



Comptroller and Auditor General

Special Report

Department of Arts, Sport and Tourism

Bord na gCon

Arrangements for the Procurement of Certain Capital Works and Services and Related Matters

March 2008

© Government of Ireland 2008

This report was prepared on the basis of information, documentation and explanations obtained from the public bodies referred to in the report. The draft report was sent to the Department of Arts, Sport and Tourism and Bord na gCon. In addition, parties who were involved in particular transactions were invited to make submissions and/or attend for interview and were afforded the opportunity to provide comments on the relevant sections of the draft report. Where appropriate, the comments received from the Department, Bord na gCon and those other parties were incorporated in the final version of the report.

Special Report of the Comptroller and Auditor General

Bord na gCon

I have, in accordance with the provisions of the Comptroller and Auditor General (Amendment) Act, 1993, prepared a special report which sets out the results of an examination which I carried out on the arrangements for the procurement of certain capital works and services and related matters by Bord na gCon.

I hereby submit my report on the above examination for presentation to Dáil Éireann pursuant to Section 11 of the said Act.

A handwritten signature in black ink, appearing to read 'John Purcell', with a stylized flourish at the end.

John Purcell

Comptroller and Auditor General

13 March 2008

Table of Contents

| | Page |
|--|------|
| Bord na gCon | |
| 1 Introduction | 1 |
| 2 Administrative Matters - Shelbourne Park | 5 |
| 3 Other Administrative Issues | 19 |
| 4 Key Findings | 27 |
| Appendices | |
| A Schedule of Matters Reserved for Board Decision | 34 |
| B Composition of the Executive | 35 |
| C Conduct of the Examination | 36 |
| D General Views of the Former Chairman | 38 |
| E Notification of Appointment of Building Overseer | 39 |

1 Introduction

1.1 Following an independent examination by Mr Tim Dalton, a report on certain matters relating to administration at Bord na gCon was published in July 2006. The report principally dealt with the arrangements for corporate governance at Bord na gCon, the drug-testing regime operated by it and the circumstances surrounding the dismissal of its former Chief Executive Officer (CEO). In the course of Mr Dalton's examination certain individuals drew his attention to matters which, in their view, merited examination by the Comptroller and Auditor General. These were referred to me by the Secretary General of the Department of Arts, Sport and Tourism.

1.2 In addition, in the course of my audits of the financial statements of Bord na gCon related matters had come to my attention. In the circumstances, I decided that an examination of specific issues was warranted.

Bord na gCon

1.3 Bord na gCon is a commercial semi-state body which was established under the Greyhound Industry Act 1958, with the objective of improving and developing the greyhound industry. It licenses greyhound racing tracks and regulates the conduct of racing at those tracks.

1.4 Bord na gCon has eleven subsidiary companies. Nine are wholly owned and are vehicles through which local racing tracks are operated at Shelbourne Park, Harolds Cross, Cork, Tralee, Waterford, Youghal, Limerick, Clonmel¹ and Galway. Bord na gCon has a 51% share in a company which operates the Mullingar track. The remaining subsidiary is a property rental company. Tracks at other locations are privately owned but receive certain grants from Bord na gCon.

1.5 There has been a considerable expansion in greyhound racing activity in recent years and turnover has doubled in the period 2001–2006. The expansion of the activity of Bord na gCon was accompanied by considerable internal transformation and enhancement of its product. In the decade 1995-2005 attendances at race meetings increased from 586,000 to 1.4 million. The impact on income was considerable with gross tote income now standing at €50.5 million (an increase of over 600%) and sponsorship trebling over that period. The expansion also impacted on bookmaker turnover which quadrupled over the period.

1.6 Bord na gCon has benefited from an allocation from the Horse and Greyhound Racing Fund² since 2001. By the end of 2006 Bord na gCon had received €79.3 million from the Fund. Overall, Bord na gCon is funded from the proceeds of racing, tote betting and an allocation from the Horse and Greyhound Racing Fund. In 2006 the revenue available to Bord na gCon was €37.3 million comprising

- €10.3 million from the net proceeds of tote betting
- €13 million in other racing income
- €4 million from the Horse and Greyhound Racing Fund.

¹ Clonmel Greyhound Racing Company Ltd does not operate the Clonmel greyhound track but leases the stadium out to a third party who manages and runs the track.

² The Fund comprises the proceeds of betting taxation and exchequer contributions.

Governance of Bord na gCon

1.7 The Board of Bord na gCon consists of a Chairman and six ordinary members, appointed by the Minister for Arts, Sport and Tourism. The term of office for ordinary Board members is three years. These ordinary members are eligible for reappointment following the end of their term. There is currently no maximum term for the Chairman. The main Board meets six or seven times a year. A schedule of matters formally reserved for Board decision is attached at Appendix A³.

Management of Bord na gCon

1.8 The headquarters of Bord na gCon is based in Limerick. The Board is serviced by an executive headed by a CEO. The structure of the executive was changed in February 2007 when a new CEO was appointed. The current and former composition of the executive is set out in Appendix B. The appointment of all senior managers requires Board approval. Decisions on matters other than those reserved for the Board are a function of the executive.

1.9 Each subsidiary company has its own board members and chairman. Appointments to these boards are a matter for decision by the main Board. In practice, the role of the subsidiary boards is largely advisory. They meet quarterly and consult with the executive of Bord na gCon and the track managers who are responsible for the day to day running of the tracks.

Examination Scope and Objectives

1.10 The Comptroller and Auditor General was appointed auditor of Bord na gCon and its subsidiaries under Section 14 of the Horse and Greyhound Racing Act 2001. In my annual audits of Bord na gCon I have satisfied myself that the broad framework of financial administration and internal control was appropriate. I have accordingly issued unqualified audit opinions on the financial statements for all years. The purpose of this report is to review a specific set of transactions where concerns have been raised publicly about their execution. Some of these have, over the years, been the subject of meetings and correspondence with Bord na gCon following the completion of annual audits.

