Hennessy	Thomas	10/11/2008	Full Restriction

Appendix 4.2.1 (continued)

Cases where Restriction Orders were made against Directors by the High Court in 2008 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction commencing	Court Outcome [See Explanatory Note at end of this Table]
291941	Hookless Bar Bistro & Store Limited	Cullen	Pauline	09/06/2008	Full Restriction
		Cullen	Michael	09/06/2008	
236293	J. & H. Burke & Son Builders Limited	Burke	Helen	31/03/2008	Full Restriction
		O'Reilly	Brendan	28/01/2008	
394823	John Porter Development Limited	Porter	John	10/03/2008	Full Restriction
		Porter	Jason	10/03/2008	
375512	Kamar Transport (Kilkenny) Limited	Kavanagh	David	01/07/2008	Full Restriction
370497	Kamar Transport Limited	Kavanagh	David	01/07/2008	Full Restriction
189484	Keating Interiors Limited	Keating	Gary	09/06/2008	Full Restriction
399819	Kitchenworx Limited	Kelly	Vincent Jnr	21/01/2008	Full Restriction
		Kelly	Glenn	21/01/2008	
		McDonnell	Ciaran	21/01/2008	
386269	Langs Consortium Limited	Brady	Peter	28/10/2008	Full Restriction
		Ferns	Francis	28/10/2008	
		Harkins	James	28/10/2008	
		Harkins	Vincent	28/10/2008	
144375	Leo W. Wilson Associates Limited	Clarke	George	03/03/2008	Full Restriction
357453	Loromac Limited	McManus	Pat	28/01/2008	Full Restriction
391980	Maxfern Limited	Costello	Patrick	17/11/2008	Full Restriction
		Costello	Yvonne	17/11/2008	
201798	Moran Office Supplies Limited	Moran	Martin	03/03/2008	Full Restriction
340687	Oberstown Transport Limited	Hughes	Martina	28/07/2008	Full Restriction
		Hughes	Robert	28/07/2008	
357337	Odyssey Internet Portals Limited	Brennan	William	18/11/2008	Full Restriction
		Norris	Michael	18/11/2008	

Appendix 4.2.1 (continued)

Cases where Restriction Orders were made against Directors by the High Court in 2008 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction commencing	Court Outcome [See Explanatory Note at end of this Table]
324305	Odyssey Internet Productions Limited	Brennan	William	18/11/2008	Partial Restriction
		Norris	Michael	18/11/2008	
401027	Odyssey Internet Products & Services Limited	Brennan	William	18/11/2008	Full Restriction
		Norris	Michael	18/11/2008	
275182	Optus Telecommunications Limited	Hoey	Graham	20/10/2008	Full Restriction
		Murphy	John	17/11/2008	
384127	P.P Demolition Groundworks and Paving Contractors Limited	Purcell	Margaret	08/12/2008	Full Restriction
		Purcell	Padraig	08/12/2008	
327279	Pat Doody Construction Limited	Doody	Pat	13/10/2008	Full Restriction
		Sweeney	Marcella	13/10/2008	
398420	Peak Telecom Limited	Eipe	John	26/05/2008	Full Restriction
		Eipe	Lene	26/05/2008	
342277	Prestbury Alarms Limited	Casey	Raymond	21/01/2008	Partial Restriction
		Smith	Christopher	21/01/2008	
277699	QED Logistics Limited	Ryan	Christopher	20/10/2008	Full Restriction
		Ryan	Gerard	20/10/2008	
362651	S.P.& T. Developments Limited	Fetherson	Paul	07/04/2008	Full Restriction
		Fetherston	Tommy	07/04/2008	
		Merriman	Susan	07/04/2008	
367431	Security Direct Limited	Caffrey	Sandra	24/01/2008	Full Restriction
		Caffrey	John	24/01/2008	
254964	Southern Fibreglass Products Limited	Lynch	Donal	14/01/2008	Full Restriction
		O'Sullivan	Timothy	14/01/2008	
282858	Southern Scaffolding Company Limited	Trihy -	Ann	13/10/2008	Full Restriction
		Wight		13/10/2008	
		Wight	Kenneth		

Appendix 4.2.1 (continued)

Cases where Restriction Orders were made against Directors by the High Court in 2008 pursuant to Section 56

Company No.	Company Name	Restricted Directors		Five Year Restriction commencing	Court Outcome [See Explanatory Note at end of this Table]
396025	Strategic Workforce Solutions Limited	Curran	Cian	28/04/2008	Full Restriction
		Curran	Thomas	28/04/2008	
322509	TMS Plant Sales Limited	Thorpe	Olive	24/11/2008	Full Restriction
		Thorpe	Adrian	24/11/2008	
372384	West Link Security Services Limited	Weldon	Paul	28/04/2008	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. The following **Appendix 4.2.2** lists the persons that were disqualified in all Section 56 cases.

Appendix 4.2.2

Cases where Disqualification Orders were made against Directors by the High Court in 2008 as a consequence of a Liquidator's Section 56 Report

Company No.	Company Name	Disqualified Directors		Date Disqualified From	Date Disqualified To
367314	Birmingham Construction Limited	Birmingham	Simon	28/04/2008	27/04/2013
285968	Devey Enterprises Limited	Devey	Mark	02/12/2008	01/12/2014
		Devey	Jacinta	02/12/2008	01/12/2014
370497 375512	Kamar Transport Limited Kamar Transport (Kilkenny) Limited	Kavanagh	David	01/07/2008	30/06/2015
189484	Keating Interiors Limited	Keating	Gary	26/05/2008	25/05/2012
350210	Oakley Formwork Limited	Govern	Conor	11/02/2008	10/02/2013
		Govern	Eimear	11/02/2008	10/02/2013
335674	Rosmuc Developments Limited	Griffin	Colm	25/02/2008	25/02/2016

Appendix 4.2.3

Cases where Restriction Declarations or Disqualification Orders were not made against Directors by the High Court in 2008 pursuant to Section 56

Company Name	Company Number	Date of Court Order
C.M.G. Construction (Limerick) Limited	278910	27/11/2008
Drum Engineering Limited	215249	30/04/2008
Floor Textures Ireland Limited	257280	05/03/2008
Kranks Corner Limited	238480	19/12/2008
Space-Makers Construction Limited	313095	04/02/2008

Appendix 5.1.1

Approved versus Actual Staffing Complement by Grade

Year-end	Approved	Actual
2006	37	34.8
2007	46	40.6
2008	46	44.8

Breakdown by Grade at end-2008

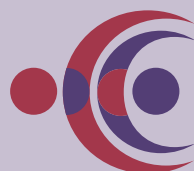
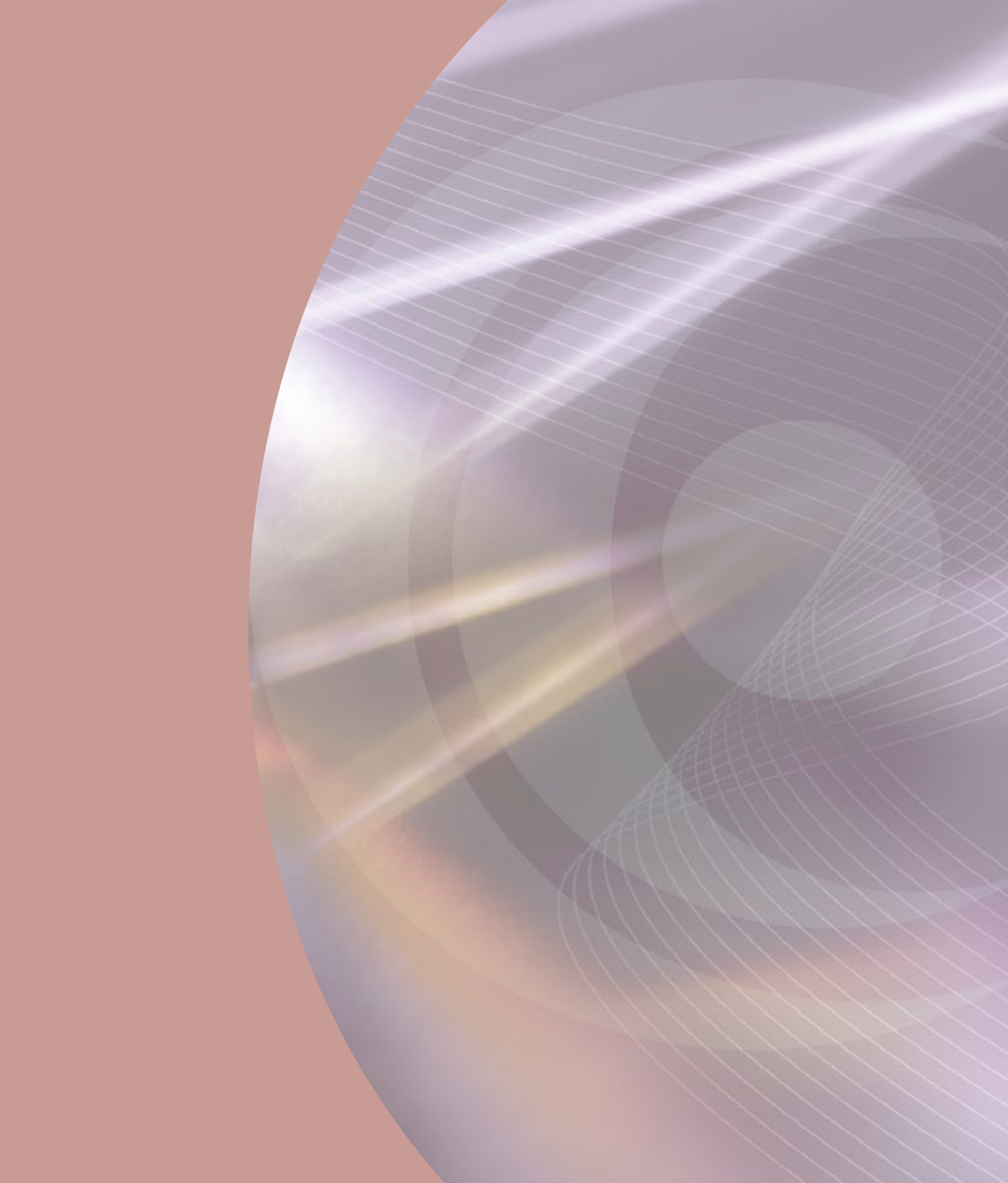
Grade	Approved	Actual
Accountant Grade I	2	2
Accountant Grade III	1	-
Assistant Principal	4	4
Clerical Officer ⁵⁵	5	6.1
Corporate Compliance Manager	1	1
Detective Garda	5	5
Detective Inspector	1	1
Detective Sergeant	2	2
Director	1	1
Executive Officer	8	7.7
Higher Executive Officer/Systems Analyst	8	7
Legal Adviser	3	3
Principal Officer	2	2
Principal Solicitor	1	1
Solicitor	2	2
Total	46	44.8

⁵⁵ 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 5.1.2

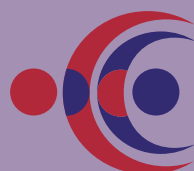
Breakdown of Expenditure against Allocation in 2008 and Previous Years

Source of Allocation/Expenditure	2006		2007		2008	
	€000s	€000s	€000s	€000s	€000s	€000s
Allocation						
Exchequer Grant		4,713.0		4,823.0		4,957.0
Expenditure						
Salaries, Wages and Allowances	1,915.3		2,140.2		2,411.6	
Advertising and Publicity	165.8		326.8		304.1	
Office Premises	231.2		286.6		353.2	
Legal Expenses	452.0		913.2		630.4	
Consultancy Services	240.1		268.7		169.3	
Computerisation	53.3		74.1		61.6	
Printing	106.9		157.0		141.9	
Incidental Expenses	15.8		14.8		27.1	
Travel and Subsistence	33.4		31.0		32.0	
Telecommunications	49.6		43.7		88.8	
Postal/Courier Services	18.5		69.6		75.1	
Office Machinery and Photocopying	48.9		33.6		25.0	
Human Resource Development	24.9		18.9		23.0	
Total Expenditure		3,355.7		4,378.2		4,343.1
Amount Surrendered		1,357.3		444.8		613.9



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

Tuarascáil Bhliantúil 2008



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

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Ráiteas Cóipchirt agus Séanta

Is leis an Stiúrthóir um Fhorfheidhmiú Corparáideach cóipcheart ábhar an doiciméid seo. Féadfar iomlán nó páirt den doiciméad seo a atáirgeadh gan bhreis cheada, ar choinníoll go n-admhaítear an fhoinse.

Níor chóir go dtuigfí aon ní dá bhfuil anseo mar fhaisnéis de nó ar son an Stiúrthóra um Fhorfheidhmiú Corparáideach maidir lena thuiscint nó lena léiriú ar aon cheann d'fhorálacha Achtanna na gCuideachtaí 1963 go 2006 nó maidir le léiriú ar dhlí ar bith. Ba chóir dul sa tóir ar Comhairle dlí neamhspleách maidir le héifeachtaí aon fhorála dlí. Ní ghlacann an Stiúrthóir um Fhorfheidhmiú Corparáideach le haon fhreagracht nó le haon dliteanas is cuma cén chaoi a n-éiríonn siad as ábhar an fhoilseacháin seo nó as aon bhotún, mhíchruinneas nó easnamh in ábhar an doiciméid seo. Forchoimeádann an Stiúrthóir an ceart caingean chúirte a thionscnamh a d'fhéadfadh a bheith nó gan a bheith de réir fhorálacha an doiciméid seo.

© **Stiúrthóir um Fhorfheidhmiú Corparáideach 2009**

Focal Factory a d'aistrigh an Tuarascáil Bhliantúil seo go Gaeilge.

Brollach



De bhun alt 16(1) den Acht um Fhorfheidhmiú Dlí Cuideachtaí 2001 is cúis áthais dom Tuarascáil na hOifige don bhliain 2008 a chur faoi bhráid an Tánaiste agus an Aire Fiontair, Trádála agus Fostaíochta Mary Coughlan T. D.

I gcaitheamh na bliana 2008 shaothraigh OSFC an cuspóir atá aici géilliúntas i leith dlí na gcuideachtaí a fheabhsú. Glacann an Oifig cur chuige dériain maidir leis an ról atá aici. Is mian léi ar an gcéad dul síos an géilliúntas deonach a spreagadh agus a éascú trí réim eolais na bpáirtithe leasmhara ábhartha sa chuideachta ar a gcearta agus ar a bhfreagrachtaí a dhoimhniú agus a leathnú. Is mian léi ar an dara dul síos an géilliúntas a smachtú trí réimse gníomhaíochtaí ar a n-áirítear na páirtithe lena mbaineann a spreagadh chun cosc a chur ar shárúithe braite agus ionchúisimh choiriúla a thionscnamh i gcás go bhfuil na sárúithe ar dhlí nó ar dhualgas níos tromchúisí.

Seo a leanas buaicpointí na bliana 2008 don OSFC rangaithe de réir gníomhaíocht phríomha:

- ceapachán Cigire na hArd-Chúirte do DCC plc, do S&L Investments Ltd. agus do Lotus Green Ltd. chun gnéithe de cheannach agus de dhíol scaireanna Fyffes plc i 1995 agus i 2000 a imscrúdú;
- foilseachán Lámhleabhair/Treorach mionsonraithe um Dhlí na gCuideachtaí i ndáil le Cuideachtaí Bainistithe Maoin Sealbhais d'fhonn a rialachas a fheabhsú;
- tinreamh ag thart ar 80 imeacht poiblí mar a ndearna foireann ó OSFC láithreoirreachtaí agus mar a ndeachaigh siad i dteagmháil leis an bpobal chun géilliúntas i leith Dhlí na gCuideachtaí a spreagadh;
- 32 chiontú, 20 duine dícháilithe agus duine amháin srianta. Sháraigh méid na bhfíneálacha, €46,600, ar gearradh riamh roimhe. B'as measúnú na hOifige ar chuideachtaí dócmhainneacha díscailte a d'eascair 12 cheann den 20 dícháiliú;
- méadú de 42% go dtí 406 ar líon na dtuarascálacha tosaigh leachtaitheora a fuarthas. Ba léiriú é sin ar an lag trá atá ar an ngeilleagar náisiúnta agus tá súil le breis agus dhá oiread na leachtuithe a tharla i 2008 sa bhliain 2009. Chinn an Oifig thart ar 350 tuarascáil tosaigh leachtaitheora freisin, ardú de 22% ar thorthaí na bliana 2007;
- ardú de 15% go dtí 584 ar líon na gcásanna a bhain le sárúithe líomhanta ar Achtanna na gCuideachtaí a dhún an Oifig i ndiaidh imscrúdú a dhéanamh orthu. I bhformhór na gcásanna sin is i ndiaidh réiteach sásúil ar bhonn riaracháin ar an deacracht maidir le dlí na gcuideachtaí a dúnadh an cas. Cuireadh 78 gcás breise ar aghaidh go dtí an Oifig féachaint an mbeadh sé oiriúnach caingeán dlí a thionscnamh ina leith;
- a cheithre oiread de mhéadú go €134 milliún ar mhéid na n-iasachtaí do stiúthóirí arna thuairisciú ag iniúchóirí; tharla cuid mhaith acu sin i gcuideachtaí tógála agus maoin sealbhais. Tá an Oifig sásta gurbh é an fáth gur baineadh géilliúntas amach san oiread sin de chásanna í féin a bheith páirteach iontu, bhí cásanna eile fós á gcoinneáil faoi léirmheas ag deireadh na bliana;
- an chéad uair riamh a ciontaíodh stiúthóir cuideachta as sócmhainní cuideachta a úsáid go feasach as de shárú ar na srianta dlíthiúla maidir le hiasachtaí a thairiscint do stiúthóirí;
- an chéad chás riamh inar cuireadh pianbhreith choimeáda ar stiúthóir cuideachta nár chuir an Chúirt ar fionraí í. Tá achomharc déanta ag an stiúthóir atá i gceist in aghaidh an chiontaithe agus in aghaidh na pianbhreithe. Bhain an cas le duine a bhí ag gníomhú mar stiúthóir de shárú ar ordú dícháilithe na hArd-Chúirte.

Is mian liom a chur in iúl gur mór agam an ceathrar ball breise foirne a chuir an Roinn Fiontair, Trádála agus Fostaíochta ar fáil don Oifig i 2008 i gcomhréir le gealltanais na Roinne maidir le méadú ar leibhéal foirne na hOifige. Ba chionsiocard an méadú seo agus roinnt den mhéadú ar an bpróiseáil a thuairiscítear thuas.

Caitheadh €4.34 milliún i 2008, laghdú de bheagán ar an gcaiteachas de €4.37 milliún i 2007. Bhíothas in ann an laghdú sin a bhaint amach d'ainneoin an caiteachais a bhain le ceathrar ball breise foirne agus d'ainneoin chostas tosaigh an iniúchta DCC. Is tríd an ngearradh siar a rinneadh ar obair fógraíochta agus phoiblíochta tar éis don Rialtas a iarraidh go laghdófaí caiteachas nach raibh geallta is mó a riaradh ar an mbreis chostais seo.

Foireann lántiomnaithe a d'oibrigh go crua is ea a chinntigh an rath agus na torthaí breátha a baineadh amach i 2008. Ba mhaith liom mo bhuíochas a ghabháil leo mar gheall ar a dtiomantas leanúnach d'obair na hOifige. Is tríd an obair a dhéanaimid i dteannta a chéile a chabhraimíd le lucht gnó, le leasanna poiblí agus leis an bpobal i gcoitinne chun dul i mbun páirtíochta le chéile go cóir agus go cothrom trí struchtúir chorparáideacha.

Ba mhaith liom an tacaíocht leanúnach a thug an tOireachtas, an Rialtas agus na Cúirteanna don Oifig san obair atá ar siúl aici a admháil freisin. Tá buíochas tuille freisin ag daoine gairmiúla i réimse an dlí agus na cuntasaíochta a thug taca dúinn i rith na bliana 2008. Tá súil agam go leanfaidh sin ar aghaidh i 2009 agus go n-éireoidh linn an difear a dhéanamh chun caighdeán chorparáideach a fheabhsú ar mhaithe leis an bpobal ina iomláine.

Paul Appleby
Stiúthóir um Fhorfheidhmiú Corparáideach
31 Márta 2009

Réamhrá

Sainíonn Ráiteas Straitéise láithreach an Stiúrthóra um Fhorfheidhmiú Corparáideach a bhfuil liostáilte anseo thíos mar aidhmeanna príomha an OSFC agus mar fho-aidhmeanna atá gaolta leo:

Aidhm 1: Géilliúntas i leith Achtanna na gCuideachtaí a Spreagadh

- Fo-aidhm 1.1: Eolas Áisiúil ar Dhlí na gCuideachtaí a Fhoilsiú
- Fo-aidhm 1.2: Géilliúntas a chur chun cinn
- Fo-aidhm 1.3: Dlí na gCuideachtaí agus Cleachtais Chorparáideacha a Bhaineann leis a Fheabhsú

Aidhm 2: Cásanna ina bhfuil Amhras faoi Shárú Dhlí na gCuideachtaí a Nochtadh

- Fo-aidhm 2.1: Socruithe um Nochtadh agus Tuairisciú a fhorbairt le haghaidh Cásanna a bhfuil Amhras faoi Shárú Dhlí na gCuideachtaí
- Fo-aidhm 2.2: Cásanna a bhfuil Amhras faoi Shárú Achtanna na gCuideachtaí a Aithint
- Fo-aidhm 2.3: Fiosrúcháin Foirmeálta Chuideachta a Thacú/Choimisiúnú

Aidhm 3: Sáruithe Braite ar Achtanna na gCuideachtaí a Ionchúiseamh

- Fo-aidhm 3.1: Polasaí Forfheidhmithe Cothrom a Fhorbairt
- Fo-aidhm 3.2: Seasamh le Ceanglais Nochta Achtanna na gCuideachtaí
- Fo-aidhm 3.3: Pionós a Ghearradh ar Pháirtithe a Dhéanann Neamhshuim de Leasanna Cuideachta nó de Leasanna nach iad
- Fo-aidhm 3.4: Caingean Dlí a Thionscnamh i gcoinne Páirtithe a Dhiúltaíonn Freagracht faoin Dlí

Aidhm 4: Pionós a Ghearradh i leith Iompair Mhíchuí i dtaca le Cuideachtaí Dócmhainneacha

- Fo-aidhm 4.1: Maoirsiú a Dhéanamh ar Leachtaitheoirí agus iad ag Comlíonadh a nDualgas go Cuí
- Fo-aidhm 4.2: Iompar Stiúrthóirí i gCúinsí Leachtaithe Dhóchmhainnigh a Mheas
- Fo-aidhm 4.3: Pionós a Ghearradh i leith Iompair Chaloisigh nó Mhaslaigh

Aidhm 5: Seirbhís den Scoth a Sholáthar do Chustaiméirí Inmheánacha agus Seachtracha

- Fo-aidhm 5.1: Acmhainní OSFC a Dhaingniú agus a Bhainistiú
- Fo-aidhm 5.2: Foireann a Fhorbairt
- Fo-aidhm 5.3: Seirbhísí Custaiméara den Scoth a chur chun cinn agus Caoi a Choinneáil Orthu

Déanann an Tuarascáil seo athbhreithniú ar an dul chun cinn i 2008 trí thagairt a dhéanamh do gach ceann de na haidhmeanna agus de na fo-aidhmeanna seo.

Aidhm 1: Géilliúntas i leith Achtanna na gCuideachtaí a Spreagadh

Réamhrá

Ba den suntas an méid oibre a rinne an Oifig i 2008 chun a sainchúram i leith géilliúntais a chur chun cinn agus baineadh amach torthaí thar na bearta i réimsí éagsúla. Le linn don fhoireann feidhm an ghéilliúntais a fheidhmiú d’ullmhaigh agus d’eisigh siad roinnt foilseacháin shuntasacha, d’fhreastail siad ar níos mó ná 80 imeacht phoiblí agus chuir trína lámha níos mó ná 400 saincheist a bhain le géilliúntas i leith dhlí na gcuideachtaí. Dhéileáil Foireann Fáiltithe na hOifige leis an iomad ceisteanna de chineál níos gnáiche. Tríd is tríd ba bhliain an-shásúil a bhí inti.

Fo-Aidhm 1.1: Faisnéis Inrochtana maidir le Dlí na gCuideachtaí a Fhoilsiú

D’eisigh an Oifig naoi bhfoilseachán faoi leith i 2008 (cúig i 2007). Tá an liosta iomlán ar fáil in **Aguisín 1.1.1** a ghabhann leis an Tuarascáil seo. Déileáiltear anseo thíos leis na cinn is suntasaí de na foilseacháin sin.

Tríd is tríd chuir an Oifig thart ar 24,000 cóip dá foilseacháin éagsúla i gcúrsaíocht i 2008. Tá gach ceann de na doiciméid nuafhoilsithe a phléitear anseo thíos ar fáil ag suíomh idirlín OSFC ag www.odce.ie.

Lámhleabhar faoi Chuideachtaí Bainistithe Úinéirí Maoin Sealbhais

Ba é an Lámhleabhar um Dhlí na gCuideachtaí faoi Chuideachtaí Bainistithe Úinéirí Maoin Sealbhais¹ arna fhoilsiú ag an Oifig an doiciméad treorach ba chuimsithe a eisíodh i 2008. Tá níos mó ná 200 leathanach sa bhfoilseachán tábhachtach sin agus cuireadh i dtoll a chéile é chun feidhmiú na gcuideachtaí seo a fheabhsú amach anseo. Bhí an cineál cuideachta seo maille leis an gceist níos leithne faoi fhorbairt ilaonaid a raibh na cuideachtaí seo bainteach leo ina ábhar conspóide poiblí a pléadh go tráthrialta le blianta beaga anuas. Maidir leis an Lámhleabhair/Treorach um Dhlí na gCuideachtaí arna fhoilsiú ag OSFC is é an ceann is deireanaí i sraith d’fhoilseacháin a d’eisigh an Coimisiún um Athchóiriú an Dlí², an Ghníomhaireacht Tomhaltóra Náisiúnta³ agus páirtithe éagsúla eile inar tugadh aghaidh ar ghnéithe éagsúla den réimse.

Déileáilann Lámhleabhar OSFC leis na saincheisteanna iomadúla agus éagsúla a bhaineann le cuideachtaí bainistithe maoin sealbhais. Ar na hábhair ba thábhachtaí a pléadh bhí:

- bunchéimeanna in éabhlóid chuideachta bhainistithe maoin sealbhais;
- cumhacht vótála chomhaltaí na cuideachta;
- príomhról stiúrtóirí na cuideachta;
- a cruinnithe ginearálta bliantúla;
- an chead faoin dlí atá ag na comhaltaí iarratas ar fhaoiseamh a chur chuig an Ard-Chúirt agus
- ról agus cur chuige OSFC le linn di bheith ag déileáil le saincheisteanna maidir le cuideachta bhainistithe.

Cuireadh an Lámhleabhar i dtoll a chéile trí fhorbairt a dhéanamh ar Pháipéar Comhairliúcháin⁴ a d’eisigh OSFC i Nollaig 2006. Rinneadh páirtithe leasmhara nach mór 70 aighneacht agus bhí tionchar mór ag na tuairimí agus ag na moltaí a léiríodh iontu ar obair ullmhúcháin an Lámhleabhair sular cuireadh an cruth deiridh air. Foilsíodh tráchttaireacht ar an haighneachtaí sin freisin in éindí leis an Lámhleabhar.

Leabhrán um Cuideachtaí Bainistithe – Treoir i leith Dhlí na gCuideachtaí d’Úinéirí Maoin Sealbhais

Mar leabhar compánach don Lámhleabhar atá sách fada d’eisigh an Oifig freisin Leabhrán dar teideal - “Cuideachtaí Bainistíochta – Treoir d’Úinéirí Maoine maidir le Dlí na gCuideachtaí.” Ullmhaíodh an treoir achomair seo d’fhonn forléargas a thabhairt do ghnáthchomhaltaí i gcuideachtaí bainistithe maoin chónaithe (.i. úinéirí na maoine sealbhais) maidir lena gcearta faoi dhlí na gcuideachtaí. Is éard a bhí an Leabhrán ceaptha a dhéanamh tráth a scríofa réamheolas ar an réimse a sholáthar; chuirfeadh sé ar chumas daoine ar spéis leo níos mó a fhoghlaim fairsingiú a fháil ar na sonraí a bhí ann tríd an Lámhleabhar a cheadú.

Mínítear sa Leabhrán coincheapa na cuideachta bainistithe agus an ghníomhaire bhainistithe agus tá léirithe ann ról na stiúrtóirí, ról na gcomhaltaí agus ról rúnaí na gcuideachta. Tugtar chun suntais ann an tábhacht atá le ráitis airgeadais na cuideachta, leis an iniúchadh agus leis an tuairisceán bliantúil agus mínítear ann cén chaoi ar féidir le dlí na gcuideachtaí teacht i gcabhair ar chomhaltaí atá ag iarraidh a gcearta a dhearbhu. Sainítear sa Leabhrán freisin an ról sách teoranta atá ag OSFC maidir le haghaidh a thabhairt ar iomad na bhfadhbanna a thagann chun cinn i dtaca le cuideachtaí bainistithe.

1 Fógra Cinnidh D/2008/1. Tá an Lámhleabhar ar fáil ar iasacht ón Oifig nó ag www.odce.ie.
 2 Féach ar Tuarascáil ón gCoimisiún um Athchóiriú an Dlí maidir le Forbairt Ilaonad (Meitheamh 2006) atá le fáil ag www.lawreform.ie.
 3 Féach Conclúid agus Torthaí Fóram na bPáirtithe Leasmhara i bhForbairt Ilaonaid agus Ceannach agus Cónaí i Maoin Sealbhais Ilaonaid in Éirinn i bhfoilseacháin na Gníomhaireacht Tomhaltóra Náisiúnta (Meán Fómhair 2008). Tá an dá dhóiciméad ar fáil ag www.consumerproperty.ie.

4 Fógra Comhairliúcháin C/2006/2 – Dréacht-Treoir OSFC ar Rialachas Cuideachtaí Bainistíochta Úinéirí Árasáin.



Lámhleabhar agus Treoir Achomair faoi Chuideachtaí Bainistithe Úinéirí Maoine Chónaithe

Tá an Leabhrán comhchuí leis an áisiúlacht atá ceaptha dó; cuireadh i dtoll a chéile é i gcomhar leis an nGníomhaireacht Náisiúnta um Litearthacht d'Aosaigh agus fuair sé an marc Béarla Soiléir. Tá idir an Lámhleabhar agus an Leabhrán ar fáil i mBéarla agus i nGaeilge ar shuíomh idirlín OSFC ag www.odce.ie. Mar dheis tagartha tá curtha ar fáil ar an suíomh idirlín freisin leagan caibidil i ndiaidh a chéile den Lámhleabhar⁵.

Eisíodh roinnt míle cóip den Leabhrán chuig chomhlachtaí bainistíochta, chuig leabharlanna, chuig ionaid chomhairle saoránach agus chuig ionadaithe poiblí i ndiaidh a fhoilsithe.

Páipéar Chomhairliúcháin faoi Nochtadh Scéil agus Dlí na gCuideachtaí

D'eisigh an Oifig trí cinn faoi leith de Pháipéir Chomhairliúcháin i 2008. Foilsíodh an chéad ceann díobh i Meitheamh agus pléadh ann an mhaith a dhéanann an foráil maidir le nochtadh scéil i ndlí na gcuideachtaí in Éirinn⁶. Is ag deireadh 2007/go luath i 2008 go príomha a chuir foireann OSFC an Páipéar Chomhairliúcháin seo i dtoll a chéile chun rannchuidiú le hiniúchadh ar inmhianaitheacht foráil maidir le nochtadh scéil a chur sa Bhille nua um Chomhdhlúthú na gCuideachtaí⁷ a rinne an Grúpa Athbhreithnithe Dlí Chuideachta (GADC).

