

# Companies Report 2005

Presented to the Oireachtas in accordance with  
the provisions of the Companies Acts 1963 to 2005



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## FOREWORD

2005 was a year of substantial change to the regulatory framework within which companies operate in Ireland. Much of the law in relation to Market Abuse and Prospectuses was repealed and replaced by new provisions made through both primary and secondary law. The Investment Funds, Companies and Miscellaneous Provisions Act 2005, amongst other things, put in place enabling provisions to allow for the EU Directives dealing with Market Abuse and Prospectuses to be transposed by Regulations.

The Investment Funds Act also made some very welcome changes for the Funds Industry in Ireland. It provided for a new investment vehicle – the non-UCITS CCF – to complement the existing portfolio of investment vehicles available to investors in Ireland. It also provided for segregated liability and cross investment for investment companies to allow for greater investor protection and choice. These changes have made Ireland a more attractive location for the establishment of investment funds, thereby increasing our competitiveness in the area.

2005 also saw major changes for the accounting and auditing profession with the adoption of EU requirements relating to International Financial Reporting Standards (IFRS). While initially adapting to these changes may pose challenges for the profession and industry, ultimately we will reap the benefits of compliance with converged standards in terms of our international reputation.

Much work was undertaken in 2005 to facilitate the establishment on a statutory basis of the Irish Auditing and Accountancy Supervisory Authority (IAASA) which is now empowered to discharge a wide range of functions under the Companies (Auditing and Accounting) Act, 2003. I am confident that this new Authority through its independent professional expertise, significant powers and active supervision of the regulation and governing of the auditing and accounting profession will ensure that the regulatory structures governing auditors and accountants in Ireland will promote high standards of practice.

The Company Law Review Group (CLRG) continued its sterling effort in working towards preparing a draft Scheme of Bill to modernise and consolidate company law. Full details of the Group's activities for the year are reported separately but I would like to specifically acknowledge the work of the Group in relation to the Directors Compliance Statement during 2005. The provision which was included in the Companies (Auditing and Accounting) Act 2003 has led to much debate prior to and after enactment. I believe the CLRG has now come up with a workable compromise provision which strikes a good balance between corporate responsibility and the costs associated with compliance.

The Office of the Director of Corporate Enforcement (ODCE) and the Companies Registration Office (CRO) continued their respective enforcement roles throughout 2005. As required by law, the Director's annual report is published and laid before the Houses separately although we have included in the present report a summary of the highlights from that report this year. In addition, the Registrar of Companies has for the first time produced and published on the CRO website a report of activities for the year although he is not required by law to produce a separate report. Again for

completeness we have included a summary of the highlights here with the full report available on the CRO website.

Finally, to refer to the ongoing review of the Companies Report itself. My officials initiated a consultation process with the key stakeholders which itself has led to some improvements in terms of the format and content of the report. This year we have made clearer the distinction between the work of my Department and the work of the Agencies and Bodies. In an effort to limit duplication of the extensive nature of material reported to the Oireachtas we have opted to include summaries of reports from Agencies and Bodies where the full reports are laid separately. In addition, we have included summaries of the main role and responsibilities of the Agencies and Bodies in the company law arena. In the context of the growing number of specialised regulatory agencies it is becoming increasingly important to clarify, when we can, their respective roles.

You will notice some other more minor changes to the layout and format of the report but the review process continues and over the next couple of years I hope further fine-tuning will lead to the production of an even more satisfactory document. The changes we have made are a step in the direction of developing the report into a more useful policy tool for monitoring and assessing progress towards broader and more strategic corporate governance goals.

This report is submitted in accordance with section 392 of the Companies Act 1963 which requires the Minister to “cause a general annual report of matters within this Act to be prepared and laid before both Houses of the Oireachtas”. A deadline of “not later than 7 months after the end of the calendar year to which the report relates” was added in 2001 by the Company Law Enforcement Act of that year (section 99).

Michael Ahern  
Minister for Trade and Commerce

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# *Part A*

*Part A of this report details the activities of Company Law Sections in the Department of Enterprise Trade and Employment in 2005 relative to the Companies Acts, 1963 to 2005*

## Chapter 1 Legislative and Related Developments

*Legislation brought into effect in 2005.*

### Investment Funds, Companies and Miscellaneous Provisions Act 2005

(No.12 of 2005)

The Investment Funds, Companies and Miscellaneous Provisions Act 2005 (enacted on 29 June 2005) made a number of changes to the law on investment funds, with a view to providing the greatest flexibility to the Funds Industry while at the same time keeping appropriate controls in place. It provided for the introduction of a new type of investment fund vehicle - the non-UCITS (Undertakings for Collective Investment in Transferable Securities) Common Contractual Fund (CCF) and it also provided for the introduction of cross investment and segregated liability for investment funds.

A number of other changes were made to general company law to remove existing anomalies and pave the way for smooth transposition of EU Directives on Market Abuse and Prospectuses. In addition, some minor amendments to Consumer Law were made mostly to increase the level of maximum fines that can be imposed on parties found guilty of breaches of specific consumer legislation and an immediate requirement of the co-operative sector was answered by the provision of increases in certain financial limits relating to co-operatives. Amendments were also made to the Takeover Panel Act and the Competition Act.

In summary, therefore, the Act provided for:

- (1) the introduction of a Non-UCITS contract fund structure i.e. the Common Contractual Fund (CCF) structure;
- (2) the amendment of the Companies Act 1990 to provide for the introduction of segregated liability and cross investments for investment funds;
- (3) the amendment of the Companies Acts to enable the transposition of the EU relating to Market Abuse
- (4) the amendment of the Companies Acts to enable the transposition of the EU Prospectus Directive;
- (5) other miscellaneous amendments to the Companies Acts to remove anomalies and make other changes that were needed;
- (6) the amendment of certain pieces of consumer protection legislation largely to increase the maximum fines that can be imposed on conviction;
- (7) the amendment of the Industrial and Provident Societies Act 1893 to allow an increase in certain financial limits;
- (8) the amendment of the Takeover Panel Act 1997 regarding its scope; and
- (9) the amendment of the Competition Act 2002 concerning retention of evidence seized by the Authority.

As regards the provisions relating to the introduction of a non-UCITS contract fund structure i.e. the **Common Contractual Fund (CCF)** structure, the Act provided the legislative framework for an Irish authorised and regulated investment fund structure which allows for the pooling of assets by institutional investors. For example, many multinational companies operate pension schemes in a number of different

jurisdictions for the benefit of employees in those jurisdictions. When these local pension funds are centralised/pooled a number of cost savings are achieved through economies of scale. These savings include a reduction of management fees, administration costs and custodian fees. In addition, the pooling of assets allows smaller individual funds to diversify their risk by using a larger number of investment managers than would be possible if they were to operate on a stand-alone basis.

As already mentioned, the Act also amended the Companies Act 1990 to provide for the introduction of **segregated liability and cross investment** for investment funds. Ideally, an investor who invests in a particular sub-fund should be in the same position as if that sub-fund were itself a limited liability company. The investor should be subject only to investment risks and liabilities incurred in the pursuance of the investment strategy attributable to the sub-fund in which it has chosen to invest and should not be exposed to potential liability as a result of activities in other sub-funds. The legislation also facilitates investment by one sub-fund of an umbrella fund into another sub-fund of the same umbrella. This had been permitted in investment funds which were structured as unit trusts but was not possible in investment companies because the legislation provided that shares which are purchased by an investment company must be cancelled. This meant that an investment company couldn't purchase shares in itself and hold these for the benefit of the investors in a particular sub-fund. The 2005 Act removed this prohibition.

Finally, in terms of provisions specifically for investment funds the Act gave the Minister the power to make Regulations to allow investment companies the flexibility to comply with **alternative accounting standards**. The Minister made these Regulations in 2005 to allow investment companies draw up their accounts in compliance with US, Canadian or Japanese accounting standards – details at **Appendix 4**.

The Act made other miscellaneous amendments to the **Companies Acts** to remove anomalies, rectify incomplete or incorrect cross-references in existing law and facilitate operators using electronic technology.

The Act also amended certain pieces of **consumer** protection legislation largely to increase the maximum fines that can be imposed on conviction.

The amendment of the **Industrial and Provident Societies Act 1893** allowed an increase in the maximum amount which a member of a society may have by way of interest in the shares of a society (including co-operatives) to €150,000 or an amount equal to 1 per cent of the total assets of the society, whichever is the greater. The amounts which may be distributed by a society by way of testamentary nomination or on intestacy were raised to €15,000 and €10,000 respectively.

The amendment to the **Irish Takeover Panel Act 1997** was designed to exclude issuers of non-voting debt instruments from the remit of the Takeover Panel, if those instruments are listed on the Irish Stock Exchange.

The amendment to the **Competition Act 2002** related to retention of evidence by the Authority. It provided that any books, documents or records which are seized or obtained by the Authority could be retained for a period of 6 months, or such longer

period as may be permitted by a judge of the District Court. It further provided that if, within that period, proceedings had been commenced (to which those books, documents or records were relevant) they could be retained until the conclusion of those proceedings.

## **Market Abuse**

The provisions in the Companies Acts relating to Market Abuse were amended to facilitate the implementation of the EU Directive on Market Abuse and related Instruments. Most of the transposition was done by Regulation but primary law was required to provide for civil and criminal liability for breach of the Market Abuse legislation (i.e. Part 4 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005). The Act also provided for the repeal of previously existing law in the area but these repeals were only commenced in so far as they apply to regulated markets. The new regime took effect on 6 July 2005. The repeals as they apply to specific unregulated markets will be commenced once an Order is made under section 37 specifying the elements of the transposing Regulations which will apply to such markets. Until then the old regime will apply to the new Irish Stock Exchange Junior market, known as the Irish Enterprise Exchange (IEX), which was launched during 2005.

### **Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005)**

As just mentioned, these Regulations provide for the prevention, detection, investigation and sanctioning of insider dealing and market manipulation. The Market Abuse Directive (MAD) consists of four EU Directives - the principal 'framework' Directive 2003/6/EC on insider dealing and market manipulation (Market Abuse) and detailed implementing Directives, 2003/124/EC, 2003/125/EC and 2004/72/EC. (Another related instrument, EU Regulation 2273/2003, which has direct application, implements Directive 2003/6/EC as regards exemption for buy-back programmes and stabilisation of financial instruments.)

The new legislation applies to any financial instrument admitted to trading on a regulated market (or where a request for admission to trading has been made). It introduced a new offence in Irish law, namely, market manipulation. The new legislation largely replaces Part V of the Companies Act 1990, which hitherto provided for insider dealing and the Companies (Amendment) Act 1999 which provided for stabilising activity in relation to the issue or sale of securities.

## **Prospectuses**

Provisions of the Companies Acts dealing with Offers to the Public were amended to facilitate the transposition of the EU Directive dealing with Prospectuses to be published when securities are listed or offered to the public. The primary objective of the new legislation is to enhance investor protection through the production of high quality prospectuses and to improve the efficiency of raising capital by issuers through the issue of a single approved prospectus, which will be valid for use across the EU. Another main feature of the legislation is that offers of securities that are excluded from the Prospectus Directive are not subject to national prospectus rules

although they will be required to contain a clear warning that such offers are not prepared pursuant to the Prospectus Directive and have not been reviewed prior to issue by any regulatory authority. Part V of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 provided for the necessary repeals of previously existing law in this area as well as providing for civil and criminal liability for breach of the law. The new regime took effect on 1 July 2005.

### **Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005)**

As just mentioned, these Regulations along with the provisions in the Act, transposed EU Directive 2003/71/EC and the implementing Commission Regulation 809/2004 which together set down new rules for the drawing up, approval and distribution of prospectuses when securities are offered to the public or admitted to trading on a regulated market. (A prospectus is a disclosure document containing all the necessary information to enable investors to make an accurate evaluation of the financial position and prospects of the issuer and of the rights derived from the securities being offered.)

### **Sanctions**

Regulations made under the Market Abuse and Prospectus Directives provide for administrative sanctions, in addition to criminal and civil sanctions provided for in primary law. The earlier legislation was limited to criminal and civil sanctions only.

## **The Financial Regulator's role - Prospectus and Market Abuse Legislation**

As provided for in the respective Regulations the Financial Regulator is the competent authority in Ireland for the purposes of the Prospectus Directive and the Market Abuse Directive. In this context, the Financial Regulator issued Interim Prospectus Rules and Market Abuse Rules in July 2005 pursuant to section 51 and section 34, respectively, of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005. These Interim Rules set out procedural and administrative requirements and guidance in respect of the national implementing legislation including such issues as submitting a prospectus for approval, disclosing inside information, maintaining insider lists, notification of manager's transactions and notification of suspicious transactions.

In assuming its responsibilities as competent authority under the Directives, the Financial Regulator has put in place an operational framework which involves the delegation of certain functions to the Irish Stock Exchange e.g. initial prospectus review, initial market monitoring, processing company announcements. As the Irish securities regulator the Financial Regulator is an active member of the Committee of European Securities Regulators ('CESR') working on both permanent subgroups and expert groups to facilitate co-operation among European securities regulators and the development of common guidance and standards underpinning the Directives.

Under Regulation 108 of the Prospectus (Directive 2003/71/EC) Regulations 2005 and Regulation 54 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 the Financial Regulator shall provide the Minister for Enterprise, Trade and Employment

with a copy extract, relating to the performance of its functions under the Regulations, of its annual report to the Minister for Finance pursuant to section 330 of the Central Bank Act 1942 as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003. The Financial Regulator proposes to publish its annual report in July.

### **Companies Act, 1990 (Uncertificated Securities)(Amendment) Regulations 2005 (S.I. 693 of 2005)**

The Companies Act, 1990 (Uncertificated Securities) (Amendment) Regulations 2005 facilitated the introduction of a Central Counterparty (CCP) system for the Irish Securities Market on 5<sup>th</sup> December, 2005.

The purpose of the Regulations was to extend the circumstances when a properly authenticated dematerialised instruction (PADI) is considered to have been sent through the system. The end result of this process leads to record a change in the registered owner of securities.

Key benefits identified by the Irish Stock Exchange of the CCP system include

- member firms having to only deal with one counterparty when buying or selling securities on behalf of investors;
- the reduction in possible exposure to default because the CCP provider is effectively guaranteeing the settlement of trades;
- CCP arrangements are seen to enhance liquidity and provide opportunities for increased efficiencies;
- CCP is seen as a significant attraction for institutional investors as it provides anonymity among market participants.

### **Companies Act, 1990 (Prescribed Alternative Accounting Standards Bodies) Regulations 2005 (S.I. 382 of 2005)**

These Regulations are made under section 260A of the Companies Act 1990 as inserted by section 28 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005. Section 28 of the Act provides that investment companies established under the 1990 Companies Act may comply with alternative accounting standards and it also provides that the Minister may make Regulations to prescribe the bodies which may lay down these alternative accounting standards.

The purpose of these Regulations was to prescribe the bodies in the United States, Canada and Japan which have the authority to lay down accounting standards with which investment companies may comply. Similar provisions were made in the Schedule to the 2005 Act for investment companies established under the Undertakings for Collective Investment in Transferable Securities (UCITS) regime.

### **European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S. I. No. 116 of 2005)**

European Council Regulation (EC 1606/2002) dated 19 July, 2002 requires listed companies, including banks and insurance companies, to prepare their consolidated

accounts in accordance with International Accounting Standards (IAS) from 2005 onwards. EU Directive 2003/51/EC of 18 June, 2003, which complements Regulation EC 1606/2002, amends the European Union 4th and 7th Company Law Directives which, respectively, govern the preparation of annual and consolidated accounts.

The European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005) gives full effect to Regulation 1606/2002 and to Directive 2003/51/EC and ensure that optional accounting treatments available under International Financial Reporting Standards, as endorsed by the EU are available to companies, while leaving those companies which can and wish to adhere to the EU Accounting Directives (implemented in Ireland, by the Companies (Amendment) Act 1986 and the 1992 Group Accounts Regulations) as the basis for their accounts, free to do so. It also makes other changes to reflect current best reporting practices.

### **Companies (Auditing and Accounting) Act 2003 (Commencement) Order 2005 (S.I. No. 686 of 2005)**

This order fixed 1 December, 2005 as the date on which section 47 of the Act came into operation to the extent that it was not already in operation by virtue of article 5 of S.I. No. 132 of 2003.

### **Companies (Auditing and Accounting) Act 2003 (Commencement) (No. 2) Order 2005 (S.I. No 791 of 2005)**

This order provides for the commencement of certain provisions of the Act which allow for the establishment of the Irish Auditing and Accounting Supervisory Authority (IAASA).

### **Interim Board of the Irish Auditing and Accounting Supervisory Authority (IAASA)**

Necessary arrangements were put in place, in particular over the final quarter of the year, to establish the Irish Auditing and Accounting supervisory Authority (IAASA). As of 2 February, 2006 IAASA was given most of the powers provided for it in the Companies (Auditing and Accounting) Act, 2003 (the 2003 Act).

IAASA has a wide range of oversight functions, under the 2003 Act, including supervision of the regulatory functions of prescribed accountancy bodies. In particular the 2003 Act provides for IAASA to:

- Grant recognition to bodies of accountants under the Companies Acts and attach terms and conditions to the recognition of these bodies;
- Intervene in the disciplinary processes of the accountancy bodies where it deems it necessary;
- Carry out independent investigations of possible breaches of standards of prescribed accountancy bodies by their members; and
- Review the accounts of certain categories of companies and apply to the Courts to compel directors of a company to amend accounts that are not in compliance with the Companies Acts.

Chapter 6 provides further information on IAASA, in particular, its activities in 2005.

*Appendix 3 lists and briefly describes the primary and secondary legislation brought into effect in 2005 and statutory instruments not included above can be found there.*

*Current legislative projects including Directives in the process of being transposed.*

### **Company Law Review Group**

The main project here is the Companies Consolidation and Reform Bill and this is dealt with in more detail in Chapter 2.