1.11 The specific matters I decided to examine and report on were

- aspects of the procurement of building and ancillary services at Shelbourne Park between 2000 and 2002
- the engagement of staff in the areas of security and building supervision at Shelbourne Park during that period
- perquisites enjoyed by certain staff and related matters
- the planning and management of the refurbishment at Shelbourne Park in 2005
- selling of advertising space at Shelbourne Park
- printing of race cards and related material at the Dublin stadia
- the leasing of an annexe to the Head Office building
- catering procurement at Cork Greyhound Racing Company Ltd and The Kingdom Greyhound Racing Company Ltd
- commissioning of television programmes

³ This reservation of matters for the Board was adopted for the first time on 4 September 2002.

- the procurement of a Tote system
- unapproved capital works at the Tralee stadium
- procurement of professional services for construction works
- severance deals and court awards and settlements in the period 1995 – 2006.

Examination Methodology

1.12 The examination was conducted by staff of the Office of the Comptroller and Auditor General. The work carried out during the examination included the following main elements

- examination of relevant Bord na gCon records
- review of papers provided by the Department of Arts, Sport and Tourism
- interviews with involved parties
- consideration of comments from parties who had relevant administrative and governance responsibilities
- clearance of the final draft report with Bord na gCon and the Department.

1.13 The timeframe for completing the examination was affected by the unavailability of certain documents mainly due to the passage of time, and the fact that many of the key personnel involved are no longer with the organisation.

1.14 Appendix C sets out a list of persons who engaged with my staff for purposes of this report.

Report Content and Structure

1.15 The report is set out in four Chapters. Chapter 2 examines aspects of administration at Shelbourne Park⁴. Chapter 3 examines the remaining issues relating to administration by Bord na gCon. Chapter 4 outlines my findings based on the review of the issues in Chapters 2 and 3 and includes the general views of Bord na gCon and the Department. The views of the Chairman⁵ are set out in Appendix D.

1.16 The report by its nature focuses on specific issues where concerns arose that best practice associated with public sector values was not adhered to. Any findings with regard to procedural matters outlined subsequently should not be seen to detract from the many positive achievements realised by Bord na gCon in the period under review. It is acknowledged that these achievements were considerable and served to build up greyhound racing in Ireland to a level where it has become a major spectator sport and entertainment option.

⁴ Shelbourne Park was managed in conjunction with Harolds Cross by a Managing Director of Dublin tracks.

⁵ All references to the Chairman in this report relate to the Chairman who served during the period 1995-2006.

2 Administrative Matters - Shelbourne Park

2.1 The two Dublin tracks – Shelbourne Park and Harolds Cross - account for approximately 45% of the turnover of Bord na gCon⁶. Consequently, their smooth operation is key to the overall success of the organisation. This chapter examines certain perceived shortcomings in the management of activities at Shelbourne Park and related control issues. The matters examined included

- building works and associated procurements 2000 – 2002
- arrangements for security services
- the provision of motor cars to certain managers
- refurbishment project 2005 - 2006
- arrangements for the selling of advertising space
- the arrangements for the printing of race cards and related material.

2.2 These matters have to be considered in the context of the governance and management arrangements which pertained at the two Dublin tracks. A new CEO⁷ was appointed in 1997. He informed me that he was advised by the Chairman in view of the overall volume of work at Bord na gCon that he should let the Managing Director (MD) of the two Dublin tracks take direct responsibility for their running and development and that he as CEO should concentrate on developing the other tracks⁸. The Chairman also advised the CEO that since the Chairman himself was based in Dublin he would have a lot of input into the operation of the two Dublin tracks. The CEO accepted this arrangement which continued up to his retirement in March 2003.

2.3 Notwithstanding the above the MD has pointed out that the CEO was a director of Shelbourne Park from 1997 to 2003 and attended all board meetings together with the Financial Controller. He would meet him personally most weeks and kept him fully apprised of both day-to-day management matters and developmental issues. The former Personnel and Development Manager who was also Company Secretary has stated that during the relevant time all instructions received by him in relation to the operation and control of the Dublin tracks came from the CEO. He had never been informed that the CEO was not in charge of the Dublin tracks.

2.4 The Chairman informed me that the intention was that the CEO would continue to have overall responsibility for management of the Dublin tracks. Only the redevelopment of Shelbourne Park was intended to be reserved to the MD.

Procurement of building works 2000 - 2002

2.5 A redevelopment project took place at Shelbourne Park between 2000 and 2002. The MD of the Dublin tracks had charge of the development. He had also overseen a previous phase of development of Shelbourne Park in 1994. The development involved work to enhance the stand, kennels, carvery area and the development of a pavilion. It also involved the construction of new office accommodation. The project was carried out with the assistance of Project Managers (who also acted as Quantity Surveyors) and a design team.

⁶ This has been calculated at 2006 activity levels.

⁷ All references to the CEO in paragraphs 2.2 to 2.39 refer to the CEO who served during the period 1997 to 2003. See Appendix C.

⁸ The MD of the two Dublin tracks attended all Board Meetings until October 2006.

2.6 Payments arising out of the redevelopment were made by the Bord na gCon headquarters in Limerick. However, decisions in regard to the scope of the work were delegated to the MD and variations were authorised by him. The Financial Controller informed me that the authorisation and payment functions were coordinated through

- reports from the Quantity Surveyors who had responsibility for ensuring that costs were controlled and any variations over the original scope minimised
- the review by both the MD and the finance unit of cost reports issued every two to three months by the Quantity Surveyors
- the issue of payments by the Limerick headquarters based on architects certificates.

2.7 In the course of audit, I confirmed that payments had been made on foot of architects certificates. However, the periodic cost reports issued by the Quantity Surveyors were not available. The Financial Controller has informed me that as the project was completed some years ago the reports are no longer retained. However, he stated that they had been available during the course of the financial audits of Bord na gCon's accounts.

2.8 The redevelopment work was carried out under two separate contracts. After taking account of VAT the overall cost was €12 million. The outturn on the contracts is set out in Figure 2.1.