Cuireann an páipéar anailís fhorleathan ar fáil maidir le nochtadh scéil laistigh agus lasmuigh de chomhthéacs dhli na gcuideachtaí trí thagairt a dhéanamh do thaithe dreamanna náisiúnta agus idirnáisiúnta. Tá moladh modhúil reachtach de chuid OSFC ann ar iarracht é comhthoil a chruthú chun foráil i leith nochtadh scéil a chur i ndlí cuideachtaí na hÉireann.

Ar an drochuair ní rabhtas in ann tacaíocht GADC a fháil don mholadh seo. Sa Tuarascáil Bhliantúil a chuir sé faoi bhráid an Aire i Márta 2008⁸ mhol GADC gan foráil maidir le nochtadh scéil a bhain go sonrach le dlí na gcuideachtaí a chur sa Bhille nua um Chomhdhlúthú na gCuideachtaí. Ag deireadh na bliana, tuigtear gur ghlac an Roinn Fiontair, Trádála agus Fostaíochta le moladh seo an GADC.

In ainneoin mholadh an GADC cinneadh i 2008 go bhfoilseofaí ar leithligh agus glan ar mheasúnacht an GADC féin taighde agus anailís luachmhar OSFC faoi nochtadh scéile. Ag féachaint do na cúinsí as ar eascair foilseachán an Pháipéir Chomhairliúcháin níor socraíodh aon chreat ama faoi leith chun aiseolas a fháil maidir lena raibh d'ábhar ann⁹.

Páipéar Chomhairliúcháin faoi Dhréachtráiteas Straitéise OSFC, 2009-2012

D'eisigh an Oifig i mí Iúil Páipéar Chomhairliúcháin faoi Ráiteas nua Straitéise OSFC don tréimhse 2009-2012¹⁰. Bhí gearr-ráiteas sa Pháipéar a ndearnadh achoimre ar straitéis reatha na hOifige maille le sraith cheisteanna a d'irraidh tuairimí fóinteacha maidir le treoir meántearma agus fadtéarma na hOifige a mhealladh ó lucht a léite. Bhí deireadh leis an tréimhse comhairliúcháin an 30 Meán Fómhair agus fuair an Oifig 13 aighneacht.

Reáchtáil an Oifig roinnt cheardlanna agus chruinnithe don fhoireann d'fhonn ábharthacht na straitéise láithrí agus a oiread agus ba ghá athruithe a dhéanamh amach anseo a mheas.

Tá an Stiúrthóir ag breithniú an ionchuir uile agus á chur isteach i Ráiteas Straitéise nua agus déanfar iarracht sa doiciméad deiridh cuntas iomlán a dhéanamh ar na hathruithe suntasacha a tháinig ar an gcomhshaol eacnamúil agus rialúcháin le roinnt míonna anuas.

Páipéar Chomhairliúcháin faoi Pháirtithe Leasmhara i gCuideachtaí Scéim Méadaithe Gnó

I mí Mheán Fómhair 2008 d'eisigh an Oifig Páipéar Chomhairliúcháin do stiúrthóirí agus d'infeisteoirí i gcuideachtaí a thairbhígh den Scéim Méadaithe Gnó agus dá

5 Ar fáil ag www.odce.ie/ga/media_general_publications_article.aspx.

6 Páipéar Chomhairliúcháin C/2008/1 – Plépháipéar dar teideal 'Whistle-blowing and Irish Company Law'.

7 Tá roinnt eolais faoi chúlra na hoibre seo ar fáil freisin i dTuarascáil Bhliantúil na hOifige do 2007.

8 Tá Tuarascálacha Bliantúla GADC ar fáil ag www.clrg.org.

9 Féadfar tuairimí ar an bPáipéar Chomhairliúcháin um Nochtadh Scéile a sheoladh go consultation@odce.ie.

10 Páipéar Chomhairliúcháin C/2008/2 - Dhréachtráiteas Straitéise Nua OSFC.

scéim deirféar, an Scéim Síolchaipitil¹¹, d'fhonn fadhbanna maidir leis na cuideachtaí sin a thagann chun cinn ó thráth go chéile a mhaolú. Cé gurb iad na Coimisinéirí Ioncainm is príomhfhoinsé treorach i ndáil leis na scéimeanna seo, bhí Páipéar Comhairliúcháin OSFC ag díriú go háirithe ar chearta agus ar fhreagrachtaí stiúrthóirí agus infheisteoirí faoi dlí na gcuideachtaí. Míníodh ann freisin ról tábhachtach an iniúcháora maidir le dearbhú a sholáthar do pháirtithe leasmhara.

Fuair an Oifig ocht bhfreagra ar an bPáipéar Comhairliúcháin. Táthar ag dréachtú na treorach deiridh faoi láthair agus tá sá de rún ag an Oifig í a fhoilsiú sa chéad leath de 2009.

'Corporate Compliance Matters'

D'fhoilsigh an Oifig an nuachtlitir 'Corporate Compliance Matters' i gcomhar leis an Oifig um Chlárú Cuideachtaí mar chuid dá gcomhoibriú leanúnach. Eisíodh an nuachtlitir i Márta 2008 agus dáileadh í ar 240,000 stiúrthóir cuideachta ag a seolta baile. Scríobh foireann na hOifige trí alt ar na hábhair a leanas:

- réimsí arbh fhiú do stiúrthóirí cuideachta aird a dhíriú orthu. Bhí sé seo bunaithe ar thaithí dheireanach na hOifige le linn di déileáil le cásanna inar cuireadh neamhghéilliantais in iúl di;
- bainistiú praiticiúil fiachais do stiúrthóirí cuideachta, agus
- deacrachtaí gnó a admháil agus aghaidh a thabhairt orthu.

Bileoga Treorach

D'fhoilsigh an Oifig bileoga treorach ar aon leathanach a dáileadh amach ag láithreoirachtaí, ag taispeántais agus ag comhdhálacha a raibh foireann OSFC ag freastail orthu. Bhí na hábhair a pléadh iontu oiriúnach do na coinníollacha deacra eacnamúla atá ann faoi láthair.

- cearta creidiúnaithe;
- an scrúdú sláinte corparáideach, agus
- deacrachtaí gnó a admháil agus aghaidh a thabhairt orthu.

Foilseacháin Phleanáilte

I 2008 thug an Oifig chun críche den mhórchuid mhór an obair a bhain le roinnt leabhrán a choimre a bhí ceaptha bheith ina bhfoilseacháin chompanacha do Leabhair Faisnéise¹² níos cuimsithí faoi dhualgais agus faoi chumhachtaí stiúrthóirí, rúnaithe, scairshealbhoirí agus creidiúnaithe cuideachta, etc. Tá an marc Béarla Soiléir

faighte ag na leabhráin seo ón nGníomhaireacht Náisiúnta um Litearthacht d'Aosaigh agus beidh fáil orthu sul i bhfad. Beidh leaganacha Gaeilge de na foilseacháin seo ar fáil freisin.

Fo-Aidhm 1.2: Géilliúntas a Chur Chun Cinn

Obair Aighneachta

Chuir an méadú foirne ar chumas na hOifige tuilleadh oibre a dhéanamh chun stiúrthóirí cuideachta agus páirtithe leasmhara eile a chur ar an eolas maidir le gnéithe tábhachtacha de dhlí na gcuideachtaí. Chuaigh an Oifig i mbun feachtas fógraíochta ar an raidió in athuair sa chéad leath de 2008 agus dhírigh ar thopaicí a bhí ábhartha do stiúrthóirí agus do scairshealbhoirí. I gcás ábhartha, chuir an Oifig fógraí fánacha i bhfoilseacháin éagsúla ag tabhairt suntais do shaincheisteanna tábhachtacha maidir le dlí na gcuideachtaí agus ag neartú na teachtaireachta *Bí ar an Eolas* ("Get Informed"). Rinneadh gearradh siar riachtanach áfach ar an gcaiteachas ar fhógraíocht agus ar phoiblíocht sa dara leath den bhliain ar iarratais ón Rialtais ciorruithe a dhéanamh ar chaiteachas nach raibh geallta.

I 2008 freisin cuireadh le méid na láithreoirachtaí a rinne foireann OSFC os comhair stiúrthóirí agus páirtithe leasmhara eile maidir le ceisteanna a bhain le dlí na gcuideachtaí agus maidir le hobair na hOifige. Tríd is tríd rinne foireann na hOifige thart ar 65 láithreoiracht os comhair 3,100 duine (45 láithreoiracht i 2007). Tá liosta iomlán de na láithreoirachtaí ar fáil in **Aguisín 1.2.1**.



An tAire Gnóthaí Eachtracha, Micheál Martin, TD, ag buaileadh le foireann OSFC ag Seó BT na nGnóthas Beag i gCorcaigh an 16/17 Bealtaine 2008.

Dhírigh an Oifig a haird ní hamháin ar stiúrthóirí cuideachta príobháidí agus ar dhaoine gairmiúla a leithéidí cuntasóirí agus aturnaetha ach ar an earnáil phobail agus dheonach ar minic a bhíonn comhdhéanamh cuideachta ar a baill d'fhonn áis a bhaint as maoiniú poiblí. Is oibríthe deonacha nach bhfaigheann íocaíocht roinnt mhaith de na stiúrthóirí

11 Páipéar Comhairliúcháin C/2008/3 – Dréachtreoir do Infheisteoirí agus do Stiúrthóirí i gCuideachtaí a bhaineann áis as an Scéim Méadaithe Gnó agus as an Scéim Síolchaipitil.
 12 Fógra Cinnidh D/2002/1.

cuideachta seo agus teastaíonn faisnéis uathu maidir le tábhacht an ról atá acu mar stiúrthóirí agus maidir leis na hoibleagáidí dlí a ghabhann leis an ról sin.

D'fhreastail foireann na hOifige ar sé cinn déag de thaispeántais, de chomhdhálacha agus d'imeachtaí (seacht i 2007). Tá liosta de na himeachtaí a ndearnadh freastal orthu in **Aguisín 1.2.2**. Chuir an foireann faisnéis maidir le dlí na gcuideachtaí maille le coipeanna de leabhráin treorach ar fáil do na mílte duine a d'fhreastail ar na himeachtaí. I gcás ábhartha, glacadh le gearáin lena n-imscrúdú.

Fiosruithe ón bPobal

I gcaitheamh na bliana, dhéileáil an Oifig ar bhonn leanúnach le ceisteanna de chineál ginearálta agus de chineál sonrach faoi dhlí na gcuideachtaí. Dhéileáil foireann fáiltithe OSFC le ceisteanna ginearálta a leithéidí iarratais ar chóipeanna den leabhrán treorach nó ceisteanna a bhain le sainchúram na hOifige.

Nuair a measadh go raibh gá le freagra níos meáite, d'fhreagair foireann ábhartha na ceisteanna. Dhéileáil an Oifig le thart ar 400 ceist ar an dóigh seo. Tá sampla de na fiosruithe seo i **Léiriú 1.2.2**. Cé gur chuir na daoine a rinne teagmháil leis an Oifig ceisteanna faoi réimse leathan ábhar a bhain le dlí na gcuideachtaí, ba iad na saincheisteanna a tháinig chun cinn go tráthrialta, díospóidí stiúrthóirí agus an chaoi arbh fhearr ceisteanna a leithéidí an bord a theacht i sáinn, cearta comhaltaí agus stiúrthóirí i gcuideachtaí bainistithe maoin chónaithe agus an oiread agus a bhí tús curtha ag Ionstraim Reachtúil le hachtúcháin shonracha de dhlí na gcuideachtaí a réiteach.

Rud eile ar fiú a luadh le 2008 go raibh méadú ar líon na ndaoine a ghlaoigh isteach le ceisteanna maidir le dócmhainneacht agus le neamhíoc fiach. Mar a luaitear thuas, ba é an chaoi a d'fhreagair an Oifig ar na ceisteanna iomadúla sin airteagail agus bileoga treorach a chur i dtoll a chéile inar cuireadh roinnt faisnéise áisiúla ar fáil do stiúrthóirí cuideachta go háirithe.

Léiriú 1.2.2: Sampla de Fhiosruithe Poiblí ar dhéileáil an Oifig leo i 2008

Ghlaoigh duine isteach le ceist maidir le fiacha nach raibh íoctha ag cuideachta a scoir de bheith ag trádáil. D'aistrigh an stiúrthóir sócmhainní na cuideachta go gnó nua ina dhiaidh sin agus lean de bheith ag trádáil mar thrádálaí aonair.

Cuireadh in iúl don té a ghlaoigh isteach gur ábhar sibhialta a bhí in aisghabháil fiach, gur bhain sé leis na páirtithe agus gur chóir comhairle dlí neamhspleách a iarraidh. Moladh don ghlaiteoir dul go dtí suíomh idirlín OSFC agus treoir dheireanach maidir le Cearta Creidiúnaithe "Rights of Creditors" a cheadú.

Rinne comhalta cuideachta bainistithe gearán nach rabhtas ag bainistiú na cuideachta mar ba chúfí. Ba shuarach an obair chothabhála a bhíodhas ag déanamh ar an gcoimpléasc cé go raibh muirir sách ard á ngearradh. Níorbh fheasach do chomhaltaí na cuideachta bainistithe aon chruinnithe ginearálta bliantúla (CGBanna) a bheith tionóltha agus dá réir ní raibh focal le cloisteáil uathu nuair a toghadh na stiúrthóirí. Ní fuair siad riamh cóipeanna de ráitis airgeadais na cuideachta. De bhreis air sin rinne siad gearán maidir le feidhmíocht mhíshásúil an ghníomhaire bhainistithe.

Dúradh leis an té a ghlaoigh isteach nár mhór don chuideachta CGB a thionól gach bliain féilire agus nach gceadaítear tréimhse níos faide ná 15 mhí idir gach CGB. Tá sé de cheart ag comhaltaí fógra a fháil 21 lá sular tionóladh cruinniú maille le chlár oibre an chruinnithe agus cóipeanna dá ráitis airgeadais. Moladh don ghlaiteoir dul go dtí suíomh idirlín OSFC agus súil a chaitheamh ar threoracha faisnéise maidir le dualgais chuideachtaí agus stiúrthóirí. Tugadh cuireadh dó freisin foirm ghearáin a chur isteach i ndáil le loiceadh na cuideachta CGBanna a thionól. Dúradh leis gurbh amhlaidh de ghnáth gur ábhar conartha idir an cuideachtaí bainistithe agus an gníomhaire a bhí i bhfeidhmíocht an ghníomhaire bhainistithe.

Chuir comhalta na cuideachta in iúl gur dhiúltaigh Rúnaí na Cuideachta dá iarratais ar chóip de chlár na gcomhaltaí ar an bhforas nach raibh sé de chead ag an gcuideachta faoi na hAchtanna um Chosaint Sonraí na sonraí a eisiúint gan réamhcheadúnas na gcomhaltaí.

Cuireadh in iúl don duine sin go raibh sé de chead ag comhaltaí cóip den chlár a fháil faoi Alt 119 de Acht na gCuideachtaí 1963. Má chliseann ar an gcuideachta an t-iarratas a chomhlíonadh is cóir gearán a chur chuig OSFC.

D'iarr stiúrthóir cuideachta cúnaimh i ndáil le díospóid inmheánach idir bheirt stiúrthóirí a bhí ina scairshealbhóirí freisin. Bhí ról an chinnteora glactha chuige féin ag stiúrthóir amháin acu agus bhí an duine eile eisiata aige ó gach aon ghné de bhainistiú na cuideachta. Is céard is féidir leis an stiúrthóir a dhéanamh?

Cuireadh in iúl don ghlaiteoir gurbh ar an mbeirt stiúrthóirí a bhí an fhreagracht réiteach a fháil ar an díospóid. Más gá ba chóir comhairle dlí neamhspleách a iarraidh. Ar deireadh thiar, d'fhéadfadh an Ard-Chúirt foirceannadh na cuideachta a ordú.

Teagmhálaithe sna Meán

D'eisigh an Stiúrthóir cúig ráiteas fhoirmeálta preasa i 2008 mar a chuirtear in iúl in **Aguisín 1.2.3**. Dhéileáil an Oifig freisin le breis agus 100 ceist ó na meán.

Ó am go chéile rinne an Stiúrthóir roinnt agallamh leis na meán chun obair na hOifige i leith géilliúntais a chur chun cinn. Cás a léiríonn sin ba ea foilseachán na treorach maidir le cuideachtaí bainistithe.

Ina theannta sin scríobh foireann OSFC roinnt alt sna meán nó chuidigh le páirtithe eile chun alt a scríobh sna meán inar pléadh ceisteanna cosúil le hobair leanúnach na hOifige agus impleachtaí na ndeacrachtaí eacnamúla reatha ar dhlí na gCuideachtaí. Bhí an Oifig i súile an phobail i níos mó ná 500 alt sa phreas agus sna meán go háirithe i dtaca lena hobair forfheidhmithe.

Fo-Aidhm 1.3: Dlí na gCuideachtaí agus Cleachtais a Bhaineann leis a Fheabhsú

Thug an Oifig dhá fhreagra foirmeálta do pháipéir chomhairliúcháin i 2008.

Tugadh an chéad cheann don Stiúrthóir Ionchúiseamh Poiblí (SIP) agus bhain sé le Plépháipéar dá chuid ar Pholasaí i leith Ionchúiseamh mar ar pléadh Nochtadh Fáthanna na gCinntí¹³. San aighneacht a rinne an Oifig d'aontaigh sí go ginearálta le moladh an SIP na fáthanna a nochtadh in imthosca áirithe do na páirtithe a ndéanann siad dífeair dóibh i gcás a ndearnadh cinneadh gan cás a ionchúiseamh. Maidir le sonraí dúirt an Oifig go gcuirfí ar fáil nuair ba chúig ráiteas iomlán mar a nochtfaí na fáthanna ba thaca le cinneadh gan dul ar aghaidh le hionchúiseamh mura mbainfeadh nochtadh dá leithéid de cheart an duine ar a dheá-cháil nó ar thiomhde na neamhchiontachta.

Maidir leis an dara aighneacht ón Oifig ba fhreagra í ar Pháipéar Comhairliúcháin a d'eisigh an Roinn Fiontair, Trádála agus Fostaíochta (RFTF) a bhain le trasúmh Treoir 2006/46/CE ó Pharlaimint na hEorpa agus ón gComhairle¹⁴. Foráiltear sa Treoir do cheangail nua maidir le, mar shampla, nochtadh i leith rialachas corparáideach, maidir le soiléiriú ar fhreagracht an bhoird as ráitis airgeadais agus as faisnéis thábhachtach neamhairgeadais, maidir le trédhearcacht i leith caidreamh idirghrúpa agus maidir le hidirbhearta le páirtithe bainteacha. Cuireadh sraith cheisteanna sa Pháipéar RFTF a bhain le cur chun feidhme na Treorach ar bhonn náisiúnta. Thacaigh an Oifig ar bhonn ginearálta le ceangail fheabhsaithe i leith nochtadh agus chuir i gcoinne aon mhéaduithe ar thairseacha a cheadódh do chuideachtaí nochtadh dá leithéid a theorannú.

Bhí roinnt le rá ag an Oifig freisin le RFTF maidir le freagra Institiúid na Stiúrthóirí in Éirinn ar Dhhréachtbhillle um Cheartas Coiriúil (Sciúradh Airgid) 2008¹⁵. Chuir an Oifig in iúl go mbeadh sí ag tacú leis an nGarda Síochána le go gcoinneodh siad a gcumhachtaí reatha sa réimse seo agus léirigh na deacrachtaí ar casadh orthu ó thráth go chéile faoin dlí mar a bhí sé faoi láthair maidir le hainmneacha stiúrthóirí rógaire a chinntiú.

Grúpa Athbhreithnithe um Dhlí na gCuideachtaí

Is ball an Stiúrthóir den Ghrúpa Athbhreithnithe um Dhlí na gCuideachtaí (GADC), agus ina cháil mar bhall d'fhreastail sé ar roinnt chruinnithe den Ghrúpa i 2008 mar ar cuireadh tús le plé ar an gclár oibre nua a mhairfidh ar feadh dhá bhliain go deireadh na bliana 2009.

Go deireanach i 2008 d'fhoilsigh an GADC a Thuarascáil Bliantúil don bhliain 2007 inar léiríodh an smaointeoireacht taobh thiar de na moltaí a rinne sé maidir leis na saincheisteanna a tháinig chun cinn faoina chlár oibre 2006/2007. Tá cóip de Thuarascáil an GADC ar a shuíomh idirlín ag www.clrg.org. Gheofar breis eolais maidir leis na moltaí a raibh spéis ag OSFC iontu i dTuarascáil Bhliantúil OSFC don bhliain 2007.

NSAI – ISO 26000 um Fhreagracht Shóisialta Chorporáideach

Is suntasach an dul chun cinn atá déanta ag Eagraíocht Idirnáisiúnta na gCaighdeán (ISO) i ndáil le caighdeán domhanda a chruthú i réimse na Freagrachta Sóisialta Corparáidí i 2008. Chuidigh OSFC ar bhonn leanúnach agus ar bhealach cuí leis an obair ina cáil mar bhall de Choiste Scátháin 'Mirror Committee' na hÉireann atá a bhainistiú ag an Údarás um Chaighdeán Náisiúnta na hÉireann agus a bhfuil sé de thasc aige obair ISO a athbhreithniú ar son an Stáit. De bhrí go bhfuil an caighdeán ag céim Réamhdhréachtaithe Coiste faoi láthair, níl fáil ag an bpobal air chun é a scrúdú.

Údarás Maoirseachta Iniúchta agus Cuntasaíochta na hÉireann (UMICE)

Tá an Stiúrthóir ina stiúrthóir ar bhord UMICE chomh maith le bheith ina bhall dá Choiste Luach Saothair agus lean sé leis i 2008 ag comhoibriú lena chomhghleacaithe stiúrthóirí chun sainchúram an Údaráis a chur chun cinn. Ag deireadh na bliana ceapadh é mar chomhalta ar Choiste Fiosrúcháin UMICE a dhéanfaidh imscrúdú i 2009 ar líomhaintí a rinneadh i gcoinne Institiúid na gCuntasóirí Cairte in Éirinn in alt a scríobhadh i nuachtán tamall ó shin. Beidh cóip de Thuarascáil Bhliantúil UMICE ar fáil ag a shuíomh idirlín ag www.iaasa.ie i lár na bliana 2009.

13 Tá tuilleadh eolais ar Phlépháipéar SIP agus ar thorthaí an bhirt chomhairliúcháin ar fáil ag www.dppireland.ie/publications/reasons_project/.ie/publications/reasons_project/.

14 Tá teacs iomlán na Treorach ar fáil ag <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0046:EN:HTML>.

15 Tá tuilleadh faisnéise faoin mBille seo ar fáil ag www.justice.ie/en/JELR/Pages/PB08000277.

International Association of Insolvency Regulators (IAIR)

Is ball OSFC de IAIR agus bíonn sé rannpháirteach ar bhonn gníomhach ina chlár oibre bliantúil. Ag a gComhdháil Bhliantúil i St Petersburg i Meitheamh léirigh foireann OSFC torthaí dhá staidéar taighde a rinne OSFC thar cheann IAIR.

Bhain staidéar amháin le fíúntas comhroinnt faisnéise idir rialaitheoirí dócmhainneachta náisiúnta i gcúinsí ina bhfuil tráchtáil an domhain ag méadú níos mó ná riamh thar theorainneacha náisiúnta amach. Is de bharr an taighde a cuireadh eolaire ar fáil le foinsí faisnéise do bhaill IAIR chun cuidiú leo i gcás go raibh siad ag iarraidh comhoibriú lena chéile tráth a mbeadh dócmhainneachtaí trasnáisiúnta nó dócmhainneachtaí náisiúnta le diminsean idirnáisiúnta i gceist. Is i gcomhar le hOifig an Mhaoirseora Féimheachta i gCeanada a rinneadh an taighde seo.

Sa dara staidéar taiscéaladh an oiread agus a tugadh aitheantas frithpháirteach i ndlínsí IAIR do phionóis a cuireadh ar dhaoine aonair de bharr a mí-iompair san am atá caite in imthosca dócmhainneachta. Thug an staidéar le tuiscint go mbeadh breis oibre tairbhiúil chun na creata rialúcháin a neartú anseo agus i gCeanada. Tá tuarascálacha an dá staidéar ar fáil i rannán na bhfoilseachán de shuíomh idirlín IAIR ag www.insolvencyreg.org.

Ar cuireadh ó IAIR gheall OSFC go mbeadh sí ina óstach ar a Chomhdháil don bhliain 2010 i mBaile Átha Cliath.

Léirmheas Lucht Aonghairme ECFE ar an gComhdháil um Breabaireacht

Rinne tagairt i dTuarascálacha Bliantúla OSFC 2006 agus 2007 don Chomhdháil um Chomhrac Bhreabaireacht na n-Oifigeach Poiblí Eachtrannach in Idirbhearta Gnó Idirnáisiúnta (1997).¹⁶ I ndáil le hoibleagáidí na hÉireann faoin gComhdháil seo den Eagraíocht um Chomhar agus Fhorbairt Eacnamaíochta (ECFE) a chur chun feidhme, bhunaigh an Rialtas Coiste Géilliúntais Oifigeach Sinsearach i 2007 agus tá ball foirne OSFC ag freastail ar an gCoiste seo.

I Meitheamh 2008, thug foireann imscrúdaithe (le himscrúdaitheoirí ceannaireachta ón Eastóin agus ón Nua-Shéalainn, maille le hoifigigh ó Rúnaíocht an ECFE) cuairt ar Bhaile Átha Cliath d'fhonn a raibh déanta ag Éire chun a hoibleagáidí faoin gComhdháil a chur chun feidhme a fhiosrú. Bhí plé le ag na himscrúdaitheoirí le líon mór de na páirtithe lena mbaineann ar a n-áirítear oifigigh OSFC. Rinneadh tuarascáil measúnaithe ECFE ina dhiaidh sin ar chur chun feidhme na Comhdhála ag Éire agus foilsíodh i Nollaig 2008 í.¹⁷

Páirtíocht leis an gCoimisiún um Athchóiriú an Dlí (CAD)

Mar a tugadh le fios sa Tuarascáil Bhliantúil i 2007 thug OSFC freagairt ar Pháipéar Comhairliúcháin an CAD faoi Fhorbairtí Ilaonaid. Sa chéad leath de 2008 chuaigh OSFC i mbun páirtíochta leis an gCoimisiún in athuair chun cuideachtaí bainistithe maoin sealbhais a phlé.

Ag leanúint as an bPáipéar Comhairliúcháin d'fhoilsigh an CAD Tuarascáil dar teideal Forbairtí Ilaonaid 'Multi-Unit Developments'¹⁸ i Meitheamh 2008. Rinneadh inter alia sa Tuarascáil seo moltaí éagsúla maidir le hathrú faoin dlí, agus in **Aguisín 2** den Tuarascáil tá dréacht-Bhille um Fhorbairtí Ilaonaid a bhfuil sé d'aithm aige na moltaí sa Tuarascáil a chur i bhfeidhm. Ba chúis sásaimh do OSFC na tráchtaí fabhracha faoi obair threorach OSFC i ndáil le cuideachtaí bainistithe maoin sealbhais i dTuarascáil an Choimisiúin.

Coiste Idir-rannóige Ardleibhéil um Fhorbairtí Ilaonaid

Tar éis fhoilseachán Pháipéar Comhairliúcháin an CAD ar Fhorbairtí Ilaonaid, chinn an Rialtas i 2007 Coiste Idir-Rannóige Ardleibhéil a bhunú ina mbeadh ionadaithe ó na Rannóga agus ó na hOifigí ábhartha a chabhródh chun freagra comhleanúnach agus cuimsitheach a thabhairt ar anailís agus ar mholtaí an Choimisiúin. D'fhóin oifigeach OSFC mar chomhalta sa Choiste seo a fhad is a bhí an Coiste i mbun gníomhaíochtaí.

I Lúnasa 2008 chuir an Coiste foirceann leis an bplé agus chuir sé an Tuarascáil ar aghaidh chuig an gCoiste Chomh-Aireachta um Fhorbairtí Ilaonaid (i ndiaidh fhoilseachán Thuarascáil an CAD do mhí an Mheithimh 2008 dá dtagraítear thuas).

Conclúid

Is príomhinneall tiomána chun cultúr an ghéilliúntais a chur chun cinn sa Stát obair na hOifige i ndáil leis an ngéilliúntas. Le go mbeidh an obair sin éifeachtúil áfach ní mór go dtabharfar tacaíocht di trí chóras inchreidte le gníomhartha cothroma agus éifeachtúla a spreagfaidh daoine agus eagrais chun mainneachtanaí a cheartú agus chun lucht an éagóra a phionósú más cuí. Leagtar amach sna rannán eile den Tuarascáil seo an chaoi a ndearna an Oifig an obair seo i 2008.

¹⁶ Tá faisnéis faoin gComhdháil ar fáil ag www.oecd.org agus ag www.anticorruption.ie.

¹⁷ www.oecd.org/dataoecd/33/6/41869600.pdf

¹⁸ LRC 90 – 2008, ar fáil ag www.lawreform.ie.

Aidhm 2: Cásanna ina bhfuil Amhras faoi Shárú Dhlí na gCuideachtaí a Nochtadh

Réamhrá

Sa mheasúnú atá OSFC ag déanamh ar chásanna ina bhfuil amhras faoi shárú dhlí na gcuideachtaí is mian léi iompar corparáideach a fheabhsú agus cultúr an ghéilliúntais i leith Achtanna na gCuideachtaí a chothabháil. Tá sé d'aidhm ag an Oifig iompar mídhleathach a cheartú i gcás go mbeireann an lucht atá ciontach as na mainneachtanaí buntáiste míchothrom iomaíochta nó eile, bíodh sé iarbhir nó ionchasach ar pháirtithe leasmhara eile na cuideachta de thoradh an mhí-iompair sin. O thráth go chéile áfach féadfaidh sé gurbh fhiú caingean dlí a thionscnamh i leith an iompair atá i gceist agus sa chás sin déanfar imscrúdú foirmeálta.

Fo-Aidhm 2.1: Socruithe Braite agus Tuairiscithe le haghaidh Cásanna a bhfuil Amhras faoi Shárú Dlí Cuideachta a Fhorbairt

Arís sa bhliain 2008 líomhnaíodh sárúithe ar Achtanna na gCuideachtaí i líon mór tuarascálacha iniúchára agus gearán poiblí a fuair an Oifig. Gné suntasach den bhliain 2008 áfach ba ea gur braitheadh mainneachtanaí maidir le ráitis airgeadais i ndiaidh don OSFC cinneadh a dhéanamh aird níos géire a dhíriú ar ráitis airgeadais chuideachtaí a bhí faoi theorainn ráthaíochta go háirithe.

Is ó na príomhearnálacha gnó a leanas a d'eascair na cásanna a tháinig chun cinn i 2008.

Gearáin/Tuairiscí de réir Earnáil Ghnó i 2008	% na nGearán/dTuarascálacha
Eastát réadach, Ligean ar Cíos agus Gníomhaíochtaí Gnó Gaolmhara	26%
Seirbhísí Pobail agus Pearsanta	17%
Foirgníocht	9%
Mórdhíol, Miondíol agus Trádáil Mhótarfheithiclí	7%
Iompar agus Cumarsáid	6%
Déantúsaíocht	6%
Idirghabháil Airgeadais	3%
Óstáin agus Bialanna	3%
Earnáil eile Ghnó	9%
Earnáil Ghnó Anaithnid	9%
Gan bheith ina chuideachta	5%
Iomlán	100%

Líon/Foinsí na Saincheisteanna a Imscrúdaíodh

Osclaíodh 627 gcás i 2008, titim de 7% ó na 674 chás a osclaíodh i 2007. In **Aguisín 2.1.1** tá breis sonraí faoi na figiúirí seo.