### **Consolidation/Streamlining of Collective Investment Schemes Law**

The Department is currently consulting with the Regulator and Industry regarding a proposal to consolidate and streamline all of the provisions relating to Collective Investment Schemes in Ireland. It is intended that following the consultation process a Regulatory Impact Analysis will be carried out on this proposal before Heads of a Bill are drafted and submitted to Government for approval.

### **Directive of the European Parliament and of the Council of 21 April 2004 on takeover bids**

The Directive sets out to establish minimum guidelines for the conduct of takeover bids involving the securities of companies where all or some of those securities are admitted to trading on a regulated market. Given the differences existing between legal systems in the Member States, the European Council decided to limit this Directive to a framework of certain common principles and a limited number of general requirements which Member States will be required to respect through detailed implementing rules.

The Directive is viewed as being an essential step towards the objective of fully integrating European capital markets and must be transposed in Member States not later than 20 May 2006.

### **European Co-operative Statute**

The EU Council of Ministers adopted the Regulation and Directive on the European Cooperative Society on 22 July 2003. The Regulation will be directly applicable in all Member States and the Directive is required to be transposed into law by all Member States by 18 August 2006. Consultation regarding the options in the Regulation which European Community Member States may exercise has been concluded and the instrument to provide national implementation is under draft.

### **Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC**

The aim of the Directive is to upgrade the information available to investors, thus helping them to allocate their funds on the basis of a more informed assessment. It seeks to ensure that investors receive interim management statements from those share issuers who do not publish quarterly reports, and half yearly financial reports from issuers of shares or debt securities. In addition, all securities issuers will have to provide annual financial reports within four months after the end of the financial year.

The Directive will also improve dissemination of a range of information on issuers, in particular concerning changes in major shareholdings.

The Directive completes a package of Financial Services Action Plan measures adopted over the last two years (the International Accounting Standards Regulation, the Market Abuse Directive, the Prospectus Directive) to establish a common financial disclosure regime across the EU for issuers of listed securities. It is due to be implemented not later than 20 January 2007.

### **Recommendation on Remuneration of Directors and on the role of Non-Executive Independent Directors**

The Commission's Action Plan to modernise company law and enhance corporate governance in the EU contains a wide range of initiatives, which the Commission are rolling out over the short, medium and long term. Short-term measures on the corporate governance side, which have already been adopted, relate to the remuneration of directors and the role of non-executive directors in the case of listed companies.

On 6 October 2004 the European Commission adopted a Recommendation on directors' remuneration. It recommends that Member States should ensure listed companies disclose their policy on directors' remuneration and tell shareholders how much individual directors are earning and in what form, and ensure shareholders are given adequate control over these matters and over share-based remuneration schemes.

On 6 October 2004 the European Commission also adopted a Recommendation on the role of independent non-executive directors on listed companies' boards. The Recommendation concentrates on the role of non-executive or supervisory directors in key areas where executive or managing directors may have conflicts of interest. It includes minimum standards for the qualifications, commitment and independence of non-executive or supervisory directors.

Member States are required to have these measures implemented by 30 June 2006.

### **Directive of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (2005/ 56/EC)**

The aim of the Directive is to facilitate cross-border mergers of limited liability companies under favourable conditions in terms of costs and legal certainty, and provide for a framework within which this process can occur. It is directed primarily at companies who are not interested in forming a statute company under the European Company Statute, i.e., for the most part small and medium sized enterprises. This Directive is required to be implemented by 15 December 2007.

*Future legislative projects on the horizon (including Directives being negotiated).*

**Proposal to simplify the formation, maintenance and alteration of companies' capital**

On the 21 September 2004, the European Commission presented a proposal for a Directive to make it easier for public limited liability companies to take certain measures affecting the size, structure and ownership of their capital. The proposal would amend the parts of the 1976 Second Company Law Directive covering the formation, maintenance and alteration of capital. Negotiations on an agreement between the Council and the European Parliament are at a very advanced stage in relation to this proposal.

**Proposal for a Directive of the European Parliament and of the Council on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC**

This proposal, which arises from the European Commission's "Action Plan on Modernising Company Law and Enhancing Corporate Governance in the European Union", is for a minimum harmonisation Directive. It seeks to achieve effective simplification of the cross-border voting process and reduction in the disparities between Member States and focuses on selected rights of shareholders in the general meeting. It introduces minimum standards to ensure that company shareholders have a timely access to complete information in relation to general meetings of the company and have simplified ways of voting without attending the general meeting. Member States are left free to maintain or introduce provisions that are more favourable to shareholders.

**Proposal of the European Parliament and of the European Council amending Council Directive 78/660/EEC and 83/349/EEC concerning the annual accounts of certain types of companies and consolidated accounts**

Consideration of this proposal commenced at European Council working group level in late 2004 and continued in 2005. The proposal aims to further enhance confidence in the financial statements and annual reports published by EU companies by requiring them to provide more reliable and complete information to shareholders and other stakeholders. This will be achieved through amendments to Council Directives 78/660/EEC and 83/349/EEC, commonly known as the 4<sup>th</sup> and 7<sup>th</sup> accounting Directives which primarily form the basis for EU accounting requirements.

**Amendment of First Company Law Directive**

EU Directive 2003/58/EC, which was formally adopted on 15 July, 2003, amends the First Company Law Directive. The modifications are designed to make company information more easily and rapidly available to the public while at the same time simplifying the disclosure formalities required from companies. It will allow full

advantage to be taken of modern technology. Companies will be able to file their documents and particulars either by paper means or by electronic means. Interested parties will be able to obtain copies by either means. Companies will continue to file their documents and particulars in the language(s) of their Member State but will have the option of voluntarily filing the same information in other EU languages, in order to improve cross-border access.

The Directive must be transposed into domestic legislation by 31 December, 2006.

**Draft - 8<sup>th</sup> Company Law Directive on statutory audit of annual and consolidated accounts and amending Council Directives 78/660/EEC and 83/349/EEC.**

During 2005 discussions continued on the draft text of the Directive and agreement was finally reached by member states in the latter half of the year. The Directive received political agreement by the Council and Parliament at first reading in October 2005. It is expected the Directive will be published in the official journal in early 2006 and the timeframe for transposing is 24 months after the date of publication. The objective of the Directive is to restore credibility and enhance confidence in financial reporting. The directive aims at reinforcing and harmonising the statutory audit function throughout the EU and sets out principles for public supervision in all member states along with a requirement for external quality assurance and clarifies the duties of statutory auditors. It also sets out principles of independence applicable to all statutory auditors and further improves the independence of auditors by requiring listed companies to set up an audit committee with clear functions to perform.

## **Chapter 2 Company Law Review**

### **Meetings of Company Law Review Group in 2005**

The CLRG functions through a committee-based system, from the full representative Plenary which is composed of all members, guided by a smaller Steering Group, and supported by dedicated committees constituted to examine individual areas, such as guarantee companies or plcs, in greater detail.

The Plenary met on seven occasions during 2005, while the Steering Group met regularly on a monthly or fortnightly basis, depending on volume of work.

The dedicated committees continued their intensive work on progressing drafts of individual Parts of the Companies Consolidation and Reform Bill. Parts which were advanced in this context include the majority of those dealing with the private company limited by shares (the “cls”), which will be the default company type under the new Bill, and those on designated activity companies, guarantee companies, unlimited companies, and public limited companies. The drafts of these Parts are available on the CLRG’s website ([www.clrg.org](http://www.clrg.org)).

### **Directors’ Compliance Statement**

At the request of the Minister for Trade and Commerce, Michael Ahern, the CLRG undertook a review of the provisions on the Directors’ Compliance Statement (DCS) contained in section 45 of the Companies (Auditing and Accounting) Act 2003, during 2005. The CLRG’s review involved extensive consultation with members and other interested parties, the undertaking of a screening regulatory impact analysis (RIA) and ultimately led to the production of a Report which contained a recommendation for a mitigated form of DCS. The CLRG’s recommendation in this regard was approved by the Government at its meeting on 29 November 2005 and will be taken forward in the context of the new Companies Consolidation and Reform Bill.

### **Implementation of Prospectus Directive**

The CLRG oversaw a tender process in early 2005 pursuant to which a leading law firm was engaged on a consultancy basis to prepare the Draft Prospectus Regulations. The consultancy project was completed on time and within budget, and the Regulations were duly signed into law by the implementation date of 1 July 2005<sup>1</sup>.

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<sup>1</sup> Prospectus (Directive 2003/71/EC) Regulations 2005 (SI No. 324 of 2005)

## **Appointment of CLRG Chairman to European Commission Advisory Expert Group on Corporate Governance and Company Law**

The European Commission, in a decision made on 28 April 2005<sup>2</sup>, established a group of non-governmental experts on corporate governance and company law. The role of the Group is to provide technical advice to the Commission on initiatives in the field of corporate governance and company law at the Commission's request, and the Chairman of the Group may also suggest that the Commission consults the Group on any related matter. The Chairman of the CLRG, Dr. Thomas B. Courtney, was appointed as a member of Group.

### **Ongoing issues**

The current issue of paramount concern to the CLRG is to complete the drafting of the General Scheme of the Company Law Consolidation and Reform Bill such that the Minister for Enterprise, Trade and Employment can bring it to Government for agreement in the latter half of 2006. When the General Scheme goes to the Office of the Parliamentary Counsel the Department of Enterprise, Trade and Employment will continue to engage on the development of the Bill proper, and the CLRG will continue to assist the Department in that regard.

With regard to EU-derived law it is necessary in the immediate future to consider the Regulations which will give effect to the Takeovers Directive, which is due for implementation on 20 May 2006. It is also necessary to consider the transposition of the Transparency Directive, due for implementation on 20 January 2007, and in particular to reflect on the timeframe and methodology of the enactments required.

Finally, looking forward to the work program of the CLRG in 2006-7, the Minister for Trade and Commerce has asked the CLRG to consider, once the General Scheme of the Company Law Consolidation and Reform Bill has been approved by Government, the issue of Limited Liability Partnerships and other reforms to Partnership Law which may be appropriate.

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<sup>2</sup> Commission Decision 2005/380/EC of 28 April 2005

## Chapter 3 Other Statutory Functions of the Minister for Enterprise, Trade and Employment

*The Minister for Enterprise, Trade and Employment has a number of other statutory functions under the Companies Acts. This Chapter reports on the discharge of these functions in 2005.*

### **Company Investigations**

In November 2001 responsibility for the investigation of company law offences was assigned to the Director of Corporate Enforcement.

### **Examinations under section 19 of the Companies Act 1990**

Three examinations of company books and documents by the Minister's authorised officer under section 19 of the Companies Act 1990 remained to be concluded at the end of the year. The companies involved are College Trustees Ltd., Guinness & Mahon (Ireland) Ltd. and Hamilton Ross Co. Ltd. In June 2005, the Minister directed the authorised officer to place at the disposal of relevant public authorities, including Tribunals of Inquiry, whatever information and assistance arising from his investigative work was required by those authorities for the purpose of the performance of their statutory functions. This process was continuing at the end of the year. The Minister's objective in giving his direction was to achieve the earliest possible pursuit by the appropriate authorities of any matter which may require action by them.

### **Cost of Investigations under the Companies Acts.**

At the end of 2005, the accumulated costs of all investigations from 1997 amounted to approximately €11.3m. Of this amount section 19 Investigations by Authorised Officers and related expenditure amounted to €2m and the remaining €9.3m was incurred by High Court Inspectors appointed under section 8.

Appendix 8 contains a list of all company investigations that were undertaken at the instigation of the Minister for Enterprise, Trade and Employment since the commencement of the Companies Act 1990.

### **Companies exempted from showing particulars of directors on headed paper**

Section 196 (1) of the 1963 Act obliges a company to indicate particulars relating to its directors, including all shadow directors as defined under section 27 of the Companies Act 1990, on its business letters. Section 196 (2) empowers the Minister to grant an exemption to this requirement.

Applications for exemption are considered once the company's Annual Returns are up to date, where a company has a history of frequent changes to the board of directors which have been filed with the Companies Registration Office and which would entail

the financial burden and inconvenience of repeated revision and printing of company stationery.

**Table showing the numbers exempted from showing particulars over the past five years:**

	2001	2002	2003	2004	2005
Companies Exempted	2	5	4	0	3
Applications rejected	3	5	5	4	4

**Prospectuses for Business Expansion Schemes (BES)**

The function of the Minister for Enterprise, Trade and Employment in relation to BES funds is to ensure that the prospectus and publicity material for a fund give prospective investors the information required to make an objective decision when deciding to invest in a particular fund.

Under section 5 of the Designated Investment Funds Act 1985, the Minister for Enterprise, Trade and Employment has to approve the terms of the prospectus and other publicity material for each fund while the Revenue Commissioners look after the tax elements. The 1985 Act requires that each prospectus must clearly include statements:

- (i) regarding the risks involved
- (ii) that no liability shall attach to the Minister
- (iii) that no right to relief shall arise by reason only of the Minister’s approval
- (iv) that before subscribing to a fund a prospective investor should seek professional advice.

Ultimately responsibility for assessing the bona fides of a particular fund rests with the investor.

One application was approved in 2005 as follows:

Name	Size of Fund	Trustees	Manager	Managers Fee	Approved
The 2005 Davy BES Fund	€3m (min) €10m (max)	Capita Corporate Trustees Ltd, Unit 5, Manor Street Business Park, Manor Street, Dublin 7	BES Management Limited	3.5% payable by participants on the amount of investment	03/11/05

### **Secretaries of Public Limited Companies**

Section 236 of the Companies Act 1990 places a duty on directors of a PLC to take all reasonable steps to ensure that the secretary of the company has adequate knowledge and experience to discharge the functions of a secretary as laid down by the Act. The section provides that the Minister may recognise relevant bodies for the purpose of the section. The Institute of Chartered Secretaries and Administrators (ICSA) has been so recognised by the Minister. It is not obligatory for a secretary of a plc to be a member of a recognised body.

The total membership of the Institute worldwide as of 31 July 2005 was 37,401.

	<b>Worldwide</b>	<b>Ireland</b>
Associates and Fellows	37,401	579
Graduates*	3,891	69

Please note that the Institute can no longer differentiate between Associates and Fellows worldwide due to changes in the way it gathers this data. Of the 579 Associates and Fellows in Ireland, 421 are Associates and 158 are Fellows.

\*graduate denotes a candidate for the Profession who has completed the education requirements but has not yet met the other criteria to be considered for membership.

The Institute has reported that no complaints were received concerning any member in the Irish Region, consequently no disciplinary actions have been taken.

# *Part B*

*Part B of this report deals with reports of Bodies/Agencies to the Department of Enterprise, Trade and Employment for 2005 relative to the Companies Acts, 1963 to 2005*

## **Chapter 4 Office of the Registrar of Companies**

*The Registrar has published his own Annual Report on the Companies Registration Office website [www.cro.ie](http://www.cro.ie). In the sections below the Registrar has set out the main points from that report.*

### ***Major Projects***

The Integrated Enforcement Environment continued to have a major impact particularly through the strike off process. While plans were implemented to step up actions regarding presenters and directors the major effect of those enhancements will be felt during 2006.

The backlog clearance project continued to bring substantial benefits in document checking and registration but the levels of throughput necessary to clear the backlog of unregistered annual returns is not yet in place. Renewed effort on a number of fronts will be necessary in 2006.

Extensive work was done to support the statutory Electronic Filing Agent, and to develop the pre-filled annual return.

The implementation of the Companies On-line Registration Environment went very smoothly and can now be extended to a much wider user base.

### ***Registry of Friendly Societies***

On 1 May 2003 the Registrar of Companies was appointed Registrar of Friendly Societies to take over responsibility for the functions of the Registry of Friendly Societies that remained after the transfer of the credit union function to IFSRA, i.e. the registration and general regulation of industrial and provident societies, friendly societies and trade unions. The statutory functions of the Registrar of Friendly Societies in relation to these entities remained unchanged at the end of 2005.

### **Mission Statement**

The Mission Statement of the CRO has been to ensure a high level of filing of returns due, a rapid turnaround of the information on those returns with the assurance that the information provided to us complies with the relevant statutory provisions and that the information supplied by us accurately reflects that provided.

That Statement is summarised as Input, Output and Quality and the actions in our business plans in recent years have been grouped under those headings. In the Registrar's Report on [www.cro.ie](http://www.cro.ie) we set out the commitments we made in the business plan for 2005 and the extent to which those commitments were met.

## **Input**

### **Integrated Enforcement Environment**

The Integrated Enforcement Environment was initiated in May 2004. This represents a radical revision to the way in which CRO conducts its enforcement activities. The system enables the Office to accurately distinguish one company from another on the basis of its compliance history, and to initiate appropriate enforcement action on the basis of that history.

Strike-off figures for 2005 were as follows:

Voluntary strike-off	3316 companies
Strike-off following failure to file annual returns	9514 companies
Strike-off at the request of the Revenue Commissioners	794 companies

### **Late Filing Penalties**

We were disappointed in 2005 at the continued high level of late filing penalties. Following the fall in 2004 from the 2003 figure we anticipated a further substantial decline in 2005.

The following penalties have been paid since the commencement.

2001	€1.8 m.
2002	€12.5 m
2003	€27.8 m
2004	€18.2 m
2005	€1.4 m

## **Communications**

### ***Main Campaigns***

In 2005 the “You’ve Got a Date” campaign ran for two weeks in September and for two weeks in November. These were timed to coincide with peak filing times.

For three weeks in November/December there was a campaign concerning applications to register Business Names. This was to highlight the benefits of applying on-line.

**Newsletter**

The CRO E-Zine, an electronic bulletin, is published once a fortnight to inform subscribers of the current developments in the Companies Registration Office.