Figure 2.1 Refurbishment Works 2000 — 2002 (excluding VAT)

| Contract | Amount | Variation on sums included in contract^a | Additional Works | Outturn |
|-----------------|-----------------|---|-----------------------------|-----------------|
| | €million | €million | €million | €million |
| 1 | 2.8 | 0.4 | 0.8 | 4.0 |
| 2 | 2.8 | 0.8 | 3.0 | 6.6 |
| | 5.6 | 1.2 | 3.8 | 10.6 |

Note a In relation to the second contract, the original tender Bill of Quantities which amounted to €4.5m was reduced to a contract sum of €2.8m. Some specified works amounting to €0.9m included as variations in Phase 1 and Phase 2 were included in this BOQ and are included as variations on contract sums for the purpose of this analysis.

2.9 There were considerable additional works on the contracts. I sought explanations from Bord na gCon as to the management of the work. Based on information supplied to me, the extra expenditure arose on the elements set out in Figure 2.2.

Figure 2.2 Additional works 2000 — 2002 (excluding VAT)

| Additional Expenditure | Contract 1 | Contract 2 | Total |
|--|------------|------------|------------|
| | €million | €million | €million |
| Track changes | – | 1.1 | 1.1 |
| Work to existing structures | 0.5 | 0.5 | 1.0 |
| Building electrical and mechanical works arising from additional works | – | 0.8 | 0.8 |
| Generator and associated costs | – | 0.3 | 0.3 |
| New buildings | – | 0.1 | 0.1 |
| Fit out to kitchen bar and roof terrace | 0.1 | – | 0.1 |
| Other | 0.2 | 0.2 | 0.4 |
| Total additional works | 0.8 | 3.0 | 3.8 |

2.10 In addition to payments under the contracts, further amounts totalling €0.4 million were paid for certain works ancillary to the redevelopment including painting, a glazed screen, bar equipment and other small works.

2.11 In regard to the cause of the increased contract outturn, the Chairman explained that in December 1999 Bord na gCon had secured the freehold title to lands at Shelbourne Park following a court judgment. This opened the way for the sale of a portion of the lands with planning permission for apartments and provided a funding basis to facilitate the redevelopment of Shelbourne Park. The Board were advised of this position on 21 January 2000.

2.12 In June 2000 the Board was presented with cash flows indicating that expected proceeds from the sale of the land at Shelbourne Park would be around €8.3 million and the cost of the redevelopment would be approximately €7 million. The Board noted at its meeting of June 2000 that it was likely that an additional €1.27 million would be required to refurbish the existing facility. On receipt of detailed project cost estimates and subsequent tenders, a report presented to the Board in September indicated that the total cost of the project was likely to be €10.3 million. The Board report (prepared by the executive) recommended that the total project cost be curtailed to €8.3 million. The September Board minute indicated that the Board expected that the total project cost should not exceed €9.5 million with a direction given to curb costs to make the project as self financing as possible.

2.13 The discussions at the Board meetings of June and September were in the context of anticipated government funding of €7.6 million on an annual basis. The decisions of the Board in respect of the expenditure on Shelbourne Park had been clearly made on this basis. However, during 2000 discussions commenced with government regarding a permanent basis of funding for the Horse and Greyhound racing industries. This would result in an additional €16.5 to €17.8 million over the course of the first four year phase of the Horse and Greyhound Racing Fund. This fundamentally altered the basis of decision making for capital expenditure projects. In 2001, the Board received actual funding of €14.3 million due to transitional arrangements inclusive of allocations from the Horse and Greyhound Racing Fund. The Board in light of this additional funding decided to allocate extra funds to the Shelbourne Park projects and committed €10.3 million. Consequently, the introduction of the Horse and Greyhound Racing Fund was a fundamental change in the funding of the industry and facilitated the allocation of additional revenues for capital projects.

2.14 While the delegation of authority to the MD to manage the development was designed to achieve an effective execution of the project, in practice its management was hampered by his illness. The management of major capital projects in normal circumstances would place considerable strain on the resources of small organisations like Shelbourne Greyhound Stadium Ltd. However, the absence of a key manager⁹ effectively caused a vacuum to develop at a key point in the project.

2.15 In his absence, a considerable amount of authority transferred to a person whom he had engaged to oversee the redevelopment of Shelbourne Park in November 2000 (the building overseer). The same person had been recruited by the MD in April of that year to manage security at the track. The appointment was made without advertising and/or a recruitment process. The contractual relationship between Shelbourne Greyhound Stadium Ltd and the individual is unclear. However, it is likely that the overseer was engaged under a contract for services based on the fact that

- the overseer was never included on the payroll
- no contract appears to have been established or requested by the building overseer
- a fee basis was agreed for the security services provided individually and by a related company
- no holiday or pension arrangements were in place
- invoicing for services took place.

A copy of the notification of the rationale for his appointment as building overseer for the project is set out at Appendix E.

2.16 The involvement of the overseer in site meetings and the authorisation of works effectively meant that, for certain periods, control was neither being exercised by the organs of Bord na gCon nor Shelbourne Greyhound Stadium Ltd. Overall, there needs to be greater transparency in a project of this scale between on-site authorisation of additional work, the establishment of the related financial commitment, monitoring of the project and the reporting of progress to the Board.

Purchase of a Generator

2.17 Associated with the redevelopment work, €124,704 was paid for a new generator. Investigations of problems with the generator led to the discovery that it was 20 years old. A subsequent investigation by PriceWaterhouseCoopers (PWC) which had been commissioned by Bord na gCon established that the tender procedure was flawed with the building overseer instructing the services consultants who had been retained to manage the tender process to add a supplier to the list of those invited to tender. This supplier was subsequently awarded the contract on the instructions of the building overseer who was a registered director of the company in question.