Titim de 11% ar líon na ngearán a fuarthas ón bpobal ó 331 i 2007 go 295 i 2008 ba shiocair leis an gcuid is mó den laghdú sin. Ba léir áfach ardú de 8% ó 204 i 2007 go 221 i 2008 ar líon na dtuarascálacha a fuarthas ó iniúcháirí, ó chomhlachtaí cuntasáíochta aitheanta agus ó dhreamanna eile a bhfuil sé de dhualgas orthu cásanna a bhfuil amhras faoi shárú Achtanna na gCuideachtaí a thuairisciú don OSFC. Bhí ardú de 11% ar líon na dtuarascálacha iniúchára agus ba iad ba mhó ba chúis leis an méadú seo ar chásanna.

Ba é 'mír feachtais' OSFC trínar díriodh aird ar bhrath na n-easnamh i ráitis airgeadais chuideachtaí a bhí faoi theorainn ráthaíochta, faoi deara do chuid mhaith den fhuilleach. Ba é an scrúdú a rinneadh ar ghéilliúntas i leith oibleagáidí nua maidir le nochtadh i Rialacháin na gComhphobal Eorpach (Cuideachtaí) (Leasú) 2007 an 'mír feachtais' comhfhreagrach i ndeireadh na bliana 2007.

Comhoibriú idir Údaráis Rialúcháin

Ó tharla go bhfuil cumhachtaí na hOifige chun doiciméid agus áitribh a imscrúdú teoranta is mór is gá don Oifig dul ar iontaoibh faisnéise poiblí agus tríú páirtithe chun cásanna ar féidir mí-iompar bheith i gceist a aithint. Tá sé tábhachtach dá bhrí sin go mbeadh raon leathan ag na foinsí faisnéise atá aici maidir le cásanna ar féidir sárú dlí cuideachta bheith i gceist, agus is é sin an fáth go mbíonn an Oifig ag iarraidh ar bhonn leanúnach rialtóirí eile a spreagadh chun cásanna ar féidir neamhghéilliúntas i leith Achtanna na gCuideachtaí bheith i gceist a thuairisciú. Uaireanta cuirtear cruth foirmeálta ar na socruithe comhroinnte faisnéise frithpháirteacha seo i Meamraim Thuisceana (MTanna) dhéthaobhacha.

Teagmháil OSFC/Comhlachtaí Cuntasáíochta

Tá caidreamh dearfach idir OSFC agus na comhlachtaí cuntasáíochta gairmiúla agus tionóladh cruinnithe go tráthrialta i 2008 ag leibhéal teicniúil agus iomlánach chun athbhreithniú a dhéanamh ar shocruithe maidir le tuairiscí a chur ó iniúcháirí agus ó na comhlachtaí féin go dtí OSFC agus ar a sheal ó OSFC go dtí na comhlachtaí. Cuireadh tús le hobair forbartha ar threoir athbhreithnithe do iniúcháirí chun cuidiú leo cásanna a bhfuil amhras faoi chionta indíotáilte faoi Achtanna na gCuideachtaí a thuairisciú. De ghnáth bíonn réimse na gcionta a chuireann iniúcháirí in iúl sách cúng agus chuir an Stiúrthóir in iúl ar go leor ócáidí go raibh imní air faoi sin agus tá súil leis go nochtaiigh lucht na gairme sin mainneachtanaí níos éagsúla de bharr na treorach nuair a chuirfeadh an cruth deiridh uirthi.

I Samhain 2008 cuireadh prótacail nua i bhfeidhm chun saincheisteanna ó OSFC a bhain le baill aonair ó ghairm na cuntasáiochta, a chur faoi bhráid na gcomhlachtaí. Ba éard a spreag na prótacail seo sraith d'atreoruithe a rinne OSFC do na comhlachtaí agus do Údarás Maoirseachta Iniúchta agus Cuntasáiochta na hÉireann (UMICE) a d'eascair as mainneachtanaí i leith ráiteas airgeadais a bhraith OSFC, go príomha i gcuideachtaí faoi theorainn ráthaíochta. Molann OSFC gníomhaíocht na comhlachtaí atá i gceist sa mhéid is go bhfuil sé curtha in iúl acu dá mbaill go bhfuil cuideachtaí faoi theorainn ráthaíochta neamh-incháilithe le haghaidh díolúine ó iniúchadh. Tá súil leis go bhfeabhsóidh sin an géilliúntas i leith na hoibleagáide reachtúla seo amach anseo.

Rinneadh obair i rith na bliana chun foclaíocht na hoibleagáide in Alt 202 d'Acht na gCuideachtaí 1990 faoina bhfuil sé de cheangal ar chuideachtaí agus ar stiúrthóirí leabhair chuí chuntais a choinneáil a athbhreithniú. Is é an aidhm atá ag an athbhreithniú seo rún agus raon feidhme na hoibleagáide a shoiléiriú i gcomhthéacs an chomhshaoil tráchtála reatha. Tá sá de rún againn go gcuirfear aon fhoclaíocht athbhreithnithe ar aghaidh lena bhreithniú in am agus i dtráth mar chuid den Bhille um Chomhdhlúthú agus Athchóiriú Cuideachtaí arna bheartú.

Teagmháil OSFC/UMICE

Tharla teagmháil go tráthrialta ag leibhéal na foirne idir an dá chomhlacht i 2008. Chomh maith le saincheisteanna na mainneachtanaí i leith ráiteas airgeadais a luaitear thuas ba chúis teagmhála tráthrialta freisin cásanna de dhaoine neamhcháilithe ag gníomhú mar iniúchóirí.

Teagmháil OSFC/Coimisinéirí Ioncain

Tharla teagmháil fhorleathan i rith na bliana leis na Coimisinéirí Ioncain maidir le ceisteanna a bhain le dlí na gcuideachtaí. Bhain an teagmháil go háirithe le hobair na hOifige trína dtugtar aghaidh ar an réimse a bhaineann le cuideachtaí dócmhainneacha neamhleachtaithe i gcasanna gur creidiúnaí substaintiúil atá sna Coimisinéirí Ioncain. Go hiomlán, roinneadh faisnéis faoi 80 chuideachta agus iarchuideachta.

Teagmháil OSFC/Rialtóir Airgeadais

Bhí teagmháil níos minice idir OSFC agus an Rialtóir Airgeadais i rith na bliana agus chuaigh an caidreamh eatarthu i dtreise dá réir. Go deireanach i 2008 casadh an Stiúrthóir agus Phríomhfheidhmeannach an Rialtóir Airgeadais lena chéile chun teacht ar chomhaontú maidir le hathbhreithnithe ar an Meamram Tuisceana (MT), agus síníodh MT athbhreithnithe.

Teagmháil OSFC/Bord na bPinsean

Tionóladh réamhchruinniú idir OSFC agus Phríomhfheidhmeannach Bhord na bPinsean chun an comhoibriú maidir le cásanna a bhaineann le cuideachtaí dócmhainneacha a bhain íocaíochtaí pinsin ó fhostaithe ach nár chuir an íocaíocht sin ar aghaidh chuig an soláthraí

pinsin a chur ar bhonn foirmiúil. Chuir OSFC dréacht-MT chuig Bhord na bPinsean lena bhreithniú agus beifear á thabhairt chun críche i 2009.

Teagmháil OSFC/Biúro an Ghárda um Imscrúdú Calaoise (BGIC)

Ar an gcéad ásc tharla teagmháil go tráthrialta idir bhaill an Garda ar iasacht ag OSFC agus a gcomhghleacaithe i BGIC agus i rannóga eile den Fhórsa.

Ar cuireadh ón BGIC d'fhreastail an Stiúrthóir i 2008 ar láithreoireacht a rinne an Federal Bureau of Investigation ó Stáit Aontaithe Mheiriceá i mBaile Átha Cliath. Bhí ionadaithe ó rialtóirí agus ó eagrais airgeadais eile i láthair freisin.

Teagmháil OSFC/Oifige um Chlárú Cuideachtaí (OCC)

Chuidigh foireann na hOifige um Chlárú Cuideachtaí (OCC) le hobair na hOifige, go háirithe chun doiciméadú tionscantaigh cláraithe a bhféadfadh OSFC úsáid a bhaint as in imeachtaí cúirte a chur ar fáil don OSFC agus a dheimhniú.

Fo-Aidhm 2.2: Cásanna a bhfuil Amhras faoi Shárú Achtanna na gCuideachtaí a Aithint

Go ginearálta ba léir ar an bpointe ó thuarascálacha iniúchóra agus ó obair bhraite na hOifige féin cérbh iad na saincheisteanna a bhain le neamhghéilliúntas braite. I gcás gur ghá a dhéanamh amach cé acu sáruithe iarbhir ar dhlí na gcuideachtaí nó nach ea a bhí i gceist, chuaigh foireann OSFC i dteagmháil leis na gearánaithe ábhartha.

Cineál na Saincheisteanna atá aitheanta i dTuarascálacha Iniúchóra agus i dTuarascálacha Sainordaitheacha eile

Sa 221 thuarascáil shainordaitheacha a fuarthas i 2008 luadh seacht bpríomhchineál cáis ina raibh amhras faoi chion. In **Aguisín 2.2.1** den Tuarascáil seo ainmnítear cineálacha na gcion a tuairiscíodh.

Mar ab amhlaidh sna blianta a chuaigh roimhe seo ba thréith de 87% de na mainneachtanaí a tuairiscíodh an dá fhionnachtain a leanas:

- Bhain 161 chás le hidirbhearta iomarcacha stiúrthóirí mar ar bhain stiúrthóirí úsáid as cistí cuideachta contrártha leis na srianta in Alt 31 de Acht na gCuideachtaí 1990. B'ionann agus méadú de 17% ar na 138 dtuarascálacha a fuarthas i 2007 an figiúr seo;
- Tuairiscíodh 32 cás i 2008 ina raibh amhras faoi mhainneachtain maidir le leabhair chuí chuntais a choinneáil contrártha le hAlt 202 d'Acht na gCuideachtaí 1990. Ba dhíol fáilte an laghdú sin ar an 40 tuarascáil a fuarthas i 2007.

Iasachtaí Stiúrthóirí

Tugadh chun suntais i dTuarascálacha Bliantúla OSFC roimhe seo feiniméan idirbhearta na stiúrthóirí agus, ar an drochuair, tharraing imeachtaí na bliana 2008 aird an phobail ar an saincheist seo ar bhonn leanúnach.

Maidir le 161 chás inar tuairiscíodh idirbhearta iomarcacha stiúrthóirí, d'fhás méideanna na n-iasachtaí a bhain leo go €134 milliún i 2008, méadú faoi cheathair ar an €33.7 milliún a thuairiscigh iniúcháirí i 2007. Gné áirithe ba ea cásanna inar ghlac stiúrthóirí le hiasachtaí ó chuideachtaí in earnáil na tógála agus in earnáil fhorbairt na maoin sealbhais; tuairiscíodh i 47 dtuarascáil iniúcháirí gur glacadh le hiasachtaí de thart ar €98 milliún. Is ionann an méid seo agus thart ar 73% de ne hidirbhearta uile a thuairiscigh iniúcháirí i 2008.

Ag féachaint don dualgas cruthúnais ard a bhaineann le hionchúiseamh na mainneachtanaí seo lean an Oifig ar aghaidh i 2008 lena polasaí seanbhunaithe stiúrthóirí a spreagadh chun na hiasachtaí a bhí i gceist a thabhairt ar ais don chuideachta agus foláireamh a thabhairt dóibh maidir le hiarmhairtí amach anseo dá ndéanfaí an mainneachtain in athuair. D'íoc stiúrthóirí cuideachta thart ar €164 milliún ar ais agus thug an Oifig rabhadh do 423 stiúrthóir i rith na bliana; ba iad na hiniúcháirí a chuir an chuid is mó de na cásanna in iúl dúinn. Ag deireadh na bliana bhí 43 chás idir lámha, ceann amháin acu a bhí an-tábhachtach.

Cineál nua cáis a tháinig chun cinn i 2008 ba ea cás ar dealraitheach go raibh loiceadh i ráitis airgeadais cuideachta i ndáil le nochtadh dóthanach a dhéanamh ar idirbhearta stiúrthóirí. Tháinig an cheist seo chun cinn go háirithe i gcás Anglo Irish Bank Corporation plc (“Anglo”) agus ba é go díreach faoi deara éirí as a phost don chathaoirleach agus do stiúrthóir eile a thairbhígh de na hiasachtaí sin. B'ábhar an cheist seo de mhionscrúdú a rinne foireann OSFC ag deireadh na bliana.

Leagadh síos in Ailt 41 go 46 d'Acht na gCuideachtaí 1990 na hoibleagáidí maidir le nochtadh arbh ábhar iad do Threoir a thug OSFC roimhe seo¹⁹. Go bunúsach ní mór faisnéis a bhaineann le hidirbhearta idir cuideachtaí agus a stiúrthóirí nó idir cuideachtaí agus páirtithe eile a bhfuil baint acu leis na stiúrthóirí a nochtadh sna nótaí a ghabhann le ráitis airgeadais chuideachta. Baineann forálacha speisialta in Ailt 43 agus 44 le baint cheadúnaithe go háirithe. Ag féachaint dar tharla le Anglo, chinn OSFC i ndeireadh mhí na Nollag litir a scríobh chuig thart ar 40 banc cheadúnaithe sa Stát chun an oiread is a bhí siad ag comhlíonadh a n-oibleagáidí faoi Ailt 43 agus 44 a mheas.

Cineál na Saincheisteanna sainaitheáidh i dTuarascálacha Deonacha agus i mBraith eile

In **Aguisín 2.2.2** léirítear i bhfoirm achomair tréithe na

ngearán éagsúla poiblí agus na saincheisteanna braite eile a tháinig chun suntais i 2008.

Cuideachtaí Bainistithe Maoin Sealbhais

Cuireadh 61 ghearán breise maidir le cuideachtaí bainistithe chuig OSFC i 2008. Mar ab amhlaidh sna blianta a chuaigh roimhe seo bhain roinnt de na gearáin seo le saincheisteanna nach de shainchúram na hOifige iad (a leithéid leibhéal na muirear seirbhíse agus leithdháileadh na limistéir chomónta ar an gcuideachta bhainistithe gan bheith déanta). Bhain na saincheisteanna um dhlí na gcuideachtaí sna cásanna seo go príomha le loiceadh maidir le:

- cruinnithe ginearálta bliantúla (CGBanna) a thionól;
- comhaltaí a chur ar an eolas go tráthúil go raibh na chruinnithe seo á dtionól;
- na cuntais airgeadais is deireanaí den chuideachta a nochtadh do chomhaltaí agus
- cead a thabhairt chun cláir chuideachta a imscrúdú.

Tá sampla de chás cuideachta bhainistithe i mbloc árasán i gCathair Bhaile Átha Cliath léirithe i **Léiriú 2.2.1**; arís agus arís eile bhí fadhbanna leis ach rinne OSFC réiteach sásúil orthu ar bhonn riaracháin.

Léiriú 2.2.1: Cás Cuideachta Bhainistithe Maoin Chónaithe

I 2008 fuair OSFC roinnt ghearán ó chomhaltaí cuideachta bhainistithe maoin sealbhais ar chás dóibh go raibh loicthe ag an gcuideachta CGB a thionól agus cuntais athbhreithnithe neamhghiorraithe iniúchta na cuideachta a sholáthar do na comhaltaí. Ghlac an Oifig leis gur chomhaltaí den chuideachta i ndáiríre a bhí san gearánaithe agus go raibh cuimse chumarsáide déanta acu le rúnaí na cuideachta ar feadh achair sách fada ag iarraidh go dtabharfaí aghaidh ar a raibh ag cur imní orthu. Gheall rúnaí na cuideachta dóibh de réir dealraimh níos mó ná uair amháin go réiteofaí na heasnaimh aitheanta.

Chrom OSFC ar litir a scríobh chuig stiúrthóirí na cuideachta ag iarraidh faisnéis áirithe maidir lena ndualgais reachtúla agus an dóigh a raibh siad á gcomhlíonadh agus thaispeáin sé go raibh gnáthoibriúchán na cuideachta curtha faoi chúram rúnaí na cuideachta agus na ngníomhairí bainistithe. Ansin mar fhreagra ar idirbheart OSFC:

- thionóil na stiúrthóirí CGB de réir Achtanna na gCuideachtaí;
- dheimhnigh siad go raibh fáil ar iniúcháir na cuideachta agus
- gheall siad go mbeidh deis ag na comhaltaí leabhair agus taifid na cuideachta a cheadú.

Ina dhiaidh sin ghlac na comhaltaí páirt sa CGB agus fuair siad cóipeanna roimh ré de ráitis airgeadais iniúchta na cuideachta.

¹⁹ Tá an Treoir faoi Idirbhearta a bhaineann le Stiúrthóirí (Samhain 2003) ar fáil ag www.odce.ie. Pléitear i Rannán 9 den Treoir na hoibleagáide infheidhme maidir le nochtadh.

Mainneachtanaí maidir le Ráitis Airgeadais

Sna himscrúduithe a rinne sí ar ghearáin le blianta beaga anuas tharla sé ó ham go chéile le linn di ráitis airgeadais chuideachta faoi theorainn ráthaíochta a iniúchadh gur bhraith OSFC éilimh mhíchearta ar dhíolúine ó chlárú agus ó iniúchadh maille le mainneachtanaí airgeadais eile. De ghnáth is cuideachtaí ‘nach bhfuil ar thóir brabúis’ ach gur le haghaidh cuspóir carthanais, pobail nó sóisialta a bunaíodh iad atá sna chuideachtaí atá faoi theorainn ráthaíochta. De bhua a saintréithe bíonn ceangail dlí orthu go mbeidh na sócmhainní a bhíonn á mbainistiú acu faoi réir dearbhairthe iniúchta neamhspleách.

I bhfeachtas spriochdírithe i 2008 rinne OSFC imscrúdú ar ráitis airgeadais 264 chuideachta. I 68 gcás (thart ar 25% de na cuideachtaí a imscrúdaíodh) ba léir ó ráitis airgeadais na cuideachta go raibh a bheag nó a mhór de neamhghéillíuntas le hAchtanna na gCuideachtaí i gceist. Braitheadh 100 easnaimh agus seo a leanas na mainneachtanaí príomha:

- tharla sé 64 uair gur dheimhnigh na hiniúcháirí go raibh siad sásta go raibh na stiúrthóirí i dteideal cuntais ghiorraithe a thaisc agus gur chláraigh na cuideachtaí ansin cuntais ghiorraithe ainneoin nach bhfuil cuideachtaí atá faoi theorainn ráthaíochta i dteideal cuntais ghiorraithe a chlárú²⁰;
- i 30 ceann de na cásanna thuairiscigh na hiniúcháirí easnamh caipitil ainneoin nach mbíonn scairchaipiteal eisithe ag cuideachtaí atá faoi theorainn ráthaíochta²¹;
- tharla ocht n-uair gur chinn ar iniúcháirí tuairim iomlán iniúchta a chur ar fáil de réir an cheangail reachtúil²², agus
- i líon beag de chásanna eile ní dhearnadh aon iniúchadh.

Tar éis do OSFC dul i dteagmháil leis na hiniúcháirí cuideachta agus/nó na stiúrthóirí lena mbaineann, cuireadh na mainneachtanaí a bhí i gceist ina gceart. Mar a luaitear thuas cuireadh na dearmaid ghairmiúla atá i gceist in iúl do chomhlachtaí gairmiúla na n-iniúcháirí agus do UMICE le go bhféadfadh siad leigheas cuí a chur ar an scéal. Cás cuideachta a rinne éileamh míchuí ar dhíolúine ó iniúchadh ar feadh na mblianta fada atá i **Léiriú 2.2.2**.

Léiriú 2.2.2: Cuideachta Phobalbhunaithe in Iarthar na hÉireann

Bhí úinéireacht agus feidhm bhainistithe ag cuideachta phobalbhunaithe ar mhaoín sealbhais ar feadh na mblianta fada. Ar feadh achair sách fada bhí sí ag éileamh díolúine ó iniúchadh go míchuí. Tamall gairid ó shin dhiúscairigh sí sócmhainní agus fuair méid mór airgid dá bharr.

Tar éis do OSFC teagmháil a dhéanamh leis an gcuideachta rinne na stiúrthóirí bearta chun iniúcháir a cheapadh, a ullmhódh ráitis airgeadais agus a chláródh le OCC iad.

Fiacha fós gan Íoc

I 2008 fuarthas méid suntasach gearán inar líomhnaíodh go raibh loicthe ag cuideachtaí fiacha a íoc. In éagmais aon sárú follasach ar dhlí na gcuideachtaí mhol OSFC do na gearánaithe dul sa tóir ar leigheas dlí ar a son féin chun aon airgead a bhí dlite dóibh a fháil ar ais.

Láimhdeachas Cásanna

In **Aguisín 2.2.3** cuirtear ar fáil sonraí láimhdeachas cáis. Bhí thart ar 950 cás idir lámha i 2008 agus anois tá thart ar 584 acu dúnta. Is ionann sin agus méadú de 15% ar na 507 gcás a dúndadh i 2007. Ba é an iarracht chomhbheartaithe a rinne foireann na hOifige i 2008 chun líon mór de na cásanna a bhí fós idir lámha ag an Oifig a dhúnadh ba chúis leis an toradh seo.

In **Aguisín 2.2.4** cuirtear faisnéis ar fáil maidir le modh diúscairigh na 584 chás seo:

- Dúnadh 56% de na cásanna tar éis teacht ar shocrú maidir leis an mainneachtain i leith dhlí na gcuideachtaí agus/nó tar éis cur chuige bunaithe ar ghéillíuntais a ghlacadh i leith na mainneachtana. In go leor cásanna chuir OSFC faenic ar na daoine lena mbaineann agus mheabhraigh dóibh go leanfadh iarmhairtí as dá ndéanfaí an mainneachtain braite in athuair. Bhain níos mó ná a leath de na cásanna seo le hidirbhearta iomarcacha stiúrthóirí;
- Cuireadh críoch le 25% díobh ar an mbonn nach raibh an fhianaise maidir le mainneachtain faoi Achtanna na gCuideachtaí ina húdar dóthanach chun beart breise a dhéanamh. Mar riail ghinearálta measadh nach raibh na líomhaintí ábhartha nó go raibh siad imeallach ó thaobh Achtanna na gCuideachtaí de agus/nó ó thaobh shainchúram OSFC de. Thabharfaí cineál típicitíil cáis ar ghearáin maidir le muirir sheirbhíse i gcuideachta bhainistithe maoin sealbhais;

²⁰ Is cuideachtaí príobháideacha amháin atá i dteideal cuntais ghiorraithe a chlárú faoi Acht na gCuideachtaí (Leasú) 1986 (arna leasú).

²¹ Ní bhaineann an ceangal ar iniúcháirí tuarascáil dá leithéid a dhéanamh faoi Alt 40 d'Acht na gCuideachtaí (Leasú) 1983 ach do chuideachtaí a bhfuil scairchaipiteal acu.

²² Mar a cheanglaítear i gCuid 193 d'Acht na gCuideachtaí 1990 (arna leasú).

- Cuireadh críoch le 12% ar an mbonn go mbeadh sí níos cuí dá rachadh na gearánaithe sa tóir ar leighis dlí nó eile ar a son féin d'fhonn a leas a chur chun cinn. Baineann **Léiriú 2.2.3** a ghabhann leis seo le cás inar iarraidh cuideachta mór le rá ar OSFC i 2008 breathnú i ndiaidh imeachtaí dícháilithe nó srianta a thionscnamh i gcoinne dhá iarstiúrthóir dá cuid;
- Ar na cásanna a raibh fágtha measadh go ginearálta gur ábhar iniúchta príomha ag údarás eile iad m.sh., ag Bord na bPinsean i ndáil le loiceadh ranníocaí pinsin a sheoladh go dtí an soláthraí pinsin.

Léiriú 2.2.3: Iarratas ar OSFC Imeachtaí Dícháilithe a Thionscnamh

Ar teagasc ó Bhord na Stiúrthóirí chuir Rúnaí Cuideachta gearán chuig OSFC i 2008 ag rá go ndearna dhá iarstiúrthóir failli i ndualgas. Chuaigh an Chuideachta i mbun beart éigeandála i bhfoirm faoiseamh urghaire lena leasanna a chosaint agus de réir tuairisce bhí sí ag breathnú i ndiaidh caingean dlí neamhsonraithe a thionscnamh i gcoinne na h-iarstiúrthóirí agus páirtithe gaolmhara. Ag gníomhú dó ar chomhairle dlí, tháinig an Bord ar an tuairim gur dhaoine iad an bheirt iarstiúrthóirí nach raibh oiriúnach le bheith ina stiúrthóirí ar aon cuideachta faoi dhliteanas teoranta agus gur chóir go ndícháileofaí nó go srianfaí iad. Iarradh ar OSFC breathnú i ndiaidh beart cuí a dhéanamh ag éirí as an ngearán.

Ina freagra chuir OSFC fios ar na doiciméid ábhartha uile a d'fhónfadh mar fhianaise ar áitiú an Bhoird agus ar bhreis eolais maidir leis an gcaingean dlí a bhí tionscanta cheana féin agus a rabhtas anois ag déanamh machnaimh uirthi agus an tráthchlár a bhain leis an gcinneadh sin a bhí déanta. In san freagra freisin iarradh ar an gCuideachta aghaidh a thabhairt ar an tshaincheist a leanas:

“Is cinnte gur cuireadh in iúl duit sa chomhairle dlí a cuireadh ar fáil do do Chuideachta go bhfuil an bealach oscailte d’aon chomhalta nó d’aon oifigeach i do Chuideachta faoi Alt 160(4) d’Acht na gCuideachtaí [1990] iarratas ar dhícháiliú ar aon duine dá hiaroifigigh a chur chuig an Ard-Chúirt sna himthosca a luaitear sa chás seo. Dá réir sin ní mór dom an cheist a chur cén fáth go mbeadh do Chuideachta ag iarraidh ar an Oifig seo a cheart iarratas ar dhícháiliú a dhéanamh a fheidhmíú nuair atá an ceart céanna ar fáil duitse an beart sin a dhéanamh.”

Níor bhain an Chuideachta áis as an deis a thug an Oifig di a gearán a thabhairt níos faide ar aghaidh agus níl aon fhaisnéis ar fáil a thabharfadh le tuiscint gur lainseáil sí imeachtaí dícháilithe dá cuid féin i gcoinne na n-iarstiúrthóirí a bhfuil trácht orthu.

De bhreis ar na 584 chás a dúnadh, measadh go n-oirfeadh imscrúdú mionsonraithe i 78 gcás eile. Orthu sin bhí roinnt tuarascálacha iniúcháir a meas an Oifig go mbeadh údar dóthanach chun caingean dlí a thionscnamh mar gheall orthu dá bhfaighfí breis fhianaise ábhartha maidir le mí-iompar, agus cásanna áirithe de chuideachtaí bainistithe maoin sealbhais inar theip ar stiúrthóirí freagra dearfach a thabhairt ar iarrachtaí OSFC coigeartú na mainneachtanaí aitheanta a bhaint amach.

Fo-Aidhm 2.3: Imscrúduithe Foirmeálta Cuideachta a Thacú/ Choimisiúnú

Ó thráth go chéile is gá do OSFC smaoineamh ar imscrúdú críochnúil a dhéanamh ar ghníomhaíochtaí cuideachta d’fhonn na fíricí a thabhairt chun solais agus d’fhonn mí-iompar más ann dó a aithint. I gcúinsí ina bhfuil amhras faoi chalaiois, neamhdhleathacht nó iompar dochrach ceadaíonn Achtanna na gCuideachtaí do OSFC a éileamh go dtabharfaí ar aird lena n-iniúchadh leabhair agus doiciméid shonraithe na cuideachta.

Imscrúdú Ard-Chúirte

Ag éirí as iarratas OSFC, cheap an Ard-Chúirt Bill Shipsey SC i mí Iúil 2008 mar Chigire do DCC plc, do S&L Investments Ltd agus do Lotus Green Ltd chun gnéithe de cheannach agus de dhíol scaireanna Fyffes plc i 1995 agus i 2008 a imscrúdú. Ba í seo an chéad ócáid a chuir an Oifig iarratas chuig an Ard-Chúirt ag iarraidh go gceapfaí cigire ar chuideachta.

Bhí rath ar achainí OSFC chuig an gCúirt; lean na hachainí as:

- an scrúdú a rinne an Oifig ar Bhreithiúnais na hArd-Chúirte agus na Cúirte Uachtaraí sna himeachtaí sibhialta a bhain le déileáil chos istigh i 2000 arna líomhain, a thionscain Fyffes plc i gcoinne DCC plc, S&L Investments Ltd, Lotus Green Ltd agus James Flavin agus
- imscrúduithe dá cuid féin a d’ardaigh ceisteanna maidir le bailíocht dhlíthiúil idirbhearta gaolmhara áirithe a bhain le scaireanna i 1995.

Chuaigh an Cigire i mbun oibre i bhfómhar na bliana 2008 agus is eol gur chosain an tImscrúdú thart ar €180,000 suas go dtí deireadh na bliana 2008.

Fiosrúcháin Leanúnacha

Ag tús na bliana 2008 bhí an Oifig gafa ar bhonn leanúnach le ceithre scrúdú ar leabhair agus ar dhoiciméid cuideachta. Bhain ceann amháin díobh sin le DCC plc agus le cuideachtaí gaolmhara agus cuireadh deireadh leis i ndiaidh chinneadh na hArd-Chúirte i mí Iúil Cigire a cheapadh do na cuideachtaí.

Rinneadh tagairt i dTuarascálacha Bliantúla a eisíodh roimhe seo don imscrúdú a rinne OSFC ar leabhair agus ar dhoiciméid Cologne Reinsurance Ltd. Tuigtear gur féidir gur cuireadh deireadh le roinnt imeachtaí gaolmhara san USA i 2008 a raibh roinnt de na páirtithe bainteach leo agus ag deireadh na bliana bhí an Oifig ag feitheamh ar dhearbhu ó údaráis an SA maidir leis na sonraí sula measfadh sí cén beart de chuid OSFC, má bhí beart le déanamh, a bheadh cuí.

Bhí dhá imscrúdú cuideachta eile de chuid OSFC a tionscnaíodh roimh 2008 fós idir lámha ag deireadh na bliana.

Imscrúdú Nua Cuideachta

Seachas imscrúdú DCC plc, S&L Investments Ltd agus Lotus Green Ltd, níor tionscnaíodh aon scrúdú aimsithe fíricí nua ar leabhair agus ar dhoiciméid cuideachta i 2008.

Iniúchtaí Cuideachta Roinne

I 2008 choinnigh an Roinn Fiontair, Trádála agus Fostaíochta an Stiúrthóir ar an eolas maidir le hiniúchtaí a bhí fós á ndéanamh aici ar leabhair agus ar dhoiciméid College Trustees Limited, Guinness and Mahon (Ireland) Limited agus Hamilton Ross Company Limited.

Conclúid

Ag féachaint do mhéid na gcásanna a iniúchadh agus a dúnadh i 2008, ba bhliain thar bheith gnóthach a bhí ann i ndáil le cásanna arbh fhéidir go ndearnadh mainneachtanaí i leith dhlí na gcuideachtaí a mheasúnú. Ag deireadh na bliana áfach ba léir gurbh ar na himeachtaí a nochtadh ag Anglo ba mó a bheadh aird na hOifige dírithe i 2009. Leis na hacmhainní atá ar fáil beidh sé deacair go leor agus ní baol ach gur dúshlán a bheidh ann an ghnáthobair bhraite a bhainistiú ag an am céanna. Sna himthosca sin, ní dóigh go mbeifear ag próiseáil an méid céanna cásanna i 2009.