**Outcome**

Our Business Plan for 2005 contained the following:

<b>Due to File</b>	<b>Filed on Time</b>	<b>Filed a Current Return</b>	<b>Up to Date at 31 December</b>
<b>2003</b>			
<b>133,716</b>	89,744	112,189	105,652
	67.12%	83.90%	79.01%
<b>2004 - Target</b>			
	70%	90%	85%
<b>2004 - Outturn</b>			
<b>142,537</b>	100,861	119,572	113,683
	<b>70.76%</b>	<b>83.89%</b>	<b>79.76%</b>
<b>2005 – Target</b>			
	73%	90%	86%

The following was the out-turn:

<b>2005 - Outturn</b>			
<b>144,907</b>	105,649	125,721	121,806
	<b>73%</b>	<b>87%</b>	<b>84%</b>

We met our target on the number of companies that filed on time but missed our target on the other two headings. The figures nonetheless showed the continuation of progress over earlier years.

**Presenters**

During 2005 we continued as planned to engage in discussions with individual presenters on their filing record. Our target for 2005 was that by the end of the year there should be no presenters with more than 30% of their returns outstanding and a much-reduced proportion at more than 20%.

The position for 2005 is difficult to compare with 2004 as we expanded our database of presenters and now have data on many more presenter firms. Nonetheless it is clear that we did not make any significant headway.

## **Output**

### **Cash Office**

The receipt of submissions through the cash system remains a critical output from the Office as delays in recording documents result in a diminution of customer service and impact on the enforcement process.

The Lodgements Office, with assistance from other areas of the Office from time to time, continued to deal with the seasonal peaks in a timely manner. No large backlogs were allowed to accumulate in 2005.

More than 50,000 submissions were received and processed through the cash system during the five-week period commencing 30 September 2005. A total of more than 345,000 submissions were received throughout the year.

### **Other Output**

In the main, except for some slippage in the registration and scanning of Business Names, we have achieved our targets for scanning, registration of mortgages and charges, new companies, changes of name and re-registration of companies and the supply of bulk data.

While performance slipped a little in respect of registration of electronic business names applications in the latter part of the year, it was being achieved consistently by year-end.

Regarding manual applications, performance deteriorated as the year progressed to the extent that by end-year, a backlog of 7 weeks' manual applications had built up. Additional resources were put in place to address the problem as early as possible in the New Year.

It has not proven possible to attend to the scanning of business name applications to the extent predicted and the most recently scanned applications are those received up to the end of October 2005.

### ***Overall Comment***

This year has seen the largest increase in applications, year on year, for some years. There were 16,300 new registrations in 2002 and 23,587 in 2005, itself an increase of 17% on the previous year's figure. Priority was given to electronically filed documents and substantial advertising was put in place to encourage the use of this timesaving option.

### **Web Search facility**

The popularity of the on-line search continues to grow. More than 88% of searches are now conducted online compared to 83% in December 2004.

**Quality**

**E-Filing**

CRO’s principal means of dealing with the increased volumes of registration resulting from greater compliance is the automation of its processes. The outsourced key-up of annual return data has largely automated the registration process for these forms. Into the future this outsourcing will be replaced by enabling and encouraging the presenters to key up the data and file the returns online.

The development of an online pre-filled annual return was far advanced in 2005 and by January 2006 was in a testing phase.

Currently, a considerable amount of automation is enabled by the electronic filing of the annual return, changes of address, directors/secretary details and business name particulars and the registration of business names.

During 2005 the take-up of e-filing continued to increase. The following is the percentage filed electronically in the last three years:

	<b>2003</b>	<b>2004</b>	<b>2005</b>
B10 change in director/secretary	16.89	28.7	43.6
B1 Annual Return	1.14	4.19	5.4
B2 change in Registered Office	20.24	35.95	46.8
Business Names Registration and changes	9.21	26.46	44.1

On 1 September 2005 a differentiated fee structure was introduced for Business names to take account of the reduced cost of processing electronically filed documents. This resulted in a significant increase, i.e. from 40% to 60%, in the number of business names registrations being filed online.

A similar differentiation was introduced for company filings with effect from 1 December 2005.

The next most commonly filed forms, i.e. resolutions and forms M1 and M2 (changes to/from single from/to multiple member companies) were launched in November 2005 and appear to be becoming popular.

**Information Unit**

An average of 3,100 calls per week was received during 2005. This equates to 307 fewer calls per week received compared to 2004 figures. That said, fewer calls were answered and more calls abandoned during 2005 compared to 2004 figures. This is a direct result of staff shortages. The unit lost 4 experienced members of staff due to transfers and promotions during 2005. Replacement staff have been trained and it is hoped that previous service levels will be restored in the near future. Over 12,400 e-mails were answered during 2005. 95% of e-mails were replied to within 8 hours of receipt.

## **Registrar's Report**

Detailed statistics regarding the number and breakdown of companies on the register as at 31 December 2005, the number of submissions received and registered during the year, the finances of the Office, enforcement activity etc. can be found in the Registrar's Report at [www.cro.ie](http://www.cro.ie).

## **Chapter 5 Office of the Director of Corporate Enforcement**

*The Director of Corporate Enforcement presented the fifth Annual Report for the year 2005 pursuant to section 16(1) of the Company Law Enforcement Act 2001. The full Report is available on the ODCE website at [www.odce.ie](http://www.odce.ie). The Director has summarised the Report as follows.*

The ODCE had another successful year in 2005. The following summarises the results achieved under each of its primary goals.

### **Goal 1 – Encouraging Compliance with the Companies Acts**

In 2005, the Director of Corporate Enforcement and his staff continued to promote compliance with the requirements of the Companies Acts, and they also contributed to the development of policy and practice vis-à-vis corporate governance frameworks.

The Office issued three Information Notices in 2005<sup>1</sup>:

- Information Notice I/2005/1 which outlined the companies in insolvent liquidation in respect of which the ODCE had decided to grant full relief<sup>2</sup> or relief ‘at this time’<sup>3</sup> in 2004 pursuant to section 56 of the Company Law Enforcement Act 2001 (“the 2001 Act”);
- Information Notice I/2005/2 which explained the key changes to company law arising from the enactment of the Investment Funds, Companies and Miscellaneous Provisions Act 2005;
- Information Notice I/2005/3 which informed auditors in particular that they were exempted with effect from 1 September 2005 from reporting suspected annual return defaults to the ODCE<sup>4</sup>.

Towards the end of 2005, the Office also developed a draft Consultation Paper on the pending legal requirement<sup>5</sup> for certain public limited companies, large private companies and relevant undertakings to have an Audit Committee. In anticipation of the commencement of a requirement<sup>6</sup> that auditors assist the ODCE with information

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<sup>1</sup> These Information Notices are available at <http://www.odce.ie/publications/information.asp>. The primary and secondary legislation associated with a number of these Notices are also accessible via the ODCE website.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Section 37(d) of the Companies (Auditing and Accounting) Act 2003 (“the 2003 Act”).

<sup>5</sup> Section 42 of the 2003 Act.

<sup>6</sup> Section 37(e) of the 2003 Act.

in relation to their indictable offence reports, work was also undertaken to update Decision Notice D/2002/2 dealing with the auditor reporting duty.

In addition, the ODCE delivered some 58 presentations in 2005 to a combined audience of over 3,000. An Office presentation, entitled “Corporate Health Check” and identifying a few key company law compliance issues has proven to be popular with company directors and was regularly given in 2005 on its own or as part of a wider presentation on the ODCE’s role.

### **Goal 2 – Uncovering Suspected Breaches of Company Law**

The Office continued in 2005 to receive a large number of reports and complaints of suspected corporate misconduct. Some 2,373 reports and complaints were received in 2005, a 21% increase on the equivalent result for 2004. The 1,992 mandatory reports received from auditors and others disclosed some 15 suspected offences under the Companies Acts. Five offences were present in almost 98% of those reports. As in previous years, the public complaints received in 2005 were of a wider character.

Overall, the ODCE concluded its deliberations on 2,111 cases representing some 73.5% of the 2,872 cases received and on hands in 2005. The corresponding closure figure for 2004 was 66.7%. In addition, a further 154 cases were referred for more detailed investigation of the prospects for possible civil or criminal proceedings. Notwithstanding the improvement in throughput, some 607 cases were on hands at the end of 2005, a significant increase on the 499 on hands at end-2004.

The Office was directly involved in three company investigations in 2005, and it continued to progress a number of investigations concluded in earlier years.

### **Goal 3 – Prosecuting Detected Breaches of the Companies Acts**

2005 was a very active year for the Office on the enforcement front. While the number of criminal charges for breaches of the Companies Acts dealt with by the Courts in 2005 compared well with the preceding year (112 charges in 19 cases in 2005 vis-à-vis 99 in 20 cases in 2004), what was most significant was the better balance achieved between civil and criminal proceedings. Some 49 convictions and 21 disqualifications<sup>7</sup> were secured (compared with 66 and three respectively in 2004).

Particular highlights of the ODCE’s criminal enforcement proceedings in 2005 included:

- the conviction of six restricted individuals who had failed to abide by the terms of their restriction<sup>8</sup> following the High Court’s consideration of their

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<sup>7</sup> When disqualified, 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.

<sup>8</sup> A restricted person 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 €3,487 is required. In the case of a public limited company, the corresponding figure is €17,435. Moreover, the called up share capital must be fully paid for in cash. Restriction permits individuals to continue to avail of the benefits of

past conduct as directors of insolvent companies. As well as the imposition of substantial fines, these convictions entailed consequential disqualifications for periods ranging from three to five years in each case;

- the initiation of a first prosecution under section 243 of the Companies Act 1990 (“the 1990 Act”) arising from the use of a falsified document affecting or relating to the property or affairs of a company;
- the imposition of fines totalling over €35,000, an increase of nearly 70% on the aggregate of some €1,550 in fines imposed in 2004.

Notable developments in the ODCE’s civil enforcement proceedings in 2005 included:

- the initiation of disqualification proceedings against nine former directors or senior managers of National Irish Bank Ltd. as a consequence of the findings in the High Court Inspectors’ Report of 2004;
- the imposition of five year disqualification periods on two directors of an insolvent building company arising from their misconduct in relation to the company’s affairs;
- the disqualification for periods ranging from one year to five years of ten directors of insolvent companies, which had been struck off involuntarily by the Registrar of Companies for repeated failure to file annual returns;
- the initiation of a first civil enforcement action directing a company and a director to hold an annual general meeting (AGM) in compliance with the law following their failure to comply with a direction to do so, pursuant to section 371 of the Companies Act 1963 (“the 1963 Act”);
- the obtaining for the first time of an order, also under section 371 of the 1963 Act, compelling a liquidator to initiate restriction proceedings from which no relief had been given and to furnish a second report to the ODCE, pursuant to section 56 of the 2001 Act;
- the obtaining of orders joining the Director to proceedings issued by restricted directors under section 152 of the 1990 Act for relief from the terms of their restriction orders, so that he could acquaint the Court of his views on the granting of relief (in whole or in part) from the restriction.

The year was also significant for the legal representation of the ODCE at a hearing before the European Court of Justice in the Eurofood (IFSC) Ltd. case on which a decision is awaited at year-end.

Overall, the Director directly participated in 69 proceedings, of which 40 were in the Superior Courts and 29 were in the District Court. Of those proceedings, 35 were

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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.

concluded, and 34 remained ongoing at year-end. All but two of the concluded proceedings were successful in progressing the ODCE's enforcement activity or achieving some other satisfactory outcome. Two cases were under appeal at year-end.

The volume of cases for possible criminal enforcement dealt with in the Office continued to increase last year. Some 368 cases were on hand at end-2005, compared with 284 at the start of the year. In all, some 159 new cases were received in 2005.

#### **Goal 4 – Sanctioning Improper Conduct relating to Insolvent Companies**

The ODCE's work in this area remained focused in 2005 on:

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

Some 1,009 liquidator reports were received (992 in 2004). Of these, 327 were initial reports (362 in 2004) from 102 liquidators, while the balance of 682 (630 in 2004) constituted further or final reports on company liquidations.

The ODCE issued decisions in the case of 942 liquidator reports (1,084 in 2004) of which 317 (529 in 2004) constituted initial reports from liquidators. The primary reason for the drop in the number of initial reports determined was because the 2004 figure comprised more than a single year's liquidations.

During 2005, the High Court reached decisions in 102 cases where no relief or partial relief had previously been decided by the ODCE, with the remaining cases pending before the Court or yet to be initiated. In respect of the cases heard, the High Court has restricted or disqualified one or more directors in 88 cases, representing 86% of the total. No restriction orders were made in respect of the remaining 14 cases or 14% of the total. When classified in terms of individual directors, there were 135 directors restricted, five directors disqualified and two directors both restricted and disqualified. This represents 74% of the 192 directors that were the subject of restriction or disqualification proceedings. Restrictions were not made in respect of the balance of 50 directors.

While a total of 145 new persons were restricted in 2005, the net increase in the CRO's Register of Restricted Persons was 113 due to those restricted in 2000 being removed from the Register in 2005 on the completion of their restriction period. At end-2005, the number of restricted persons stood at 600.

The law<sup>9</sup> 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. In cooperation with the Courts Service and the Registrar of Companies, the Office secured during 2005 the updating of the CRO's Register of Disqualified Persons to include those individuals subject to deemed disqualifications. This led to the identities of 985 individuals, who were deemed to be disqualified during the past five

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<sup>9</sup> Section 160(1) of the Companies Act 1990.

years, being notified to the CRO in 2005 with the result that more than 1,000 persons are now listed on the Register. This was a substantial increase on the ten individuals who were registered at end-2004.

Reference was made earlier to directors who were disqualified in 2005 as a result of their companies being struck off the Companies Register for failing to file annual returns. A further 100 struck-off companies were selected for action in 2005. In 30 of these cases, the directors were able to show the ODCE before the issue of any court proceedings that there were no liabilities currently or at the time of strike-off. This was on the basis of the production of appropriate formal accounts along with an auditor's certificate covering the period from the date of the last accounts up to dissolution along with sworn declarations from the directors that no liabilities existed. Confirmations were also required from creditors where it was alleged that liabilities were settled, including Revenue liabilities. In three cases, the directors promised to restore the company to the Companies Register. At the end of 2005, eight cases were before the courts. Many of the remaining cases remain open at year-end.

### **Goal 5 – Providing Quality Services to Internal and External Customers**

The ODCE endeavoured in 2005 to continue to provide quality customer services for its customers, and the Director believes that his staff substantially succeeded in meeting this objective.

The ODCE remained close to its approved staffing complement throughout the year. Having regard to the nature and extent of the ODCE's current workload and his desire to focus more attention on cases of serious misconduct, the Director deemed it necessary in May 2005 to seek sanction from the Department of Enterprise Trade and Employment for an extra 20 staff comprising administrative, Garda and some specialist resources. No decision is available on this application at year-end.

The administrative costs of the Office in 2005 were funded through Subhead A09 of Vote 34 (Minister for Enterprise Trade and Employment). In summary, expenditure was €2.899 million, a saving of €1.639 million on the allocation of €4.538 million.

The publications prepared and issued during 2005 included:

- the Director's End-of-Year Statement and Review of 2004;
- the ODCE Annual Report for 2004 (in both the Irish and English languages);
- the ODCE Customer Service Charter, the Statement of ODCE Principles of Quality Customer Service and the ODCE Customer Complaints Procedure (in both the Irish and English languages).

The Office's website at [www.odce.ie](http://www.odce.ie) continued in 2005 to attract significant numbers of visitors reflecting the utility of the site for corporate governance and related information. In all, some 178,904 visits were made which represented a 53% increase on the 116,783 figure achieved in 2004 (which itself was up 54% on the 2003 figure

of 75,597). Some 229,961 downloads of information on the ODCE website were recorded in 2005, a substantial increase on the comparable figure of 59,261 in 2004.

The ODCE commissioned market research from Millward Brown IMS in late 2005. 90% of the 130 accountants and liquidators interviewed rated the Office as effective. A very satisfactory result of 68% effectiveness was also returned from the 300 directors polled. This represented an improvement on the equivalent research results from early 2004.

**Conclusion**

The Director believes that the ODCE further consolidated and developed its positive impact on market performance in 2005. While concerned that customer service levels may have declined due to work pressures, the Director is satisfied overall that the Office has again delivered very good value for taxpayers' investment in its work

## Chapter 6 Irish Auditing and Accounting Supervisory Authority

### Role of the Irish Auditing and Accounting Supervisory Authority

The establishment of the Irish Auditing and Accounting Supervisory Authority ('the Authority') was provided for by Part 2 of the Companies (Auditing and Accounting) Act, 2003 ('the Act'). Section 8 of the Act provides that the objects of the Authority are to:

- supervise how the prescribed accountancy bodies regulate and monitor their members;
- promote adherence to high professional standards in the auditing and accountancy profession;
- monitor whether the accounts of certain classes of companies and other undertakings comply with the Companies Acts and, where applicable, Article 4 of the IAS Regulation<sup>1</sup>; and
- act as a specialist source of advice to the Minister on auditing and accounting matters.

### Establishment of the Authority

Those sections of the Act necessary to allow the establishment of the Authority on a statutory basis were commenced on 13 December, 2005 by Statutory Instrument 791 of 2005. Following the commencement of those sections, the Authority was incorporated as a company limited by guarantee on 20 December, 2005. The composition of the Authority's Board of Directors is set out below.

<b>Chairperson</b>	
Karen Erwin	Managing Director, Erwin Mediation Limited
<b>Members</b>	
Paul Appleby	Director of Corporate Enforcement
Helene Coffey	Partner, Coffey & McMahon, Solicitors
Marie Daly	Head of Legal & Regulatory Affairs, Irish Business and Employers' Confederation
Michael Deasy*	Head of Financial Institutions and Funds Authorisations, the Financial Regulator
Ian Drennan*	Chief Executive, IAASA

<sup>1</sup> Section 8 of the Act was amended by S.I.116 of 2005 to introduce a reference to the IAS Regulation. This amendment was made on foot of EU Regulation EC1606/2002 ('the IAS Regulation').