2.18 In August 2001, the main contractor had submitted an interim valuation that included a claim for payment to the supplier for the full cost of the generator amounting to €145,385. The project managers approved an amount of €10,848 before VAT which represented 76% of the tender price. It was only when difficulties arose at the technical installation of the generator in February 2002 that Bord na gCon became aware, based on a report from an electrical contractor, that the generator was not new. On discovery of this the project manager was instructed to

⁹ The MD was on sick leave between February and May 2001 and was only available on a restricted hours basis between June and December 2001. Thereafter he was absent on long term sick leave.

conduct an inquiry into the matter. Subsequent to this inquiry and following legal advice, PWC were appointed to examine the matter further. No further payments were made to the company and what transpired to be a second hand generator was ultimately installed in working order.

2.19 On completion of the PWC report, Bord na gCon sought advice from their legal advisors asking if it would be appropriate to pass the file concerning the generator to the Gardaí with a view to a criminal prosecution being pursued. After an examination of all the facts and files, the legal advice to Bord na gCon was that it would be a futile exercise as the legal advisors believed there would not be a sufficient case for prosecution. The Board followed the legal advice received.

Other Associated Procurements

2.20 The PWC report also indicated that ancillary works had been undertaken by Shelbourne Greyhound Stadium Ltd without a tender process as required by public procurement guidelines and without the involvement of the professional project managers. The items involved are listed in Figure 2.3.

Figure 2.3 Ancillary Works

| Type of Work | Expenditure |
|----------------------|----------------|
| | € |
| Washers/Ice machines | 80,791 |
| Glazed Screens | 97,129 |
| Painting Works | 101,692 |
| Total | 279,612 |

2.21 In the case of the glasswashers and ice machines acquired between August 2000 and February 2001, Bord na gCon paid a company €80,791 for nine glasswashers and eight ice machines. Only six of each were received. It is estimated that €9,973 was overpaid. As a result of later enquiries to the Companies Registration Office it was determined that the VAT number of the supplier of the ice machines and glasswashers had not been active since June 2000. The invoices were authorised for payment by a stamp of the signature of the MD of the Dublin tracks. Shelbourne Greyhound Stadium Ltd was unable to provide an order form or delivery docket in respect of any of this equipment. In this instance, there was a breakdown in the obligation to ensure that trade is conducted with bona fide and tax compliant suppliers.

2.22 In the case of glazed screens, the architects expressed concern that the glass might crack because it did not meet the required technical specifications. In addition, no planning permission for this aspect of the development had been sought until January 2007¹⁰.

2.23 In the case of painting works, arising out of concerns about some aspects of the control of the project, Bord na gCon retrospectively sought assurance that the work paid for had been carried out. The project managers for the main contract, who had certified the invoices for payment, were asked to carry out an inspection of the work. In a small number of cases, this inspection of the work proved difficult as some of the walls had been subsequently altered in colour. However, the project managers concluded that the painting works represented good value for money.

¹⁰ The Financial Controller informed me that the necessity of finalising outstanding planning issues had been brought to the attention of the architects.

Investigation by Bord na gCon

2.24 When apparent control deficiencies at Shelbourne Park came to the attention of Bord na gCon headquarters, the Financial Controller requested the Project Managers to investigate them. Following a preliminary report from the Project Managers in March 2002, PWC were engaged to conduct an independent enquiry. The initial terms of reference of the enquiry was

- to ascertain in so far as possible the factual position regarding authorisation, procurement and expenditure related to the redevelopment,
- to report on compliance of the procedures with EU rules and State guidelines,
- to report on the efficiency of corporate governance procedures
- to report on any unusual aspects arising from the review which might indicate irregularity paying particular attention to the generator supply, the painting contract and the supply of sundry equipment¹¹.

2.25 In March 2003, the PWC enquiry was limited to establishing the factual position regarding the generator and the glazed screen. In revising the instructions, the CEO stated that no useful purpose would be served by examining broader areas such as corporate governance and compliance with State guidelines as subsequent changes at Bord na gCon had corrected these shortcomings.

2.26 PWC reported in April 2004. In relation to the generator, they established that the tender procedure was flawed. In respect of the glazed screen the investigation found that this work had not been performed under the main contract and no official tendering process was followed. They found that the Project Managers recommended an amount for payment on the basis that it represented market rates for the item procured but the architects did not certify the work.

2.27 PWC made a number of recommendations in relation to the future conduct of capital projects. They recommended that variations on the initial project plan should be minimised and that all variations should be negotiated and carried out by the project managers and not performed on an ad hoc basis by management. They also recommended that greater importance should be placed on the selection of supervisory staff in all areas of capital spend and that Bord na gCon should retain all original documentation on all capital projects. They also recommended that Bord na gCon should inspect all equipment for authenticity prior to receipt on site and installation.

2.28 The PWC investigation cost €63,500 plus VAT of €13,335.

Security Services at Dublin Tracks

2.29 The security services at the Dublin tracks between April 2000 and December 2001 were provided by the person appointed as building overseer both personally and through a company. Payments for security were approved by the MD. The building overseer's roles were terminated in December 2001 on the instructions of the CEO when the General Manager of Shelbourne Greyhound Stadium Ltd expressed concerns about the overseer's roles to the CEO.

2.30 After the termination of the arrangements with the building overseer the method of remunerating security personnel was unorthodox. It involved the company engaged to provide catering services at Shelbourne Park paying €45,258 directly to security personnel between

¹¹ The investigation also extended to the provision of cars to managers (see paragraphs 2.35 - 2.39).

January and May 2002 at the request and on behalf of Shelbourne Greyhound Stadium Ltd¹². The catering company was then reimbursed in respect of these payments. The arrangement was altered subsequently, at which point cheques due in respect of security services were drawn in favour of the catering company who cashed them for the individual security personnel. Payments of €8,151 were made using this method. On the instructions of the Financial Controller, following tax advice from PWC, Shelbourne Greyhound Stadium Ltd paid €10,111 by way of voluntary settlement to the Revenue Commissioners to cover the payments which had been made without tax deduction. The cash payments had come to light in the course of work by the Board's internal auditor.