Tugadh méid mór iasachtaí do stiúrthóirí i dtionscal na tógála i 2008 ainneoin feidhmíocht na hearnála a dhul i léig agus tuigtear go rachaidh sé rite ar chreidiúnaithe aon chuid nó roinnt den airgead sin a fháil ar ais i 2009 mar gheall air sin. Más mar sin a thitfidh sé amach is baolach go gcuirfear pionóis sna cúirteanna ar stiúrthóirí na gcuideachta maoiné agus tógála sin. Ba chóir do na stiúrthóirí sin gach iarracht a dhéanamh chun fiacha atá ag an gcuideachta orthu a íoc ar ais d'fhonn dliteanas na gcreidiúnaithe a íoslaghdú agus sin iompar a bheidh OSFC ag spreagadh go leanúnach.

Aidhm 3: Sáruithe Braite ar Achtanna na gCuideachtaí a Ionchúiseamh

Réamhrá

Sa rannán den Tuarascáil a chuaigh roimhe seo, rinneadh tagairt don iarratas rathúil a cuireadh chuig an Ard-Chúirt go gceapfaí Cigire chun roinnt cuideachtaí a imscrúdú. Sa rannán seo, pléifear na himeachtaí dlí a tionscnaíodh i réimse an fhorfheidhmithe mar ar tharla roinnt rudaí tábhachtacha i 2008. Áirítear orthu siúd:

- an chéad uair riamh a ciontaíodh stiúrthóir cuideachta as sócmhainní cuideachta a úsáid go feasach de shárú ar na srianta dlíthiúla maidir le hiasachtaí a thairiscint do stiúrthóirí. Chuir an Chúirt lena mbaineann pionóis shuntasacha ar dhaoine sa chás seo;
- an chéad chás riamh inar cuireadh pianbhreith choimeáda ar stiúrthóir cuideachta agus nár chuir an Chúirt an pianbhreith sin ar fionraí. Ach tá achomharc déanta ag an stiúrthóir in aghaidh an chiontaithe agus in aghaidh na pianbhreithe;
- léiriúchán úsáideach na Cúirte Uachtaraí ar an bhfrása “*persistently in default*” in Alt 160(2)(f) d’Acht na bliana 1990.

Pléitear a lán de na cásanna seo go mion níos faide ar aghaidh sa Tuarascáil seo.

Imeachtaí Dlí

Í 2008 baineadh amach 32 chiontú de bharr obair an OSFC, dícháilíodh 20 duine agus cuireadh srianadh ar dhuine amháin as dualgais agus oibleagáidí faoi dhlí na gcuideachtaí a shárú. Sa tábla thíos cuirtear ar fáil na sonraí comhfhreagracha i 2007.

Líon/Cineál na dTorthaí Forfheidhmithe Rathúla	2007	2008
Cúisimh ar ar ciontaíodh daoine	28	32
Cúisimh curtha san áireamh ar ciontú	16	1
Cúisimh a mheastar a bheith cruthaithe (Acht um Promhadh Ciontóirí 1907)	5	-
Orduithe dícháilithe	14	20
Orduithe a rinneadh in imeachtaí géilliúntais	2	-
Sriantaí	-	1
Cinntí eile	3	1
Iomlán	68	55

Bhí an Oifig páirteach i thart ar 52 imeacht dlí; bhí 27 díobh ar siúl sa Chúirt Uachtarach nó san Ard-Chúirt, 24 sa Chúirt

Dúiche agus ceann amháin sa Chúirt Choiriúil Chuarda. Is léir ón bhforléargas ar stádas agus ar thoradh na gcásanna seo in **Aguisín 3.1** gur éirigh leis an Oifig sna himeachtaí go ginearálta.

In **Aguisín 3.2** tá mion cur síos ar chineál na n-imeachtaí sibhialta agus coiriúla a tháinig chun cinn sna Cúirteanna éagsúla maille le achoimre ar thorthaí na gcásanna lena mbaineann.

In **Aguisín 3.3** tá sonraí na bpáirtithe ar chinn an Chúirt ábhartha gur sháraigh siad a ndualgais agus a n-oibleagáidí faoi Achtanna na gCuideachtaí, maille leis na ciontaí agus leis na pionóis ábhartha. I gcomhréir le cleachtas OSFC, cuireadh achoimre ar gach cás ar an suíomh idirlín www.odce.ie i gcaitheamh na bliana 2008.

Caingne Forfheidhmithe Sibhialta

Baineadh amach 20 ordú dícháilithe agus ordú srianta amháin i 2008 agus ba de thoradh caingne forfheidhmithe sibhialta ach cúig cinn de na horduithe dícháilithe sin. Seo a leanas sonraí na n-imeachtaí sibhialta:

- dhícháiligh an Ard-Chúirt dhá réag ar feadh tréimhsí ó cheathair go seacht mbliana i ndáil le stiúrthóirí ar baineadh a gcuideachtaí de chlár na cuideachta mar gheall ar loiceadh tuairisceán bliantúil a chlárú ag an am cuí agus ar chlis orthu a thaispeáint don Ard-Chúirt nach raibh dliteanais fós amuigh ag na cuideachtaí lena mbaineann. Tharla freisin nach raibh an Chúirt toilteanach duine amháin ar thionscain OSFC imeachtaí ina choinne a dhícháiliú. Ina bhformhór de na cásanna seo ba stiúrthóirí ar an iliomad cuideachtaí dócmhainneacha a bhí bainte den chlár na daoine a dícháilíodh. Cuireadh achomharc chuig an gCúirt Uachtarach maidir le dhá cheann de na horduithe dícháilithe seo;
- cuireadh ordú srianta ar feadh cúig bliana ar stiúrthóir a bhí bainteach le trí cuideachta a baineadh de Chlár na gCuideachtaí;
- dícháilíodh san Ard-Chúirt freisin triúr dhuine aonair ar feadh sé, ceathair agus trí bliana faoi seach mar iarmhairt ar iarratais de chuid OSFC a bhí bunaithe ar na cinntí diúltacha i dTuarascáil Chigirí na hArd-Chúirte ar National Irish Bank Ltd (NIB) agus National Irish Bank Financial Services Ltd (NIBFS). Bhac an Chúirt na horduithe dícháilithe seo ar bhonn coinníollacha áirithe go dtí go bhfaighfí toradh na n-achomharc a taisceadh ó shin i leith sa Chúirt Uachtarach. Níor éirigh le OSFC in iarratas dícháilithe a tionscnaíodh i ndáil leis an gceathrú duine sa chás agus is ábhar achomhairc an cinneadh sin faoi láthair.

Chlis ar an Oifig toradh dearfach a bhaint amach in aon sraith imeachtaí dícháilithe amháin anuraidh ach d'éirigh léi sna cinn eile. Sa chás seo áfach mar a chuirtear in iúl sa Réamhrá thuas rinneadh léiriúchán úsáideach sa Chúirt Uachtarach ar an bhfrása “*persistently in default*” in Alt 160(2)(f) d'Acht na bliana 1990. Féach **Léiriú 3.4.1** thíos mar a bhfuil achoimre ar an gcás seo.

Bhí thart ar sé imeacht déag a thionscain OSFC fós os comhair na hArd-Chúirte agus na Cúirte Uachtaraí ag deireadh na bliana. Bhain ocht gcinn de na cásanna seo le himeachtaí a d'eascair as Tuarascáil NIB/NIBFS agus bhain sé cinn eile díobh le stiúrthóirí cuideachtaí dócmhainneacha ar baineadh de Chlár na gCuideachta iad toisc gur theip orthu tuairisceán bliantúil a chlárú. Baineann an dá cás atá fágtha le cineálacha caingne dícháilithe eile a bhfuiltear fós ag fanacht ar thoradh achomhairc a rinneadh ina leith.

Caingne Forfheidhmithe Coiriúla

Déantar tagairt sa Réamhrá thuas do dhá chás suntasacha choiriúla; bhain ceann acu le stiúrthóir cuideachta ar cuireadh pianbhreith choimeáda air ach nár chuir an Chúirt an phianbhreith ar fionraí. Cuireadh an pionós seo ar an duine de bhrí gur ghníomhaigh sé mar stiúrthóir cuideachta le linn na tréimhse dícháilithe. Tá achomharc déanta ó shin i leith ag an duine atá i gceist maidir lena chiontú agus maidir leis na pionóis a bhain leis an gciontú ar a n-áirítear fineáil de €1,500 agus tréimhse dícháilithe bhreise ar feadh cúig bliana.

Bhain an dara cás suntasach le stiúrthóir cuideachta agus ba é an chéad uair riamh a ciontaíodh stiúrthóir cuideachta as sócmhainní cuideachta a úsáid go feasach de shárú ar na srianta dlíthiúla maidir le hiasachtaí a thairiscint do stiúrthóirí. Tá na saincheisteanna maidir leis an gcás seo i **Léiriú 3.3.1** thíos.

I 2008 tugadh chun críche imeachtaí forfheidhmithe coiriúla eile a bhain leis na cionta a leanas:

- gníomhú mar stiúrthóir le linn bheith srianta agus a bheith ag sárú na coinníollacha reachtúla a bhaineann le caipitliú cuideachta. D'ionchúisigh OSFC trí chás sa chatagóir seo i 2008 agus dá thoradh sin baineadh amach cúig chiontú (agus cuireadh cúiseamh amháin san áireamh) i gcoinne triúr stiúrthóir lena mbaineann. Mar iarmhairt ar a gciontaithe beidh na stiúrthóirí seo dícháilithe anois ar feadh tréimhsí a mhairfidh ó dhá bhliain go cúig bliana. Ar mhaithe le páirtithe leasmhara cuideachta a chosaint agus d'fhonn macántacht chóras an tsrianta a neartú leanfaidh an Oifig ar aghaidh leis an monatóireacht féachaint an bhfuil daoine atá dícháilithe nó srianta ag comhlíonadh cheangail an dlí;
- gníomhú mar iniúchóir le linn bheith neamhcháilithe. I 2008 d'ionchúisigh OSFC go rathúil duine aonair amháin i ndáil leis na cúig chúiseamh uile a bhí os comhair na Cúirte. Bhí a mhacasamhail de chás fós ar siúl ag deireadh na bliana. Maidir le ráitis airgeadais cuideachta is é tuairim OSFC go bhfuil sé den tábhacht

nach gcuirfeadh staid na ráiteas sin creidiúnaithe agus páirtithe leasmhara eile amú go háirithe in imthosca ina gcuirtear in iúl go hearráideach gur iniúch duine cáilithe na ráitis. Tugann OSFC iniúcháirí neamhcháilithe os comhair na Chúirte chun an baol seo a shrianadh agus chun muinín úsáideoirí ráiteas airgeadais as inchreiditheacht na ráiteas sin a láidriú;

- loiceadh maidir le leabhair chúí chuntas a choinneáil. D'ionchúisigh OSFC ceithre cinn de na cásanna seo i 2008 agus dá thoradh sin baineadh amach seacht gciontú i ndáil le cuideachtaí agus stiúrthóirí. Is é an fáth go n-áitíonn OSFC a thábhachtaí is atá sé go gcoinneodh cuideachtaí agus stiúrthóirí taifid agus córas cuntasaíochta dóthanach go gcuidíonn na nithe sin le lucht gnó chun léiriú cruinn a choimeád ar staid na cuideachta ó thaobh airgeadais de;
- faisnéis bhréagach a sholáthar. D'ionchúisigh an Oifig go rathúil i 2008 cás a bhain le faisnéis bhréagach de chineál ábhartha a sholáthar don OCC. I **Léiriú 3.2.1** thíos pléitear imthosca an cháis.

Imeachtaí Forfheidhmithe eile

Bhí baint ag OSFC le ceithre imeacht eile; bhain suntas áirithe le dhá ceann. I gceann amháin chuir OSFC isteach ar na himeachtaí chun cuireadh a thabhairt go hómósach don Ard-Chúirt duine nó níos mó a dhícháiliú dá deoin féin, dá mb'fhéidir sin, ag éirí as imeacht rathúil a bhain le déileáil chos istigh a thionscain Fyffes plc i gcoinne DDC plc agus roinnt páirtithe eile. Ní dhearna an Chúirt é sin áfach roimh an am a cuireadh na himeachtaí déileála chos istigh i gcrích. Ina dhiaidh sin áfach thionscain an Stiúrthóir iarratas rathúil dá chuid féin ar Imscrúdú Ard-Chúirte ar dhéileálacha áirithe le scaireanna i DCC plc agus in dhá chuideachta eile.

Bhain an dara cás le heisiúint chostas in achomharc rathúil a rinne stiúrthóir cuideachta dócmhainneach i gcoinne srianta a cuireadh air san Ard-Chúirt. Féach ar **Léiriú 4.1.1** sa chéad rannán eile den Tuarascáil.

Cásanna Forfheidhmithe

In **Aguisín 3.4** cuirtear faisnéis staitistiúil ar fáil maidir le láimhdeachas na gcásanna coiriúla i 2008. Rinne OSFC gníomhaíocht chomhbheartaithe i rith na bliana chun nach mór 260 cás nach raibh aon mhaitheas inmharthana acu ó thaobh ionchúisimh a dhúnadh; is de bharr sin is féidir le OSFC anois aird a dhíriú ar líon beag cásanna agus tosaíocht a thabhairt dóibh. Bhí thart ar 125 chás idir lámha aici ag deireadh na bliana; ba iad na 75 chás nua a fuarthas i 2008 a bhformhór sin.

Leagtar amach in **Aguisín 3.5** catagóirí ginearálta na gcionta sna 75 chás nua. Bhain an chuid is mó de na cásanna le daoine ar líomhnaíodh gur ghníomhaigh siad mar iniúchóir nó mar stiúrthóir tráth a raibh cosc orthu é sin a dhéanamh agus le cuideachtaí ar chlis orthu leabhair chúí chuntais a choinneáil.

Fo-Aidhm 3.1: Polasaí Forfheidhmithe Cothrom a Chur Chun Cinn

Choinnigh an Oifig leis i 2008:

- ag cabhrú leis na daoine ar mhian leo dlí na gcuideachtaí a chomhlíonadh .i. formhór na ndaoine agus
- ag cur in aghaidh mhí-iompar na ndaoine ar bhaolach go ngéillfeadh siad don chathú gan dlí na gcuideachtaí a chomhlíonadh.

Ag brath ar chineál an chiona agus ar a thromchúisí is atá an mí-iompar atá curtha in iúl, bíonn cur chuige céimneach ag OSFC maidir lena fhreagrachtaí rialúcháin ó:

- réiteach a bhaint amach maidir le mainneachtain, go
- caingean forfheidhmithe OSFC de chineál áirithe a thionscnamh, go
- cion indíotáilte a chur faoi bhráid an Stiúrthóra Ionchúiseamh Poiblí le go ndéanfar cinneadh faoi ar chóir an cás a thriail os comhair breithimh agus giúiré.

Is é toradh an chur chuige rialúcháin srathach seo nach dtéitear i mbun caingean dlí fhoirmeálta ach i mionlach de chásanna. Tá an Stiúrthóir ag dréim leis go leanfar chomh fada ar aghaidh agus is féidir a thuar leis an gcur chuige ginearálta seo agus le cibé mion-choigeartuithe is gá a dhéanamh i gcás forbairtí cáis le himeacht aimsire.

Fo-Aidhm 3.2: Ag Seasamh le Ceangail um Nochtadh

Tá sé de cheangal ar dhaoine a thairbhíonn de ionchorprú agus de phribhléid an dliteanais theoranta faoi Achtanna na gCuideachtaí cloí le dualgais agus le hoibleagáidí iarmhartacha áirithe. Orthu sin tá na ceangail a leanas:

- go mbeidh cuideachtaí a thrádálann sa Stát cláraithe,
- go gcoinneofar sonraí áirithe cuideachta, (m.sh., an áit a bhfuil an oifig chláráithe lonnaithe, ainmneacha na stiúrthóirí, etc.) chun dáta agus
- go mbeidh faisnéis faoi fheidhmíocht airgeadais agus oibriúcháin na cuideachta cruinn agus go dtabharfar chun dáta iad go pras.

Tá sé d'aidhm ag na ceangail seo go mbeidh trédhearcacht sa mhargadh sa chaoi is gur féidir leis na baill, le creidiúnaithe agus le páirtithe leasmhara eile cinneadh feasach a dhéanamh ar an mbaol a bhaineann le dul i bpáirtíocht leis an eintiteas trí scrúdú a dhéanamh ar an bhfaisnéis chláráithe atá ar fáil san OCC.

Arís i 2008 bhí mainneachtanaí cosúil le loicadh cuideachtaí agus stiúrthóirí cuideachtaí leabhair chuí chuntas a choinneáil le sonrú ar chlár oibre OSFC agus ionchúisíodh ceithre chás go rathúil agus ciontaíodh ceithre cuideachta agus beirt stiúrthóir de thoradh sin.

Cion is féidir bheith i bhfad níos tromchúisí is ea falsú doiciméad agus taifead cuideachta. Tá cúlra ciontaithe a baineadh amach in Aibreán 2008 i gcoinne duine a d'iarraídh a chomhstiúrthóir a dhíbirt ó cuideachta bheag trí thuairisceán bliantúil falsa a chlárú leis an OCC léirithe i **Léiriú 3.2.1.**

Léiriú 3.2.1: Faisnéis Fhalsa a thabhairt do Chláráitheoir na gCuideachtaí

Ba é cúlra an cháis seo go bhfuair OSFC gearán ó stiúrthóir cuideachta darb ainm Gortlee Stores Limited inar líomhnaíodh gur chuir foirm 'B10' a bhí cláraithe in OCC in iúl go bréagach go raibh sí éirithe as mar stiúrthóir na cuideachta.

Tar éis imscrúdú a dhéanamh chruthaigh OSFC don Chúirt ábhartha gurbh é ba chúis leis an chlárú litir a scríobh an stiúrthóir gearánaí mar dhea chuig chomhairleoirí gairmiúla na cuideachta ag rá go raibh sé ag éirí as oifig. Bhí an Chúirt sásta áfach gur bhrionnagh an cosantóir, an tUasal Patrick McFadden, síniú an ghearánaithe d'fhonn a pháirtí sa ghnó a dhíbirt go mídhleathach as a post mar stiúrthóir.

Tar éis dó pléadáil ciontach ar an aon chúiseamh amháin chiontaigh an Chúirt an tUasal McFadden agus ghearr fineáil de €500 air.

Fo-Aidhm 3.3: Pionós a Ghearradh ar Pháirtithe a Dhéanann Neamhaird de Leasanna Cuideachta nó de Leasanna Nach Iad

Ar chúiseanna a bhaineann le cosaint an phobail, tá roinnt forálacha curtha in Achtanna na gCuideachtaí a chuireann bac ar dhaoine neamhcháilithe nó dícháilithe gníomhú mar iniúcháirí, stiúrthóirí nó leachtaitheoirí cuideachta nó gníomhú go ginearálta nó i gcúisí sainithe áirithe. Mar a luaitear thuas d'ionchúisigh OSFC go rathúil cúigear dhuine faoin gceannteideal ginearálta seo i 2008.

Ar mhaithe le creidiúnaithe cuideachta agus le páirtithe leasmhara eile ní mór do stiúrthóirí cuideachta sócmhainní a gcuid cuideachtaí a chaomhnú agus toirmisctear sa dlí go sonrach iasachtaí iomarcacha a thabhairt as na sócmhainní sin do stiúrthóirí agus do dhaoine bainteacha eile. Tugadh chun suntais i dTuarascálacha Bliantúla OSFC roimhe seo an obair shuntasach a rinne OSFC sa réimse seo in imeacht na mblianta. Tá Treoir mhionsonraithe faoi Idirbhearta a mbíonn Stiúrthóirí páirteach iontu ar fáil i gcónaí ag www.odce.ie.

Mar a luaitear thuas ba i 2008 a ionchúisíodh ar díotáil den chéad uair riamh stiúrthóir cuideachta as sócmhainní cuideachta a úsáid go feasach de sháru ar na srianta dlíthiúla infheidhme. Pléitear i **Léiriú 3.3.1** a leanas na himthosca a bhaineann le ciontú ábhartha na Cúirte Cuarda.

Léiriú 3.3.1: Stiúrthóir a Ionchúiseamh ar Díotáil as Iasachtaí Iomarcacha a bhaint dá Chuideachta go feasach

I mí Iúil phléadail Stuart Fogarty, stiúrthóir Aubrey Fogarty Associates Ltd (“AFA”), ciontach i 16 chúiseamh faoi leith gur údaraigh sé nó gur cheadaigh sé don chuideachta suimeanna a thabhairt ar iasacht dó nuair a bhí a fhios aige nó nuair a bhí cúis réasúnach aige le creidiúint go raibh an chuideachta ag briseadh an dlí dá chionn sin. Shíl an Chúirt go raibh na cúisimh cruthaithe agus thug don chosantóir sochar an Achta um Promhadh Ciontóirí 1907 agus chaith amach na cúisimh tar éis a thabhairt dá haire gur thug sé €3,000 do charthanas.

I Nollaig 2005, thuiriscigh iniúchóirí AFA do OSFC gur thairbhig an tUasal Fogarty d’iasachtaí suntasacha ón chuideachta in athuair de shárú ar an dlí infheidhme.

Tar éis imscrúdú a dhéanamh thionscain OSFC imeachtaí achomair i gcoinne an Uasail Fogarty i lár na bliana 2007. Bhí na himeachtaí ann chun cinneadh a dhéanamh maidir le 13 chúiseamh a bhain le hidirbhearta leithleacha de €426,338 idir Meán Fómhair 2003 agus Nollaig 2005. Bhí an Stiúrthóir den tuairim go raibh imeachtaí achomair oiriúnach de bhrí gur aisíocadh na hiasachtaí don chuideachta, nach raibh aon dliteanais chánach nár íocadh agus nach raibh aon chailteanas fulaingthe ag aon pháirtí ag éirí as an sárú ar an dlí.

Mar a tharla dhiúltaigh an Breitheamh Dúiche dlínse sa chás agus is ar díotáil a déileáladh leis. D’ullmhaigh OSFC leabhar na fianaise agus ba é an Stiúrthóir Ionchúiseamh Poiblí a d’ionchúisigh an cás. I mBealtaine 2008 phléadail an tUasal Fogarty ciontach; ciontaíodh sa Phríomh-Chúirt Choiriúil é ar gach ceann de na 13 chúisimh agus gearradh fineálacha de €34,000 air. Ghearr an Chúirt téarma príosúnachta dhá bhliain, curtha ar fionraí air, maidir le ceann amháin de na cionta agus d’ordaigh an Chúirt dó ina dhiaidh sin 240 uair an chloig de Sheirbhís Phoiblí a dhéanamh maidir le dhá cheann eile.

De bhrí gur ciontaíodh an tUasal Fogarty ar díotáil i gcion a bhain le cuideachta mheasfaí é bheith dícháilithe faoi Alt 160(1) d’Acht na bliana 1990 ar feadh tréimhse cúig bliana mura n-athródh an Chúirt an tréimhse sin ar iarratas an ionchúisitheora. Ar iarratas ón SIP a rinneadh le tacaíocht ó OSFC, dhícháiligh an Chúirt an tUasal Fogarty ar feadh sé mhí ó 28 Bealtaine go 27 Samhain 2008. D’éirigh an tUasal Fogarty as bheith ina stiúrthóir ar thart ar 20 cuideachta ar feadh na tréimhse atá i gceist de thoradh an cháis.

Fo-Aidhm 3.4: Ag Gníomhú i gcoinne Páirtithe a Dhiúltaíonn Cuntasacht faoin Dlí

Coinníonn an Stiúrthóir leis go seasta ag ionchúiseamh cásanna ina mbíonn stiúrthóirí cuideachta ag tabhairt neamhaird ar an dlí de shíor. Tá cur síos i **Léiriú 3.4.1** a leanas ar aon chás dá leithéid a thionscain OSFC i 2003. Cé gur chlis ar achomharc OSFC i mBealtaine 2008 is díol

suntais an léiriúchán a thug Breithiúnas na Cúirte Uachtarái ar an bhfrása “*persistently in default in relation to the relevant requirements*” in Alt 160(2)(f) d’Acht na bliana 1990 agus an tacaíocht a thug an breithiúnas do thuairim OSFC gur fiú bacadh a chur san áireamh mar uirlis dhlíneach tráth a mbíonn rogha le déanamh ag an gCúirt in iarratas ar dhícháiliú.

Léiriú 3.4.1: Imeachtaí Dícháilithe i gcoinne Stiúrthóirí a rinne mainneachtanaí de shíor (“*persistently in default*”)

B’iad imthosca an cháis gur chlis ar stiúrthóirí Wood Products (Longford) Limited, Patrick McGowan agus Patricia McGowan, tuairisceán bliantúil a gcuideachta a chlárú le Cláraitheoir na gCuideachtaí ó 1991 go 2003. De thoradh an loicthe seo a bhí imithe in ainseal baineadh an chuideachta den Chlár agus díscaoileadh í i 1999.

I mBealtaine 2001 cuireadh an chuideachta ar ais ar an gClár trí ordú na hArd-Chúirte. Chuir an tOrdú de cheangail ar na stiúrthóirí gach tuairisceán bliantúil maille le tuairisceáin áirithe chánach nár tugadh ar aird go dtí sin a chur ar fáil. Chinn ar na stiúrthóirí an tOrdú sin a chomhlíonadh.

I Samhain 2003 thionscain OSFC imeachtaí dícháilithe i gcoinne an beirt stiúrthóirí faoi inter alia Alt 160(2)(f) ar an bhforas go ndearna siad “mainneachtanaí de shíor maidir leis na ceangail ábhartha” (“*persistently in default in relation to the relevant requirements*”). Ina dhiaidh sin chláraigh na Freagróirí na tuairisceáin bhliantúla agus chánach a bhí i gceist; d’éirigh Patricia McGowan as mar stiúrthóir agus ceapadh stiúrthóir eile ina háit.

I mí Feabhra 2005 tháinig an Ard-Chúirt ar an tuairim nárbh fhéidir a rá go raibh na Freagróirí ag déanamh mainneachtana de shíor toisc nach d’ainneoin idirghabháil na gCúirteanna ar níos mó ná ócáid amháin a tharla an neamhghníomh. Ba é tuairim na Cúirte dá réir nár chóir na Freagróirí a dhícháiliú.

Ar achomharc, chinn an Chúirt Uachtarach freisin, i mBealtaine 2008, gan na Freagróirí a dhícháiliú ar an mbonn nach ndéanfadh an dícháiliú aon mhaitheas ag an bpointe sin agus gur rídhoigh go ndéanfadh sé dochar do ghnó na cuideachta. Ach bhí an Chúirt den tuairim inter alia:

- gur chlis ar na Freagróirí ar feadh 13 bhliain a n-oibleagáid faoin dlí maidir le tuairisceáin forordaithe a chlárú leis an gCláraitheoir a chomhlíonadh. Ba chion coiriúil gach faillí. Sháraigh siad arís is arís eile oibleagáid shainordaitheach a bhí orthu mar stiúrthóirí cuideachta agus rinne siad cionta coiriúla dá réir. Chomh maith leis sin chlis orthu Ordú ón Ard-Chúirt a chomhlíonadh. Níor bheag san chun an choinníoll faoin Acht maidir le “mainneachtana a dhéanamh de shíor” (“*persistently in default*”) a shásamh;
- cé nach é príomhaidhm an dícháilithe daoine a phionósú ach an pobal a chosaint ba chóir go mbeadh roinnt den bhacadh sa rogha a dhéanann an Chúirt. Is cuid den pholasáí in Alt 160 go bhfeabhsófaí an rialachas corparáideach. Is mó ná riamh atá na Cúirteanna ag éirí airdeallach agus is lú ná riamh atá siad fulangach maidir le caighdeáin róscaoilte agus maidir le neamhaird ar an dlí.

Conclúid

Bhí méadú ar líon na gciontuithe agus na ndícháilithe a bhain an Chúirt amach i 2008 agus rinne an Chúirt roinnt cinntí i ndáil le himeachtaí forfheidhmithe dhlí na gcuideachtaí nach ndearnadh riamh cheana.

Ag deireadh na bliana bhí líon suntasach de chásanna ar na bioráin ag an Oifig agus is léir go mbeifear gnóthach sa bhliain atá amach romhainn ag iarraidh mí-iompar corparáideach braite a ionchúiseamh. Tabharfaimid aghaidh ar bhonn leanúnach ar shaincheisteanna tosaíochta i réimse dhlí na gcuideachtaí a chuireann bac ar an trédhearcacht, a chuireann iompar cothrom sa chaidreamh tráchtála idir pháirtithe leasmhara i mbaol agus a bhaineann an bonn den mhuinín sa mhargadh.

Aidhm 4 – Pionós a Ghearradh i leith Iompar Míchuí i dtaca le Cuideachtaí Dócmhainneacha

Réamhrá

Tá deacrachtaí airgeadais ag bualadh níos mó cuideachtaí anois de bharr an lag trá sa gheilleagar agus tá sé thar bheith tábhachtach go gcinnteoidh stiúrthóirí cuideachta go mbeidh siad freagracht i mbun gníomhaíochta i ndáil le páirtithe leasmhara agus go háirithe i ndáil leo siúd a chaillfidh airgead má tharlaíonn loiceadh dócmhainneach don cuideachta. Le go mbeidh siad freagrach agus tráthúil i mbun gníomhaíochta chun an chuideachta a shábháil nó, murar féidir sin, chun beart a dhéanamh le cuideachta dócmhainneach a fhoirceannadh ar bhealach ordúil agus iomchuí ba mhaith an mhaise do stiúrthóirí comhairle chuí a ghlacadh lena n-áirítear comhairle ghairmiúil. Mí chliseann

ar stiúrthóirí gníomhú go freagrach féadfaidh sé go gcuirfidh an Chúirt pionóis orthu amach anseo.

Léireofar sa chuid seo den Tuarascáil obair OSFC i 2008 i ndáil le:

- cuideachtaí dócmhainneacha faoi leachtú agus
- cuideachtaí neamhleachtaithe nó cuideachtaí dócmhainneacha díscailte.

Treochtaí Leachtaithe

Sa tábla a leanas léirítear líon na leachtuithe a cuireadh in iúl don OCC le blianta beaga anuas.

Leachtuithe	2004	2005	2006	2007	2008
Leachtuithe Creidiúnaithe	321	300	323	308	530
Leachtuithe Cúirte	40	49	31	36	83
Iomlán na gCuideachtaí Dócmhainneacha	361	349	354	344	613
Leachtuithe Comhaltáí	827	868	930	1,057	1,051
Na Leachtuithe uile	1,118	1,217	1,284	1,401	1,664

D'fhan líon na leachtuithe sócmhainneacha mórán mar an gcéanna idir 2007 agus 2008. Ach bhí ardú de 78% go dtí 613 ar líon na gcuideachtaí dócmhainneacha a cuireadh faoi leachtú agus is léiriú an méadú mór seo ar an meath tobann ar an ngeilleagar náisiúnta.

Tá go leor cuideachtaí ag tabhairt aghaidh ar dhúshlán shuntasacha faoi láthair. Maidir le meánlíon na leachtuithe dócmhainneacha bhí ardú ó 33 in aghaidh na míosa sa chéad ráithe de 2008 go 60 in aghaidh na míosa sa ráithe dheireanach. Ach tá súil leis go méadóidh an leibhéal sin a thuilleadh i 2009.

Cuideachtaí Dócmhainneacha faoi Leachtú de réir Earnáil Eacnamúil

Léirítear in **Aguisín 4.1** briseadh síos de réir earnáil eacnamúil ar chuideachtaí dócmhainneacha faoi leachtú trí thagairt a dhéanamh do na chéad tuarascálacha a fuarthas ó leachtaitheoirí i 2008. Ní haon iontas gur in earnáil na tógála a tharla níos mó ná a thrian de na leachtuithe dócmhainneacha uile a tuairiscíodh. Tríd is tríd bhí ardú de 81% ó 78 go 141 ar líon na gcuideachta dá leithéid a cuireadh faoi leachtú i 2008 i gcomórtas le 2007 i gcomhthéacs ardú de 42% ar fud na n-earnálacha uile. Taifeadadh arduithe inchomparáide i dtaca le ceapa níos lú

in earnáil na margaíochta agus na bolscaireachta (+138%), san earnáil earcaíochta agus slándála (+86%) agus san earnáil phobail agus shóisialta (+79%), rud atá níos deacra a thuiscint b'fhéidir.