Sean Hawkshaw	Managing Director, KBC Asset Management Limited
Tom Healy	Chief Executive, Irish Stock Exchange
Pat A. Houlihan	Assistant Principal, Company Law (EU/Legislation) Section, Department of Enterprise, Trade & Employment
Jim Kelly	Principal, Office of the Revenue Commissioners
Tony Kelly*	Partner, Byrne Curtin Kelly, Certified Public Accountants & Registered Auditors
Anne Maher	Chief Executive, Pensions Board
David Martin*	Company Director
Donal O'Connor*	Senior Partner, PricewaterhouseCoopers, Chartered Accountants & Registered Auditors
Joe O'Toole	Senator
* Denotes membership of a prescribed accountancy body	

## Interim Board Activities During 2005

During the year under review, the Interim Board of the Authority continued and completed the necessary preparatory work to allow the statutory establishment of the Authority to come to fruition. During the year, the Interim Board:

- completed an assessment of the Authority's initial financial and human resource requirements and secured Ministerial approval for same;
- completed the Authority's initial Work Programme and submitted same to the Minister pursuant to the requirements of the Act;
- recruited a number of the Authority's professional staff (accounting and legal);
- completed a consultative exercise with nine accountancy bodies on the issue of the funding of the Authority and, as a result, secured unanimous agreement to a model for facilitating the apportionment of the respecting bodies' contributions to the Authority's funding (the Act provides that the prescribed accountancy bodies are required to provide 60% of the Authority's ongoing funding);
- completed a major exercise of examining three accountancy bodies (AIA, CIMA and CIPFA) with a view to making recommendations to the Minister for Trade & Commerce as to whether, on commencement of the relevant provisions, they should be prescribed under the Act, thereby bringing them within the remit of the Authority;
- completed the procurement and fit out of the Authority's headquarters in Naas, Co. Kildare; and
- worked closely with the Minister and his officials on the matter of the timing and sequencing of the commencement of relevant provisions of the 2003 Act.

In May 2005, following agreement with Interim IAASA, the Minister for Trade and Commerce, formally requested Interim IAASA to carry out an examination and assessment of an application by the Association of International Accountants for recognition as a body of Accountants under the Companies Acts. The Boards examination of the application was still ongoing at the end of 2005.

## **Further Information**

Further detailed information in relation to the Authority's functions, powers, role etc. is available on the Authority's website at [www.iaasa.ie](http://www.iaasa.ie).

## **Chapter 7 Auditors & Recognised Accountancy Bodies**

### **Regulation of Auditors**

Part X of the Companies Act 1990 contains the main provisions governing the recognition and qualification of auditors. Section 187 provides, inter alia, that a person cannot act as an auditor unless s/he is a member of a body of accountants recognised by the Minister for Enterprise, Trade and Employment s/he was authorised in an individual capacity by the Minister for Enterprise, Trade and Employment prior to the 3<sup>rd</sup> February 1983. Section 191 of the Companies Act 1990 provides for the recognition of accountancy bodies by the Minister for Enterprise, Trade and Employment where s/he is satisfied as to certain matters set out in the section.

The Department continued to oversee the manner in which the recognised accountancy bodies supervised their members in 2005, insofar as such members are entitled to practice as auditors. As of 2 February, 2006 the Interim Board of the Irish Auditing and Accounting Supervisory Authority (IAASA) will supervise the recognised Accountancy Bodies in accordance with the Companies (Auditing and Accounting) Act, 2003.

At the end of the reporting period, the following bodies of accountants were recognised by the Minister for auditing purposes under section 191:

**The Institute of Chartered Accountants in Ireland (ICAI);**

**The Institute of Certified Public Accountants in Ireland (ICPAI);**

**The Association of Chartered Certified Accountants (ACCA);**

**The Institute of Incorporated Public Accountants (IIPA);**

**The Institute of Chartered Accountants in England and Wales (ICAEW);**

**The Institute of Chartered Accountants of Scotland (ICAS).**

### **Qualified Auditors**

2,702 members of accountancy bodies were in practice in the State as auditors at the end of 2005. This compares with 3,701 in 2004.

Details of those members of the recognised bodies who are qualified to act as auditor of a limited company within this jurisdiction are retained in the Companies Registration Office and are available for public inspection on payment of the appropriate fee. It is a condition of recognition of the accountancy bodies referred to above that particulars of each member qualified for appointment as auditor of a company or as auditor of a public company are submitted to the Registrar of Companies.

**Individually Recognised Auditors**

In addition, the following 32 persons are individually authorised to act as auditors by the Minister for Enterprise, Trade and Employment, by virtue of a Ministerial authorisation obtained prior to 3 February 1983. These individuals are required to notify the Registrar of Companies by the end of November each year that they are continuing to act as auditors.

**Company Auditor and Public Auditor**

<b>Company Auditor</b>			
Ardagh, Sean	Dublin 12	O’Carroll, Sean	Co. Dublin
*Breen D.C.	Waterford	O’Connor, Vincent	Limerick,
Browne, John	Longford	Pattison, Joseph	Kilkenny/Dublin
*Byrne, John F.	Co. Meath	*Reid, Gerard	Dublin 2
Collins, Mary Desmond	Co. Limerick	Roche, Michael J	Co. Dublin
Costello, J. St. John	Co. Limerick	*Rocks, Patrick J.	Co. Monaghan
Cullinane, Stephen	Galway	Sheridan, Michael	Co. Waterford
*D’arcy, Gerard Joseph	Co. Roscommon	Steen, Lionel R.	Co. Kilkenny
Duffy, Cormac Gerard	Galway	Thornley, Edward	Dublin 4
Fahey, John	Co. Tipperary		
Finnegan, Patrick D.	Co. Wicklow		
Flynn, Charles	Co. Leitrim		
Glynn, Patrick David	Kilkenny		
Hardiman, John	Co. Westmeath	<b>Public Auditor **</b>	
Keenan, John P	Co. Dublin	Hogan, Leslie Vincent	Limerick
McDonald, Robert	Co. Galway	Keogh, Michael	Co. Dublin
Martin, Brian J.	Dublin 2		
Mullins, J.A.	Limerick City		
Murphy, E.P.	Dublin 14		
Murphy, Patrick Joseph	Sligo		
O’Brien, Thomas	Waterford		

\*Authorised as both public auditor and a company auditor.

\*\*A public auditor is not entitled to audit the accounts of a limited company.

**Resignation of Auditors**

Section 185 of the Companies Act 1990 provides for the resignation of auditors. The total number of resignations notified to the CRO in 2004 was 2,660. The following table indicates the number of resignations or removal of auditors over the last five years, as notified to the CRO.

	2001	2002	2003	2004	2005
RESIGNATION OF AUDITORS	1,054	2,619	2,477	2,672	2,660
REMOVAL OF AUDITORS	81	97	88	91	87

## Report of the Accountancy Bodies for 2005

TOTAL NUMBER OF MEMBERS WORLD-WIDE:	ICAI	ACCA	ICPAI	IIPA	ICAEW	ICAS
AT THE START OF 2005	14,193	104,610	2,748	176	126,490	15,931
NET EFFECT OF MOVEMENT IN MEMBERSHIP DURING 2005	799	4,978	166	19	1,185	457
AT THE END OF 2005	14,992	109,588	2,914	195	127,675	16,388

TOTAL NUMBER OF MEMBERS IN PRACTICE IN THE STATE:	ICAI	ACCA	ICPAI	IIPA	ICAEW	ICAS
AT THE START OF 2005	1,471	505	430	123	62	3
NET EFFECT OF MOVEMENT IN MEMBERSHIP DURING 2005	44	58	18	2	(14)	0
AT THE END OF 2005	1,515	563	448	125	48	3

TOTAL NUMBER OF RECOGNISED AUDITORS IN THE STATE*	ICAI (FIRMS) <sup>1</sup>	ACCA	ICPAI	IIPA	ICAEW (FIRMS)	ICAS (FIRMS)
AT THE START OF 2005	1,048	283	430	123	5,475	344
NET EFFECT OF MOVEMENT IN AUDITORS DURING 2005	(4)	22	430*	2	(322)	(37)
AT THE END OF 2005	1,044	305	0	125	5,153	307

\* In 2005, ICPAI moved from a system of recognising individuals as auditors to recognising the audit firm. This change was implemented on the 1<sup>st</sup> April 2005

TOTAL NUMBER OF RECOGNISED AUDITORS OUTSIDE THE STATE	ICAI (FIRMS) <sup>2</sup>	ACCA	ICPAI	IIPA	ICAEW (FIRMS)	ICAS (FIRMS)
AT THE START OF 2005	254	355	0	0	5,463	343
NET EFFECT OF MOVEMENT IN AUDITORS DURING 2005	(5)	(68)	0	0	(322)	(37)
AT THE END OF 2005	249	287	0	0	5,141	306

TOTAL NUMBER OF RECOGNISED FIRMS IN THE STATE	ICAI <sup>3</sup>	ACCA	ICPAI	IIPA	ICAEW	ICAS
AT THE START OF 2005	794	283	0	0	12	1
NET EFFECT OF MOVEMENT IN AUDITORS DURING 2005	1	22	351*	0	0	0
AT THE END OF 2005	795	305	351	0	12	1

\* In 2005, ICPAI moved from a system of recognising individuals as auditors to recognising the audit firm. This change was implemented on the 1<sup>st</sup> April 2005

<sup>1</sup> ICAI, ICAEW & ICAS have interpreted this question as all firms registered to conduct audits in the state regardless of the location of the firm

<sup>2</sup> ICAI, ICAEW & ICAS have answered this question on the basis of firms resident outside the state

<sup>3</sup> ICAI, ICAEW & ICAS have answered this question on the basis of firms resident in the state

<b>TOTAL NUMBER OF COMPLAINTS RECEIVED CONCERNING RECOGNISED AUDITORS</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>	<b>IIPA</b>	<b>ICAEW</b>	<b>ICAS</b>
COMPLAINTS ON HANDS AT THE START OF 2005	41	23	4	2	0	0
CASES REOPENED DURING 2005	1					
NEW COMPLAINTS RECEIVED DURING 2005	83	76	10	3		
COMPLAINTS CONCLUDED DURING 2005	66	33	11	0		
COMPLAINTS ON HAND AT THE END OF 2005	59	66	3	5	0	0

The following table shows how complaints against auditors practising in the State were handled by each recognised accountancy body in 2005

<b>NUMBER OF COMPLAINTS HANDLED BY COMMITTEES CONCERNING RECOGNISED AUDITORS</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>	<b>IIPA</b>
TOTAL NUMBER OF COMPLAINTS RESOLVED WITHOUT RECOURSE TO THE INVESTIGATION/ COMPLAINTS COMMITTEE	48	31	7	0
TOTAL NUMBER OF COMPLAINTS CONCLUDED BY THE INVESTIGATION/COMPLAINTS COMMITTEE	14		2*	0
TOTAL NUMBER OF COMPLAINTS CONCLUDED BY THE DISCIPLINARY COMMITTEE	2	1	2	0
TOTAL NUMBER OF CASES CONCLUDED BY THE APPEALS COMMITTEE	2	1	0	0
TOTAL NUMBER OF CASES CONCLUDED BY THE COMMITTEE OF INQUIRY (OR EQUIVALENT)	0		0	9
TOTAL NUMBER OF RECOGNISED AUDITORS WHO WERE THE SUBJECT OF A COMPLAINT CONCLUDED BY THE DISCIPLINARY COMMITTEE AND WHO WERE EXONERATED IN 2005	0		0	

\*Both without sanction

### Consent Orders

<b>CONSENT ORDERS WERE OFFERED BY THE INVESTIGATION/COMPLAINTS COMMITTEES AS FOLLOWS:</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>
TOTAL NUMBER OF CONSENT ORDERS OFFERED (IF APPLICABLE) BY INVESTIGATION/COMPLAINTS COMMITTEE	11		0
TOTAL NUMBER OF CONSENT ORDERS ACCEPTED	11		

### Consent Orders (continued)

<b>CONSENT ORDERS – Category of Sanctions</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>
REPRIMAND, FINE AND COSTS	9		
SEVERE REPRIMAND, FINE AND COSTS	2		

### Sanctions Imposed - Disciplinary Committee

<b>TOTAL NUMBER OF RECOGNISED AUDITORS WHO WERE THE SUBJECT OF A COMPLAINT CONCLUDED BY THE DISCIPLINARY COMMITTEE AND WHO WERE DISCIPLINED IN 2005 BY WAY OF:</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>
SEVERE REPRIMAND AND COSTS	1		
SEVERE REPRIMAND, FINE AND COSTS	1		
SEVERE REPRIMAND, FINE, COSTS AND PUBLICISED (NAMED)			1
SUSPENSION, COSTS AND PUBLICISED (NAMED)			1
EXCLUSION	0		
EXCLUSION, COSTS AND PUBLICISED (NAMED)		1	

**Sanctions Imposed - Appeals Committee**

<b>TOTAL NUMBER OF RECOGNISED AUDITORS WHO HAD SANCTIONS IMPOSED BY THE APPEALS COMMITTEE DURING 2005:</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>
SEVERE REPRIMAND, FINE AND COSTS	1		
SEVERE REPRIMAND, SUSPENSION AND COSTS	1		
EXCLUSION, COSTS AND PUBLICISED (NAMED)		1	

The reason(s) for the sanctions imposed on members practising as auditors in the State in 2005 were as follows:

<b>REASON FOR DISCIPLINE OF AUDITORS</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>
ACTING WITHOUT PROPER AUTHORITY	3		
BAD WORK/INADEQUATE OR UNSATISFACTORY SERVICE OR PROFESSIONAL CONDUCT	2		
BREACH OF COMPANY LAW (OTHER THAN ACTING WITHOUT AUTHORITY)	1		
BREACH OF CODE OF PROFESSIONAL CONDUCT			1
CRIMINAL CONVICTION	1		
DELAY / FAILURE TO RESPOND (EXTERNAL)	1		
FAILURE TO SATISFY A JUDGEMENT DEBT	1		
RESTRICTED FROM ACTING AS A DIRECTOR AS PER SECTION 150 OF THE COMPANIES ACT 1990			1
DISQUALIFICATION AS A DIRECTOR / DIRECTOR RESTRICTION	1		
OTHER AUDIT OR IB ISSUES UNDER ETHICAL GUIDE OR STANDARDS OR GUIDANCE	5		

The recognised bodies have reported as follows on the number of meetings held by their various disciplinary committees:

<b>NUMBER OF MEETINGS HELD</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>	<b>IIPA</b>	<b>ICAEW*</b>	<b>ICAS</b>
NUMBER OF INVESTIGATION/COMPLAINTS COMMITTEE MEETINGS HELD	4		9		12	0
NUMBER OF DISCIPLINARY COMMITTEE MEETINGS HELD	4	26	2	1	34	0
<b>IN PUBLIC</b>	4	26	2	0	34	0
<b>IN PRIVATE</b>	0	0	0	1	0	0
NUMBER OF APPEALS COMMITTEE MEETINGS HELD	2	8	0	0	7	0
<b>IN PUBLIC</b>	1	8	0	0	0	0
<b>IN PRIVATE</b>	1	0	0	0	7	0
NUMBER OF ADMISSIONS AND LICENSING COMMITTEE MEETINGS HELD		22				0

\* Covering the UK and Ireland.

<b>SUMMARY OF ACTION TAKEN BY ACCA'S ADMISSIONS AND LICENSING COMMITTEE</b>	
<u>Action taken</u>	<u>ACCA</u>
Hot review/early follow up	24
Auditing certificate removed	2
Auditing certificate relinquished	1
Referred to Professional Conduct Department	1
Remedied by practitioner and Monitoring Unit follow up	4
Rule waiver granted (re PII)	1
Outstanding	5
<b>Total</b>	<b>38</b>

Note: The figures in the table above include 26 new cases referred during 2005 and a further 12 on hand at the beginning of the year.

Note: ACCA's table above reflects its risk-based approach to monitoring where firms with poor outcomes are re-visited sooner than those with satisfactory outcomes. Firms with poor standards of audit work are referred to the Admissions and Licensing Committee after two unsatisfactory monitoring visits. In most of these cases the Committee have ordered a hot review and a further follow up visit. Firms that have failed to make significant improvements by this Committee ordered visit are referred back to the Committee. In two of these cases considered during 2005 the Committee removed the firms auditing certificate.

### **Audit Monitoring Visits**

The following table provides information on the number of, and reason for, monitoring/quality review visits undertaken by each body of its auditing members during 2005.

<b>AUDIT MONITORING VISITS TO RECOGNISED AUDITORS</b>	<b>ACCA</b>	<b>ICPAI</b>	<b>IIPA</b>
TOTAL NUMBER OF AUDIT MONITORING VISITS FOR THE YEAR UNDER REVIEW TO RECOGNISED AUDITORS BROKEN DOWN AS FOLLOWS;	143	114	5
ROUTINE VISITS;	88	66	5
CARRIED OUT RESULTING FROM A COMPLAINT;	0	0	0
FOLLOW UP VISITS;	21	48	0
VISITS ORDERED/SUGGESTED BY COMMITTEE	34	0	0
VISITS TO LISTED COMPANY AUDITORS		0	0

<b>AUDIT MONITORING VISITS TO RECOGNISED AUDITING FIRMS</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICAEW*</b>	<b>ICAS*</b>
TOTAL NUMBER OF AUDIT MONITORING VISITS FOR THE YEAR UNDER REVIEW TO RECOGNISED AUDITORS BROKEN DOWN AS FOLLOWS;	55	98	905	63
ROUTINE VISITS;	46	69	827	62
CARRIED OUT RESULTING FROM A COMPLAINT;	1	0	41	
FOLLOW UP VISITS;	2	16		
VISITS ORDERED/SUGGESTED BY COMMITTEE	1	13		1
VISITS TO LISTED COMPANY AUDITORS	5		37	0

\* Covering the UK and Ireland.