2.31 Between August 2002 and April 2004 another security company provided security services.

Tendering and Contracting

2.32 There is no evidence of tenders or contracts for the security services provided in the period April 2000 to April 2004. A tender competition was held in April 2004 and a different company was appointed. Bord na gCon was unable to provide me with a contract. Subsequently, Shelbourne Park management formed the view that this company had not carried out its duties in accordance with the award criteria and yet another company (the company who scored second highest in the April 2004 tender) was brought in on a temporary basis. A temporary security services agreement was signed with that company in May 2005 pending the completion of a tender process. This was completed in December 2007.

Authorisation and Control

2.33 My investigations revealed that Bord na gCon had in place a formal authorisation process which required invoice approval to be witnessed by signature. Despite this process being in place, there is no evidence of the signature of the MD on invoices totalling a sum of €376,058. We were advised that the practice was to present invoices to the MD with the requisite cheques for signing. The payments included €50,421 to the building overseer for his retainer between April 2000 and December 2001 and €17,085 for his own security hours between April 2000 and November 2000. A termination payment approved by the CEO of €9,523 was subsequently made to the building overseer. Bord na gCon informed me that the individual was not an employee of Shelbourne Greyhound Stadium Ltd and that the termination payment represented an amount paid in settlement of a disagreement over fees for services provided.

2.34 The Financial Controller has informed me that the Head Office finance unit was not aware that the authorisation of security invoices was not formally evidenced by signature of the MD until he was so advised by my Office. This is because the Head Office finance unit had no control function for security payments in Shelbourne Park as the payments to the individual's company were made through Shelbourne Greyhound Stadium Ltd. However, procedures for processing payments by companies within the group were set out in a Bord na gCon Procedures Manual. The Financial Controller informed me that compliance with the Procedures Manual would be checked by Internal Audit during track audits and the finance unit regarded its role as fulfilled when procedures had been promulgated and an internal auditor appointed to examine compliance. An internal audit function was created in 2000 on his recommendation. The Procedures Manual was drafted by the internal auditor who informed me that its first draft was introduced to Shelbourne Park and Harolds Cross at the end of 2000. The manual was later revised and issued to other tracks and the internal auditor stated that this process was complete by the end of February 2002.

¹² After the arrangements with the building overseer were terminated staff of his former security company continued to provide the service.

Provision of Motor Cars to Managers

2.35 In 2000, an arrangement was concluded between a Dublin garage and two managers at the Dublin tracks to provide each of the managers with a car. The two managers were required under the agreement with the garage to maintain the cars and pay the running costs. At the time of the agreement one was the MD of the two Dublin tracks and the other was the General Manager of Shelbourne Greyhound Stadium Ltd. The MD of the Dublin tracks went on sick leave between February and May 2001 and returned to work on a part time restricted hours basis between June and December 2001. Thereafter, he went on long term sick leave. He was replaced as MD of the Dublin tracks by the General Manager of Shelbourne Greyhound Stadium Ltd in March 2003.

2.36 As well as being employees both managers were at various times board members of Shelbourne Greyhound Stadium Ltd. The General Manager has been a member since 1997. The MD was also a member from 1997 until March 2003.

2.37 In 2002, the CEO on becoming aware of the arrangement instructed the General Manager of Shelbourne Greyhound Stadium Ltd to terminate the arrangement with the garage. He did not do so. In 2002, as part of a wider investigation, PWC had been commissioned to investigate the arrangements surrounding the supply by a private company of cars to managers but this was excluded from its terms of reference in March 2003.

2.38 The Board subsequently became aware in 2005 that the arrangement had continued despite the specific instructions of the CEO. When the General Manager's arrangement with the garage came to an end in 2005, he applied to Bord na gCon for a company car to replace the car which the garage had been providing. For the period during which the cars were provided, the General Manager was claiming, and being paid, full mileage expenses on journeys carried out for work purposes. As well as the issue of the payment of expenses in circumstances where a car was provided, there were also taxation implications arising from the arrangement. Tax was due in respect of 2004 and 2005 when the obligation to deduct tax on Benefits-in-Kind moved to the employers. A payment was made to the Revenue Commissioners after taking tax advice from PWC. It was agreed that the Bord na gCon portion of the tax due together with overpaid travel expenses would be recouped from the manager. In all, €1,333 was recouped from the General Manager (now MD) including travel expenses of €5,179 in respect of amounts claimed in 2004 and 2005.

2.39 Guidelines for State Bodies issued in 1992 required that all State Bodies should have a written Code of Conduct for employees that should cover, among other things, acceptance of gifts. Bord na gCon did not have a Code of Conduct prior to 2002 when a Code of Business Practice was adopted which incorporated a code of practice for employees¹³. That code requires employees to undertake not to give or receive corporate gifts, hospitality, preferential treatment or benefits which might affect or appear to affect the ability of the donor or the recipient to make independent judgment on business transactions involving Bord na gCon. The MD of the Dublin tracks (previously the General Manager) informed my staff that he was not aware of guidelines for employee behaviour.

¹³ In 2002 the Board adopted a Code of Corporate Governance which included, a Code of Business Practice for Board members, a Code of Business Practice for employees, a Schedule of Matters reserved for Board decision, procedures for dealing with new legal instruments, authorisation between Board meetings, appointment of staff, Board sub-committees and directors' responsibilities for accounting systems, internal control procedures and the health and safety of employees.

Refurbishment Project 2005 — 2006

2.40 Because of the postponement and cancellation of a project proposed by the CEO¹⁴, €158,560 was paid out in respect of services for which no value was received. The history of the proposed project is summarised in Figure 2.4.

2.41 My inquiries indicate that the proposed project evolved from concerns that had been raised in relation to the adequacy of electrical installations and fire safety in the stadium. It was also hoped to run a world championship race at Shelbourne Park and it was considered that the stadium required both structural and cosmetic work. The appointment of a new CEO in 2004 coincided with a Board decision to address the dangerous condition of the electrical installations, shortcomings in the sound system on the third-floor and below standard toilet facilities. In February 2005 the appointed project managers estimated that the cost of carrying out the work associated with the provision of new areas as well as altering the existing internal layout of hospitality suites would be €1 million and that the cost of refurbishing and upgrading the existing second floor area would be between €50,000 and €600,000.