Cuideachtaí Dócmhainneacha Neamhleachtaithe/Díscailte

Mar a cuireadh in iúl i dTuarascálacha Bliantúla a eisíodh roimhe níl aon fhiigiúirí deimhnithe a thugann léargas ar iomlán na gcuideachtaí dócmhainneacha neamhleachtaithe agus díscailte. Ag aon am amháin féadfaidh sé go bhfuil roinnt chéad cuideachta dhócmhainneacha neamhthéanta ar Chlár na gCuideachta atá éirithe as trádáil agus nach bhfuil curtha faoi leachtú. Bainfear go leor díobh sin den Chlár áfach in am agus i dtráth.

Tá figiúirí an OCC maidir le líon na gcuideachtaí díscailte le fáil, ach foláin siad idir chuideachtaí sócmhainneacha agus chuideachtaí dócmhainneacha. Braitheann líon na gcuideachtaí a dhíscailtear in aon bhliain ar bith ar ghníomhaíocht na bpáirtithe ábhartha a mbíonn ag iarraidh an chuideachta a bhaint den Chlár. Na caveat sin curtha san áireamh coimrítear sa tábla a leanas líon na gcuideachta a baineadh de Chlár na gCuideachta ó 2004 go 2008.

Cineál na Cuideachta Díscailte	2004	2005	2006	2007	2008
Bainte den Chlár ²³ ag OCC	1,401	9,514	5,255	4,085	5,804
Bainte den Chlár ²⁴ ag na Coimisinéirí Ioncaim	1,599	794	444	149	223
Bainte den Chlár ²³ go Deonach	3,595	3,316	3,757	3,975	4,542
Iomlán	6,595	13,624	9,456	8,209	10,569

Fo-Aidhm 4.1: Leachtaitheoirí a Mhaoirsiú agus iad ag Comlíonadh a nDualgas go Cuí

Ag tuairisciú faoi Alt 56 den Acht um Fhorfheidhmíú Dlí Cuideachtaí 2001

Léirítear próiseas agus scóip tuairisciú leachtaitheora in dhá fhoilseachán OSFC, Fógra Cinnidh D/2002/3 arna comhlánú le Fógra Cinnidh D/2003/1²⁵. Mar achoimre, tá ceangal dlí ar leachtaitheoir i gcuideachta atá faoi leachtú dócmhainneach forléasadh na cuideachta agus iompar aon duine a bhí ina stiúrthóir uirthi sa 12 mhí sular cuireadh faoi leachtú í a thuairisciú do OSFC. Ní mór don leachtaitheoir iarratas a chur chuig an Ard-Chúirt ar ordú srianta²⁶ le haghaidh gach duine de na stiúrthóirí mura ndíolmhaíonn an OSFC ón oibleagáid sin é. Measann an Oifig go bhfuil an díolúine oiriúnach nuair a chuireann an leachtaitheoir cosaint loighciúil faoina bráid a thacaíonn le dearbhú gur ghníomhaigh an stiúrthóir go macánta agus go freagrach agus cúrsaí na cuideachta a stiúradh aige/aici.

Tá sonraí maidir le líon na dtuarascálacha leachtaitheora i 2008 in **Aguisín 4.1.1**. Fuarthas 1,174 tuarascálacha leachtaitheora (1,007 in 2006). Ba thuarascálacha tosaigh²⁷ a bhí i 406 díobh sin (286 i 2007) ó 102 leachtaitheoir, agus ba thuarascálacha breise²⁸ nó deiridh²⁹ an 768 eile díobh (721 i 2007) ar leachtuithe cuideachta.

23 Alt 311 d'Acht na gCuideachtaí 1963 (arna leasú) agus alt 12 d'Acht na gCuideachtaí (Leasú) 1982 (arna leasú).

24 Alt 882 den Acht Comhdhlúite Cánacha, 1997.

25 Tá na doiciméid seo ar fáil ag www.odce.ie/en/media_decision_notices.aspx.

26 Sa chás go bhfuil duine aonair srianta, is féidir leis/léi gníomhú mar stiúrthóir nó mar rúnaí ar chuideachta ar feadh tréimhse chúig bliana ina dhiaidh sin ar an choinníoll amháin go dtagann an chuideachta sin le ceangail chaipitlithe iosta áirithe. I gcás cuideachta príobháidí, éilítear íosmhéid scairchaipitil ghlaite de €63,487. I gcás cuideachta theoranta poiblí is é €317,435 an figiúr comhfhreagrach. Ina theannta sin ní mór go mbeidh an scairchaipiteal glaoite íoctha ina iomláine in airgead tírím. Ceadáíonn ordú srianta do dhaoine aonair áis a bhaint as leasanna dliteanaí theoranta ar bhonn leanúnach. Duine a sháraíonn srianta na coinníollacha caipitlithe áfach beidh sé/sí i mbaol a c(h)iontáithe i gcion indiotáilte agus i mbaol a f(h)ineáil agus a d(h)ícháilithe ar feadh cúig bliana.

27 Is éard is tuarascáil tosaigh ann an chéad tuarascáil a fhaightear ó leachtaitheoir taobh istigh de sé mhí ó am a cheapacháin agus i bhformhór na gcásanna is ar bhonn na tuarascála sin a dhéantar an cinneadh maidir le faoiseamh a dheonú nó gan a dheonú. I roinnt cásanna deonaítear faoiseamh 'ag an am seo' d'fhonn imscrúduithe breise an leachtaitheora a éascú.

28 Is gnách go bhfaightear tuarascáil bhreise ón leachtaitheoir sé mhí ina dhiaidh má deonaíodh faoiseamh 'ag an am seo' agus dhá mhí dhéag ina dhiaidh más amhlaidh nach bhfuil an cinneadh faoi faoiseamh a dheonú nó gan a dheonú fós déanta. Is ar an dóigh seo a dhéanann an OSFC monatóireacht ar dhul chun cinn leachtaithe dhócmhainnigh. Os rud é gur ar bhonn na tuarascála tosaigh a dhéanfar an príomhchinneadh maidir le cé acu an díolmhófar nó ná díolmhófar leachtaitheoir ón oibleagáid imeachtaí srianta a thionscnamh is cinntí um 'fhaoiseamh' a bheidh i bhformhór na gcinntí i gcás tuarascálacha breise. An eiseacht maidir leis sin is ea nuair a bhí 'faoiseamh ag an am seo' deonta níos luaithe d'fhonn freastail a dhéanamh d'imscrúduithe breise an leachtaitheora.

29 Faightear tuarascáil deiridh ó leachtaitheoir ceithre seachtaine roimh chruinnithe deireanaigh nó roimh díscailde deireanaigh más leachtú Cúirte atá sa leachtú. Is cleachtas monatóireachta deiridh OSFC é seo sula ndíscailfeadh cuideachta dhócmhainneach.

I 2008 ba é 95% (96% i 2007) ráta géilliúntais na leachtaitheoirí a chuir an céad tuarascáil isteach in am. Rinne an Oifig monatóireacht freisin le cinntiú go raibh leachtaitheoirí ag cur isteach na tuarascálacha breise agus deiridh. Maidir leis na tuarascálacha uile a bhí dlite bhí ar an Oifig dul i mbun cumarsáid fhoirmeálta le 54 leachtaitheoir ar 110 ócáid (121 ócáid i 2007) le cur in iúl dóibh go raibh mainneachtain déanta acu maidir lena n-oibleagáidí tuairiscithe reachtúla.

Bhí caighdeán na dtuarascálacha a fuarthas go sásúil den chuid is mó i 2008 mar a bhí cheana. Bíonn an réimse seo faoi réir athbhreithniú leanúnach d'fhonn caighdeán an tuairiscithe a choinneáil slán.

Saincheisteanna eile um Leachtaitheoir agus Ghlacadóir

Fuair OSFC ceithre thuarascáil ó beirt leachtaitheoir i 2008 faoi Alt 299 d'Acht na gCuideachtaí 1963 (arna leasú). Ní dhearna aon ghlacadóir tuarascáil faoi Alt 299. Léirítear i dtuarascálacha den chineál sin, má dhéantar iad, an tuairim go bhféadfaidh iaroirfeach/iarchomhalta nó oifigeach/comhalta bheith ciontach i gcion maidir leis an gcuideachta a bhfuil sé/sí faoi dhliteanas coiriúil ina leith. I gcás ceann amháin de na tuarascálacha seo beidh an leachtaitheoir lena mbaineann ag tionscnamh imeachtaí srianta ina leith i 2009. Bhíothas ag breithniú na trí chás eile ag deireadh na bliana.

Ní fuair OSFC aon tuarascálacha i 2008 ó chomhlachtaí gairmiúla forordaithe maidir le hamhras faoi mhí-iompar leachtaitheora nó glacadóra de bhun alt 58 d'Acht na bliana 2001.

Níor iarraidh OSFC taifid leachtaitheora³⁰ nó glacadóra³¹ i 2008.

Athbhreithniú OSFC ar a Cleachtais ag eascair as Breithiúnas na Cúirte Uachtaraí le gairid

I mBreithiúnas na Cúirte Uachtaraí i 2008 cuireadh de cheangal ar an Stiúrthóir go ndéanfadh sé athbhreithniú ar nósanna imeachta na hOifige sa mhionlach de chásanna ina gcinneann sí gan ghlacadh le moladh leachtaitheora go scaoilfí óna (h)oibleagáid é/í imeachtaí srianta a thionscnamh i gcoinne stiúrthóir amháin nó níos mó. Bhain an breithiúnas le hachomharc stiúrthóir Tralee Beef and Lamb Ltd. (Faoi Leachtú) i gcoinne a shrianta. I **Léiriú 4.1.1** a leanas cuirtear breis sonraí ar fáil maidir leis an gcás agus maidir le breithiúnas na Cúirte Uachtaraí.

30 Faoi alt 57 den Acht um Fhorfheidhmíú Dlí Cuideachtaí, 2001.

31 Faoi alt 323A d'Acht na gCuideachtaí 1963 (arna chur isteach ag alt 53 d'Acht na bliana 2001).

Léiriú 4.1.1: Tralee Beef & Lamb Limited (Faoi Leachtú)

Cuideachta ab ea Tralee Beef and Lamb Ltd. le stiúrthóir feidhmeannach amháin agus le triúr stiúrthóir neamhfheidhmeannacha. Tar éis don chuideachta dul faoi leachtú i 2002 thuairiscigh an leachtaitheoir Tom Kavanagh don OSFC gur chóir imeachtaí srianta a thionscnamh i gcoinne an stiúrthóra feidhmeannaigh agus i gcoinne beirt de na triúr stiúrthóir neamhfheidhmeannacha. Mhol sé áfach nár chóir go dtionscnófaí imeachtaí i gcoinne an tríú stiúrthóir neamhfheidhmeannach (Simon Coyle a cheap infheisteoirí an Scéim Méadaithe Gnó). Tar éis do OSFC tuarascáil an leachtaitheora a bhreithniú tháinig sí ar an tuairim gur chóir go dtabharfadh gach duine den triúr stiúrthóir cuntas don Ard-Chúirt maidir lena n-iompar.

Ina dhiaidh sin chuir an Ard-Chúirt srianadh ar stiúrthóirí uile na cuideachta. Ach rinne an tUasal Coyle achomharc i gcoinne chinneadh na Cúirte.

An 1 Feabhra 2008 chuir an Chúirt Uachtarach ar leataobh Ordú na hArd-Chúirte a chuir srianadh ar an Uasal Coyle. I gcúrsa a bhreithiúnas cháin an Breitheamh Hardiman:

- an creat reachtach trína gcuirtear srianadh ar stiúrthóirí; thug sé *“draconian”* ar ghnéithe den chreat sin. Cuireadh in iúl go sonrach gur díol buartha é Alt 56 a chuireann oibleagáid ar leachtaitheoirí cuideachtaí dócmhainneacha ordú srianta a iarraidh i gcás nach ndéonaíonn OSFC díolúine ón oibleagáid sin ainneoin mholadh an leachtaitheoir go ndéonófaí, agus Alt 150 a chuireann dualgas cruthúnais aisiompaithe ar stiúrthóirí cuideachta chun an Chúirt a shásamh maidir lena n-ionrachas, lena bhfreagracht agus na hiarmhairtí a ghabhadh le srianadh ar cháil *“fhear ghairmiúil”* cosúil leis an tUasal Coyle i gcomórtas le *“stiúrthóir ‘cowboy’”*;
- an dóigh ar láimhseáil an Ard-Chúirt an cás. Measadh go raibh an srianadh a cuireadh ar an Uasal Coyle fabhtach toisc gur fairsingíodh dlí a bhí ann cheana chun é a shrianadh gan an fairsingiú a bhí molta ná a théarmaí a phlé ag an éisteacht. Cuireadh in iúl freisin gur dhíol buartha é nach raibh an cás i gcoinne an Uasail Coyle sainithe sách maith san Ard-Chúirt a rá nach ndearna an leachtaitheoir aon cháineadh agus nár eisigh OSFC aon ráiteas maidir leis na fáthanna gur díúltaíodh díolúine;
- an modh ar dhiúscair OSFC an ról a bhí aici. Cáineadh an diúltú d'iarratas an leachtaitheora go ndíolmhófaí an tUasal Coyle, an loiceadh na fáthanna a bhí leis an diúltú a insint agus gan bheith i láthair ag na héisteachtaí san Ard-Chúirt agus sa Chúirt Uachtarach. (Dealraíonn sé nár chuir comhairleoirí dlí an leachtaitheora in iúl don Chúirt Uachtarach roimh an éisteacht go raibh OSFC toilteanach páirt a ghlacadh in éisteacht an achomhairc os comhair na Cúirte Uachtaraí.)

I ndiaidh an Bhreithiúnais agus ag éirí as iarratas an Uasail Coyle ar a chostais (i gcúinsí nach raibh maoiniú dóthanach le fáil ón leachtú chun aon deonú costais dá leithéid a chlúdach), tugadh cuireadh do OSFC teacht os comhair éisteacht na Cúirte Uachtaraí i ndáil leis an iarratas seo. Phléigh na páirtithe éagsúla an cás agus mar aitheantas ar imthosca áirithe an cháis d'aontaigh OSFC ranníocaíocht a dhéanamh i gcomhair chostais achomharc an Uasail Coyle os comhair na Cúirte Uachtaraí. Ar an mbonn sin ní dhearna an Chúirt Uachtarach aon ordú maidir le costais.

Is soiléir gur breithiúnas tábhachtach breithiúnas na Cúirte Uachtaraí ach is rud atá fós le déanamh amach cén tábhacht a bheidh leis maidir le hoibriúcháin córas maorsithe cuideachtaí dócmhainneacha faoi leachtú go ginearálta. Ar a shon sin chuir na tráchtanna a rinneadh an Chúirt sa réimse seo iontas ar OSFC toisc go sílfí go mbeadh scrúdú ó ghné na Bunreachta de déanta ag Oifig an Ard Aighne ar an bhforáil ábhartha lena bhforáiltear do shrianadh ar stiúrthóirí cuideachtaí dócmhainneacha sular achtaíodh í. Chomh maith leis sin ceapadh srianadh go sonrach mar phionós cuí i ndáil le mí-iompar measartha corparáideach. Measadh go mbeadh srianadh comhsheasmhach le ceart coitinne an duine a bheatha a shaothrú dá gceadófaí do dhuine a bhí faoi ordú srianta gníomhú ar bhonn leanúnach i bpost cúramach i gcuideachta ach í bheith caipitlithe go measartha. Ag an am céanna, thabharfadh na rialacha a bhaineann le caipitliú cuideachta cosaint áirithe do chreidiúnaithe agus don phobal i gcoitinne dá gcliseadh ar ghnó an té a bhí srianta níos deireanaí.

Maidir le cur i bhfeidhm chóras Alt 56 is amlaidh nach bhfuil sé de cheangal ar thart ar cúigeir as gach seisear stiúrthóir cuntas a thabhairt ar a n-iompar san Ard-Chúirt de bharr cinntí OSFC díolúine bunaithe ar a gcuid tuarascálacha a dheonú ar na leachtaitheoirí ábhartha. Bhí ard-chomhréir ar feadh roinnt bhlianta idir cinntí OSFC maidir le díolúine agus cinntí deireanacha na hArd-Chúirte maidir le buanna an tsrianta. Dá réir sin tá OSFC den tuairim nach bhfuil oibriúcháin Alt 56 ag cur aon ualach ródhóthanach ar stiúrthóirí cuideachtaí dócmhainneacha faoi leachtú.

Ag eascairt as tráchtanna na Cúirte Uachtaraí maidir leis an gcás seo léiríonn OSFC anois na fáthanna nach ndéonaíonn sí díolúine sa líon beag de chásanna nach nglacann an Oifig le moladh leachtaitheora faoiseamh a dheonú ar stiúrthóir áirithe (mar a tharla i gcás an Uasail Coyle). In ainneoin na dtráchtanna a rinne an Chúirt Uachtarach tá an Stiúrthóir sásta go ndiúscaíonn an Oifig na freagrachtaí atá uirthi sa réimse de réir idir litir agus spiorad an dlí.

Athbheithniú OSFC ar a Cleachtais maidir le Tuarascálacha Leachtaitheora

Ag féachaint dá hacmhainní teoranta rinne an Oifig athbheithniú i 2008 féachaint cén athruithe arbh fhéidir a dhéanamh ar nósanna imeachta chun an méadú ar leachtuithe dócmhainneacha a bhainistiú. Ag deireadh na bliana cinneadh ar chealú an cheangail a bhí ar leachtaitheoirí tuarascálacha breise agus deiridh a thabhairt ar aird don Oifig má bhí cinneadh deimhnithe déanta aici iad a dhíolmhú nó gan a dhíolmhú óna n-oibleagáidí ordú srianta a iarraidh maidir leis na stiúrthóirí a bhí i gceist. Ba chóir gurbh fhearrde cumas na hOifige an méid mór tuarascálacha tosaigh leachtaitheora a láimhseáil an cinneadh seo. Laghdóidh sé freisin an t-ualach riaracháin ar leachtaitheoirí amach anseo.

Fo-Aidhm 4.2: Iompar Stiúrthóirí a Mheasúnú in Imthosca Leachtaithe Dócmhainnigh

Rinne OSFC cinntí faoi 1,098 dtuarascáil leachtaitheora i 2008; tuarascálacha tosaigh a bhí i 351 agus tuarascálacha breise nó deiridh a bhí i 747 acu.

Cinntí OSFC i leith Faoisimh

Maidir leis na 351 thuarascáil tosaigh bhí ardú ábhartha ar chomhréir na gcásanna 'faoiseamh iomlán' (ó 65% go 71%) idir 2007 agus 2008 faoi seach agus titim dá réir ar chomhréir na gcásanna 'gan faoiseamh' (ó 10% go 7%). Is soiléir le blianta beaga anuas gur treo leanúnach atá sa mhéadú ar na cinntí 'faoiseamh iomlán'. Seo a leanas tréithe na gcinntí i leith faoisimh i 2008 (i gcomórtas le 2007):

Cineál an Chinnte	2007	%	2008	%
Faoiseamh iomlán ³²	189	65%	251	71%
Gan faoiseamh ³³	30	10%	23	7%
Faoiseamh 'ag an am seo' ³⁴	63	22%	70	20%
Páirtfhaoiseamh ³⁵	7	3%	6	2%
Cinntí eile	0	0%	1	0%
Iomlán	289	100%	351	100%

Is cinnte nuair a bhíonn cinntí maidir le 'gan faoiseamh' nó 'páirtfhaoiseamh' á ndéanamh ag OSFC nach cinntí maidir le hionrachas nó le freagracht na stiúrthóirí lena mbaineann atá i gceist agus bheadh sé míchuí dá ndéanfaí aon tatal nó aon líomhain dá leithéid. Is faoin Ard-Chúirt (tar éis fianaise leachtaitheora agus mínithe stiúrthóirí cuideachta a éisteacht) atá sé cinneadh a dhéanamh faoi ar chóir dearbhú um shrianadh a dhéanamh maidir le haon stiúrthóir cuideachta faoi leith.

Tá liostaí iomlána de na cuideachtaí ar deonaíodh 'faoiseamh iomlán' agus faoiseamh 'ag an am seo' ina leith le fáil i bhFógra Eolais OSFC Uimh. I/2009/2 ar shuíomh idirlín OSFC ag www.odce.ie.

Le linn do leachtaitheoirí a gcuid tuarascálacha a ullmhú is nós do OSFC iad a spreagadh chun moladh cuí a dhéanamh maidir le faoiseamh trí thagairt a dhéanamh do thorthaí a gcuid imscrúduithe. Le linn di cinntí a dhéanamh maidir le faoiseamh bíonn an Oifig i bhfách lena chinntiú nach gcuirfead ar aon stiúrthóir gan ghá, an trioblóid a bhaineann le héisteacht san Ard-Chúirt i gcás go bhfuil sé léirithe go soiléir aige nó aici gur ghníomhaigh sé nó sí go macánta le linn dó/dí cúrsaí an tionscadail loicthe a stiúradh.

Ar Lorg Cinntí Cúirte faoi na hIarratais um Shrianadh

I 2008 rinne an Chúirt cinntí i 54 chás (78 i 2007) i gcás ina ndearna OSFC cinntí gan faoiseamh nó páirtfhaoiseamh a dheonú roimhe sin. Sna cásanna sin, chuir an Ard-Chúirt ordú srianta nó dícháilithe ar dhuine amháin nó níos mó de na stiúrthóirí i 49 gcás (75 i 2007), is é sin i 91% de na cásanna (96% i 2007). Ní dhearnadh aon ordú srianta maidir leis na cúig chás a bhí fágtha (trí cinn i 2007). Tá sé le tuiscint ó na torthaí sin go bhfuil ag éirí leis an OSFC cásanna atá oiriúnach do chuingean san Ard-Chúirt a aithint.

32 Deonaíodh 'faoiseamh iomlán' i gcásanna a raibh OSFC sásta, bunaithe ar eolas a chuir an leachtaitheoir ar fáil nó ar chúis éigin eile, go raibh sé taispeánta ar bhealach sásúil ag stiúrthóirí uile na cuideachta dócmhainní gur ghníomhaigh siad go macánta agus go freagrach agus cúrsaí na cuideachta á stiúradh acu.

33 Níor deonaíodh faoiseamh nuair a bhí an OSFC sásta, bunaithe ar eolas a chuir an leachtaitheoir ar fáil nó ar chúis éigin eile, nach raibh sé taispeánta ar bhealach sásúil ag aon duine de stiúrthóirí na cuideachta dócmhainní gur ghníomhaigh siad go macánta agus go freagrach agus cúrsaí na cuideachta á stiúradh acu.

34 Deonaíodh faoiseamh 'ag an am seo' i gcásanna ina raibh OSFC sásta gur theastaigh tuilleadh ama ón leachtaitheoir chun na cúinsí ba chúis le forléasadh na cuideachta a imscrúdú mar ba chúfí. Cuireann an OSFC ceangal ar leachtaitheoirí den chineál sin an dara tuarascáil a chur isteach; déantar cinneadh nua maidir le faoiseamh ina dhiaidh sin.

35 Deonaíodh 'páirtfhaoiseamh' nuair a bhí an OSFC sásta, bunaithe ar eolas a chuir an leachtaitheoir ar fáil nó ar chúis éigin eile, go raibh sé taispeánta ag roinnt de stiúrthóirí na cuideachta dócmhainní gur ghníomhaigh siad go macánta agus go freagrach agus cúrsaí na cuideachta á stiúradh acu cé nárbh fhíor sin do stiúrthóirí uile na cuideachta.

Maidir le stiúrthóirí aonair, cuireadh ordú srianta ar 76 stiúrthóir (69 i 2007), dícháilíodh seisear stiúrthóir³⁶ (seachtar i 2007) agus cuireadh idir ordú srianta agus ordú dícháilithe ar beirt stiúrthóir i 2008 (duine amháin i 2007). Is ionann sin agus 90% de na 92 stiúrthóir a bhí ina n-ábhar d'imeachtaí um shrianadh nó dhícháiliú i 2008.

Chuir an Ard-Chúirt ordú srianta ar 81 dhuine nua i 2008; is de bharr imeachtaí de bhun Alt 56 a srianadh 78 acu. Maidir leis an triúr eile, ba stiúrthóir ar chuideachta dhócmhainneach a baineadh de Chlár na gCuideachta duine amháin acu agus d'eascair an t-ordú srianta a cuireadh ar an mbeirt eile as leachtú a ghabhann i bhfad siar go dáta roimh bhunú OSFC.

Tríd is tríd bhí laghdú glan ó 791 go 624 ar líon na ndaoine ar Chlár OCC na nDaoine Srianta de bhrí gur baineadh den Chlár i 2008 roinnt daoine a cuireadh ordú srianta orthu níos luaithe toisc go raibh a dtéarmaí srianta cúig bliana istigh. Cuireann an tábla a leanas in iúl líon na ndaoine ar Chlár na nDaoine Srianta ag deireadh gach bliana ó 2004 i leith.

Líon na Stiúrthóirí a bhí stádas srianta acu ó dheireadh 2004 go deireadh 2008 go huile

Deireadh 2004	Deireadh 2005	Deireadh 2006	Deireadh 2007	Deireadh 2008
487	600	685	791	624

Coinníonn Cláraitheoir na gCuideachtaí cláir chun dáta de na daoine srianta agus dícháilithe agus tá áis chuardaigh phoiblí ar líne le haghaidh na gclár sin ar fáil ag www.cro.ie.

Maidir leis na himeachtaí um shrianadh a tugadh chun críche san Ard-Chúirt i 2008 léirítear in **Aguisín 4.2.1** den Tuarascáil seo toradh na gcásanna ina ndearnadh orduithe srianta móide ainmneacha na ndaoine a bhí i gceist.

Ainmnítear in **Aguisín 4.2.2** na cúig chuideachta ar chinn an Ard-Chúirt i 2008 nár chóir ordú srianta a chur ar aon duine dá stiúrthóirí.

Tugann an Stiúrthóir moladh do roinnt leachtaitheoirí atá toilteanach imeachtaí dícháilithe i ndáil le mí-iompar tromchúiseach braite a thionscnamh ar bhonn leanúnach. I 2008 tionscnaíodh imeachtaí rathúla i gcoinne ochtar stiúrthóir ar chuideachtaí dócmhainneacha (ochtar i 2007). Ainmnítear in **Aguisín 4.2.3** na daoine atá i gceist agus na tréimhsí dícháilithe. Tá roinnt faisnéise maidir leis na cásanna seo ar fáil i **Léiriú 4.2.1** a ghabhann leis seo. Tá súil leis an Stiúrthóir go dtionscnofar cásanna eile cosúil leo sin i 2009.

³⁶ Duine a dhícháilítear san Ard-Chúirt toirmiscear é ó bheith ceaptha nó ó ghníomhú mar iniúchóir, mar stiúrthóir nó mar oifigeach eile, mar ghlacadóir, mar leachtaitheoir nó mar scrúdaitheoir agus ó bheith bainteach ar bhealach ar bith, bíodh sé go díreach nó go hindíreach go hiomlán nó go páirteach i gcur chun cinn, i bhfoirmiú nó i mbainistíocht chuideachta ar bith nó aon chumann atá cláraithe faoi na hAchtanna um Chumainn Tionscail agus Soláthair. Duine atá dícháilithe agus a sháraíonn ordú Cúirte dlífeair a chiontú agus a dhícháiliú ar feadh deich mbliana.

Léiriú 4.2.1: Cuideachtaí Dócmhainneacha : Dícháilithe Leachtaitheora i 2008

Cuireadh ordú dícháilithe ar feadh ocht mbliana ar an Uasail Colm Griffin stiúrthóir ar Rosmuc Developments Ltd, cuideachta thógála. Bhí fianaise ar loiceadh maidir le leabhair chuntais agus taifid chuí a choinneáil, ar loiceadh cuntais iniúchta a ullmhú, ar neamhaird a dhéanamh d'oibleagáidí maidir le cáin agus d'oibleagáidí tuairisceán reachtúil a chur chuig OCC agus ar úsáid chaloiseach sonrasc chun íocaíocht Chánach Conarthaí Iomchuí (CCI) a sheachaint.

Cuireadh ordú dícháilithe ar an Uasail David Kavanagh, stiúrthóir na gcuideachtaí iompar lastais Kamar Transport Ltd agus Kamar Transport (Kilkenny) Ltd. D'éist an Chúirt le fianaise ar íocaíochtaí toiliúla tosaíochta agus ar loiceadh leabhair chuntais agus taifid chuí a choinneáil, ar loiceadh cáin a bhí dlite a sheoladh ar aghaidh agus ar loiceadh cúrsaí na gcuideachta seo agus cuideachtaí gaolmhara eile a scaradh ó chéile.

Dícháilíodh ar feadh sé bliana an duine beirt stiúrthóir ar Devey Enterprises Ltd. a chuireadh seirbhísí plástrála ar fáil don earnáil tógála chónaitheach. Bhí fianaise ann gur ghlac na stiúrthóirí an tUasal Mark Devey agus Jacinta Devey Uas. le hiasachtaí mídhleathacha de €2.8 milliún ón gcuideachta chun a leasa pearsanta agus nár íocadh ar ais iad, go ndearna siad íocaíochtaí tosaíochta roimh leachtú agus gur chlis orthu leabhair chuntais agus taifid chuí a choinneáil agus tuairisceáin chánach agus taifid chuí a choinneáil agus tuairisceáin chánach agus taifid chuí a choinneáil agus tuairisceáin chánach agus taifid chuí a choinneáil agus tuairisceáin chánach ar feadh roinnt blianta. Ba mhó ná €1 milliún na dliteanas chánach ar leachtú.

Dícháilíodh an tUasal Simon Bermingham, stiúrthóir Bermingham Construction Ltd, ar feadh cúig bliana. D'éist an Chúirt le fianaise nár coinníodh leabhair chuntais agus taifid chuí, nár ullmhaíodh cuntais iniúchta agus gur bheag an iarracht a bhí déanta oibleagáidí cánach a chomhlíonadh agus tuairisceán bliantúil a chur chuig OCC. Measadh go raibh dliteanas cánach de €500,000 ann.

Dícháilíodh an tUasal Conor Govern agus Eimear Govern Uas., stiúrthóirí Oakley Formwork Ltd. a mhonaraigh múnlóireachtaí éagsúla coinceáide, ar feadh cúig bliana an duine. Bhí fianaise ann nár coinníodh leabhair chuntais agus taifid chuí, nár ullmhaíodh cuntais iniúchta, gur cláraíodh tuairisceán mícheart agus ganniontráilte leis na Coimisinéirí Ioncaim, go ndearnadh íocaíochtaí tosaíochta chun ráthaíochtaí pearsanta a laghdú agus nár cláraíodh tuairisceáin reachtúla le OCC ar feadh roinnt blianta.

Dícháilíodh an tUasal Gary Keating, stiúrthóir ar Keating Interiors Ltd, ar feadh ceithre bliana agus srianadh é ar feadh cúig bliana. Bhí fianaise ann gur brionnáíodh síniú stiúrthóirí eile ar ráitis airgeadais na cuideachta agus go raibh níos mó ná €900,000 d'fhiacha amuigh ag na Coimisinéirí uirthi.

Faoiseamh ó Shrianadh

Féadfaidh stiúrthóir atá srianta iarratas ar fhaoiseamh iomlán nó páirteach a chur chuig an Ard-Chúirt taobh istigh de bhliain amháin ón uair a rinneadh an t-ordú srianta.

Féadfaidh an Ard-Chúirt, má mheasann sí go bhfuil sé cóir agus cothromasach é a dhéanamh, faoiseamh dá leithéid a dheonú ar cibé téarmaí agus coinníollacha a shíleann sí a bheith iomchuí³⁷.