<b>SUMMARY OF BREACHES FOUND DURING MONITORING VISITS REFERRED TO THE ADMISSIONS AND LICENSING COMMITTEE CONCERNING RECOGNISED AUDIT FIRMS IN THE STATE:</b>	<b>ACCA</b>
FAILURE TO COMPLY WITH AUDITING STANDARDS	9
CONTROL/ELIGIBILITY	1
INDEPENDENCE	1
BREACH OF CLIENT MONEY RULES	1

## **Personnel Engaged In Monitoring**

<b>NUMBER OF ACCOUNTANCY BODY PERSONNEL ENGAGED IN MONITORING VISITS DURING 2005</b>	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>	<b>IIPA</b>	<b>ICAEW</b>	<b>ICAS</b>
PART-TIME			2	3	Note 1	
FULL TIME	6.5	15	2			3

Note 1: At 31 December 2005 the ICAI Quality Assurance Directorate (QAD) employed 56 staff of whom 27 were inspection staff engaged on audit, investment business and practice assurance reviews. Approximately half of their time was spent in audit monitoring.

## **Continuing Professional Education (CPE) for Recognised Auditors**

	<b>ICAI</b>	<b>ACCA</b>	<b>ICPAI</b>	<b>IIPA</b>	<b>ICAEW</b>	<b>ICAS</b>
NUMBER OF AUDITORS WHO UNDERTOOK CPE IN 2005	Note 1	1,183	448	123	Note 2	Note 3
NUMBER OF AUDITORS WHO <u>DID NOT</u> UNDERTAKE CPE IN 2005	Note 4	16	Note 5	0	(See Note 2)	Note 6
CONSEQUENCES OF FAILURE TO ATTEND CPE COURSES IN 2005	Note 7	Note 8	Note 9	Note 10	(See Note 2)	Note 11
TO WHAT EXTENT DOES THE CPE COVER THE STATUTORY REQUIREMENT UNDER THE IRISH COMPANIES ACTS	Fully		Note 12	Note 13	(See Note 2)	

### **Note 1**

The Institute ran 52 audit related courses in a number of venues around the country. These courses were attended by 4,660 delegates. However, whilst attendance at CPD courses is compulsory, courses may be provided by other training consortiums. It is not compulsory for members to attend Institute courses.

### **Note 2**

In January 2005 the ICAEW introduced major new CPD arrangements for members, including those working in audit. The new arrangements, compliant with IFAC's IES 7, are mandatory for all members unless qualifying for exemption. Exemption cannot be gained by any member working in the regulated area of audit.

Under the new CPD arrangements, all members have to make an annual CPD declaration to the Institute and, from 2006, a monitoring and reviewing programme will commence which will span the entire membership according to risk-based principles. The purpose of the reviews will be to check that members have complied with the new CPD requirements.

### **Note 3**

Statistics are not maintained but all practising members must confirm their compliance annually with the Institute's Continuing Professional Learning (CPL) Byelaws on their application for renewal of their practising certificates.

### **Note 4**

As there is a rolling three-year period for attending CPE courses, and as members can attend courses provided by other relevant organisations, the ICAI could not provide any further information to this question.

**Note 5**

ICPAI state that it is too early to determine this figure.

**Note 6**

Members who fail to comply are required to make up the shortfall in the following year.

**Note 7**

Members in practice's achievement of CPD is monitored through the Quality Review process. Failure to comply with the CPD requirements will be a risk indicator in determining if a firm should receive a Quality Review visit. Any failures to comply with the CPD regulations which come to light as part of the visit process are reported to the Quality Review Committee.

**Note 8**

Members who have not completed the required hours of CPD in 2005 have either undertaken to make up the shortfall in 2006 or have applied for a waiver of the full requirement.

**Note 9**

Practising Certificate for the following year is withheld until the matter is rectified.

**Note 10**

Non-applicable. However, IIPA state that, should this arise, members who do not complete the required hours of CPE are called in to give an explanation and if this is not satisfactory their practising certificate is withdrawn.

**Note 11**

Any identified shortfall in CPD will be reported to the Audit Registration Committee (ARC). Follow-up action for firms who have not complied with CPD is monitored by the ARC.

**Note 12**

Company Law is a Core Competency for auditors under CPA Bye-Laws.

**Note 13**

All CPE incorporates seminars which deal with updates of Company and Taxation Law.

## **Chapter 8 Irish Takeover Panel**

*The Irish Takeover Panel presented its Eighth Annual Report pursuant to Section 19 of the Irish Takeover Panel Act 1997. The Report, which covers the period from 1 July 2004 to 30 June 2005, is available on the Irish Takeover Panel website [www.irishtakeoverpanel.ie](http://www.irishtakeoverpanel.ie).*

### **Role of the Irish Takeover Panel**

The Irish Takeover Panel is the statutory body responsible for monitoring and supervising takeovers and other relevant transactions in Ireland. It is responsible for making Rules to ensure that takeovers and other relevant transactions comply with the General Principles set out in the Schedule to the Irish Takeover Panel Act 1997 (the “Act”). These General Principles are designed to ensure fair and equal treatment of all shareholders in relation to takeovers. The Rules also serve to provide an orderly framework within which takeovers can be conducted. The Panel has extensive powers under the Act to make rulings and give directions, to hold hearings, to summon witnesses and to require production of documents and other information, where these are appropriate in the discharge of its statutory functions.

### **Irish Takeover Panel Activities during 2005**

Takeover activity during the year was at a low level with the Panel supervising two takeovers: Heiton Group plc and ARCON International Resources plc. Notwithstanding the low level of takeovers during the year the Panel was nonetheless required to meet on twenty- four occasions to consider regulatory issues.

### **Implementation of the Takeovers Directive**

The Panel is working closely with officials in the Department of Enterprise, Trade and Employment on the implementation of the Takeovers Directive, which is required to be transposed by 20 May 2006. It is likely that the Directive will be transposed by means of secondary legislation and a number of amendments to the Act are likely. It is expected that the Panel Executive will spend a considerable amount of time over the coming months on preparatory work relating to the transposition of the Directive.

### **Rule Changes**

Rule changes were made in 2005 in relation to confidential information and announcements under Rule 2. Further information on these rule changes is available in the Irish Takeover Panel’s 2005 Annual Report. The Panel also produced a new set of Rules, which will apply specifically to takeovers effected by schemes of arrangement pursuant to section 201 of the Companies Act, 1963.

**Relevant Companies – amendment in the meaning of “relevant company” in 2005**

Practitioners should be aware that section 75 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005, which came into effect on 30 June 2005, amends the definition of “relevant company” in the Irish Takeover Panel Act by excluding from the definition companies the only securities of which are or have been within the relevant period authorised to be traded by a recognised stock exchange are debentures or bonds or other securities in the nature of debentures or bonds that do not confer voting rights in the company.

## **Chapter 9 Irish Stock Exchange**

### ***Changes to the Reporting requirement of the Irish Stock Exchange***

*Section 120 of the Companies Act 1990 provides that a recognised stock exchange shall furnish to the Minister for Enterprise Trade and Employment an annual report on the exercise of its functions under Part V of the Companies Act 1990 (Insider Dealing). The Market Abuse (Directive 2003/6/EC) Regulations 2005 largely replaced Part V of the Companies Act 1990, with effect from 6 July 2005, in so far it applies to admissions or requests for admissions to trading on a regulated market. The repeals as they apply to specific unregulated markets, e.g. the Irish Enterprise Exchange (IEX), have not as yet been commenced. The Stock Exchange has a reporting requirement on Insider Dealing for the period to 6 July 2005 for the full ISE official listing and from 12 April 2005 for the IEX Market.*

*The Stock Exchange has presented the following Annual Reports to the Minister pursuant to the above regulations. Because of the transitional nature of 2005 it was considered better to produce the Report as will formally be laid. (Detailed listings provided have been excluded). Further information on the Irish Stock Exchange may be obtained on their website [www.ise.ie](http://www.ise.ie).*

## **Annual Report to the Minister for Enterprise, Trade and Employment Pursuant to Part V of the Companies Act 1990**

### **Background**

Part V of the Companies Act, 1990 (the Act) creates an offence of Insider Dealing, and provides for criminal and civil sanctions in relation to contraventions of Part V.

Section 115(1) of the Act places a statutory duty on the relevant authority of a recognised stock exchange to furnish the Director of Public Prosecutions with a report where it appears to it that an offence has been committed under the legislation. As amended by the Company Law Enforcement Act, 2002 the Act requires that such reports must now be furnished to the Director of Corporate Enforcement.

For the purposes of Part V of the Act, the Irish Stock Exchange is a recognised stock exchange. Under section 107 of the Act a relevant authority is defined as being:-

- a) its board of directors, committee of management or other management body,  
or

- b) its manager however described.

Section 120 of the Act requires the Irish Stock Exchange, as a recognised stock exchange, to make an annual report to the Minister for Enterprise, Trade and Employment. This report must include:

- a) the number of written complaints received concerning possible contraventions of Part V,
- b) the number of reports made to the Director of Corporate Enforcement under Part V,
- c) the number of instances in which, following the exercise of powers by authorised persons under Part V, reports were not made to the Director of Corporate Enforcement, and
- d) such other information as may be prescribed.

On 6<sup>th</sup> July 2005 the Market Abuse (Directive 2003/6/EC) Regulations, 2005 (Market Abuse Regulations) were enacted. As a result securities traded on the Official List of the Exchange are now within the scope of the Market Abuse Regulations and Part V applies to securities traded on the Exchange's IEX market only.

### **Nature of Investigation Process**

Until 6<sup>th</sup> July 2005 the investigation of possible contraventions of Part V was undertaken by persons authorised under section 117 of the Act, this remains the case for IEX securities. Under the Market Abuse Regulations the Financial Regulator (FR) has delegated certain powers to the Exchange to aid the FR in the investigation of suspected cases of market abuse (including insider dealing). The decision making authority in relation to market abuse issues and the reporting obligations in relation to activity undertaken under the Market Abuse Regulations are now a matter for the FR.

In the context of Part V, authorised persons plan, perform and report on the results of their investigations in association with a relevant authority of the Stock Exchange, typically the Chief Executive. All cases that give rise to a reporting obligation under section 115 of the Act are reported to the Director of Corporate Enforcement as soon as practicable after the investigation has been concluded.

The exact nature of the investigation process may vary depending on the particular details of each case. However the investigation process is structured so as to ensure:

- a complete review of all facts relevant to the investigation,
- due attention is paid to the right of any suspect(s) to fair procedures,
- the production of a complete chain of evidence to ensure comprehensive reporting to the Director of Corporate Enforcement, if required.

In addition independent expert opinion from industry specialists and/or legal advisors is sought if the circumstances of a particular case demand it.

### **Report for the year ended 31<sup>st</sup> December 2005**

In accordance with its obligations under section 120 of the Act, the Irish Stock Exchange reports to the Minister in relation to its activities during 2005, as follows:

- a) Two written complaints were received in relation to alleged breaches of Part V of the Act.
- b) No reports were made by either the Chief Executive or by the Board, in their capacities as Relevant Authorities under Part V of the Act, to the Director of Corporate Enforcement in respect of a suspected offence.
- c) Authorised persons exercised statutory powers in relation to four investigations into suspected breaches of Part V. In two of these cases it was decided that a report to the Director of Corporate Enforcement was not warranted. A further one of these cases was closed post year end. Four investigations were ongoing at the end of 2005.
- d) No other information has been prescribed by the Minister under section 120(1)(d).

## **Annual Report to the Minister for Enterprise, Trade And Employment pursuant to Regulation 11 of the European Communities (Stock Exchange) Regulations 1984**

### **Introduction**

The European Communities (Stock Exchange) Regulations 1984 (S.I. No. 282 of 1984) (“the Regulations”), implemented the Admissions Directive, the Interim Reports Directive and the Listing Particulars Directive of the Council of the European Communities, into Irish law. The Admissions Directive (Council Directive 79/279/EEC) sets out the conditions for admission of securities to official stock exchange listing. The Listing Particulars Directive (Council Directive 80/390/EEC)<sup>1</sup> sets out the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for admission of securities to official stock exchange listing. The Interim Reports Directive sets out the information to be published on a regular basis by companies, the shares of which have been admitted to official stock exchange listing. The Regulations appointed the Irish Stock Exchange as Competent Authority for listing in Ireland and required that it furnish an annual report to the Minister for Enterprise and Employment on the exercise of its function as Competent Authority. In addition, the European Communities (Transferable Securities and Stock

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<sup>1</sup> On 1 July 2005, those parts of the Regulations relating to the Listing Particulars Directive (80/390/EEC) were amended by Regulation 110(2) of the Prospective (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005)

Exchange) Regulations, 1992<sup>2</sup> (“the 1992 Regulations”) designated the Irish Stock Exchange as the designated body for the purposes of specified articles contained therein and specified that the exercise of its functions under those regulations be also included in the annual report furnished under the Regulations.

The Board of The Irish Stock Exchange Limited (the “Board”) now presents the twenty-first annual report on the exercise of its functions as Competent Authority in the State during 2005 in accordance with section 11, Paragraphs (a) to (e) of the Regulations, and section 93(1) of the Companies Act 1990.

## **The Regulations**

### **General**

During 2005 the Board continued to carry out the functions of Competent Authority as set out in the Regulations and the 1992 Regulations. In the period, the main Competent Authority functions of the Board were delegated to and carried out by the Listing Committee, the Specialist Products Listing Committee<sup>3</sup> and the Executive of the Irish Stock Exchange.

During 2005, the Irish Stock Exchange applied the conditions for admission to Official Listing in accordance with Council Directive 79/279/EEC. It ensured that entities, shares of which have been admitted to official Stock Exchange listing, published information as required by Council Directive 82/121/EEC.

From 1 January to 30 June 2005, the Irish Stock Exchange ensured that the requirements for drawing up, scrutiny and distribution of the Listing Particulars to be published for the admission of securities to official Stock Exchange listing in accordance with Council Directive 80/390/EEC were complied with. On 1 July 2005 the Listing Particulars Directive was repealed and the Irish Financial Services Regulatory Authority became competent authority for the purposes of the Prospectus (Directive 2003/71/EC) Regulations 2005.

In addition, from 1 January to 30 June 2005, the Irish Stock Exchange carried out its functions under the 1992 Regulations, and authorised the omission of information from prospectuses in relevant instances where compliance with the circumstances set out in the 1992 Regulations was demonstrated. On 1 July 2005, the 1992 Regulations were repealed.

### **The Regulations require the following specific requirements to be addressed:**

**(a) Amendments to Listing Rules or Revisions of the Procedures**

On 1 July 2005, upon implementation of the Prospectus Directive (2003/71/EC) into Irish law, the Irish Stock Exchange ceased to use the Listing Rules of the Financial Services Authority (‘FSA’) in the United

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<sup>2</sup> On 1 July, 2005, the 1992 Regulations were revoked by Regulation 110(1)(b) of the Prospective (Directive 2003/71/EC) Regulations 2005 (S.I. 324 of 2005)

<sup>3</sup> Please note the Listing Committee and Specialist Products Listing Committee were reconstituted in September 2005, as set out in point (a) on this page.

Kingdom as its base rule book, and published its own Listing Rules. To facilitate the dual listing of securities on the Irish and London Stock Exchanges, the Exchange has retained its policy of maintaining parity of standards with the FSA.

On 12 April 2005, the Exchange launched an Exchange regulated market for small to mid-sized companies, the Irish Enterprise Exchange ('IEX'). On that date, companies on the Developing Companies Market ('DCM') and the Exploration Securities Market ('ESM') transferred to IEX and these markets ceased to exist. In addition, on 1 July 2005 *ITEQ* (the technology market of the Exchange) ceased to exist. Further information is available on the ISE website [www.ise.ie](http://www.ise.ie).

In September 2005, the Listing Committee and Specialist Products Listing Committee were reconstituted into three listing committees, as follows:

- The Equity Listing and IEX Committee;
- The Investment Funds Listing Committee; and
- The Debt Listing Committee.

**(b) Nature of all securities which are admitted to Official Listing, *ITEQ*, the DCM, the ESM and IEX.**

A number of types of securities were admitted to Official Listing, *ITEQ*, the DCM, the ESM and IEX during 2005 as follows:

**(i) States and their regional or local authorities**

No new Irish Government bonds were admitted to the Official List during 2005.

**(ii) Companies and issuers other than States and their regional or local authorities.**

The securities admitted were ordinary capital issues of Irish and foreign registered companies including equities, fixed interest, loan stock, preference stock, debentures, UCITS and investment funds.

**(c) Rejection of any applications for admission to Official Listing, *ITEQ*, DCM, ESM and IEX quotations**

In 2005 no application for admission to the Official List was refused.

No applications for admission to *ITEQ*, the DCM, the ESM and IEX were refused.

**(d) Suspension or discontinuation of any Official Listing, ITEQ, DCM, ESM and IEX quotations**

Apart from those Government securities maturing in 2005, 2,764 listings were cancelled and 66 were suspended.

**(e) Any special arrangements which have been made with the Member States pursuant to Article 18 of the Admissions Directive or Article 24 of the Listing Particulars Directive**

During the period under review it was necessary to co-operate and communicate with the Competent Authority in the United Kingdom regarding Irish securities listed on the Official List of the FSA. The Irish Stock Exchange has maintained a similar relationship with the FSA as existed during the previous year.