Figure 2.4 History of Proposed Refurbishment Project^a

The Board approved €2.85 million in respect of specific works at Shelbourne Park together with capital expenditure planned at other tracks of approximately €10 million. These approvals were in anticipation of the Department sanctioning increased borrowing of up to €25 million by way of overdraft.

The CEO selected a contractor following a public procurement process for a contract price of €69,202 excluding VAT. This tender took place before the tender design had been finalised.

The project scope was not presented to the Board before tenders were sought and it was postponed on several occasions because the CEO had not finalised designs.

In September 2005 the Board was advised that the project cost had not been defined but would be presented to the Board for approval. The Board was not advised that a tender had been conducted and a preferred contractor appointed.

The Board's application for increased funding was not approved by the Department and as a result the Board did not proceed with the project.

Draft plans were submitted in advance of a January 2006 Board meeting seeking approval at a level of €3.5 million. The Board did not approve these plans but instead approved a locally managed project to the value of €80,000.

The postponement and cancellation of the planned project resulted in nugatory expenditure of €158,560.

a The facts in this table are drawn from a review of Board minutes and documentation.

¹⁴ All references to the CEO in paragraphs 2.40 to 2.57 refer to the CEO who served during the period October 2004 to February 2006. See Appendix C.

2.42 At its meeting on 24 February 2005 the Board approved, subject to government approving overall borrowing of €25 million, the spending of €2.85 million at Shelbourne Park on the following specific works

- Health and Safety upgrade - €500,000
- Hospitality Suites and toilets upgrade - €750,000
- Upgrading of mid-level areas - €1 million
- Other stadium work - €600,000.

The Board approval was given without the consideration of detailed costings for the constituent elements of the proposed works. The first detailed costings were made by project managers in July 2005. In that plan, the scope of the work was specified as the refurbishment of the hospitality suite on level 2 of the stadium.

2.43 A public procurement process was completed in June 2005 and resulted in the selection of a main contractor at a price of €969,202 (excluding VAT). Some aspects of the tender documentation were not fully specified as Bord na gCon had not finalised the design and this resulted in the tender including a significant number of PC amounts that would be finalised later with the contractor. In the course of the examination, Bord na gCon could not reconcile works approved in the Board decision with the elements being procured. The then CEO explained that the €2.85 million was arrived at very simplistically and represented guesstimates as opposed to realistic estimates and that it was not possible to identify which elements of the €2.85 million approved by the Board were included in the tender amount of €969,202 agreed with the main contractor.

2.44 The project managers, on the instruction of Bord na gCon, wrote to the successful tenderer in July 2005 confirming the intention to enter into a formal contract and to permit immediate mobilisation. This letter allowed for works up to the value of €300,000 to be undertaken by the main contractor. However, an agreed costed schedule of works was not in existence at this stage.

2.45 The then CEO informed me that once the Board had approved the expenditure of €2.85 million he appointed Bord na gCon's Commercial Manager to lead the project in conjunction with a firm of Project Managers. The Commercial Manager informed me that the MD of the two Dublin tracks was part of the project team and had been consulted on all aspects of the refurbishment through project meetings and telephone communications.

2.46 The CEO informed me that although surveys of the stadium's electrical installations had indicated that urgent remedial repairs were required, management was advised that it would not be possible to determine the exact costs until the existing wiring was stripped back. PC sums were therefore included for the works.

2.47 The CEO also informed me that, overall, two factors drove the urgency of this particular project. The first was the need to ensure that all electrical installations could be independently certified as being compliant and secondly a desire to ensure that the third floor suites would be refurbished for the final of the 2005 Derby which is the industry's most important night of the year. According to the CEO, the mood boards presented by the architect were not as he had requested and the revisions required meant that the works would not finish in time for Derby final night. Consequently, there was no choice but to postpone the project. The knock on effect, as Bord na gCon's business is seasonally weighted towards the last quarter of the year, was that the project had to be postponed again in order to avoid an unacceptable adverse impact on the restaurant bookings in Shelbourne Park. Agreement was sought with the contractor to delay the start up until after the New Year.

2.48 On 16 September 2005, the project managers submitted a revised cost plan. The estimated cost was now €1.4 million and the proposed work formed part of an overall refurbishment plan for Shelbourne Park estimated to cost €6.5 million. There is no evidence that the Board considered these increases in cost. The €6.5 million represented a complete redesign of the building encompassing the pavilion area and provided for replacing the roof. The then CEO said that when the costing came back it was clear that the Board would not approve these works due to other priorities and, therefore, these estimates were never intended to be presented to the Board as they were for management information.

2.49 At a project team meeting on 9 December 2005 it was decided that the brief on which the contract was awarded was obsolete. Bord na gCon was represented at the meeting by Shelbourne Greyhound Stadium Ltd management. The Commercial Manager was not in attendance as he was absent on sick leave. The then CEO was not at the meeting. The then CEO and Commercial Manager had no involvement in this decision and the Shelbourne Greyhound Stadium Ltd management were acting on the instructions of the Chairman.

2.50 Ultimately, the works did not proceed and a smaller project was carried out in 2006 under the control of local Shelbourne Park management. The architects and project managers were not involved in these revised works. The revised project cost in the region of €80,000 and included an upgrade of the toilets, carpeting, seating on the ground floor, new chairs for the restaurant and hospitality suites, timber flooring in the bar areas, electrical works and the painting of the exterior of the stadium.

2.51 The postponement and eventual cancellation of the envisaged project resulted in nugatory expenditure of €158,560 comprising €66,610 paid to the project managers and €91,950 to the architects.