Déanann OSFC monatóireacht ar iarratais ar fhaoiseamh arna bpleanáil agus bíonn sí ag iarraidh idirghabháil a dhéanamh i gcásanna iomchuí chun comhchuibheas an chórais reachtúil atá ann a choinneáil slán an oiread agus is féidir. Chomh fada agus is eol don Oifig ní dheanadh aon iarratais ar fhaoiseamh i 2008. Ach is eol go bhfuil achomharc á dhéanamh maidir le trí ordú srianta sa Chúirt Uachtarach.

Ar Lorg Stiúrthóirí atá ag sárú Coinníollacha um Dhícháiliú nó um Shrianadh

Mar a chuirtear in iúl thuas sa Tuarascáil seo, tugann imscrúduithe OSFC le tuiscint ó am go chéile go bhfuil roinnt daoine atá dícháilithe nó srianta ag gníomhú i gcuideachtaí i gcónaí de shárú ar an dlí. Leanfaidh an Oifig léi ag ionchúiseamh daoine dá leithéid d'fhonn an baol do ghníomhaíocht dhliteanach gnó chorparáidigh a laghdú.

Orduithe Dícháilithe Measta

I gcás duine a chiontaítear ar díotáil in aon chion indíotáilte a bhaineann le cuideachta, nó a mbaineann calaois nó mímhacántacht leis foráiltear sa dlí³⁸ go measfar é/í a bheith faoi réir ordú dícháilithe ar feadh tréimhse chúig bliana ó dháta an chiontaithe nó ar feadh cibé tréimhse eile a ordóidh an chúirt, ar iarratas ón ionchúisitheoir. Tá cás a bhaineann le stiúrthóir amháin a dícháilíodh faoin bhforáil seo i 2008 i **Léiriú 3.3** sa rannán den Tuarascáil roimhe seo.

Tá suas le 2,700 duine (2,200 ag deireadh 2007) ainmnithe anois ar Chlár na nDaoine Dícháilithe cé go ndearraíonn sé go bhfuil roinnt iontrálacha ann faoi dhó. Meastar 2,444 dhuine a bheith dícháilithe; is trí Ordú na hArd-Chúirte a dícháilíodh 163; dícháilíodh 36 ag eascirt as loiceadh an dícháiliú i ndlínse eile a fhógairt, agus dícháilíodh 12 ar an mbonn gur ghníomhaigh siad mar stiúrthóirí le linn dóibh bheith srianta.

Fo-Aidhm 4.3: Iompar Calaoiseach nó Maslach a Phionósú

Réamhrá

I dTuarascálacha Bliantúla a eisíodh roimhe seo tá sé curtha in iúl ag OSFC go bhfuil sí i bhfách le himscrúdú a

dhéanamh ar chleachtais ‘athbheochana’ (‘phoenix’) nó ar chleachtais eile arb é an gnáth-thoradh a bhíonn orthu go nglacann cuideachta nua sócmhainní agus gnó (ach ní dliteanais) na cuideachta loicthe chuige féin i dtreo is:

- go saobhtar an iomaíocht sa mhargadh gnó infheidhme toisc go dtairbhíonn an cuideachta de chostais níos ísle ná costais an mhargaidh (mar shampla trí neamhíocaíocht chreidiúnaithe agus/nó na gCoimisinéirí Ioncaim). Dá thoradh sin d’fhéadfaí buntáiste míchothrom iomaíochta a bhaint amach i láthair an mhargaidh;
- go bhfulaingtíonn creidiúnaithe cailteanas airgeadais agus gur féidir go gclisfidh ar chuid acu dá bharr, agus
- nach mbíonn dliteanas pearsanta ar stiúrthóirí i ndáil le cailteanas tráchtála nó go mbíonn bealach éalaithe eile acu ón bhfreagracht as loiceadh na cuideachta.

Cuideachtaí atá ‘Bainte de’ Chlár na gCuideachtaí

Dhírigh OSFC a haird ar bhonn leanúnach i 2008 ar chuideachtaí dócmhainneacha ar thréig a stiúrthóirí iad agus ar “baineadh de” Chlár na gCuideachtaí iad ina dhiaidh sin as siocair loicthe tuairisceáin bhliantúla a chlárú. Tá an bealach oscailte don Stiúrthóir iarratas a chur chuig an Ard-Chúirt³⁹ chun stiúrthóirí cuideachtaí dá leithéid atá bainte de chlár na gcuideachta a dhícháiliú. Ach foráiltear sa dlí⁴⁰ freisin nach féidir leis an Ard-Chúirt ordú dícháilithe a chur ar dhuine a léiríonn don chúirt nach raibh aon dliteanais ag an cuideachta tráth ar baineadh den Chlár í nó go raibh na dliteanais sin diúscartha roimh thionscnamh an iarratais ar dhícháiliú. In ionad breithniú a dhéanamh ar cén pionós ba chóir a fhorchur, féadfaidh an Chúirt na stiúrthóirí a shrianadh i gcás go mbreithníonn sí nach bhfuil údar leis an dícháiliú.

Ach ní thagann caingean Cúirte i gceist i ndáil le gach cuideachta atá bainte den chlár a ndéanann an Oifig imscrúdú uirthi. I roinnt cásanna bíonn na hiarstiúrthóirí in ann OSFC a shásamh go raibh na dliteanais uile réitithe tráth ar baineadh an chuideachta den chlár nó sular cuireadh tús le haon imeachtaí Cúirte. Chuige sin éilítear de ghnáth go n-ullmhófar agus go gcuirfear isteach na cuntais chúil, cuntais a théann na blianta siar go minic, ina dtaispeántar trádáil na cuideachta sa tréimhse ó cuireadh an tsraith dheireanach chuntas chuig an OCC nó ó rinneadh an t-ionchorprú i gcásanna nár cuireadh cuntais isteach riamh chuig an OCC. Éilítear ar na hiarstiúrthóirí freisin go dtaispeánfaidh siad go bhfuil na fiacha atá amuigh ag na creidiúnaithe uile íoctha nó réitithe agus is minic a iarrtar fóruí neamhspleách maidir leis sin ar chreidiúnaithe aonair.

Mar shampla air sin rinne stiúrthóirí ceithre chuideachta ghaolmhara a bhí bainte den chlár íocaíochtaí de thart ar €50,000 i 2008 chun dliteanais na gcuideachta i leith na

37 Alt 152 d’Acht na gCuideachtaí 1990.

38 Alt 160(1) d’Acht na gCuideachtaí 1990.

39 Alt 160(2)(h) d’Acht na gCuideachtaí 1990.

40 Alt 160(3A) d’Acht na gCuideachtaí 1990.

gCoimisinéirí Ioncaim a réiteach. Níor chuaigh an Stiúrthóir ar aghaidh leis na himeachtaí dícháilithe sna cásanna sin.

I roinnt beag cásanna a ndearna an Oifig scrúdú orthu, rinne na hiarstiúrthóirí iarracht a gcúrsaí a thabhairt chun rialtacha tríd an gcuideachta a bhí bainte den Chlár a chur ar ais go foirmeálta ar an gClár. Mar chuid den nós imeachta sin ullmhaítear agus cuirtear isteach chuig an OCC na tuairisceáin bhliantúla uile atá fós gan bheith curtha isteach, íoctar na táillí a gearradh de bharr an chláráithe ródheireanaigh agus cuirtear iarratas foirmeálta chuig an Ard-Chúirt an chuideachta a chur ar ais ar an gClár i gcás a bhfuil an chuideachta bainte de ar feadh níos mó ná bliain amháin.

Mar a chuirtear in iúl sa rannán den Tuarascáil a chuaigh roimhe seo d'éirigh leis an Oifig ordú dícháilithe a bhaint amach i leith 12 stiúrthóirí ar chuideachtaí a bhí bainte den chlár (12 i 2007 freisin) ar fheadh tréimhsí ó cheithre bliana go seacht mbliana agus ordú srianta a bhaint amach i leith stiúrthóirí amháin ar feadh na tréimhse sainordaithe de chúig bliana. In **Aguisín 3.3** tá sonraí maidir leis na 12 ordú dícháilithe agus maidir leis an ordú srianta amháin a baineadh amach. Ag deireadh na bliana 2008 bhíothas ag feitheamh ar éisteacht chúig chás eile san Ard-Chúirt. Bhí go leor cásanna breise fós oscailte ag ceann na bliana agus tá súil leis go dtionscnófar roinnt chásanna eile i 2009.

I bhfianaise na n-iarmhairtí poitéinsiúla ar thréigean cuideachtaí dócmhainneacha a léirítear thuas, ba chóir do stiúrthóirí cuimhneamh air go mbeadh sé den chríonnacht a gcuideachta a chur faoi leachtú go foirmeálta nó socrúithe a dhéanamh chun í a bhaint den Chlár go deonach. I gcás cuideachta ar bith a baineadh de Chlár na gCuideachtaí, ba chóir go mbeadh stiúrthóirí feasach faoi go bhfuil na sócmhainní atá fágtha inti dílsithe don Aire Airgeadais de réir fhorálacha na n-Achtanna Maoine Stáit. Is é polasaí OSFC aird na Roinne Airgeadais a tharraingt ar chásanna ina n-aithnítear go raibh sócmhainní suntasacha ag cuideachta an tráth ar baineadh den Chlár í.

Conclúid

De thoradh an mhaoirsithe a rinne OSFC ar chuideachtaí dócmhainneacha i 2008 cuireadh ordú srianta nó dícháilithe ar thart ar 96 stiúrthóir i 2008. Beidh OSFC ag tabhairt aghaidh ar an réimse seo ar bhonn leanúnach i 2009 i gcomhar le leachtaitheoirí agus leis na Cúirteanna chun cosc a chur ar iompar mífhreagrach nó mídhleathach.

Aidhm 5 – Seirbhísí den Scoth a Sholáthar do Chustaiméirí Inmheánacha agus Seachtracha

Réamhrá

Lean OSFC léi i 2008 ag tabhairt tús áite don obair a bhaineann le seirbhísí den scoth a sholáthar dá custaiméirí uile. Áirítear idir an pobal agus foireann na hOifige ar chustaiméirí na hOifige agus cuimsítear san Aidhm gníomhú éifeachtach agus éifeachtúil fheidhmeanna na hOifige a chumasú. Léirítear thíos na príomhfhorbairtí maidir le hoibriúcháin agus le seirbhísí OSFC i rith na bliana.

Fo-Aidhm 5.1: Acmhainní OSFC a Dhaingniú agus a Bhainistiú

Foireann

Méadaíodh líon foirne OSFC i 2008 ó 40.6 to 44.8 fostaí lánaimseartha. B'ionann an méadú seo agus an dara céim nó an chéim dheiridh de ghealltanais a rinne an Roinn Fiontair, Trádála agus Fostaíochta i 2007 ochtar breise a sholáthar do fhoireann na hOifige. In **Aguisín 5.1** soláthraítear briseadh síos ar fhoireann na hOifige ag ceann na bliana. Tá sé soiléir ó na caipitil a théann roimhe seo sa Tuarascáil gur chuir an méadú seo ar an bhfoireann ar chumas na hOifige bheith níos gníomhaí i réimsí éagsúla i 2008.

Is mian leis an Stiúrthóir Michael Cumiskey, Joan Howley, Barry Harte, Jean Kelly agus Deirdre Mitchell a luadh agus an tsárobaire a rinne siad san Oifig le linn dóibh bheith anseo a admháil. D'fhág an cúigeir an Oifig i 2008 chun aghaidh a thabhairt ar dhúshlán nua; bhí roinnt díobh bainteach le hobair na hOifige ón lá ar céadbhunaíodh í.

Acmhainní Airgeadais

Is trí Fhomhírcheann A09 de Vóta 34 (An tAire Fiontair, Trádála agus Fostaíochta) a maoiníodh costais riaracháin na hOifige i 2008. Tá achoimre na suimeanna a dáileadh agus a caitheadh ar fáil faoi na príomh-cheannteidil Phá agus Neamhphá sa tábla a leanas. Tá briseadh síos níos mine ar fhigiúirí na bliana 2008 in **Aguisín 5.1.2**.

Fomhírcheann A09, Vóta 34	2008 Cionroinnt (€000nna)	2008 Caiteachas Iarbhír (€000nna)
Pá	2,681	2,411
Neamhphá	2,276	1,932
Iomlán	4,957	4,343

Ba íslíú de bheagán ar an gcaiteachas de €4.378 milliún i 2007 an €4.343 milliún a caitheadh i 2008. B'ionann agus ardu de 88% toradh na bliana 2008 i gcomórtas leis an €4.957 milliún arbh é an cionroinnt tosaigh don bhliain. I gcomhréir le nósanna imeachta poiblí, tugadh an farasbarr de €0.613m don Státchiste.

Baineadh amach an laghdú beag ar an gcaiteachas in ainneoin ardaithe de 10% ar líon na foirne agus an chostais a bhain le ceapachán Cigire ag an Ard-Chúirt i mí Iúil 2008 chun idirbhearta áirithe i leith scaireanna i DCC plc agus dhá chuideachta ghaolmhara a imscrúdú. Ar an dtaobh eile rinneadh gearradh siar ar thionscnaimh eile a leithéidí fógraíocht agus poiblíocht ar iarratais ón Rialtais ciorruithe a dhéanamh ar chaiteachas nach raibh geallta.

Cóiríocht

D'áitigh an Oifig breis chóiríochta san fhoirgneamh go luath i 2008 i gcomhréir leis an méadú ar líon na foirne a sannadh di i 2007 agus 2008.

Dul chun cinn Eagraíochtúil

Arís i 2008 chuaigh OSFC sa tóir ar shaineolaithe seachtracha chun cuidiú léi obair imscrúdaithe agus forfheidhmithe a dhéanamh thar aon rud eile. Is trí fhógraíocht phoiblí a rinne OSFC stocaireacht ar son a Painéil Chuntasaíochta agus Dlí agus a choinnigh ar siúl iad. Sna Painéil seo tá ainmneacha na ndaoine agus na ngnóthas ar mhian leo go gcuirfí san áireamh iad i dtaca le tascanna saineolais. Beidh na Painéil sin oscailte gach tráth d'iarratasóirí ar mian leo seirbhísí dá leithéid a sholáthar don Oifig.

Plean Gnímh um Bainistiú Baoil

Chomhoibrigh an OSFC arís i gcomhar leis an Roinn Fiontair, Trádála agus Fostaíochta i rith na bliana 2008 chun athbhreithniú agus uasdátú breise a dhéanamh ar phleananna na hOifige maidir le bainistíocht bhaoil. Rinneadh an plean i dtosach de bharr moltaí faoi shaincheisteanna freagrachta sna réimsí a bhaineann le rialú inmheánach airgeadais, socruithe iniúchta inmheánaigh agus bainistiú bhaoil i dTuarascáil Mullarkey.

Chlár Oibre Glas

I 2008 thionscain an Oifig ar bhonn foirmeálta roinnt polasaithe nach ndéanfadh dochar don chomhshaol inar beartaíodh na hacmhainní a bhí sannta di a úsáid ar an mbealach is éifeachtúla agus éifeachtaí costas agus ab fhéidir. Ghlac an fhoireann uile páirt i seisiúin faisnéise faoin ábhar agus tá siad ag leanúint go gníomhach na dtreoracha chun tomhaltas fuinnimh, ábhar agus uisce na hOifige a laghdú agus dramhaíl na hOifige a bhainistiú níos fearr. Cuireadh roinnt athruithe áirithe oibríochtúla i bhfeidhm chun lorg carbóin agus costais ghaolmhara na hOifige a laghdú.

Fo-Aidhm 5.2: Foireann a chur chun cinn

Bainistíocht Feidhmíochta

Chuir OSFC an Córas Bainistíocht Feidhmíochta agus Forbartha (PMDs) a fheidhmíonn ar fud na Ranna agus na hOifigí Rialtais uile i bhfeidhm ar bhonn leanúnach i 2008. Tá baint díreach aige le Plean Gnó Bliantúil na hOifige, soiléirítear leis ról agus cion oibre na mball foirne i leith an Phlean Ghnó agus sainítear leis freisin riachtanais oiliúna foirne.

Bhain foireann OSFC áis as níos mó ná 140 lá oiliúna agus faisnéise i 2008; ba ó acmhainní OSFC a cuireadh 88 díobh ar fáil. Chuir an Roinn Fiontair, Trádála agus Fostaíochta 47 lá oiliúna breise ar fáil do dhá bhall déag d'fhoireann OSFC. Cheadaigh an Oifig um Chlárú Cuideachtaí do cheathrar bhall OSFC páirt a ghlacadh sna clár oiliúna dá foireann féin thar tréimhse ocht lá oiliúna.

Seo a leanas cuid den oiliúint a cuireadh ar fáil i 2008:

- rannpháirtíocht foireann bhainistíochta i gClár Ceannaireachta na Roinne;
- oiliúint forbartha gairmiúla leanúnach;
- oiliúint i dteicneolaíocht faisnéise agus
- oiliúint sa nGaeilge d'fhoireann fáiltithe na hOifige go háirithe.

Clúdaíodh ábhair éagsúla a bhain le hobair na Roinne agus na hOifige agus na seirbhíse poiblí go ginearálta sna laethanta faisnéise agus ag na seimineáir inmheánacha. Cuireadh sainchlár inductúcháin OSFC ar fáil don fhoireann nua uile a tháinig go dtí an Oifig i 2008. Cuireadh seisiúin faisnéise faoi Acht na dTeangacha Oifigiúla agus faoi thionscnamh an Chlár Oibre Glas ar fáil don fhoireann uile de bhrí gur cuireadh i bhfeidhm iad san Oifig i 2008.

Obair Mheithealbhunaithe

D'oibrigh foirne ildisciplíneacha ar bhonn leanúnach laistigh de OSFC chun méid mór de chásobair na hOifige a láimhseáil i réimsí an bhraite, an fhorfheidhmithe agus na dócmhainneachta.



Casadh ar a chéile Coiste Bainistithe na hOifige a dhéanann ionadaíocht ar an bhfoireann uile faoi chathaoirleachas an Stiúrthóra ar bhonn ráithiúil i 2008 chun saincheisteanna polasaí agus eagraíochtúil a théann i gcion ar threoir agus ar fhorbairt leanúnach na hOifige a phlé.

I gcaitheamh na bliana rinne an Stiúrthóir ceithre cinn déag d'ionstraim nua nó leasaithe lenar tharmlig sé a chumhachtaí chuig bhaill áirithe den fhoireann faoi alt 13 den Acht um Fhorfheidhmiú Dlí Cuideachtaí 2001. Ar na daoine a bhí i gceist bhí tríúr ball nua foirne.

Fo-Aidhm 5.3: Seirbhísí Custaiméara den Scoth a chur chun cinn agus Caoi a Choinneáil Orthu

Seirbhísí a Chuirtear ar Fáil

Gheall OSFC acmhainní nach beag a chur ar fáil i 2008 d'fhorbairt agus d'úsáid na teicneolaíochta chun faisnéis a sholáthar dá custaiméirí, chun ionchur a fháil ó chustaiméirí agus chun feabhas a chur ar éifeacht chleachtas oibre. Ar na seirbhísí a thairgeann an Oifig don phobal agus do lucht gairme tá:

- faisnéis faoi dhlí na gcuideachtaí agus faoi chúrsaí gaolmhara via suíomh idirlín na hOifige, foilseacháin, etc. Sa chomhthéacs sin bhí 817 gcustaiméirí cláraithe ag deireadh na bliana 2008 agus súil acu go gcuirfí teachtaireacht chucu má bhí aon fhaisnéis nua curtha ar fáil ar an suíomh idirlín. Cláraíodh 48 nduine díobh den chéad uair i 2008;
- cainteanna, seimineáir agus tionscnaimh ghéilliúntais eile arna gcur ar fáil ag foireann na hOifige. Mar shampla ghlac an Oifig seastán trádála ag Seó BT na nGnóthas Beag i gCorchaigh den chéad uair;

- áis a cheadaigh don phobal gearáin a dhéanamh maidir le cásanna ina raibh amhras faoi mhí-iompar;
- seirbhísí reachtaíocht-bhunaithe trína gceanglaítear ar iniúchóirí, ar leachtaitheoirí agus ar pháirtithe leasmhara eile cásanna ina bhfuil amhras faoi shárú dhlí na gcuideachtaí a thuairisciú don Oifig;
- cúnamh ginearálta a thairgtear do chliaint na hOifige ar an bhfón, trí chomhfhreagras, le ríomhphost, etc. Mar shampla cuireadh 468 bhfiosrú chuig an gcuntas info@odce.ie i rith na bliana agus freagraíodh go pras iad.

Acht na dTeangacha Oifigiúla 2003

I rith na bliana cuireadh deireadh leis an gcomhairliúchán a bhí ar siúl idir an Oifig agus an Roinn Gnóthaí Pobail, Tuaithe agus Gaeltachta maidir leis an Dréachtscéim lena ngealltar seirbhísí a chur ar fáil i nGaeilge agus i mBéarla faoin Acht. Lainseáladh an Scéim i mí Iúil agus tá sí ar fáil ar shuíomh idirlín OSFC ag www.odce.ie.



De bhreis ar an oiliúint foirne a rinneadh i 2008 chuir an Oifig gluais de théarmaí agus de nathanna éagsúla i dtoll a chéile chun cabhair a thabhairt don fhoireann plé a dhéanamh le saoránaigh ar mhian leo a ngnó a dhéanamh leis an Oifig trí mheán na Gaeilge. Tá sé beartaithe breis oiliúna sa teanga a chur ar fáil i 2009 chun acmhainn na hOifige seirbhísí ar aon chaighdeán a chur ar fáil trí Ghaeilge agus trí Bhéarla a fheabhsú.

Foilseacháin

Ullmhaíodh agus foilsíodh naoi gcinn d'fhoilseacháin fhoirmeálta i 2008 mar a chuirtear in iúl in **Aguisín 1.1.1** den Tuarascáil seo. Is de réir na ngealltanais a rinneadh de bhun Acht na dTeangacha Oifigiúla a foilsíodh ceithre cinn díobh sin sa dá theanga oifigiúla. De bhreis ar an Scéim a comhaontaíodh faoi Acht na dTeangacha Oifigiúla ba iad Tuarascáil Bhliantúil OSFC don bhliain 2007, an Lámhleabhar Dhlí na gCuideachtaí faoi Chuideachtaí Bainistithe Úinéirí Maoine Sealbhais agus an Leabhrán Treorach faoi Chuideachtaí Bainistithe na foilseacháin a bhí i gceist

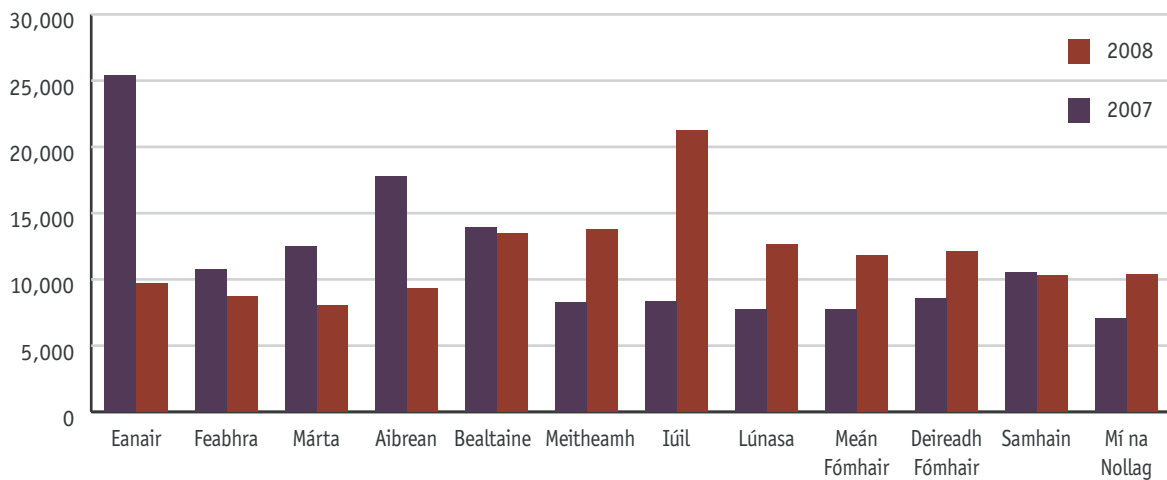
Mar a luaitear thuas, d'eisigh an Stiúrthóir freisin méid áirithe de phreasráitis agus scríobh roinnt ball foirne OSFC páipéir agus rinne láithreoireachtaí le haghaidh na meán náisiúnta agus gairmiúil agus le haghaidh lucht gnó agus grúpaí eile. Ghlac an fhoireann páirt in agallaimh sna meáin náisiúnta agus áitiúla ar iarratas.

Suíomh Idirlín

Tugadh suíomh idirlín OSFC ag www.odce.ie chun dáta ar bhonn leanúnach i 2008 trí fhaisnéis nua faoi obair OSFC agus faoi fhorbairtí rialachais corparáideacha gaolmhara a chur ar fáil. Cuireadh gach uile fhoilseachán, phreasráiteas agus airteagal nua ar fáil ar an suíomh chomh maith le torthaí na n-imeachtaí forfheidhmithe Cúirte a raibh baint ag an Stiúrthóir leo agus cinntí Cúirte eile atá ábhartha i gcomhthéacs dhlí na gcuideachtaí.

Bhí tarraingt ar an suíomh idirlín arís ag cuimse daoine a raibh suim acu i gcúrsaí rialachais chorparáidigh. I rith na bliana tugadh thart ar 141,557 cuairt ar an suíomh ardú de 2% ar an 138,604 chuairt i 2007. Tá léirithe sa chairt go raibh na huimhreacha mórán ar aon dul le huimhreacha 2007 ach go raibh laghdú ar líon na gcuariteoirí ó Eanáir go Bealtaine agus ansin méadú thar thréimhse na seacht mí ina dhiaidh sin i gcomórtas le 2007. Bhíothas thar bheith gnóthach ar feadh tréimhse i mí Iúil i gcomhthráth le ceapachán Cigire do DCC plc, do S&L Investments Ltd. agus do Lotus Green Ltd. ag an Ard-Chúirt, le lainseáil na Scéime faoi Acht na dTeangacha Oifigiúla agus leis an bPáipéar Comhairliúcháin faoi ráiteas straitéise OSFC do 2009-2012.

Go luath i 2008 rinne OSFC suirbhé ar líne ar úsáideoirí an tsuímh idirlín le fáil amach an rabhadar sásta leis na seirbhísí a bhí ar fáil dóibh. Bhí an céatadán a d'fhreagair sách íseal ach d'ainneoin sin ba dhearfach an t-aiseolas a fuarthas.



Na hAchtanna um Shaoráil Faisnéise (SF)

Ní cheadaítear nochtadh taifead faoi na hAchtanna SF ach amháin iadsan a bhaineann le riarachán ginearálta na hOifige. I rith na bliana 2008 ní fuair OSFC aon iarratais ar thairfid faoin Acht. Thug an Oifig an Lamhleabhar SF chun dáta agus chuir ar fáil é (i nGaeilge agus i mBéarla) ar an suíomh idirlín.

Achtanna um Chosaint Sonraí

Tá an OSFC cláraithe mar Rialaitheoir Sonraí le hOifig an Choimisinéara um Chosaint Sonraí. Faoi na hAchtanna um Chosaint Sonraí 1988 agus 2003 tugtar cosaint ar úsáid nó ar nochtadh míchuí faisnéise ar bith a choimeádtar faoi dhuine aonair. I 2008 thug OSFC a chlárúchán leis an gCoimisinéir um Chosaint Sonraí chun dáta agus lean léi ag comhlíonadh a dualgais dhaingne rúndachta féin atá léirithe san Acht um Fhorfheidmiú Dlí Cuideachtaí 2001.

I 2008 le cúnaimh ón Roinn Fiontair, Trádála agus Fostaíochta rinneadh criptiú ar na sonraí a choinnítear i ngairis shoghluaiste a leithéidí ríomhairí glúine agus cipíní cuimhne a mbaineann foireann na hOifige úsáid astu, rud a chuir go mór le slándáil sonraí.

An tAcht um Íoc Pras Cuntas 1997

Foráiltear faoin Acht um Íoc Pras Cuntas d'íocaíocht úis le soláthraithe a mbíonn a sonraisc gan íoc ar an dáta forordaithe. D'ainneoin pholasáí na hOifige lena socraítear go n-íocfar gach sonrasc ar mhodh tráthúil, thabhaigh an OSFC aon fhortháille úis ar íocaíochtaí i 2008. Ba á €351.06 an méid a bhí le hÍoc.

Géilliúntas i leith Caighdeáin Chomhaontaithe Seirbhíse Custaiméara

Tá sé geallta ag OSFC go gcuirfidh sí ar fáil seirbhís custaiméara den scoth do gach ball den phobal a mbeidh sí ag déileáil leo agus ar ndóigh dá foireann féin, agus choinnigh an Oifig caighdeán na seirbhíse faoi athbhreithniú go tráthrialta i 2008. Fuarthas líon beag gearán foirmeálta i rith na bliana agus déileáladh leo sin. Tá an Fhoirm Aiseolais ar shuíomh idirlín OSFC ina háis bhuan don phobal chun a dtuairim maidir leis an bhfaisnéis atá ar fáil ar an suíomh agus maidir lenár seirbhísí go ginearálta a chur chugainn.

Déanfar gach iarracht cabhair a thabhairt do dhaoine a théann i dteagmháil leis an Oifig fiú nuair nach mbaineann an cheist atá á cur go díreach le hobair na hOifige. Cuirimid ábhar faoi bhráid údarais eile go tráthrialta nuair a mheasaimid gurb iad is fearr a bheidh in ann déileáil leo go cuí. Mar shampla go deireanach i mí Mhárta cuireadh deireadh le cás san Ard-Chúirt inar ionchúisigh Bord na bPínean go rathúil cuideachta ar chlis uirthi ranníocaí na n-oibríthe a sheoladh ar aghaidh go dtí an scéim pinsin ábhartha. Bhí sé curtha in iúl ag OSFC do Bhord na bPínean roimhe sin go raibh gearán faighte aici maidir leis an gcás.

D'ainneoin na lainsí a chuireann an t-ualach trom oibre air síleann an Stiúrthóir go raibh na Caighdeáin Seirbhíse Chustaiméara atá againn comhalta go sásúil i 2008.

Conclúid

Anois ag tús na bliana 2009 tig linn breathnú siar ar 2008 mar bhliain inar baineadh amach go sásúil na haidhmeanna uile a bhí againn. Mar a luaitear sa Tuarascáil rinneadh rudaí i roinnt réimsí nach ndearnadh riamh cheana.

Tá an cuma ar an scéal go bhfuil dúshlán dhiana amach romhainn. Eascróidh deacrachtaí as an meathlú ar an ngeilleagar i ndáil leis na buiséid d'eagrais uile na seirbhísí poiblí. Cé gur chuir an Stát breis airgeadaíthe ar fáil dúinn i 2009 chun costas Imscrúdú DCC na hArd-Chúirte a chlúdach, beidh laincisí go leor ar bhuiséid ghinearálta OSFC go háirithe má dheonófar costais shuntasacha inár gcoinne in imeachtaí Cúirte.

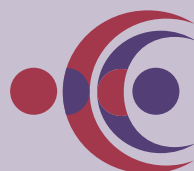
Tá roinnt chásanna móire idir lámha ag an Oifig. Tá deacrachtaí nua leithleacha ag eascairt astu sin a bhfuilimid ag tabhairt aghaidh orthu i gcónaí le cúnaimh na Roinne i gcás go mbíonn acmhainní i gceist.

Tá an meathlú ar choinníollacha eacnamúla le feiscint sa mhéadú suntasach ar líon na ngnóthaí a loiceann, rud nach bhfáiltítear leis. An ról reachtúil atá againn maidir le cuideachtaí dócmhainneacha curtha san áireamh táimid ag súil le méadú suntasach breise ar líon na dtuarascálacha leachtaitheora a chuirfear chuig an Oifig sa ghearrthéarma. Is dóigh go bhfaighfear níos mó ná 900 tuarascáil nua i 2009 i gcomórtas le 406 agus 286 i 2008 agus 2007 faoi seach. Cé go ndearnadh roinnt bearta cúiteacha chun acmhainní a chur ar leataobh le haghaidh an dúblaithe seo ar an obair i 2009 is dúshlán tromchúiseach a bheidh ann don fhoireann agus d'acmhainní na hOifige.