No other circumstances arose necessitating any special arrangements or co-operation with the Competent Authorities in other Member States.

**The Companies Act 1990**

Sections 90 to 96 of the Companies Act 1990 set out, inter alia, requirements in respect of obligations to notify the Exchange directly in the event that shares are acquired or disposed of with the result that a shareholder's interest in a company on the Official List exceeds or falls below 10%, 25%, 50%, or 75% threshold and the Exchange's obligations in the event of any apparent non compliance. Section 93 of the Companies Act 1990 requires the Stock Exchange to report on the following specific items:

- a) No written complaints were received suggesting possible contraventions of section 91 (obligation to notify certain interests to the Exchange).
- b) Two reports were made under section 92 (duty of relevant authority to report to the Director of Corporate Enforcement).
- c) No powers were exercised under section 117 as applied by section 92.

## Chapter 10 The Crest System

*The Companies Act 1990 (Uncertificated Securities) Regulations, 1996 (S.I. No. 68 of 1996) provide for an electronic share settlement system known as CREST. CREST is owned and operated by CRESTCo Ltd. The system has been operational since July 1996, settling Irish securities since October 1996. CRESTCo has presented its Annual Report to the Minister pursuant to section 34 of the above Regulations.*

### Introduction

#### 1) GENERAL

In order to facilitate the use of the CREST system for settlement of Irish securities, the Minister of State at the Department of Enterprise and Employment made the Companies Act, 1990 (Uncertificated Securities) Regulations, 1996. As a supplementary condition for recognition, the Minister required the presentation of an annual report concerning the Irish market's activities in CREST.

This paper constitutes CRESTCo's annual report for the twelve months ended 31 December 2005.

#### 2) The CREST System

The CREST system was inaugurated in 1996 and is designed to provide:

- Real-time settlement for a range of corporate and government securities (from 2000) and money market instruments (from 2003), including those traded on the London Stock Exchange (LSE), the Irish Stock Exchange, Virt-x and shares in the Eurotop 300, NASDAQ 5000 and S&P 500 indices as well as several exchange traded funds through a book transfer mechanism, and
- The ability to hold securities in dematerialised electronic form, recorded as balances in the CREST computer system.

Participation in CREST is voluntary. Investors or persons who trade securities may choose whether or not to become CREST members and hold their securities in electronic accounts maintained within the CREST system. Members transfer title to their securities by inputting electronic instructions to the system across secure networks established specifically for that purpose. These networks are provided by third party network providers (SWIFT, BT and the London Stock Exchange<sup>1</sup>) and not by CRESTCo; CRESTCo's role is to accredit the providers against a series of technical specifications. Instructions that are input through this method are matched by the system to ensure that the key elements input by buyer and seller agree. At the point of settlement of a transaction:

- the securities that are the subject of the transaction are debited from the account of the seller and credited to the account of the buyer;
- CREST and the Bank of England have linked sterling and euro settlement through CREST with inter-bank payments through Real Time Gross

<sup>1</sup> The London Stock Exchange is accredited to carry crest proprietary format message instructions on their network infrastructure, but they are not accredited to carry ISO15022 traffic.

Settlement (RTGS) on a real-time basis, such that delivery of stock through CREST is simultaneous with the transfer of sterling and euro funds in RTGS;

- for securities that are eligible for electronic transfer of title (ETT) (broadly, securities registered in the UK), CREST will confer full legal title to UK securities from the transferor to the transferee;
- for securities that are not ETT eligible (including Irish securities), an instruction is generated requiring the registrar to amend the register in respect of transfer. Legal title passes when the register is updated.

Both settlement banks and registrars interface with CREST for these purposes.

### **3) CRESTCo Limited: ownership and governance**

In November 2002, CRESTCo Limited became a wholly owned subsidiary of Euroclear Bank SA/ NV following the transaction involving CRESTCo Limited and Euroclear Plc in September 2002. From January 2005, the Euroclear group was restructured with CRESTCo Limited being a wholly owned subsidiary of Euroclear SA/ NV; CRESTCo Limited continues to trade as CRESTCo Limited and operate the CREST system. In the context of this 2005 report, the Euroclear group of companies (Euroclear group) comprises Euroclear SA/NV and its operating subsidiaries – Euroclear Bank, CRESTCo Limited, Euroclear France and Euroclear Nederland.

Euroclear SA/NV owns the group's shared securities processing platforms and delivers a range of services to the group's (International) Central Securities Depositories ((I)CSDs). Euroclear Bank, CRESTCo Limited, Euroclear France and Euroclear Nederland are sister companies, all under the ownership of Euroclear SA/ NV, which is ultimately owned by Euroclear Plc.

CRESTCo's Board of Directors consists of representatives from both CRESTCo and Euroclear, and includes two independent\* Directors. The directors as at 31 December 2005 were as follows:

Pierre Francotte (Chairman)	Euroclear SA/NV
Tim May	CRESTCo Ltd
Richard Crews	CRESTCo Ltd
Martine Dinne	Euroclear SA/NV
Yannic Weber	Euroclear SA/NV
Frederic Hannequart	Euroclear SA/NV
Mike Williams*	
Herschel Post*	
David Whitehead (Secretary)	CRESTCo Ltd

### **4) CRESTCo Board Sub-Committees**

The CRESTCo Board has a number of sub-committees, whose membership includes people co-opted from outside the Board itself.

The following representatives of the Irish market participate in the Settlement Discipline Sub-committee:

- Brian Healy, Irish Stock Exchange, 28 Anglesea Street, Dublin 2
- Graham O'Brien, NCB Stockbrokers Ltd, 3 Georges Dock, Dublin 1

**5) CRESTCo's Obligations**

CRESTCo's obligations are set out in the agreements it enters into with its users and participants. Primarily (in very brief summary), its obligation is to provide the settlement services described in the CREST Manual. The CREST Manual sets out the functionality contained in the CREST system and is available from the CRESTCo web site ([www.crestco.co.uk](http://www.crestco.co.uk)).

## **Irish participation in CREST**

**1) THE IRISH STOCK EXCHANGE**

CRESTCo has entered into an agreement with the Irish Stock Exchange, under which the Exchange has appointed CRESTCo to provide settlement services, and a Memorandum of Understanding, under which both parties agreed to share information with each other which is of mutual interest or importance.

**2) Irish Securities**

As of 1 March 2006 there were 130 Irish securities available for settlement in the **CREST system**.

**3) IRISH PARTICIPANTS**

The following Irish bodies were CREST participants as at 31 December 2005:

**The following are Irish-based Brokers who are CREST Participants:**

- Bloxham Stockbrokers\*
- Campbell O'Connor
- Davy Stockbrokers
- Dolmen Stockbrokers
- Fexco Stockbroking
- Goodbody Stockbrokers\*
- Merrion Capital Group
- NCB Stockbrokers

\* Have outsourced their settlement processing to Pershing (Ireland) Ltd.

**4) Irish-based Custodians who are CREST Members:**

- Allied Irish Bank Securities Services
- Bank of Ireland Securities Services

Note: Citibank are not an Irish company, but operate within the International Financial Services Centre. Northern Trust and Merrill Lynch are also represented in the Irish market.

**5) Irish-based Registrars who are CREST Registrars**

- Computershare (Ireland)
- Kerry

**6) Euro Settlement Banks**

There are currently no Irish banks supporting settlement in CREST. They did

not opt into the Delivery versus Payment in Central Bank Money service, which was released on 26 November 2001.

**7) CREST Liaison Groups**

Euroclear chairs a series of liaison groups and working parties to consult upon and discuss particular matters of interest to various constituencies within the securities industry.

At the time of the merger with CRESTCo, Euroclear agreed to set up Market Advisory Committees (MACs) in each country for which it acts as central securities depository or central settlement system. The purpose of the MACs is to act as a primary source of consultation between the Euroclear group and the user communities on significant matters relating to their respective domestic markets. This consultation process is conducted with Euroclear management. The members of the MACs are chosen by the market and approved by the Board of Euroclear Bank.

Irish CREST members participated in the following liaison groups and working parties as at 31 December 2005:

Liaison Group or Working Party	Irish Representatives
Irish Market Advisory Committee (MAC)	Brian Healy – Chairman (Irish Stock Exchange) Eileen Kelly (Goodbody's Stockbrokers) Eamonn Doyle (Davy Stockbrokers) Graham O'Brien (NCB Stockbrokers) Trevor Watkins (Computershare Services Ireland) Joan Moran (Bank of Ireland Securities Services) Graham Shuttlewood (Royal Bank of Scotland) Pat O'Donoghue (Capita Corporate Securities) Helen Young (Central Bank and Financial Services Authority of Ireland) Brendan McDonagh (National Treasury Management Agency) Paul Shields (National Treasury Management Agency) Tim May (Euroclear) – Euroclear Liaison
Retail Brokers Liaison Group	Kevin Petley (Davy Stockbrokers)
Professional Investors Liaison Group	No current representation from any Irish custodians
Dublin Custody Group	Simon Bracken (Citibank) Joan Moran (Bank of Ireland) Paddy Malloy (AIB) David Trost (Northern Trust)
Securities Settlement and Corporate Actions Working Group	Kevin Petley (Davy Stockbrokers) Liz Molloy (Bank of Ireland Securities Services)

## **CREST Rules**

### **1) Registrars Service Standards**

Irish securities are not eligible for the Electronic Transfer of Title process, and consequently Ireland has not seen any changes to its regulations. Details are contained in rule 5 of the CREST Rules section of the CREST Manual available from the Information section of the CRESTCo website ([www.crestco.co.uk](http://www.crestco.co.uk)).

The Standards have been fully in force since September 1997. During the course of 2005, Irish registrars incurred an aggregate penalty below £100, and therefore they were not penalised.

### **2) Settlement Discipline Rules**

At the market's request, CRESTCo Limited operates the settlement discipline regime. The Settlement Discipline Committee (SDC) which operates under specific terms of reference and monitors a regime for improving the efficiency of settlement of UK and Irish securities in CREST. The SDC entirely consists of market practitioners and applies fines set by the market.

Details are contained in rule 6 of the CREST Rules section of the CREST Manual available from the Information section of the CRESTCo website ([www.crestco.co.uk](http://www.crestco.co.uk)).

The Irish market is currently not represented on the Appeal Body, due to the resignation of Leonard Abrahamson; a replacement is being sought.

### **3) Bad Delivery Rules**

Paragraph 19(a)(ii) of the Schedule to the Companies Act 1990 (Uncertificated Securities) Regulations 1996 requires CREST to have rules relating to situations in which a registrar is unable to register a transfer in response to a registration instruction from CREST in one of the (very limited) circumstances specified in Regulation 16 (which relate to court orders etc).

Details are contained in rule 12 of the CREST Rules section of the CREST Manual available from the Information section of the CRESTCo website ([www.crestco.co.uk](http://www.crestco.co.uk)).

The bad delivery reversal procedures were not implemented in respect of an Irish security during 2005.

### **4) Changes to the CREST Rules**

The CREST Rules were most recently updated on 1 January 2005.

### **5) Corporate actions**

There were no notable corporate actions involving Irish securities during 2005.

## **European matters**

### **1) THE SETTLEMENT FINALITY DIRECTIVE**

Directive 98/26/EC of the European Parliament (the Settlement Finality Directive) was implemented in Irish law in the European Communities

(Finality of Settlement in Payment and Securities Settlement Systems) Regulations, 1998 (SI No 539 of 1998, “the Settlement Finality Regulations”) on 31 December 1998. The Settlement Finality Regulations provide for the automatic designation of bodies which are “payment systems” within the meaning of section 5 of the Central Bank Act, 1997. The CREST system is a payment system for the purposes of the Central Bank Act, 1997 and, accordingly, is a designated system pursuant to the Settlement Finality Regulations. Transfers of Irish securities by means of the CREST system therefore have the benefit of the protection of the Settlement Finality Regulations.

Details are contained in rule 13 of the CREST Rules section of the CREST Manual available from the Information section of the CRESTCo website ([www.crestco.co.uk](http://www.crestco.co.uk)).

## **2) Links between EU Settlement Systems**

CRESTCo Limited provides trade settlement and asset recording for UK, Irish, Swiss, German, US S&P 500, Jersey, Guernsey, Manx, Swedish and Dutch equities and corporate stocks, as well as Eurotop 300 securities held in ten European CSDs (through a link with SegalInterSettle AG (SIS)), Eurobonds (through a link with Euroclear), UK Gilts, Money Market Instruments, Unit Trusts and OEICs.

In consequence, Irish investors are able to hold and settle a broad range of Western European and North American securities in their CREST accounts.

## **CRESTCo Fees and tariffs**

Tariff details are available from the Information section of the CRESTCo website ([www.crestco.co.uk](http://www.crestco.co.uk)).

**Chapter 11 Financial Regulator**

As mentioned in Chapters 1 and 9 significant changes were made in transposing the EU Prospectus and Market Abuse Directives. This has resulted in the Financial Regulator being appointed as Competent Authority in both cases. The Financial Regulator submits an Annual Report to the Minister for Finance which in turn is laid before the Houses of the Oireachtas. The transposing Regulations provide that the Financial Regulator copy the Minister for Enterprise, Trade and Employment with the excerpt of their Report as it relates to its activities as Competent Authority. The Financial Regulator proposes to publish its annual report in July.

**Collective Investment Schemes**

Collective Investment Schemes may be constituted in a variety of different ways but in all cases authorisation and supervision of these vehicles is undertaken by the Financial Regulator. As part of its Annual Report to the Minister for Finance (which is approved by Government and laid before the Houses of the Oireachtas) the Financial Regulator reports on this activity.

The following is a summary of the legislation governing Collective Investment Schemes along with the types of vehicles which may be established:

<b>UCITS</b> (Undertakings for Collective Investment in Transferable Securities) - governed by Regulations transposing EU Directives		
Unit Trust	Investment Company	Common Contractual Fund

<b>Non-UCITS</b> - governed by primary law			
Unit Trusts Act 1990	Part XIII of Companies Act 1990	Investment Limited Partnerships Act 1994	Investment Funds, Companies and Miscellaneous Provisions Act 2005
Unit Trust	Investment Company	Partnership	Common Contractual Fund

## Appendix 1 Distinguishing Features of Companies and Other Related Bodies

The following describe some of the essential features of entities referred to in the Report. They are not legal interpretations.

<b>Private Limited:</b>	<p>Members' liability is limited to the amount, if any, unpaid on their shares.</p> <p>Maximum of 50 shareholders (not including employees).</p> <p>May have a single member.</p> <p>Restricted right to transfer shares.</p> <p>Shares cannot be offered for sale to members of the public.</p>
<b>Public Limited:</b>	<p>Members' liability is limited.</p> <p>At least 7 shareholders.</p> <p>No upper limit on the number of shareholders.</p> <p>Shares may be offered for sale to the public.</p> <p>Cannot commence business or exercise borrowing powers unless it has a minimum allotted share capital of €38,092.14, at least 25% of which must be fully paid-up.</p>
<b>Guarantee Company:</b>	<p>May or may not have a share capital.</p> <p>Articles must state the number of members with which the company proposes to be registered.</p> <p>Is a public company if no share capital and so must have at least 7 members.</p> <p>Members' liability is limited to the amount of the guarantee specified in the Memorandum of Association and, where there is a share capital, to the amount, if any, that is unpaid on their shares.</p>
<b>Unlimited:</b>	<p>Members' liability is unlimited.</p> <p>May or may not have a share capital.</p> <p>Articles must state the number of members with which the company proposes to be registered.</p> <p>If private company, minimum of 2 shareholders and maximum of 50.</p> <p>If public, minimum of 7 shareholders, no upper limit</p>
<b>UCITS*:</b>	<p>Sole object is the collective investment in transferable securities of capital raised from the public which operates on the principle of risk spreading.</p> <p>*(Undertaking for Collective Investment in Transferable Securities)</p>
<b>EEIG**:</b>	<p>Facilitates the economic activities of its members</p>

Does not itself record a profit or loss.  
Profits or losses returned to individual members.  
Co-operates across national frontiers within the EU.  
Minimum of 2 and maximum of 20 members.  
Not permitted to invite investment from the public.

\*\* (European Economic Interest Grouping)

## **Appendix 2** Useful contacts for company law matters in the Department

### **Website links**

Company Law Sections in the Department	<a href="http://www.entemp.ie">www.entemp.ie</a>
Company Law Review Group	<a href="http://www.clr.org">www.clr.org</a>
Office of the Registrar of Companies	<a href="http://www.cro.ie">www.cro.ie</a>
Office of the Director of Corporate Enforcement	<a href="http://www.odce.ie">www.odce.ie</a>

The following officers are serving in the Company Law area, Department of Enterprise, Trade and Employment, Earlsfort Centre, Lower Hatch Street, Dublin 2.