2.52 In responses to my inquiries in regard to the control and management of this project it emerged that the then CEO and Chairman had fundamental differences on how capital projects were to be authorised and managed. The then CEO said it was always his intention to go ahead with a project even though the scope had changed. He stated that the proposed design/layout was not presented to the Board as it was not finalised. This led to a stand-off in that neither the Board nor Shelbourne Greyhound Stadium Ltd management agreed with what was being proposed.

2.53 The then CEO informed me that the Board was not updated on what was happening to the €2.85 million approved for the following reasons.

- Shelbourne Park was one project in a number of projects being progressed.
- The Board had approved the expenditure in February 2005.
- In June 2005 the Board was informed that a project manager had been appointed.
- There were ongoing discussions with individual Board members.
- The interior designs submitted by the architect were not as envisaged by the CEO.
- It was the CEO's intention to show the Chairman, the Board of Bord na gCon and the Shelbourne Greyhound Stadium Ltd Board what was intended but the final draft was not finished.
- During his short time at Bord na gCon he had been involved in capital projects at Enniscorthy, Harolds Cross and Limerick. These projects did not go back to the Board once formal approval to proceed had been obtained.

The Commercial Manager did not routinely brief the Chairman or Board on the redevelopment.

2.54 The Chairman informed me that the cash flows presented and upon which the project was approved involved increased provisions for capital expenditure, including €2.85 million for the Shelbourne Park element. The implication of the cash flow demand was a requirement to increase Bord na gCon's debt to €25 million and that approval from the Department of Arts, Sport and Tourism would be necessary to increase the debt to this level. Accordingly, the Board's acceptance of the cash flow projections was on the basis that the increased borrowing requirement would be approved by the Department. A submission was subsequently presented to the Department but approval was not obtained to increase debt at that time¹⁵.

2.55 The Chairman informed me that the Board never shared the vision of the CEO although it had never informed him of its disagreement. The Chairman went on to say that the Board never signed off on the Shelbourne Park project because they did not have the money to do it.

2.56 The Chairman said that when he became aware that the Commercial Manager had instructed Shelbourne Greyhound Stadium Ltd to cancel bookings for the corporate suites in anticipation of development work he expressed his concern at the resulting loss of business. He said that he was cognizant of the fact that these requests to cancel bookings had been made in spite of the fact that no plans had been approved.

2.57 The Chairman said the Board was always clear that, in the event of failure to secure the additional borrowing, the original proposed level of expenditure could not proceed. While the Board was conscious of a potential claim by the contractor for loss of profits from the development, he was aware that a Board member who knew the main contractor very well had managed to agree a settlement with the contractor for zero compensation.

Advertising Revenue

2.58 The procedures for advertising hoardings provide that all advertising must be invoiced. However, it leaves discretion to a manager to allow hoarding signs provided by a race sponsor to be erected in the first year of sponsorship where that sponsorship exceeds €1,300.

2.59 Otherwise, the arrangements and procedures for directly selling advertising and the arrangements with strategic partners and sponsors are not documented. As a result, informal arrangements for selling advertising at tracks was the norm with local track managers having the discretion to determine the amounts to be charged. The lack of control over income from advertising in Shelbourne Park was raised by the internal auditor in 2004 and again in 2005 but management has been slow to address the issue.

2.60 In all, some €39,000 was generated from advertising at Shelbourne Park in the six years 2000-2005. This relatively low level of advertising revenue reflects arrangements whereby major sponsors are permitted to place advertising signs at the track as part of sponsorship deals. The Chairman has pointed out that the level of income generated from advertising hoardings must be viewed in the context of the significantly increased sponsorship generated over the years 2000-2005. He stated that the commercial reality is that Track Managers offer the benefit of an annual signage as the basis for attracting sponsors. Between 2001 and 2005 the sponsorship at Shelbourne Park grew from €13,829 to €396,635.

2.61 The MD of the Dublin tracks informed me that there is no fixed price agreed for advertising or signage. As a result, different rates have not been established in Shelbourne Park Greyhound Stadium for prime spots. He went on to say that most signs are for sponsors. A lot of extra

¹⁵ Approval for increasing the borrowing limit to €25 million was given in November 2007 following the submission by Bord na gCon of a five year strategic plan.

signage is brought in for major events by the bigger sponsors which Bord na gCon are glad to facilitate. It is at a Track Manager's discretion who and what to charge for signage. Some tracks do not receive any income from this source.

2.62 The Chairman explained that obtaining sponsorship for greyhound racing was extremely difficult. He considered it an achievement to have generated as many signs around Shelbourne Park as they did. Advertising was often linked to sponsorship of events. As a result, while revenues were low the number of signs was very important so as to increase the profile of sponsors. The Chairman pointed out that while other large sporting venues would get significant direct income from advertising signage, Bord na gCon have never managed to get a major portion of this general advertising. He drew attention to the fact that most of the signage is betting-related – coming from the large bookmaking firms.

2.63 With the increased popularity of greyhound racing in recent years it would be opportune for Bord na gCon to review whether it is receiving benefit for all advertising hoardings and signage in place at the track and what the scope is for increased revenue from this source at all tracks.

Printing Costs at the Dublin Tracks

2.64 Concerns were expressed that a contract for printing of material including race cards for the two Dublin tracks was held by a company connected to a member of the current Board. The Board member has been a member of the Board of Bord na gCon from 21 December 2001 to date. He has also been a Board member for Shelbourne Greyhound Stadium Ltd from 2004 to date. Contracts for the provision of printing to Shelbourne Park and Harolds Cross were held by the printing company for over twenty years until 2005. The most recent contract was signed in 2000 for a five year period. In other tracks, a move to use in-house printing had begun in 1991. The cost of printing at the two Dublin tracks in the period from 2000 up to August 2005 was €2 million of which €1.7 million was incurred on race cards – an average annual cost of €301,495. Figure 2.5 details the payments to the printing company from 2000 to 2005 for printing at the two Dublin tracks.