De bhrí go bhfuil níos mó gnóthaí faoi bhrú tá an baol ann go dtiocfaidh meath ar an gcaighdeán géilliúntais i leith dhlí na gcuideachtaí agus i leith ceangal reachtach eile de réir mar a bheidh stiúrthóirí cuideachta ag tabhairt airde ar imníocha gnó níos práinní. Ní mór dúinn ár n-iarrachtaí a dhúblú chun teachtaireacht chomhchuibheas agus inchreidte maidir le géilliúntas i leith Achtanna na gCuideachtaí a choimeád slán. Is iad na teorainneacha a chuirtear ar chaiteachas OSFC le haghaidh fógraíochta agus a macasamhail eile de phoiblíochta faoi deara go gcaithfear bealaí eile a aimsiú agus a thriail chun an teachtaireacht a chur amach chuig lucht gnó, pobail agus chuig an lucht gairmiúil.

Ach tá aghaidh tugtha ag an Oifig ar dhúshlán dheacra roimhe seo agus d'éirigh léi teacht slán astu agus tiocfaidh sí slán astu arís. Tá dochar déanta do dhea-cháil na hÉireann de bharr na n-imeachtaí deireanacha agus is tábhachtach an mhaise dúinn a thaispeáint go bhfuilimid tiomanta do chomshaol cobhsaí agus iontaofa dlí a choinneáil slán do chuideachtaí sa Stát. Má leanfaimid linn ag déanamh ár gcuid den obair is mór a chabhróidh sin le fiontraíocht agus leis an iomaíocht ag leibhéal cuideachta, rudaí atá tábhachtach chun postanna a chruthú agus chun muinín a spreagadh. Is é an aidhm atá againn leanúint leis an obair ag cruthú comhshaoil níos fearr d'fhiontraíocht ghnó agus phobail sa Stát.

Aguisíní



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

Aguisín 1.1.1

Foilseacháin a d'éisigh OSFC i 2008

Teideal	Ábhar	Dáta Eisiúna
Athbhreithniú OSFC na bliana 2007	Achoimre ar Ghníomhaíocht OSFC i 2007	Eanáir 2008
Cúrsaí Géilliúntais Chorporáidigh	Comhfhoilseachán OCC/OSFC faoi Saincheistanna Ábhartha um Dhlí na gCuideachtaí	Earrach 2008
Tuarascáil Bhliantúil OSFC do 2007	Tuarascáil Mhionsonraithe ar Ghníomhaíocht OSFC i 2007	Bealtaine 2008
Páipéar Comhairliúcháin C/2008/1	Nochtú Scéil Briseadh Dlí agus Dlí na gCuideachtaí in Éirinn	Meitheamh 2008
Scéim faoi Acht na dTeangacha Oifigiúla 2003	Gealltanais OSFC maidir le Soláthar Seirbhísí Gaeilge agus Béarla don tréimhse 2008-2011	Iúil 2008
Páipéar Comhairliúcháin C/2008/2	Dhréachtráiteas Straitéise an OSFC	Iúil 2008
Páipéar Comhairliúcháin C/2008/3	Scéimeanna Méadaithe Gnó agus Síolchaipitil	Meán Fómhair 2008
Fógra Cinnidh D/2008/1	Lámhleabhar Dhlí na gCuideachtaí faoi Chuideachtaí Bainistithe Úinéirí Maoin Chónaithe	Nollaig 2008
Treoir Achomair	Cuideachtaí Bainistithe – Treoir i leith Dhlí na gCuideachtaí d'Úinéirí Maoin Sealbhais	Nollaig 2008

Aguisín 1.2.1

Liosta Láithreoireachtaí OSFC i 2008

Dáta	Eagraí	Cineál Ócáide	Ábhar	Ionad Coinne	Tinreamh (garlíon)	Cainteoir
15/01/08	Comhairle Cathrach Bhaile Átha Cliath	Láithreoireacht	Rialachas Corparáideach agus Freagrachtaí Stiúrthóirí	Oifig Comhairle Cathrach Bhaile Átha Cliath, An Ché Adhmaid	14	Kevin Prendergast agus Adrian Brennan
25/01/08	NetWorks	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrthóirí Cuideachta	Lusty Beg Island, Fear Manach	16	Kevin Prendergast
11/02/08	SEEPP Phort Lairge	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrthóirí Cuideachta	Campas Charraig an Iúir, IT Phort Láirge	18	Kevin Prendergast
11/02/08	Biúro an Gharda Síochána um Imscrúdú Calaoise	Cúrsa Calaoise GBFI	OSFC Ról agus Feidhmeanna	Cearnóg Fhearchair	20	Mick Prendergast
15/02/08	Smurfit School of Business	Láithreoireacht	OSFC – Cad í agus céard a dhéanann sí?	Smurfit Business School, Carraig Dubh	15	Paul Appleby
26/02/08	Rannóg Tithíochta, Comhairle Cathrach Bhaile Átha Cliath	Láithreoireacht	Rialachas Corparáideach agus Freagrachtaí Stiúrthóirí	Oifig Cathrach, An Ché Adhmaid, Baile Átha Cliath	15	Kevin Prendergast
04/03/08	Ollscoil Luimnigh	Láithreoireacht	OSFC – Cad í agus céard a dhéanann sí?	Campas Ollscoil Luimnigh	130	Kevin Prendergast
11/03/08	Jordan Publishing Ltd.	Comhdháil	Faisnéis chun dáta maidir le hobair ghéilliúntais agus forfheidhmithe OSFC	Caisleán Chluain Tarbh, Baile Átha	80	Paul Appleby
12/03/08	West Training and Development Ltd	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrthóirí Cuideachta	Mayoralty House, Bóthar na gCeannaithe, Gaillimh	10	Kevin Prendergast
13/03/08	Nova Choláiste na hOllscoile, BAC	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrthóirí Cuideachtaí Príobháideacha Teoranta	Coláiste na hOllscoile BAC, Baile Átha Cliath	30	Kevin Prendergast

Aguisín 1.2.1 (ar lean)

Liosta Láithreoireachtaí OSFC i 2008

Dáta	Eagraí	Cineál Ócáide	Ábhar	Ionad Coinne	Tinreamh (garlón)	Cainteoir
19/03/08	A & L Goodbody	Láithreoireacht	OSFC – Dóchmhainneacht, Srianadh agus Dícháiliú	Oifig A & L Goodbody, IFSC	60	Kevin Prendergast
01/04/08	Payback Solutions	Láithreoireachtaí	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	Muckross Park Hotel, Cill Airne	16	Kevin Prendergast
09/04/08	IT Dhún Dealgan	Láithreoireacht	Ról an OSFC	Oifig um Chlárú Cuideachtaí	9	Kevin Prendergast
09/04/08	Plato	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	Shamrock Foods, Baile an Mhóta, Baile Átha Cliath	9	Kevin Prendergast
14/04/08	Enviro Skillnet	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	Corcaigh	12	Kevin Prendergast
15/04/08	Cam Leanaí Chontae Fhine Ghall	Láithreoireacht	Rialachas Corparáideach agus Freagrachtaí Stiúrtóirí	Business Park Soird, Baile Átha Cliath	8	Kevin Prendergast
16/04/08	Oifig um Chlárú Cuideachtaí	Láithreoireacht	Ról an OSFC	Baile Átha Cliath	40	Kevin Prendergast
16-18/04/08	Institute of Internal Auditors	Comhdháil	Dlí na gCuideachtaí a Chomhlíonadh agus a Fhorfheidhmiú – cá sheasaimid?	Knightsbrook Hotel, Baile Átha Troim, Co. an Mhí	150	Paul Appleby
17/04/08	Centre for Independent Living	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	Leitir Ceannain, Co. Dún na nGall	5	Kevin Prendergast
17/04/08	Abbey Arts Centre	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	Béal Átha Seanaidh, Dún na nGall	15	Kevin Prendergast
23/04/08	Institute of Chartered Secretaries and Administrators	Comhdháil	Faisnéis chun dáta maidir le hobair ghéilliúntais agus forfheidhmithe OSFC	Coláiste Náisiúnta na hÉireann	60	Paul Appleby

Aguisín 1.2.1 (ar lean)

Liosta Láithreoireachtaí OSFC i 2008

Dáta	Eagraí	Cineál Ócáide	Ábhar	Ionad Coinne	Tinreamh (garlón)	Cainteoir
28/04/08	Irish Institute of Continuing Professional Development	Láithreoireacht	OSFC - Gnéithe Sibhialta agus Coiriúla de Dhlí na gCuideachtaí	Metropole Hotel, Corcaigh	21	Kevin Prendergast
28/04/08	South and Mid West Community Development Support Agency	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	Láionad Phobail Machain, Corcaigh	18	Kevin Prendergast
06/05/08	South and Mid West Community Development Support Agency	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	Ashbourne Business Park, Luimneach	14	Kevin Prendergast
07/05/08	South and Mid West Community Development Support Agency	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	CDP Trá Lí, Trá Lí	18	Kevin Prendergast
07/05/08	CLRG	Láithreoireacht	Cionta agus Forfheidhmiú	Buswells Hotel, Baile Átha Cliath	30	Adrian Brennan
05/06/08	Thursday Network Group	Láithreoireacht	Obair reatha an OFSC	O'Brien Hartnett Offices, Bóthar Haddington, Baile Átha Cliath	12	Kevin Prendergast
06/06/08	Governance Forum Event	Láithreoireacht	Dualgais an Rúnaí Cuideachta	IPA, Bóthar Lansdún, Baile Átha Cliath	40	Kevin Prendergast
20-26/06/08	International Association of Insolvency Regulation	Comhdháil	Treochtaí maidir le Leachtú Cuideachta in Éirinn	St. Petersburg	60	Paul Appleby
08/07/08	Irish Institute of Continuing Professional Development	Láithreoireacht	OSFC - Gnéithe Sibhialta agus Coiriúla de Dhlí na gCuideachtaí	Coláiste Ríoga na Lianna, Sráid Chill Dara, Baile Átha Cliath	35	Kevin Prendergast
11/07/08	UCD Masters in Management Studies	Láithreoireacht	OSFC - An Caighdeán a Shocrú	Smurfit Business School, Dún Charúin, Co. Átha Cliath	55	Kevin Prendergast
18/07/08	UCD Masters in Management Studies	Láithreoireacht	OSFC - An Caighdeán a Shocrú	Smurfit Business School, Dún Charúin, Co. Átha Cliath	75	Kevin Prendergast

Aguisín 1.2.1 (ar lean)

Liosta Láithreoireachtaí OSFC i 2008

Dáta	Eagraí	Cineál Ócáide	Ábhar	Ionad Coinne	Tinreámh (garlíon)	Cainteoir
12/09/08	Bord Fiontar Contae Laoise	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	Ionad Fiontar Laoise	8	Eileen McManus
16/09/08	An Roinn Gnóthaí Pobail, Tuaithe agus Gaeltachta	Láithreoireacht	Rialachas Corparáideach agus Freagrachtaí Stiúrtóirí	Páirc an Chrócaigh	180	Kevin Prendergast
17/09/08	Irish Times Training	Láithreoireacht	Géilliúntas a Spreagadh, an Dlí a chur i bhFeidhm	Morgan Hotel, Baile Átha Cliath	16	Kevin Prendergast
24/09/08	Cumann Dlí na hÉireann	Lainseáil Dioplóma an Chumann Dlí i nDlí na gCuideachta	Luach an Chúrsa Dioplóma	Cumann Dlí, Plás Blackhall	50	Paul Appleby
25/09/08	Small Firms Association	Comhdháil	Rialúcán na gCuideachta	Caisleán Baile Átha Cliath	200	Paul Appleby
29/09/08	Biúró an Gharda Síochána um Imscrúdú Calaoise	Cúrsa Calaoise GBFI	OSFC Ról agus Feidhmeanna	Cearnóg Fhearchair	20	Mick Prendergast
03/10/08	Irish Small and Medium Enterprise	Comhdháil	Rialúcán nó Tachtadh	Jury's Hotel, Páirc an Chrócaigh	250	Paul Appleby
07/10/08	ACCA CPD	Láithreoireacht	Dualgais agus Freagrachtaí Stiúrtóirí agus Rúnaí Cuideachta	Radisson SAS, Baile Átha Cliath	60	Dermot Madden
16/10/08	Corporate Governance Association of Ireland	Láithreoireacht	Treo todhchaí an OFSC	The Kildare Street and University Club, Baile Átha Cliath	60	Paul Appleby
16/10/08	Cumann Dlí na hÉireann	Láithreoireacht	Géilliúntas i leith Dlí na gCuideachtaí	Cumann Dlí, Baile Átha Cliath	100	Adrian Brennan
22/10/08	Commercial Law Centre, Coláiste na hOllscoile BAC	Seiminéar	Srianadh agus Dícháiliú – Dearcadh ón OSFC	Coláiste na hOllscoile BAC, Belfield	30	Paul Appleby
28/10/08	Ollscoil Chathair Bhaile Átha Cliath	Láithreoireacht	Ról an OSFC	Campas DCU, Glas Naíon	50	Kevin Prendergast

Aguisín 1.2.1 (ar lean)

Liosta Láithreoireachtaí OSFC i 2008

Dáta	Eagraí	Cineál Ócáide	Ábhar	Ionad Coinne	Tinreamh (garlón)	Cainteoir
03/11/08	Cumann Dlí na hÉireann	Láithreoireacht	Géilliúntas i leith Dlí Chorporáideach	Cumann Dlí, Corcaigh	95	Adrian Brennan
03/11/08	ICAI	Láithreoireacht	Teastas i bhFreagrachtaí Stiúrthóirí	Oifig ICAI, Burlington House	32	Kevin Prendergast
04/11/09	CEB Ceatharlach	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrthóirí Cuideachta	Seven Oaks Hotel	20	Adrian Brennan
05/11/08	Leader Chair Conference	Láithreoireacht	Rialachas Corparáideach agus Freagrachtaí Stiúrthóirí	Europe Hotel, Cill Airne	50	Kevin Prendergast
06/11/08	UCD Master of Accounting	Láithreoireacht	Ról an OSFC	Smurfit Graduate Business School, Carraig Dubh	140	Kevin Prendergast
10/11/08	Institute of Bankers	Láithreoireacht	Fórfheidhmiú Chorporáideach	Institute of Bankers, Baile Átha Cliath	85	Kevin Prendergast
12/11/08	Local Development Companies	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrthóirí Cuideachta	Heritage Hotel, Portlaoise	30	Kevin Prendergast
18/11/08	Cumann Dlí na hÉireann	Láithreoireacht	Ról an OSFC	Cumann Dlí na hÉireann, Plás Blackhall, Baile Átha Cliath 7	200	Adrian Brennan
19/11/08	IT Áth Luain	Láithreoireacht	OSFC – Cad í agus céard a dhéanann sí?	IT Áth Luain	30	Paul Appleby
19/11/08	Dublin Business Innovation Centre	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrthóirí Cuideachta	Guinness Enterprise Centre, Baile Átha Cliath	8	Kevin Prendergast
19/11/08	Local Development Companies	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrthóirí Cuideachta	Downhill Hotel, Béal an Átha	35	Kevin Prendergast
20/11/08	Local Development Companies	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrthóirí Cuideachta	Clayton Hotel, Gaillimh	40	Kevin Prendergast

Aguisín 1.2.1 (ar lean)

Liosta Láithreoireachtaí OSFC i 2008

Dáta	Eagraí	Cineál Ócáide	Ábhar	Ionad Coinne	Tinreamh (garlíon)	Cainteoir
26/11/08	Local Development Companies	Láithreoireacht	Scrúdú Sláinte Corparáidí do Stiúrtóirí Cuideachta	Seven Oaks Hotel, Ceatharlach	32	Kevin Prendergast
28/11/08	ACCA, Athlone Members Network	Láithreoireacht	Ról agus Freagrachtaí Stiúrtóir agus Rúnaí gCuideachta	Shamrock Lodge, Átha Luain	15	Dermot Madden
29/11/08	South and East Cork Area Development	Láithreoireacht	Grúpaí Pobail - Community – Bhur Freagrachtaí Dlíthiúil	Dúglas/ Carraig Uí Leighin/ Baile an Chollaig	50	Kevin Prendergast
01/12/08	Citizens Information Service Fhine Ghall	Láithreoireacht	Ról Stiúrtóir gCuideachta	Carnegie Court Hotel, Sord	14	Eileen McManus
03/12/08	William Fry Solicitors	Láithreoireacht	Dícháiliú agus Srianadh faoi Achtanna na gCuideachta	Oifig William Fry Solicitors, Baile Átha Cliath	25	Adrian Brennan
05/12/08	Local Authority Solicitors Bar Association	Láithreoireacht	Freagrachtaí Stiúrtóir agus Obair an OFSC	Halla na Cathrach Baile Átha Cliath	35	Kevin Prendergast agus Dermot Morahan
09/12/08	Coláiste Dhúlaigh	Láithreoireacht	Ról an OSFC	Oifig OSFC	20	Kevin Prendergast
11/12/08	ACCA Ireland (Drogheda Members Network)	Láithreoireacht	Ról agus Freagrachtaí Stiúrtóir agus Rúnaí gCuideachta	Boyne Valley Hotel, Droichead Átha	10	Dermot Madden

Aguisín 1.2.2

Liosta na dTaispeántas/n-Imeachtaí ar ar fhreastail OSFC in 2008

Dáta	Imeacht	Ionad Coinne
31/01/08	Expo Fiontar Dún Laoghaire	Dún Laoghaire
12/03/08	Fíor-Nuamhaisiú Gnó	The Osprey Hotel, Nás na Rí
23/04/08	Comhdháil Bhliantúil ICSCA	IFSC, Baile Átha Cliath
07/05/08	Skillnets	Ionad Comhdháil Páirc an Chrócaigh, Baile Átha Cliath
9-10/05/08	Seó BT na nGnóthas Beag	RDS, Baile Átha Cliath
13/05/08	Fóram Gnó Náisiúnta	Ghleann na nDraoithe, Cill Mhainteán
16-17/05/08	Seó BT na nGnóthas Beag	Silver Springs Hotel, Corcaigh
20/06/08	Taispeántas Farmfest	Lárionad Teagasc, Baile Átha an Rí, Gaillimh
23-25/09/08	Craobhchomórtas Treafa Náisiúnta	Gráinseach Chuffe, Cill Chainnaigh
25/09/08	Lá Fiontar Fhine Ghall	Sord, Co. Átha Cliath
03/10/08	Comhdháil Náisiúnta ISME	Ionad Comhdháil Páirc an Chrócaigh, Baile Átha Cliath
09/10/08	Comhdháil Náisiúnta an Foirgníochta	Ionad Comhdháil Páirc an Chrócaigh, Baile Átha Cliath
10/10/08	Imeacht Gnó Cathair Luimnigh	Marriott Hotel, Luimneach
16/10/08	Spiorad Fiontar na Thir Theas	Hotel Kilkenny, Cill Chainnigh
21-22/11/08	Taispeántas Eireanneach Saincheadúnais	RDS, Baile Átha Cliath
26/11/08	Lá Fiontar na mBan	Mullingar Park Hotel, An Muilleann Gearr

Aguisín 1.2.3

Liosta de Phreasráitis OSFC - 2008

Dáta	Ábhar
07/01/08	Athbhreithniú Cinnbliana ar Ghníomhaíocht OSFC i 2007
28/05/08	Iarratas OSFC ar Chigire Ard-Chúirte a cheapadh chun ceist dhiscréideach maidir le cúrsaí DCC plc agus le dhá chuideachta ghaolmhara a imscrúdú
28/05/08	Lainseáil Thuarascáil Bhliantúil OSFC 2007
11/09/08	Dréacht-treoir d'Infheisteoirí agus do Stiúrthóirí i gCuideachtaí a bhaineann áis as na Scéimeanna Méadaithe Gnó agus Sólchaipitil
17/12/08	Treoir Nua do Chuideachtaí Bainistithe Maoin Sealbhais

Aguisín 2.1.1

Briseadh síos ar Chásanna Nua Imscrúdaithe de réir Foinse i 2008 (i gcomórtas le 2007)

Foinse na gCásanna Nua Imscrúdaithe	2007	2008
Tuarascálacha agus Braith Dheonacha		
- Gearáin Phoiblí	331	295
- Tuarascálacha ó Údaráis Phoiblí sa Stát ⁴¹	19	3
- Tuarascálacha ó Údaráis Phoiblí taobh amuigh den Stát	3	5
- Míreanna Feachtais OSFC	86	71
- Braith eile	31	32
Iomlán na dTuarascálacha agus Braith Dheonacha	470	406
Tuarascálacha Sainordaitheacha		
- Tuarascálacha Indíotáilte ó Iniúchóirí	186	207
- Tuarascálacha ón OCC	10	7
- Tuarascálacha Indíotáilte ó Chomhlachais Ghairmiúla	7	3
- Tuarascálacha ó Leachtaitheoirí	1	4
Iomlán na dTuarascálacha Sainordaitheacha	204	221
Iomlán na dTuarascálacha agus Braith	674	627

⁴¹ Go tipiciúil faigheann OSFC na tuarascálacha seo ó fhoinsí éagsúla, lena n-áirítear an Roinn Fiontair, Trádála agus Fostaíochta, an OCC, an Garda Síochána, na Coimisinéirí Ioncaim, an Rialtóir Airgeadais agus Ranna agus gníomhaireachtaí rialaitheacha eile.

Aguisín 2.2.1

Tuarascálacha Sainordaitheacha i 2008– Tréithe Gníomhaíochtaí a mheastar bheith ina Mainneachtainí i leith Dhlí na gCuideachtaí (i gcomórtas le 2007)

Na Cineálacha Mainneachtana a Luaitear	Iomlán 2007	Iomlán 2008
Sárú Iasachta Stiúrthóirí	138	161
Mainneachtain Leabhair Chúí Chuntas a Choinneáil	40	32
Gan Stiúrthóir ina Chónaí sa Stát	3	7
Ráitis Fhalsa d'Iniúcháirí	1	6
Falsú Doiciméad	2	6
Easpa Cáilíochta chun Ceapacháin mar Iniúcháir	4	2
Cruinnithe Ginearálta Urghnácha gan bheith Tionólta	2	1
Eile	15	21
Iomlán na Mainneachtainí i dTuarascálacha Sainordaitheacha	205	236

Aguisín 2.2.2

Tuarascálacha Deonacha agus Braith Eile i 2008 – Tréithe na Saincheisteanna (i gcomórtas le 2007)

Cineáil na Saincheisteanna a Luaitear	2007	2008
Easnamh Iniúchta agus Ráitis Airgeadais	-	68
Trádáil Mheargánta/Chalaoiseach/ Dhócmhainneach	52	49
Cruinnithe Cinn Bhliana/Ginearálta Urghnácha	45	48
Saincheisteanna Fiachais	38	35
Saincheisteanna Scairshealbhóirí	65	29
Saincheisteanna Stiúrthóra	23	27
Trádáil le linn bheith bainte de Chlár na gCuideachtaí	29	18
Brionnú/Faisnéis Bhréige	27	15
Saincheisteanna Iniúcháir	11	8
Rialacháin um Chumarsáid	86	3
Saincheisteanna Míshoiléire/Eile	94	106
Iomlán	470	406

Aguisín 2.2.3

Láimhdeachas Cásanna ag Céim an Bhraite í 2008 (i gcomórtas le 2007)

Measunú Cásanna	2007	2008
Cásanna idir lámha an 1 Eanáir	267	323
Cásanna Nua	674	627
Cásanna a Dúnadh	507	584
Cásanna Breis Mheasúnachta ag OSFC	111	78
Cásanna idir lámha an 31 Nollaig	323	288

Aguisín 2.2.4

Cásanna a Dúnadh ag Céim an Bhraite de réir an Phríomhshlí Diúscartha i 2008

Tréithe na gCinntí	Tuascálacha Deonacha	Tuascálacha Sainordaitheacha	Iomlán 2008
Neamhdhóthain Fianaise ar Mhainneachtain	148	6	154
Mainneachtain dá n-Oirfeadh Caingean Shibhialta	67	-	67
Cásanna a Dúnadh de bharr Leasú na Mainneachtana/ Rabhaidh	160	169	329
Ábhair nár bhain go díreach le OSFC	24	7	31
Eile	3	-	3
Cásanna a Dúnadh	402	182	584
Cásanna a Cuireadh ar aghaidh a mheastar a bheith In-fhorfheidhmithe	16	47	63
Cásanna a cuireadh ar aghaidh d'fhonn Scrúdú Dócmhainneachta	11	4	15
Cásanna a cuireadh ar aghaidh d'fhonn a Meas Arís	27	51	78

Aguisín 3.1

Fordhearcadh ar Imeachtaí OSFC i 2008 (i gcomórtas le 2007)

Imeachtaí de réir Cineál Cáis	2007	2008
Imscrúdú		
■ Rathúil	13	13
■ Neamhrathúil	-	-
■ Ar lean	-	-
Fo-iomlán	13	13
Forfheidhmiú Sibhialta		
■ Rathúil	11	4
■ Neamhrathúil	-	1
■ Ar lean	15	16
Fo-iomlán	26	21
Forfheidhmiú Coiriúil		
■ Rathúil	8	9
■ Neamhrathúil	1	-
■ Tarraingthe Siar	-	1
■ Ar lean	7	3
Fo-iomlán	16	13
Athbheithniú Breithiúnach agus Eile		
■ Rathúil	3	1
■ Neamhrathúil	-	1
■ Réitithe	3	2
■ Ar lean	3	1
Fo-iomlán	9	5
Iomlán na nImeachtaí		
■ Rathúil	35	27
■ Neamhrathúil	1	2
■ Réitithe	3	2
■ Tarraingthe Siar	-	1
■ Ar lean	25	20
Iomlán	64	52

Aguisín 3.2

Briseadh síos ar Imeachtaí Dlí i 2008 a raibh baint ag an Stiúirhóir leo i 2008

Cineál	Ábhar	Alt/Acht lena mbaineann ⁴²	Uimhreacha cáis	Toradh/Stádas Cáis
Uaschúirteanna				
Iarratas OSFC	Ceapachán Cigire ar thrí chuideachta	S. 8(1), 1990	1	Deonaíodh
Achomharc Comhfhreagróirí/ Frith-Achomharc OSFC	Dícháiliú ag éirí as imscrúdú cuideachta - réamhcheisteanna	S. 160(2)(a), (b) agus/nó (d), 1990	1	Ar lean
Achomharc OSFC	Dícháilithe de bharr mí-iompair	S. 160(2)(b) agus/nó (d), 1990	1	Ar lean
Achomharc OSFC	Dícháiliú ag éirí as Tuarascáil Chigire	S. 160(2)(b), (d) agus/nó (e), 1990	1	Ar lean
Achomharc Freagróra	Dícháiliú ag éirí as Tuarascáil Chigire	S. 160(2)(b), (d) agus/nó (e), 1990	1	Ar lean
Iarratas OSFC	Dícháiliú ag éirí as Tuarascáil Chigire	S. 160(2)(b), (d) agus/nó (e), 1990	6	Cinneadh ceithre chás (rinneadh achomharc maidir leo uile ó shin i leith) as ar tháinig trí chinneadh dícháilithe agus aon iarratas ar dhícháiliú a diúltaíodh; dhá chás ar lean
Iarratas OSFC	Dícháiliú ag éirí as Tuarascáil Chigire – coinneáil siar de pháipéir	S. 12, 1990	1	Deonaíodh
Iarratais OSFC agus Freagróra	Dícháiliú ag éirí as Tuarascáil Chigire – réamhcheist re croscheistiú	S. 160(2)(b), (d) agus/nó (e), 1990	1	Réitíodh

⁴² Is iad na hAchtanna dá dtagraítear an tAcht um Fhianaise Leabhar Baincírí 1879, Achtanna na gCuideachtaí 1963 agus 1990 agus an tAcht um Cheartas Coiriúil (Cionta Gadaíochta Agus Calaoise), 2001.

Aguisín 3.2 (ar lean)

Briseadh síos ar Imeachtaí Dlí a raibh baint ag an Stiúrthóir leo i 2008

Cineál	Ábhar	Alt/Acht lena mbaíneann	Uimhreacha cáis	Toradh/Stádas Cáis
Uaschúirteanna (ar lean)				
Achomharc OSFC	Dícháiliú de bharr mainneachtain sheasta	S. 160(2)(f), 1990	1	Diúltaíodh
Iarratas OSFC	Dícháiliú as siocair mainneachtanaí ar baineadh cuideachta den chlár dá mbarr	S. 160(2)(h), 1990	10	Cinneadh cúig chás (rinneadh achomharc maidir le ceann amháin) agus chás amháin cinneadh go pháirteach as ar tháinig 12 ordú dícháilithe agus aon iarratas ar dhícháiliú a diúltaíodh; ar lean (sé chás)
Idirghabháil OSFC	Rannpháirtíocht in iarratas ar chostais	S. 150, 1990	1	Réitíodh
Idirghabháil OSFC	Dlínse na Cúirte ordú dícháilithe a dhéanamh dá deoin féin	S. 160(2), 1990	1	Nótáladh
Cúirt Choiriúil Chuarda				
Ionchúiseamh ⁴³	Idirbhearta iomarcacha stiúrthóirí	S. 40, 1990	1	Ciontuith (13) agus Dícháiliú
Cúirt Dúiche				
Iarratas OSFC	Tairgeadh doiciméad baincéireachta agus eile	S. 7A, 1879/ S. 52, 2001	5 ⁴⁴	Deonaíodh
Iarratas OSFC	Barantas Cuardaigh	S. 20, 1990	1 ⁴⁵	Deonaíodh

⁴³ Is é an Stiúrthóir Ionchúiseamh Poiblí a rinne an Ionchúiseamh seo i ndiaidh imscrúdú OSFC.

⁴⁴ I gcúig chás baineadh amach deich gcinn d'orduithe doiciméid a thabhairt ar aird.

⁴⁵ Baineadh amach dhá bharantas cuardaigh sa chás seo amháin.