### **Head of Division**

Ronald Long, Assistant Secretary [Ronald\\_Long@entemp.ie](mailto:Ronald_Long@entemp.ie)

Tanya Holly, Legal Adviser [Tanya\\_Holly@entemp.ie](mailto:Tanya_Holly@entemp.ie)

### **Company Law Administration**

Eamonn Carey, Principal Officer	<a href="mailto:Eamonn_Carey@entemp.ie">Eamonn_Carey@entemp.ie</a>
Dermot Sheridan, Assistant Principal	<a href="mailto:Dermot_Sheridan@entemp.ie">Dermot_Sheridan@entemp.ie</a>
Pauline Hodson, Higher Executive Officer (J/S)	<a href="mailto:Pauline_Hodson@entemp.ie">Pauline_Hodson@entemp.ie</a>
Eileen McManus, Higher Executive Officer	<a href="mailto:Eileen_McManus@entemp.ie">Eileen_McManus@entemp.ie</a>
Ann Walsh, Higher Executive Officer (J/S)	<a href="mailto:Ann_Walsh@entemp.ie">Ann_Walsh@entemp.ie</a>
Arancha Carlos, Executive Officer	<a href="mailto:Arancha_Carlos@entemp.ie">Arancha_Carlos@entemp.ie</a>
Annette Whelan, Executive Officer (J/S)	<a href="mailto:Annette_Whelan@entemp.ie">Annette_Whelan@entemp.ie</a>
Ann Murphy, Clerical Officer	<a href="mailto:Ann_Murphy@entemp.ie">Ann_Murphy@entemp.ie</a>
Ian Crawford, Clerical Officer	<a href="mailto:Ian_Crawford@entemp.ie">Ian_Crawford@entemp.ie</a>

### **Company Law EU/Legislation**

Damien White, Principal Officer	<a href="mailto:Damien_White@entemp.ie">Damien_White@entemp.ie</a>
Pat A. Houlihan, Assistant Principal	<a href="mailto:Pat_A_Houlihan@entemp.ie">Pat_A_Houlihan@entemp.ie</a>
Sean O'Flaherty, Assistant Principal	<a href="mailto:Sean_OFlaherty@entemp.ie">Sean_OFlaherty@entemp.ie</a>
Nuala Moloney, Higher Executive Officer	<a href="mailto:Nuala_Moloney@entemp.ie">Nuala_Moloney@entemp.ie</a>
Mairead Daly, Higher Executive Officer	<a href="mailto:Mairead_Daly@entemp.ie">Mairead_Daly@entemp.ie</a>
Niamh Flood, Clerical Officer	<a href="mailto:Niamh_Flood@entemp.ie">Niamh_Flood@entemp.ie</a>

### **Company and Business Regulation Review**

Pat E Nolan, Principal Officer	<a href="mailto:Pat_Nolan@entemp.ie">Pat_Nolan@entemp.ie</a>
Conor Verdon, Administrative Officer	<a href="mailto:Conor_Verdon@entemp.ie">Conor_Verdon@entemp.ie</a>
Brooke O'Rourke, Executive Officer	<a href="mailto:Brooke_O'Rourke@entemp.ie">Brooke_O'Rourke@entemp.ie</a>
Eileen Bolger, Staff Officer	<a href="mailto:Eileen_Bolger@entemp.ie">Eileen_Bolger@entemp.ie</a>

### **Company Law Financial Services**

Vincent Madigan, Principal Officer	<a href="mailto:Vincent_Madigan@entemp.ie">Vincent_Madigan@entemp.ie</a>
Josephine Kelly, Assistant Principal	<a href="mailto:Josephine_Kelly@entemp.ie">Josephine_Kelly@entemp.ie</a>
Pauline Mulligan, Assistant Principal	<a href="mailto:Pauline_Mulligan@entemp.ie">Pauline_Mulligan@entemp.ie</a>

*The following Appendices 3 – 6 list primary and secondary legislation made in the period since 1963. Copies of the legislation may be purchased direct from the Government Publications Sales Office, Government Publications Warehouse, Mount Shannon Road, Rialto, Dublin 8 or by post from Government Publications, Postal Trade Section, 4/5 Harcourt Road, Dublin 2. Phone: (01) 6733515 ext. 4040/4045; Fax: (01) 6476843.*

*The full text of the Acts, Statutory Instruments and Regulations is available on the Departments website [www.entemp.ie](http://www.entemp.ie) or may be obtained on the Houses of the Oireachtas' website [www.oireachtas.ie](http://www.oireachtas.ie) or the Office of the Attorney General's website [www.attorneygeneral.ie](http://www.attorneygeneral.ie).*

<b>Appendix 3</b> Company Law and Business Names Legislation enacted in 2005
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**No. 12 of 2005****Investment Funds, Companies and Miscellaneous Provisions Act 2005**

This Act made a number of changes to the existing law on investment funds, with a view to providing the greatest flexibility to the Funds Industry while at the same time keeping appropriate controls in place. It provides for the introduction of a new type of investment fund vehicle - the non-UCITS (Undertakings for Collective Investment in Transferable Securities) Common Contractual Fund (CCF) and it also provides for the introduction of cross investment and segregated liability for investment funds. A number of other changes are made to general company law to remove existing anomalies and pave the way for smooth transposition of EU Directives on Market Abuse and Prospectus. The Act also increases the amount of shares that a member may hold and other financial limits for Industrial and Provident Societies (Co-operatives). In addition, some minor amendments to Consumer Law have been made mostly to increase the level of maximum fines that can be imposed on parties found guilty of breaches of specific consumer legislation.

**S.I. No. 116 of 2005****European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005**

These regulations give full effect to European Council Regulation 1606/2002 and to Directive 2003/51/EC and ensure that optional accounting treatments available under International Financial Reporting Standards, as endorsed by the EU are available to companies, while leaving those companies which can and wish to adhere to the EU Accounting Directives (implemented in Ireland, by the Companies (Amendment) Act 1986 and the 1992 Group Accounts Regulations) as the basis for their accounts, free to do so. It also makes other changes to reflect current best reporting practices.

**S.I. No. 179 of 2005****Companies (Fees) Order 2005**

This Order provides for disapplication of filing fees where certain specified documents are filed electronically with the Registrar of Companies.

**S.I. No. 323 of 2005**

**Investment Funds, Companies and Miscellaneous Provisions Act 2005  
(Commencement) Order 2005**

This Order specifies dates on which provisions of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (No.12 of 2005) come into operation.

**S.I. No. 324 of 2005**

**Prospectus (Directive 2003/71/EC) Regulations 2005**

These Regulations along with Part 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 give effect to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and amending Directive 2001/34/EC.

**S.I. No. 342 of 2005**

**Market Abuse (Directive 2003/6/EC) Regulations 2005**

These Regulations along with Part 4 of The Investment Funds, Companies and Miscellaneous Provisions Act 2005 give effect to Directive 2003/6/EC and the implementing Directives 2003/124/EC, 2003/125/EC and 2004/72/EC on insider dealing and market manipulation (market abuse).

**S.I. No. 365 of 2005**

**Companies (Fees) (No. 2) Order 2005**

This Order provides for a reduction in or disapplication of filing fees where certain specified documents are filed electronically with the Registrar of Companies and for an increase in filing fees where those documents are delivered in paper format to the Registrar of Companies.

**S.I. No. 366 of 2005**

**Business Names Regulations 2005**

These Regulations provide for a reduction in or disapplication of filing fees where certain specified documents are filed electronically with the Registrar of Business Names and for an increase in filing fees where documents are delivered in paper format to the Registrar of Companies.

**S.I. No. 382 of 2005**

**Companies Act 1990 (Prescribed Alternative Accounting Standards Bodies) Regulations 2005**

These Regulations prescribe the bodies in the United States, Canada and Japan which have the authority to lay down accounting standards with which investment companies may comply. The Regulations are made under section 260A of the Companies Act 1990 as inserted by section 28 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

**S.I. No. 517 of 2005**

**Companies (Fees) (No. 3) Order 2005**

This Order provides for the introduction from 1 December 2005 of a new table of fees to be paid to the Registrar of Companies. The table makes separate provision for fees payable in respect of paper transactions and fees payable in respect of electronic transactions. The Order also revokes the Companies (Fees) (No. 2) Order 2005 (S.I. No. 365 of 2005) which will not come into operation.

**S.I. No. 686 of 2005**

**Companies (Auditing and Accounting) Act 2003 (Commencement) Order 2005**

This order fixed 1 December, 2005 as the date on which section 47 of the Act came into operation to the extent that it was not already in operation by virtue of article 5 of S.I. No. 132 of 2003.

**S.I. No. 693 of 2005**

**Companies Act 1990 (Uncertificated Securities) (Amendment) Regulations 2005**

These Regulations amend the Companies Act, 1990 (Uncertificated Securities) Regulations, 1996 in order to facilitate the introduction of a Central Counterparty system for the Irish securities market.

**S.I. No 694 of 2005**

**Companies (Forms) Order 2005**

The purpose of this Order is to prescribe a form to be used for the notification pursuant to section 57(4)(a), Investment Funds, Companies and Miscellaneous Provisions Act 2005, by a company to the registrar of companies of the authorisation of an electronic filing agent, and for the notification pursuant to section 58(2) of the 2005 Act by a company to the registrar of the revocation of authorisation of its electronic filing agent.

**S.I. No. 695 of 2005**

**Investment Funds, Companies and Miscellaneous Provisions Act 2005 (Commencement) (No. 2) Order 2005**

This Order fixes 1 December 2005 as the date on which sections 57, 58, 61 and 71 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 come into operation.

**S.I. 735 of 2005**

**Business Names (No. 2) Regulations 2005**

The purpose of these Regulations is to decrease the fee for provision by the Registrar of Business Names to any person of an uncertified copy or extract from any Business Names document or part of any such document filed with the Registrar, whether furnished to that person in paper format or electronically.

**S.I. No. 737 of 2005**

**Companies (Fees) (No. 4) Order 2005**

This Order lays down the fee to be paid in respect of the filing of Form B77 (notification to the registrar of companies of the appointment/revocation of appointment of an electronic filing agent by a company), and makes separate provision for the fee payable in respect of a paper notification and the fee payable in respect of an electronic notification.

**S.I. No. 791 of 2005**

**Companies (Auditing and Accounting) Act 2003 (Commencement) (No.2) Order 2005**

This Order provides for the commencement of certain provisions of the Act which allow for the establishment of the Irish Auditing and Accounting Supervisory Authority (IAASA).

**S.I. No 840 of 2005**

**European Communities (Adjustment of Non-comparable Amounts in Accounts and Distributions by Certain Investment Companies) Regulations 2005**

These regulations make amendments to the Companies Acts 1963-2005 consequential on changes in accounting practice for financial years beginning on or after 1 January 2005. Similar changes are also made for Credit Institutions and Insurance Companies.

<b>Appendix 4</b> List of Companies and Business Names Acts, Orders and Regulations other than that contained in Appendix 5
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**COMPANIES ACTS 1963 - 2005**

Companies Act 1963  
(No. 33 of 1963)

Companies (Amendment) Act 1977  
(No. 31 of 1977)

Companies (Amendment) Act 1982  
(No. 10 of 1982)

Companies (Amendment) Act 1983  
(No. 13 of 1983)

Companies (Amendment) Act 1986  
(No. 25 of 1986)

Companies (Amendment) Act 1990  
(No. 27 of 1990)

Companies Act 1990  
(No. 33 of 1990)

Companies (Amendment) Act 1999  
(No. 8 of 1999)

Companies (Amendment) (No. 2) Act  
1999  
(No. 30 of 1999)

Company Law Enforcement Act 2001  
(No. 28 of 2001)

Companies (Auditing and Accounting)  
Act 2003  
(No. 44 of 2003)

Investment Funds, Companies and  
Miscellaneous Provisions Act 2005  
(No. 12 of 2005)

**COMPANIES ACTS 1963 - 2005  
- ORDERS AND REGULATIONS**

Companies Act 1963 (Commencement)  
Order 1964  
(S.I. No. 41 of 1964)

Companies (Recognition of Countries)  
Order 1964  
(S.I. No. 42 of 1964)

Companies (Stock Exchange) Order 1964  
(S.I. No. 43 of 1964)

Companies (Fees) Order 1964  
(S.I. No. 44 of 1964)

Companies (Forms) Order 1964  
(S.I. No. 45 of 1964)

Companies (Stock Exchange) Order 1975  
(S.I. No. 198 of 1975)

Companies (Fees) Order 1976  
(S.I. No. 64 of 1976)

Companies (Amendment) Act 1977  
(Commencement) Order 1978  
(S.I. No. 95 of 1978)

Companies (Amendment) Act 1977  
(Designation of Stock Exchange Nominee)  
Regulations 1979  
(S.I. No. 122 of 1979)

Companies (Fees) Order 1980  
(S.I. No. 400 of 1980)

Companies (Amendment) Act 1982  
(Commencement) Order 1982  
(S.I. No. 255 of 1982)

Companies (Forms) Order 1982  
(S.I. No. 256 of 1982)

Companies (Fees) Order 1983  
(S.I. No. 259 of 1983)

Companies (Amendment) Act 1983  
(Commencement) Order 1983  
(S.I. No. 288 of 1983)

Companies (Forms) Order 1983  
(S.I. No. 289 of 1983)

Companies (Amendment) Act 1986  
(Commencement) Order 1986

(S.I. No. 257 of 1986)	(S.I. No. 95 of 1992)
Companies (Fees) Order 1987 (S.I. No. 99 of 1987)	Companies Act 1990 (Insider Dealing) Regulation 1992 (S.I. No. 131 of 1992)
Companies (Forms) Order 1987 (S.I. No. 147 of 1987)	Companies Act 1990 (Commencement) Order 1992 (S.I. No. 258 of 1992)
Companies (Amendment) Act 1982 (section 13 (2) Order 1988 (S.I. No. 54 of 1988)	Companies Act 1990 (Auditors) Regulation 1992 (S.I. No. 259 of 1992)
Companies (Fees) Order 1988 (S.I. No. 237 of 1988)	Companies (Fees) Order 1993 (S.I. No. 142 of 1993)
Companies (Forms) Order 1990 (S.I. No. 224 of 1990)	Companies (Fees) (No. 2) Order 1993 (S.I. No. 241 of 1993)
Companies Act 1990 (Commencement) Order 1990 (S.I. No. 336 of 1990)	Companies (Forms) Order 1994 (S.I. No. 100 of 1994)
Companies (Stock Exchange) Regulation 1990 (S.I. No. 337 of 1990)	Companies (Stock Exchange) Regulation 1995 (S.I. No. 310 of 1995)
Companies Act 1990 (Commencement) Order 1991 (S.I. No. 10 of 1991)	Companies Act 1990 (Uncertificated Securities) Regulation 1996 (S.I. No. 68 of 1996)
Companies Act 1990 (Commencement) (No. 2) Order 1991 (S.I. No. 117 of 1991)	Companies (Fees) Order 1997 (S.I. No. 358 of 1997)
Companies Act 1990 (Insider Dealing) Regulation 1991 (S.I. No. 151 of 1991)	Companies (Forms) (Amendment) Order 1999 (S.I. No. 14 of 1999)
Companies (Forms) Order 1991 (S.I. No. 161 of 1991)	Companies Act 1963 (Ninth Schedule) Regulation 1999 (S.I. No. 63 of 1999)
Companies (Forms) Regulation 1991 (S.I. No. 162 of 1991)	Companies Act 1963 (section 377(1)) Order 1999 (S.I. No. 64 of 1999)
Companies (Fees) Order 1991 (S.I. No. 163 of 1991)	Companies (Amendment) Act 1999 (Commencement) Order 1999 (S.I. No. 144 of 1999)
Companies (Fees) Regulation 1991 (S.I. No. 164 of 1991)	Companies (Fees) Order 1999 (S.I. No. 232 of 1999)
Companies Act 1990 (Parts IV and VII) Regulation 1991 (S.I. No. 209 of 1991)	Companies (Amendment) (No. 2) Act 1999 (Commencement Order), 1999
Companies (Fees) Order 1992	

(S.I. No. 406 of 1999)	(S.I. No. 39 of 2002)
Companies (Amendment) (No. 2) Act 1999 (Commencement) Order 2000 (S.I. No. 61 of 2000)	Company Law Enforcement Act 2001 (Commencement) (No. 4) Order 2002 (S.I. No. 43 of 2002)
Companies (Forms) Order 2000 (S.I. No. 62 of 2000)	Company Law Enforcement Act 2001 (Commencement) (No. 5) Order 2002 (S.I. No. 53 of 2002)
Companies (Fees) Order 2000 (S.I. No. 63 of 2000)	Companies (Forms) (No 2) Order 2002 (S.I. No. 54 of 2002)
Companies (Amendment) (No. 2) Act 1999 (Bonding) Order 2000 (S.I. No. 64 of 2000)	Companies Act 1990 (Commencement) Order 2002 (S.I. No. 57 of 2002)
Company Law Enforcement Act 2001 (Commencement) Order 2001 (S.I. No. 391 of 2001)	Companies (Forms)(No. 3) Order 2002 (S. I. No. 114 of 2002)
Company Law Enforcement Act 2001 (Commencement) (No. 2) Order 2001 (S.I. No. 438 of 2001)	Company Law Enforcement Act 2001 (Winding-up and Insolvency Provisions) (Commencement) Order 2002 (S.I. No. 263 of 2002)
Companies Act 1990 (section 34) Regulation 2001 (S.I. No. 439 of 2001)	Company Law Enforcement Act 2001 (section 56) Regulations 2002 (S.I. No. 324 of 2002)
Companies (Forms) Order 2001 (S.I. No. 466 of 2001)	Company Law Enforcement Act 2001 (section 58) Regulations 2002 (S.I. No. 544 of 2002)
Companies (Fees) Order 2001 (S.I. No. 477 of 2001)	Companies (Fees) Order 2002 (S.I. No. 557 of 2002)
Company Law Enforcement Act 2001 (Commencement) (No. 3) Order 2001 (S.I. No. 523 of 2001)	Company Law Enforcement Act 2001 (Winding-up and Insolvency Provisions) (Commencement) Order 2003 (S.I. No. 217 of 2003)
Company Law Enforcement Act 2001 (section 34) Regulation 2001 (S.I. No. 524 of 2001)	Companies (Fees) Order 2003 (S.I. No. 187 of 2003)
Company (Fees) (No. 2) Order 2001 (S.I. No. 569 of 2001)	Companies (Forms) Order 2003 (S.I. No. 189 of 2003)
Companies Act 1963 (section 24) Regulation 2001 (S.I. No. 571 of 2001)	Companies (Auditing and Accounting) Act 2003 (Commencement) Order 2004 (S.I. No. 132 of 2004)
Companies (Forms) Order 2002 (S.I. No. 38 of 2002)	Companies (Forms) Order 2004 (S.I. No. 133 of 2004)
Companies Act 1990 (Form and Content of Documents Delivered To Registrar) Regulations 2002	

Companies (Amendment) Act 1982  
(section 13(2)) Order 2004  
(S.I. No. 506 of 2004)

Companies (Forms) (No. 2) Order 2004  
(S.I. No. 829 of 2004)

Companies (Fees) Order 2005  
(S.I. No. 179 of 2005)

Investment Funds, Companies and  
Miscellaneous Provisions Act 2005  
(Commencement) Order 2005  
(S.I. 323 of 2005)

Prospectus (Directive 2003/71/EC)  
Regulations 2005  
(S.I. No. 324 of 2005)

Market Abuse (Directive 2003/6/EC)  
Regulations 2005  
(S.I. No. 342 of 2005)

Companies (Fees) (No. 2) Order 2005  
(S.I. 365 of 2005)

Companies Act 1990 (Prescribed  
Alternative Accounting Standards Bodies)  
Regulations 2005  
(S.I. No. 382 of 2005)

Companies (Fees) (No. 3) Order 2005  
(S.I. No. 517 of 2005)

Companies (Auditing and Accounting)  
Act 2003 (Commencement) Order 2005  
(S.I. No. 686 of 2005)

Companies Act 1990 (Uncertificated  
Securities) (Amendment) Regulations  
2005  
(S.I. No. 693 of 2005)

Companies (Forms) Order 2005  
(S.I. No. 694 of 2005)

Investment Funds, Companies and  
Miscellaneous Provisions Act 2005  
(Commencement) (No. 2) Order 2005  
(S.I. No. 695 of 2005)

Companies (Fees) (No. 4) Order 2005  
(S.I. No. 737 of 2005)

Companies (Auditing and Accounting)  
Act 2003 (Commencement) (No. 2) Order  
2005  
(S.I. No. 791 of 2005)

## **REGISTRATION OF BUSINESS NAMES ACT 1963**

The following Orders and Regulations  
were made pursuant to the above Act:

Registration of Business Names Act 1963  
(Commencement) - Order 1964  
(S.I. No. 46 of 1964)

Business Names Regulation 1964  
(S.I. No. 47 of 1964)

Business Names Regulation 1976  
(S.I. No. 63 of 1976)

Business Names Regulation 1980  
(S.I. No. 399 of 1980)

Business Names Regulation 1983  
(S.I. No. 260 of 1983)

Business Names Regulation 1987  
(S.I. No. 100 of 1987)

Business Names Regulation 1988  
(S.I. No. 238 of 1988)

Business Names Regulation 1993  
(S.I. No. 138 of 1993)

Business Names Regulation 1997  
(S.I. No. 357 of 1997)

Business Names Regulation 2001  
(S.I. No. 572 of 2001)

Business Names Regulations 2002  
(S.I. No. 291 of 2002)

Business Names Regulations 2003  
(S.I. No 188 of 2003)

Business Names Regulations 2005  
(S.I. No. 366 of 2005)

Business Names (No. 2) Regulations 2005  
(S.I. No. 735 of 2005)

## Appendix 5 Regulations made pursuant to the European Communities Acts, 1972 and 1973

European Communities (Companies) Regulation 1973 (S.I. No. 163 of 1973) to give effect to the Council Directive of the European Communities of 9 March, 1968 (68/151/EEC).

European Communities (Stock Exchange) Regulation 1984 (S.I. No. 282 of 1984) to give effect to Council Directives 79/297/EEC, 80/390/EEC and 82/121/EEC.

European Communities (Mergers and Divisions of Companies) Regulation 1987 (S.I. No. 137 of 1987) to give effect to Council Directives 78/855/EEC and 82/891/EEC.

European Communities (Undertakings for Collective Investment in Transferable Securities) Regulation 1989 (S.I. No. 78 of 1989) to give effect to Council Directive No. 85/611/EEC of 20 December 1985, as amended by Council Directive No. 88/220/EEC of 22 March 1988.

European Communities (European Economic Interest Groupings) Regulation 1989 (S.I. No. 191 of 1989) to give effect to the provisions of Council Regulation (EEC) No. 2137/85 of 25 July 1985.

European Communities (Stock Exchange) (Amendment) Regulation 1991 (S.I. No. 18 of 1991) to give effect to Council Directive No. 87/345/EEC of 22 June 1987.

European Communities (Companies: Group Accounts) Regulation 1992 (S.I. No. 201 of 1992) to give effect to Council Directive No. 83/349/EEC of 13 June 1983.

European Communities (Transferable Securities and Stock Exchange) Regulation 1992 (S.I. No. 202 of 1992) to give effect to Council Directive No. 89/298/EEC of 17 April 1989 and Council Directive No. 90/211/EEC of 23 April 1990.

European Communities (Branch Disclosures) Regulation 1993 (S.I. No. 395 of 1993) to give effect to Council Directive No. 89/666/EEC of 21 December, 1989.

European Communities (Accounts) Regulation 1993 (S.I. No. 396 of 1993) to give effect to Council Directives 90/604/EEC and 90/605/EEC of 8 November, 1990.

European Communities (Stock Exchange) (Amendment) Regulation 1994 (S.I. No. 234 of 1994) to give effect to Council Directive 94/18/EC of 30 May, 1994.

European Communities (Single Member Private Limited Companies) Regulation 1994 (S.I. No. 275 of 1994).

European Communities (Single Member Private Limited Companies) (Forms) Regulation 1994 (S.I. No. 306 of 1994).

European Communities (Accounts) (Forms) Regulation 1995 (S.I. No. 178 of 1995).

European Communities (Stock Exchange)(Amendment) Regulation 1995 (S.I. No. 311 of 1995).

European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulation 1996, (S.I. No. 357 of 1996).

European Communities (Public Limited Companies Subsidiaries) Regulation 1997 (S.I. No. 67 of 1997)

European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations, 1999 (S.I. No. 50 of 1999)

European Communities (Single-Member Private Limited Companies Regulation 1994 (Amendment) Regulation 2001 (S.I. No. 437 of 2001).

European Communities (Corporate Insolvency) Regulations 2002 (S.I. 333 of 2002)

European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2003 (S.I. No. 51 of 2003)

European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003)

European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2003 (S.I. No. 212 of 2003)

European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment No. 2) Regulations 2003 (S.I. No. 497 of 2003)

European Communities (Undertakings for Collective Investment in

Transferable Securities) (Amendment No. 3) Regulations 2003 (S.I. No. 623 of 2003)

European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment No. 4) Regulations 2003 (S.I. No.737 of 2003)

European Communities (Fair Value Accounting) Regulations 2004 (S.I. No.765 of 2004)

European Communities (Companies) Regulations 2004 (S.I. No. 839 of 2004).

European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005).

European Communities (Adjustment of Non-comparable Amounts in Accounts and Distributions by Certain Investment Companies) Regulations 2005 (S. I. No 840 of 2005)

## Appendix 6 Other Legislation affecting the operation of Companies

*(This is an indicative list of various types of legislation and should not be taken as a comprehensive list of legislation containing legislative requirements on companies).*

Friendly Societies Acts 1896 – 1977 (No. 5 of 1997)	European Communities (Late Payment in Commercial Transactions) Regulations 2002 (S.I. 388 of 2002)
Partnership Act, 1890	District Court Rules 1997 (Order 39 Rule 9 (3))
Industrial and Provident Societies Act, 1893 – 1978	Rules of the Superior Courts (S.I. No. 15 of 1986)
Designated Investment Funds Act, 1985 (section 6) (No. 16 of 1985)	Rules of the Superior Courts (No. 3) 1991 (S.I. No. 147 of 1991)
Limited Partnership Act, 1907	Rules of the Superior Courts (S.I. No. 276 of 1991)
Safety, Health and Welfare at Work Act, 1989 (section 12(6)) (No. 7 of 1989)	Rules of the Superior Courts (No. 4) 1991 (S.I. No. 278 of 1991)
Unit Trusts Act, 1990	Rules of the Superior Courts (No. 2) 1993 (S.I. No. 265 of 1993)
Investment Limited Partnership Act, 1994 (No. 24 of 1994)	Rules of the Superior Courts (No. 3) 1994 (S.I. No. 101 of 1994)
Investment Intermediaries Act, 1995 (section 80) (No. 11 of 1995)	Rules of the Superior Courts (No. 4) 1997 (S.I. No. 344 of 1997)
Stock Exchange Act 1995	Rules of the Superior Courts (No.1) 1999 (S.I. No. 3 of 1999)
Irish Takeover Panel Act, 1997	Rules of the Superior Courts (No.1) 2001 (S.I. No. 268 of 2001)
Electoral Act 1997 (section 26)	Rules of Superior Courts 2005 (Order 77 (Amendment) Rules) 2005 (S.I. No. 51 of 2005)
Electoral (Amendment) Act 1998	Rules of Superior Courts (Proof of Liquidator's Appointment in Creditors' Voluntary Winding Up) 2005 (S.I. No. 502 of 2005)
Electoral (Amendment) Act 2001 (section 49 and 50)	Rules of Superior Courts (Takeover Schemes) 2005 (S.I. No. 688 of 2005)
Electoral (Amendment) Act 2002 (2)	
Electronic Commerce Act 2000 (No. 27 of 2000)	
Competition Act 2002 (section 48(a) and 51)	

## Appendix 7 The Companies Liquidation Account at 31 December 2005

Under the provisions of section 307 of the 1963 Act, the liquidator of a company, that has been wound up voluntarily and is about to be dissolved is required to lodge to the Companies Liquidation Account unclaimed dividends and balances. The Account is under the control of the High Court. Under the Act, these monies, if not claimed, revert to the State seven years after lodgement.

An application for a disbursement from the Account can be made by way of a Petition to the Court as provided for by Order 75 of the Rules of the Superior Courts. A Petition should only be filed in respect of unclaimed dividends lodged in the Account not more than seven years prior to the date of issue of the Petition. Otherwise the application should be made to the Minister for Finance.

The following is a list of the companies and deposits in the Companies Liquidation Account at 31<sup>st</sup> December 2005:

COMPANY TITLE	AMOUNT ON DEPOSIT	WHERE DEPOSITED
Gaymark Ltd	€75.62	TSB Inv A/C
Union Leasing	€1,630.34	TSB Inv A/C
Rocquaine Ltd	€1,302.14	TSB Inv A/C
P.M.P.A. Coaches	€20,281.11	TSB Inv A/C
Fabracast Building Ltd	€3,609.95	TSB Inv A/C
T.M. National Rent-A-Car	€689.40	TSB Inv A/C
James Duffy & Co. Ltd	€744.60	TSB Inv A/C
Irish Tatler Publications Limited	€1,740.93	TSB Inv A/C
Thatcham Limited	€25.18	TSB Inv A/C
Leinster Express (1972)	€467.26	TSB Inv A/C
McBirney & Co.	€48,924.95	TSB Inv A/C
Russells (Youghal) Ltd	€54.74	TSB Inv A/C
Sligo Stationery Depot	€36.25	TSB Inv A/C
Worldwide Dryer Rentals (Irl) Ltd	€1,574.91	TSB Inv A/C
Kantoher Foods Products Ltd	€1,337.90	TSB Inv A/C
Leinster Express (1972) Ltd	€73.89	TSB Inv A/C
Orwell Dist. Ltd	€7,187.33	TSB Inv A/C
Atlasta Toole Eng. Co. Ltd.	€99.88	TSB Inv A/C
McCairns (PMPA) PLC	€4,120.10	TSB Inv A/C
Suirway Forklifts Ltd	€113.88	TSB Inv A/C
NU - Plast (Arklow) Ltd	€17,662.95	TSB Inv A/C
Thermal Refrigeration Ltd	€48.49	TSB Inv A/C
R J Campbell (Builders) Ltd	€454.81	TSB Inv A/C
Leinster Credit Ltd	€2,516.58	TSB Inv A/C
Keenan Bros. Ltd	€9,445.12	TSB Inv A/C
Clare Textiles	€251.62	TSB Inv A/C
WKLR Supporters	€2,129.14	TSB Inv A/C
Printing Appliances Sales & Services	€2,002.54	TSB Inv A/C
Athboy Co-Op Ltd	€3,324.32	TSB Inv A/C
McCrae Ltd	€187.17	TSB Inv A/C
Metro Investments	€107.36	TSB Inv A/C
Impshire Thoroughbreds	€6,549.28	TSB Inv A/C
Sun Laboratories Irl Ltd	€7,420.02	TSB Inv A/C
Lazard Global Liquidity Fund	€8,549.28	TSB Inv A/C

Decvale Ltd	€263.78	TSB Inv A/C
MJB Developments Ltd	€18.79	TSB Inv A/C
Ranks (Ireland) Ltd	€48.66	TSB Inv A/C
Mornington Fish Products Ltd	€13,553.27	TSB Inv A/C
George Bell (Agencies) Ltd	€19.53	TSB Inv A/C
Eisc Teoranta	€1,938.50	TSB Inv A/C
AP Byrne Ltd	€3,672.19	TSB Inv A/C
Meridian Capital Markets	€1,756.621	TSB Inv A/C
Century Communications Ltd.	€8.00	TSB Inv A/C
Seirbhisi na nOilean Teoranta	€2,097.00	TSB Inv A/C
Sliogan Eisc na nOilean Teoranta	€1,758.00	TSB Inv A/C
Carmel International Textiles Ltd.	€5,034.00	TSB Inv A/C
Private Motorists Protection Assoc. Ltd.	€1,792.84	TSB Inv A/C
PMPA Oil Co Ltd	€429.63	TSB Inv A/C
Farm Fresh Frozen Foods	€4,328.96	TSB Inv A/C
H Williams (Tallaght) Ltd	€6,869.87	TSB Inv A/C
PMPA Garage (Arklow) Ltd	€13.85	TSB Inv A/C
PMPA Garage (Athy) Ltd	€429.89	TSB Inv A/C
PMPA Garage (Carrick) Ltd	€280.28	TSB Inv A/C
PMPA Garage (Clonmel) Ltd	€4,388.00	TSB Inv A/C
PMPA Garage (Dundalk) Ltd	€2,444.62	TSB Inv A/C
PMPA Garage (Kells) Ltd	€62.80	TSB Inv A/C
PMPA Garage (Longmile) Ltd	€16,713.08	TSB Inv A/C
PMPA Garage (North Strand) Ltd	€5,696.59	TSB Inv A/C
PMPA Garage (Athlone) Ltd	€75.95	TSB Inv A/C
PMPA Garage (Ballina) Ltd	€3,435.55	TSB Inv A/C
PMPA Garage (Blayney) Ltd	€70.69	TSB Inv A/C
PMPA Garage (Bray) Ltd	€1,268.85	TSB Inv A/C
PMPA Garage (Cashel) Ltd	€1,278.86	TSB Inv A/C
PMPA Garage (Cavan) Ltd	€1,103.17	TSB Inv A/C
PMPA Garage (Letterkenny) Ltd	€411.52	TSB Inv A/C
PMPA Garage (Midleton) Ltd	€2,085.04	TSB Inv A/C
PMPA Garage (Mullingar) Ltd	€166.30	TSB Inv A/C
McCairns Motors (Waterford) Ltd	€1,782.39	TSB Inv A/C
Orbitex Investment Funds PLC	€12,281.41	TSB Inv A/C
Newbridge Holdings	€9,824.56	TSB Inv A/C
<b>Total funds on deposit</b>	<b>€475,642.081</b>	<b>TSB Inv A/C</b>

## Appendix 8 Investigations under the Companies Acts

Since the commencement of the Companies Act 1990, in 1991, authorised officers or inspectors have been appointed to the following companies.

YEAR	APPOINTEE	COMPANY	SECTION
1999	Ms. Noreen Mackey B.L., Mr. Paul Rowan FCA; Mr. Justice Declan Costello was replaced by Judge Sean O’Leary and Mr Michael Cush, SC on 8 December, 2000.	Ansbacher (Cayman) Limited	Section 8
1999	Gerard Ryan FCA	College Trustees Limited	Section 19
1998	George Maloney FCCA	Faxhill Homes Limited	Section 19
1998	Gerard Ryan FCA	Dunnes Stores ILAC Company Limited	Section 19
1998	Gerard Ryan FCA	Dunnes Stores Ireland Company	Section 19
1998	Gerard Ryan FCA	Kentford Securities Ltd.	Section 19
1998	John Blayney SC Tom Grace FCA	National Irish Bank Ltd NIB Financial Services Ltd.	Section 8
1998	Gerard Ryan FCA	Ansbacher (Cayman) Ltd.	Section 19
1998	Gerard Ryan FCA	Guinness & Mahon (Ireland) Ltd.	Section 19
1998	Gerard Ryan FCA	Irish Intercontinental Bank Ltd.	Section 19
1998	Gerard Ryan FCA	Hamilton Ross Co. Ltd.	Section 19
1997	Lyndon MacCann BL	Bula Resources (Holdings) plc	Section 14
1997	Gerard Ryan FCA	Celtic Helicopters Ltd.	Section 19
1997	Peter Fisher CIMA	Garuda Ltd.	Section 19
1994	Martin Cosgrove FCA	Clonmannon Retirement Village Rayhill Properties Co. Ltd. Hilltop Catering Ltd. Retirement Inter (Ireland) Ltd. Home Affairs Ltd.	Section 19
1994	Frank Clarke SC	CountyGlen plc	Section 8
1993	Peter Fisher CIMA	CountyGlen plc	Section 19
1991	John Glackin, Solicitor	Chestvale Properties Ltd & Hoddle Investments Ltd. (Telecom)	Section 14
1991	Ciaran Foley SC Aidan Barry FCA	Siuire Eireann cpt and others	Section 8
1991	Maurice Curran, Solicitor	Siuire Eireann cpt and others (Greencore)	Section 14