Aguisín 3.2 (ar lean)

Briseadh síos ar Imeachtaí Dlí a raibh baint ag an Stiúrthóir leo i 2008

Cineál	Ábhar	Alt/Acht lena mbaineann	Uimhreacha cáis	Toradh/Stádas Cáis
Cúirt Dúiche (ar lean)				
Ionchúiseamh	Ag gníomhú mar Iniúchóir le linn bheith dícháilithe	S. 187, 1990	2	Cinneadh cás amháin as ar tháinig 5 chiontú; tá cás amháin ar leanúint
Ionchúiseamh	Ag gníomhú mar stiúrthóir le linn bheith dícháilithe	S. 161, 1990	1	Ciontú agus dícháiliú (rinneadh achomharc ó shin i leith)
Ionchúiseamh	Ag gníomhú mar stiúrthóir le linn bheith srianaithe agus ag sárú na gcoinníollacha reachtúla	S. 161, 1990	3	Cinneadh dhá chás as ar tháinig cúig chiontú agus trí ordú dícháilithe; tarraingíodh siar aon ionchúiseamh amháin
Ionchúiseamh	Loiceadh leabhair chuí chuntas a choinneáil	S. 202, 1990	5	Cinneadh ceithre chás as ar tháinig seacht gciontú; tá cás amháin ar leanúint
Ionchúiseamh	Eolas Bréagach a Sholáthar don OCC	S. 242, 1990	1	Ciontú

Aguisín 3.3

Sonraí maidir le Caingne Forfheidhmithe OSFC ar Éirigh leo i 2008⁴⁶

Páirtithe a Pionasaíodh/ Fáth an Phionóis	Uimhir Chuideachta	Pionós/Cinneadh	Costais/ Caiteachais
Gníomhú mar iniúchóir gan bheith cáilithe			
Donal Sweeney	-	Ciontuith (5), €2,500 i bhfíneálacha	€1,065
Gníomhú mar stiúrthóir cuideachta le linn bheith dícáilithe			
Donal Harrington	407161	Ciontú, Pianbhreith choimeádta sé mhí, Dícháiliú ar feadh cúig bliana, fineáil ⁴⁷ €1,500	€228
Gníomhú mar stiúrthóir cuideachta le linn bheith srianta agus na coinníollacha reachtúla a shárú			
Sean Crowe Gary O'Brien	400396	Ciontuith (2), Dícháiliú (2) ar feadh dhá bhliain, €1,000 i bhfíneálacha	€228
Brian Keogan Jnr	372308 375424 403679	Ciontuith (3), CSA (1), Dícháiliú (2) ar feadh beagnach ceithre bhliain, €750 000 i bhfíneálacha	€684
Idirbhearta iomarcacha stiúrthóirí			
Stuart Fogarty	24806	Ciontuith (13), Pianbhreith choimeádta dhá bhliain (ar fionraí), Dícháiliú ar feadh sé mhí, Seirbhís pobail de 240 uair, €34,000 i bhfíneálacha	-

⁴⁶ Nil san Aguisín seo ach eolas faoi imeachtaí forfheidhmithe arna dtionscnamh ag OSFC a raibh toradh rathúil orthu i 2008. Eisiaítear imeachtaí eile le toradh fabhrach ina rabhamar páirteach. Féach Aguisín 3.2 le haghaidh na gcásanna sin agus an téacs ábhartha den Tuarascáil Bhliantúil.

⁴⁷ Tá an cás seo faoi achomairc.

Aguisín 3.3 (ar lean)

Sonraí maidir le Caingne Forfheidhmithe OSFC ar Éirigh leo i 2008

Páirtithe a Pionasaíodh/ Fáth an Phionóis	Uimhir Chuideachta	Pionós/Cinneadh	Costais/ Caiteachais
Mainneachtain leabhair chuí chuntas a choinneáil			
D & N Joinery Limited	360990	Ciontú, fíneáil €1,500	€228
Georgian Antiques Limited	295671	Ciontú, fíneáil €850	€228
John Nolan Plant Hire (Swinford) Limited, John Joseph Nolan, John Patrick Nolan	300602	Ciontuithe (3), €3,000 i bhfíneálacha	€684
Papswood Limited	284808	Ciontuithe (2), €1,000 i bhfíneálacha	€228
Eolas Bréagach a Sholáthar don OCC			
Patrick McFadden	181430	Ciontú, fíneáil €500	-
Neamhoiriúnacht chun gníomhú mar oifigeach cuideachta de bharr mainneachtana tuairisceán bliantúil a chlárú agus an chuideachta a bhaint de Chlár na gCuideachta dá barr			
Ronan Barry	257276 311990	Dícháiliú ar feadh 5 bliana	Fómhas costas cheal comhaontaithe
Terence Mullen	257276 311990	Dícháiliú ar feadh 5 bliana	Gan Ordú de réir Costais
Ruth Phelan	311990	Dícháiliú ar feadh 5 bliana	Ranníocaíocht €2,000
Anthony Dominic Collins, Patricia O'Connell	222019 320899	Dícháiliú ar feadh 5 bliana (2) ⁴⁸	Fómhas costas cheal comhaontaithe
Mathew Collins	310770	Dícháiliú ar feadh 5 bliana	Fómhas costas cheal comhaontaithe

⁴⁸ Tá an cás seo faoi achomairc, ach níor deonaíodh bac.

Aguisín 3.3 (ar lean)

Sonraí maidir le Caingne Forfheidhmithe OSFC ar Éirigh leo i 2008

Páirtithe a Pionasaíodh/ Fáth an Phionóis	Uimhir Chuideachta	Pionós/Cinneadh	Costais/ Caiteachais
Neamhoiriúnacht chun gníomhú mar oifigeach cuideachta de bharr mainneachtana tuairisceán bliantúil a chlárú agus an chuideachta a bhaint de Chlár na gCuideachta dá barr (ar lean)			
William Collins	304339 310770 364532	Srianta ar feadh cúig bliana	Fómhas costas cheal comhaontaithe
Nigel Weir	364532	Dícháiliú ar feadh 5 bliana	Fómhas costas cheal comhaontaithe
Valerie Cummins	331912	Dícháiliú ar feadh ceithre bliana	Gan Ordú de réir Costais
William Fitzsimons	342765 376455 389367	Dícháiliú ar feadh sé bhliana	Ranníocaíocht €1,500
Michelle O’Keeffe	342765 376455	Dícháiliú ar feadh 5 bliana	Ranníocaíocht €1,500
Liam O’Keeffe	342765	Dícháiliú ar feadh ceithre bliana	Ranníocaíocht €1,500
John Quinn	225238	Dícháiliú ar feadh seacht mbliana	Ranníocaíocht €10,000
Neamhoiriúnacht chun gníomhú mar oifigeach cuideachta mar iarmhairt ar Thuarascáil Chigirí			
Frank Brennan	30478 65780	Dícháiliú ar feadh sé bliana ⁴⁹	Fómhas costas cheal comhaontaithe
Patrick Byrne	30478 65780	Dícháiliú ar feadh ceithre bliana ⁴⁹	Fómhas costas cheal comhaontaithe
Michael Keane	30478 65780	Dícháiliú ar feadh trí bliana ⁴⁹	Fómhas costas cheal comhaontaithe

49 Tá na cásanna seo faoi achomáirc. Deonaíodh bac ar seach ordú ar feitheamh thoradh na n-achomhairc.

Aguisín 3.4

Láimhdeachas OSFC ar Chásanna a Mheastar a bheith In-fhorfheidhmithe mar Chásanna Coiriúla i 2008 (i gcomórtas le 2007)

Cásanna a meastar a bheith ina gCásanna Forfheidhmithe Coiriúla	2007	2008
Cásanna idir lámha le himeachtaí coiriúla a bhí fós ar siúl ar 1 Eanáir	1	8
Cásanna eile idir lámha a mheastar a bheith in-fhorfheidhmithe ar 1 Eanáir	290	310
Cásanna nua a cuireadh ar aghaidh a mheastar a bheith in-fhorfheidhmithe	81	75
Iomlán na gCásanna	372	393

Láimhdeachas Cásanna i rith na Bliana	2007	2008
Cásanna ar tarraingíodh siar imeachtaí coiriúla	0	1
Cásanna ar cinneadh imeachtaí coiriúla	9	10
Cásanna ar cuireadh imeachtaí coiriúla ar atráth	0	0
Cásanna eile a dúnadh	45	258
Cásanna idir lámha le himeachtaí coiriúla a bhí fós ar siúl ag deireadh na bliana	8	3
Cásanna idir lámha ag deireadh na bliana a mheastar a bheith in-fhorfheidhmithe	310	121
Iomlán na gCásanna	372	393

Aguisín 3.5

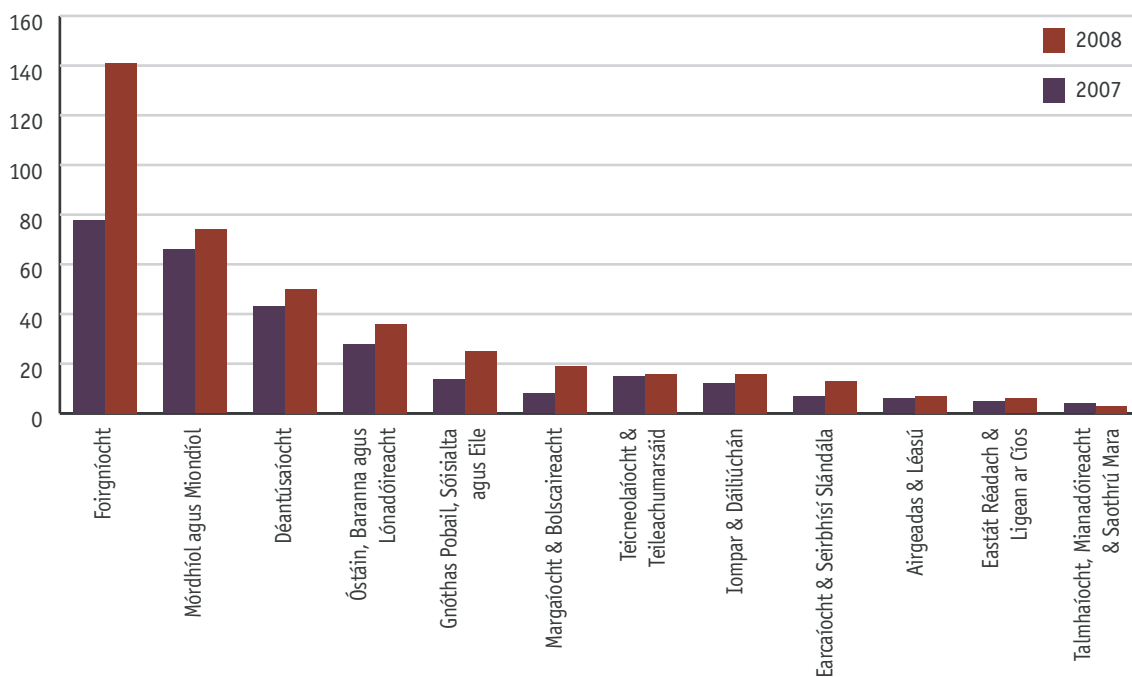
Cásanna Nua a Mheastar a bheith In-fhorfheidhmithe de réir Tréithe i 2008

Cásanna Nua de réir Tréithe	Líon
Mainneachtain leabhair chuí chuntas a choinneáil	34
Duine Srianta/Dícháiliú ag gníomhú mar Stiúrthóir gan bheith ceadaithe	9
Duine ag gníomhú mar Iniúchóir gan bheith ceadaithe	9
Loiceadh stiúrthóirí cuideachta faisnéis/mínte a theastaíonn ó iniúchóirí a chur ar fáil dóibh	6
Falsú, etc. leabhar agus doiciméad cuideachta	4
Idirbhearta iomarcacha stiúrthóirí	4
Cásanna eile a bhfuil Amhras faoi Chion	9
Iomlán na gCásanna	75

Aguisín 4.1

Tuarascálacha Leachtaitheora ar 31 Nollaig 2008 - Anailís de réir Earnála

Dócmhainneacht de réir Earnála	Tuarascálacha faoi Alt 56			
	2007		2008	
Foirgníocht	78	27%	141	35%
Mórdhíol agus Miondhíol	66	23%	74	18%
Déantúsaíocht	43	15%	50	12%
Óstáin, Baranna agus Lónadóireacht	28	10%	36	9%
Gnóthas Pobail, Sóisialta agus Eile	14	5%	25	6%
Margaíocht & Bolscaireacht	8	3%	19	5%
Teicneolaíocht & Teileachumarsáid	15	5%	16	4%
Iompar & Dáiliúchán	12	4%	16	4%
Earcaíocht & Seirbhísí Slándála	7	2%	13	3%
Airgeadas & Léasú	6	2%	7	2%
Eastát Réadach & Ligean ar Cíos	5	2%	6	1%
Talmhaíocht, Mianadóireacht & Saothrú Mara	4	1%	3	1%
IOMLÁNA	286	100%	406	100%



Aguisín 4.1.1

Tuarascálacha Leachtaitheora ar 31 Nollaig 2008 – Cásanna a cuireadh chun cinn

Rangú	Tuarascálacha Tosaigh	Tuarascálacha Breise	Tuarascálacha Deiridh	Iomlán na dTuarascálacha
Tuarascálacha faoi Alt 56 a fuarthas				
Tuarascálacha ar aghaidh ó 2007	99	89	74	262
Tuarascálacha a fuarthas i 2008	406	479	289	1,174
Tuarascálacha dlite nach bhfuarthas i 2008	23	18	1	42
Ráta Géilliúntais	95%	96%	G/F ⁵⁰	97%
Tuarascálacha faoi Alt 56 a cinneadh				
Cinntí dlite i 2008	360	450	307	1,117
Cinntí eisithe i 2008	351	440	307	1,098
Ráta thabhairt chun críche	98%	98%	100%	98%
Cinntí lenar deonaíodh scaoileadh iomlán ⁵¹	251	386	307	944
Cinntí lenar deonaíodh páirt-scaoileadh ⁵²	6	5	G/F	11
Cinntí lenar deonaíodh scaoileadh ag an am seo ⁵³	70	35	G/F	105
Cinntí lenar deonaíodh gan scaoileadh ⁵⁴	23	14	G/F	37
Cinneadh eile	1	0	G/F	1
Tuarascálacha ar aghaidh go dtí 2009	154	128	56	338
Líon na Leachtaitheoirí a raibh baint acu le Tuarascálacha faoi Alt 56	102	134	79	194
Líon na Stiúrthóireachtaí a raibh baint acu le Tuarascálacha faoi Alt 56	988	1,257	762	2,724

50 Cialaíonn 'G/F' 'gan feidhm'.

51 Dámhadh Scaoileadh Iomlán i gcásanna a raibh OSFC sásta, bunaithe ar eolas a chuir an leachtaitheoir ar fáil nó ar chúis éigin eile, go raibh sé taispeánta ar bhealach sásúil ag stiúrthóirí uile na cuideachta dócmhainní gur ghníomhaigh siad go macánta agus go freagrach agus cúrsaí na cuideachta á stiúradh acu.

52 Is iad is cásanna Páirt-scaoileadh ann cásanna a mbaineann na cúinsí atá i gceist le roinnt de stiúrthóirí na cuideachta ach nach leo ar fad.

53 Dámhadh Scaoileadh 'ag an am seo' i gcásanna ina raibh OSFC sásta gur theastaigh tuilleadh ama ón leachtaitheoir chun na cúinsí ba chúis le forléasadh na cuideachta a imscrúdú mar ba chuí. Cuireann OSFC ceangal ar leachtaitheoirí den chineál sin an dara tuarascáil a chur isteach; déantar cinneadh nua maidir le scaoileadh ina dhiaidh sin.

54 Níor dámhadh Scaoileadh nuair a bhí an OSFC sásta, bunaithe ar eolas a chuir an leachtaitheoir ar fáil nó ar chúis éigin eile, nach raibh sé taispeánta ar bhealach sásúil ag aon cheann de stiúrthóirí na cuideachta dócmhainní gur ghníomhaigh siad go macánta agus go freagrach agus cúrsaí na cuideachta á stiúradh acu. cuideachta dócmhainní gur ghníomhaigh siad go macánta agus go freagrach agus cúrsaí na cuideachta á stiúradh acu.

Aguisín 4.2.1

Cásanna ina ndearna an Ard-Chúirt Orduithe Srianta i leith Stiúrthóirí i 2008 de bhun Alt 56

Uimhir Cuideachta	Aimn Cuideachta	Stiúrthóirí Srianta		Srianadh 5 bliain dár thosaigh	Toradh an Cháis Chúirte [Féach an Nóta Míithe ag bun an Tábla seo]
353038	Alden Interiors Limited	Phelan	Denise	23/06/2008	Srianadh Iomlán
		Phelan	Alan	23/06/2008	
381231	All Fine Foods Limited	Cassidy	Gavin	17/11/2008	Srianadh Iomlán
		Dunne	Jude	17/11/2008	
125166	Alloy Access Limited	Fanning	Joseph	14/01/2008	Srianadh Iomlán
		Fanning	Robert	14/01/2008	
373134	Applied Optotech Limited	Bradell	Jules	02/06/2008	Srianadh Iomlán
400338	Avondale Tool Hire Limited	Porter	John	10/03/2008	Srianadh Iomlán
		Porter	Jason	10/03/2008	
318573	Bilcon Construction Limited	Conway	William	31/03/2008	Srianadh Iomlán
384353	Blarney Builders Providers Limited	Barrett	James	21/11/2008	Srianadh Iomlán
		O'Sullivan	Paul	21/11/2008	
392589	Bray Scaffolding Services Limited	Currums	Glen	15/12/2008	Srianadh Iomlán
		Currums	Michelle	15/12/2008	
387470	Common-Castle Construction Limited	Quinn	Ivan	30/06/2008	Srianadh Iomlán
		Quinn	Gerard	30/06/2008	
375654	Computational Analytics Limited	Fitzgerald	Patrick	03/11/2008	Srianadh Iomlán
403532	Damal Catering Limited	Sheridan	Damien	14/01/2008	Srianadh Páirteach
227855	First European Textile Group Limited	Hartung	Erwin	20/10/2008	Srianadh Iomlán
		Hartung	Dieter	20/10/2008	
233773	Futon Ireland Limited	Mealy	Richard	31/03/2008	Srianadh Iomlán
		Mealy	Philip	31/03/2008	
260911	Gorenberg Limited	Gore	Gillian	14/01/2008	Srianadh Iomlán
		Gore	Noel	14/01/2008	
375192	Henco Café Limited	Hennessy	Thomas	10/11/2008	Srianadh Iomlán

Aguisín 4.2.1 (ar lean)

Cásanna ina ndearna an Ard-Chúirt Orduithe Srianta i leith Stiúrtóirí i 2008 de bhun Alt 56

Uimhir Cuideachta	Aimn Cuideachta	Stiúrtóirí Srianta		Srianadh 5 bliain dár thosaigh	Toradh an Cháis Chúirte [Féach an Nóta Mínithe ag bun an Tábla seo]
291941	Hookless Bar Bistro & Store Limited	Cullen	Pauline	09/06/2008	Srianadh Iomlán
		Cullen	Michael	09/06/2008	
236293	J. & H. Burke & Son Builders Limited	Burke	Helen	31/03/2008	Srianadh Iomlán
		O'Reilly	Brendan	28/01/2008	
394823	John Porter Development Limited	Porter	John	10/03/2008	Srianadh Iomlán
		Porter	Jason	10/03/2008	
375512	Kamar Transport (Kilkenny) Limited	Kavanagh	David	01/07/2008	Srianadh Iomlán
370497	Kamar Transport Limited	Kavanagh	David	01/07/2008	Srianadh Iomlán
189484	Keating Interiors Limited	Keating	Gary	09/06/2008	Srianadh Iomlán
399819	Kitchenworx Limited	Kelly	Vincent Jnr	21/01/2008	Srianadh Iomlán
		Kelly	Glenn	21/01/2008	
		McDonnell	Ciaran	21/01/2008	
386269	Langs Consortium Limited	Brady	Peter	28/10/2008	Srianadh Iomlán
		Ferns	Francis	28/10/2008	
		Harkins	James	28/10/2008	
		Harkins	Vincent	28/10/2008	
144375	Leo W. Wilson Associates Limited	Clarke	George	03/03/2008	Srianadh Iomlán
357453	Loromac Limited	McManus	Pat	28/01/2008	Srianadh Iomlán
391980	Maxfern Limited	Costello	Patrick	17/11/2008	Srianadh Iomlán
		Costello	Yvonne	17/11/2008	
201798	Moran Office Supplies Limited	Moran	Martin	03/03/2008	Srianadh Iomlán
340687	Oberstown Transport Limited	Hughes	Martina	28/07/2008	Srianadh Iomlán
		Hughes	Robert	28/07/2008	
357337	Odyssey Internet Portals Limited	Brennan	William	18/11/2008	Srianadh Iomlán
		Norris	Michael	18/11/2008	

Aguisín 4.2.1 (ar lean)

Cásanna ina ndearna an Ard-Chúirt Orduithe Srianta i leith Stiúirthóirí i 2008 de bhun Alt 56

Uimhir Cuideachta	Aimn Cuideachta	Stiúirthóirí Srianta		Srianadh 5 bliain dár thosaigh	Toradh an Cháis Chúirte [Féach an Nóta Mínithe ag bun an Tábla seo]
324305	Odyssey Internet Productions Limited	Brennan	William	18/11/2008	Srianadh Páirteach
		Norris	Michael	18/11/2008	
401027	Odyssey Internet Products & Services Limited	Brennan	William	18/11/2008	Srianadh Iomlán
		Norris	Michael	18/11/2008	
275182	Optus Telecommunications Limited	Hoey	Graham	20/10/2008	Srianadh Iomlán
		Murphy	John	17/11/2008	
384127	P.P Demolition Groundworks and Paving Contractors Limited	Purcell	Margaret	08/12/2008	Srianadh Iomlán
		Purcell	Padraig	08/12/2008	
327279	Pat Doody Construction Limited	Doody	Pat	13/10/2008	Srianadh Iomlán
		Sweeney	Marcella	13/10/2008	
398420	Peak Telecom Limited	Eipe	John	26/05/2008	Srianadh Iomlán
		Eipe	Lene	26/05/2008	
342277	Prestbury Alarms Limited	Casey	Raymond	21/01/2008	Srianadh Páirteach
		Smith	Christopher	21/01/2008	
277699	QED Logistics Limited	Ryan	Christopher	20/10/2008	Srianadh Iomlán
		Ryan	Gerard	20/10/2008	
362651	S.P.& T. Developments Limited	Fetherson	Paul	07/04/2008	Srianadh Iomlán
		Fetherston	Tommy	07/04/2008	
		Merriman	Susan	07/04/2008	
367431	Security Direct Limited	Caffrey	Sandra	24/01/2008	Srianadh Iomlán
		Caffrey	John	24/01/2008	
254964	Southern Fibreglass Products Limited	Lynch	Donal	14/01/2008	Srianadh Iomlán
		O'Sullivan	Timothy	14/01/2008	
282858	Southern Scaffolding Company Limited	Trihy -	Ann	13/10/2008	Srianadh Iomlán
		Wight	Kenneth	13/10/2008	
		Wight			

Aguisín 4.2.1 (ar lean)

Cásanna ina ndearna an Ard-Chúirt Orduithe Srianta i leith Stiúrtóirí i 2008 de bhun Alt 56

Uimhir Cuideachta	Aimn Cuideachta	Stiúrtóirí Srianta		Srianadh 5 bliain dár thosaigh	Toradh an Cháis Chúirte [Féach an Nóta Mínithe ag bun an Tábla seo]
396025	Strategic Workforce Solutions Limited	Curran	Cian	28/04/2008	Srianadh Iomlán
		Curran	Thomas	28/04/2008	
322509	TMS Plant Sales Limited	Thorpe	Olive	24/11/2008	Srianadh Iomlán
		Thorpe	Adrian	24/11/2008	
372384	West Link Security Services Limited	Weldon	Paul	28/04/2008	Srianadh Iomlán

Nóta: Sa tábla thuas ciallaíonn **“Srianadh Iomlán”** toradh cás Cúirte inar dhícháiligh nó inar chuir an Chúirt srianadh ar gach duine de na stiúrtóirí ar chuir an leachtaitheoir iarratas isteach lena srianadh nó lena ndícháiliú de bhun Alt 150 nó Alt 160 d’Acht na bliana 1990 sa chás nach raibh an leachtaitheoir scaoilte ón oibleagáid sin faoi alt 56 d’Acht na bliana 2001.

Sa tábla thuas ciallaíonn **“Srianadh Páirteach”** toradh cás Cúirte inar dhícháiligh nó inar chuir an Chúirt srianadh ar dhuine nó níos mó de na stiúrtóirí ar chuir an leachtaitheoir iarratas isteach lena srianadh nó lena ndícháiliú ach **nár chuir ar gach duine** de bhun Alt 150 nó Alt 160 d’Acht na bliana 1990 sa chás nach raibh an leachtaitheoir scaoilte ón oibleagáid sin faoi alt 56 d’Acht na bliana 2001. In **Aguisín 4.2.2** a leanas liostáiltear na daoine a dícháiltodh in gach ceann de na cásanna faoi Alt 56.

Aguisín 4.2.2

Cásanna ina ndearna an Ard-Chúirt Orduithe Sriantha i leith Stiúirtheoirí i 2008 de dhroim Tuarascálacha Leachtaitheora de réir Alt 56

Uimhir Cuideachta	Aimn Cuideachta	Stiúirtheoirí Dícháilithe		Dícháilithe ó	Dícháilithe go dtí
367314	Birmingham Construction Limited	Birmingham	Simon	28/04/2008	27/04/2013
285968	Devey Enterprises Limited	Devey	Mark	02/12/2008	01/12/2014
		Devey	Jacinta	02/12/2008	01/12/2014
370497 375512	Kamar Transport Limited Kamar Transport (Kilkenny) Limited	Kavanagh	David	01/07/2008	30/06/2015
189484	Keating Interiors Limited	Keating	Gary	26/05/2008	25/05/2012
350210	Oakley Formwork Limited	Govern	Conor	11/02/2008	10/02/2013
		Govern	Eimear	11/02/2008	10/02/2013
335674	Rosmuc Developments Limited	Griffin	Colm	25/02/2008	25/02/2016

Aguisín 4.2.3

Cásanna sa bhliain 2008 nach ndearna an Ard-Chúirt Dearbhú Srianadh nó Orduithe Dícháilíochta i leith Stiúrthóirí de bhun Próiseas Alt 56

Ainm Cuideachta	Uimh. Chuideachta	Dáta Ordú Cúirte
C.M.G. Construction (Limerick) Limited	278910	27/11/2008
Drum Engineering Limited	215249	30/04/2008
Floor Textures Ireland Limited	257280	05/03/2008
Kranks Corner Limited	238480	19/12/2008
Space-Makers Construction Limited	313095	04/02/2008

Aguisín 5.1.1

Líon Foirne Ceadaithe i gcóimheas le Líon Foirne Iarbhír de réir Gráid

Deireadh-Bhliain	Ceadaithe	Iarbhír
2006	37	34.8
2007	46	40.6
2008	46	44.8

Briseadh síos de réir Gráid ag deireadh 2008

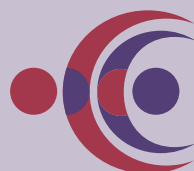
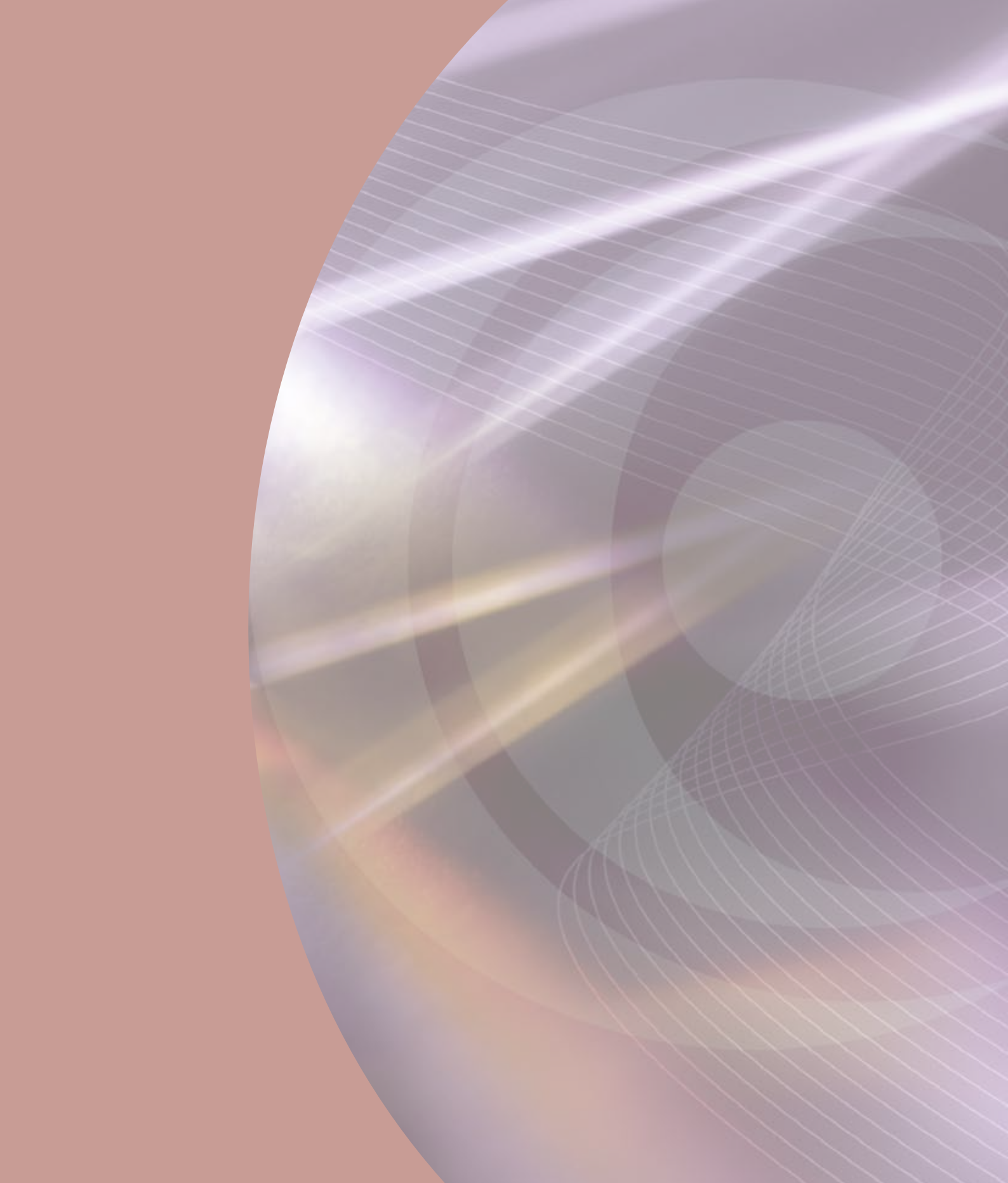
Grád	Ceadaithe	Iarbhír
Cuntasóir Grád I	2	2
Cuntasóir Grád III	1	-
Príomhoifigeach Cúnta	4	4
Oifigeach Cléireachais ⁵⁵	5	6.1
Bainisteoir Géilliúntais Chorparáidigh	1	1
Bleachtaire Garda	5	5
Cigire Bleachtaireachta	1	1
Sáirsint Bleachtaireachta	2	2
Stiúrthóir	1	1
Oifigeach Feidhmiúcháin	8	7.7
Ard-Oifigeach Feidhmiúcháin/Anailísí Córais	8	7
Comhairleoir Dlí	3	3
Príomhoifigeach	2	2
Príomhaturnae	1	1
Aturnae	2	2
Iomlán	46	44.8

⁵⁵ Cuimsítear san uimhir a luaitear anseo Rúnaí Dlí atá fostaithe ar bhonn conartha. Cúisí comhroinnt oibre is cúis leis na huimhreacha anseo agus ansiúd sa tábla a bhfuil codáin iontu.

Aguisín 5.1.2

Briseadh síos ar an gCaiteachas i gcóimheas leis an gCionroinnt i 2008 agus Blianta Roimhe

Foinse Chionroinnte/Chaiteachais	2006		2007		2008	
	€000nna	€000nna	€000nna	€000nna	€000nna	€000nna
Cionroinnt						
Deontas ón Státhchiste		4,713.0		4,823.0		4,957.0
Caiteachas						
Tuarastail, Pá agus Liúntais	1,915.3		2,140.2		2,411.6	
Fógraíocht agus Poiblíocht	165.8		326.8		304.1	
Áitreabh Oifige	231.2		286.6		353.2	
Costais Dlí	452.0		913.2		630.4	
Seibhísí Comhairleoireachta	240.1		268.7		169.3	
Ríomhaireacht	53.3		74.1		61.6	
Priontáil	106.9		157.0		141.9	
Fochostais	15.8		14.8		27.1	
Taisteal agus Cothabháil	33.4		31.0		32.0	
Teileachumarsáid	49.6		43.7		88.8	
Seirbhísí Postais/Teachtaire	18.5		69.6		75.1	
Fótóchóipeáil agus Trealamh Oifige	48.9		33.6		25.0	
Forbairt Acmhainne Daonna	24.9		18.9		23.0	
Caiteachas Iomlán		3,355.7		4,378.2		4,343.1
Suim a Géilleadh		1,357.3		444.8		613.9



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