Figure 2.5 Payments to the Printing Company, 2000 — 2005

| Year | Race Cards | Catalogues | Extra Pages, Adverts | Tickets, Brochures and other | Total |
|--------------|----------------------|---------------|----------------------|------------------------------|------------------|
| | € | € | € | € | € |
| 2000 | 205,737 | 4,683 | 8,542 | 57,637 | 276,599 |
| 2001 | 261,160 | 1,722 | 17,957 | 31,330 | 312,169 |
| 2002 | 360,775 | 3,312 | 25,683 | 39,722 | 429,492 |
| 2003 | 330,959 | 3,690 | 700 | 20,970 | 356,319 |
| 2004 | 339,342 | 1,505 | 16,467 | 13,720 | 371,034 |
| 2005 | 207,333 ^a | 602 | 19,342 | 39,812 | 267,089 |
| Total | 1,705,306 | 15,514 | 88,691 | 203,191 | 2,012,702 |

Note a up to August 2005

2.65 The Board member who had the contract for printing race cards while it was outsourced stated that, in comparing the relative costs, account should be taken of the fact that the race cards provided by him were of a superior quality to those currently produced in-house. He added that the race cards produced by him had a glossy finish and high quality printing while the current race cards are not of the same standard.

2.66 The Chairman has also pointed out that

- internal printing to an acceptable quality was not a viable option until developments in technology allowed for it
- the move to internal printing involved trading off some quality against lower costs.

2.67 My review established that

- The contract awards had preceded the date of appointment of the Board member.
- The comparative cost of direct provision is cheaper. The costs of printing race cards for the two Dublin tracks for the twelve month period to August 2006 were calculated at €17,762¹⁶.

2.68 While evidence of a tender process in 1997 was available, when I requested the tender documentation for the most recent contract, management at the Dublin tracks were only able to provide me with a tender submitted by the printing company in 2000 and a letter to them awarding the contract from the then MD of the Dublin tracks. No formal contract documents were available in respect of these services.

¹⁶ This amount is the direct cost of printing race cards and does not include a provision for organisational overheads. These are estimated to be of the order of €40,000.

3 Other Administrative Issues

3.1 In addition to matters relating to the Dublin tracks dealt with in Chapter 2 a number of other matters relating to the administration of Bord na gCon were reviewed in the course of my examination. In particular, I examined concerns about

- the leasing of an annexe to the Head Office building in Limerick
- the awarding of catering contracts
- the award of a contract for television production
- the arrangements for the acquisition of Tote services
- additional capital works at the Tralee track
- the procurement of professional services for construction works
- severance deals, court awards and settlements in the period 1995-2006.

Lease of Annexe in Head Office

3.2 The annexe to the Limerick Head Office of Bord na gCon became vacant in 1994. Previously, the premises had been let successively to several tenants. Bord na gCon was unable to find a tenant again until 1996, despite contacts with leading Limerick auctioneers, because of the down market condition of the annexe and a recession in the local economy. In 1996 Bord na gCon rented the annexe to a solicitor. The solicitor was well known to the CEO at the time¹⁷ and she was later to become his daughter-in-law.

3.3 The CEO informed the Chairman at the time that there was an opportunity to let part of the annexe building as a starter office. The CEO informed the Chairman of the connection with the prospective tenant. The Chairman had no objection to the lease. My examination established that the rent was in line with market conditions in Limerick in 1996. The CEO informed me that the Chairman and the Board were fully conversant with the initial letting and all the surrounding circumstances and that the Chairman told him the matter was one for the executive and not for the Board. However, the Chairman is adamant that he advised the CEO to give the tenant a two year lease, as this did not confer property rights. The CEO is equally adamant that no such limitation was ever discussed.

3.4 Although the lease was not due to expire until July 1998, an ancillary indenture was drawn up in June 1997. This provided for a five year term from August 1996 at the same rent as agreed under the 1996 lease. The revised lease provided for a rent review after two years with the rent payable to be determined on the basis of a fair current market rent. As the revised lease was for a term in excess of four years and eleven months it conferred certain statutory rights on the tenant in regard to renewal in accordance with the Landlord and Tenant (Amendment) Act 1994. It appears from a review of the relevant documentation that no legal advice was received from the Board's solicitors before the extension of the term to five years.

3.5 The CEO had conducted the negotiations with the tenant in relation to the revision of the lease. The Company Secretary said he signed one copy of the ancillary indenture and decided that since the CEO had negotiated the details it would be more appropriate for him to sign it.

¹⁷ All references to the CEO in paragraphs 3.2 to 3.21 relate to the CEO who served during the period 1989 to 1997 unless otherwise indicated. See Appendix C.

3.6 The CEO stated with regard to the revision of the lease in 1997 that the tenant had found the premises satisfactory and Bord na gCon regarded her as a satisfactory tenant. He added that Bord na gCon was happy to have obtained a rent review clause (falling due in July 1998) and a stream of income into the future. The rent was scheduled for review after the retirement of the CEO. He said the lease was a welcome addition to Bord na gCon's cash flow which was in difficulty in 1997¹⁸. The CEO informed me that as the Chairman had indicated that the original lease was a matter for the executive he had treated the renewal of the lease as a routine matter.

3.7 The Chairman said that neither he nor the Board were consulted about the revision of the lease or the increase in the term to five years which conferred property rights on the tenant. The CEO retired in 1997. All subsequent actions in regard to the premises were carried out by his successor.

3.8 In July 1999, Bord na gCon sought possession of the building as it formed part of an overall development plan for the Limerick Head Office. The lease was not due to expire until August 2001. In early December, the tenant agreed a settlement to include a payment of €5,230 to rescind the lease. The basis for this level of compensation was that Bord na gCon was not just buying out the last year of the lease i.e. September 2000 - September 2001 but had to buy out the tenant's rights as she had a right to a new lease.

3.9 The Chairman said he was unhappy with the settlement and would have fought the legality of the lease but for the fact that a development was being considered under which Bord na gCon stood to gain financially and it afforded an opportunity to locate staff in a new building more suited to office accommodation. Accordingly, Bord na gCon needed vacant possession of the annexe. The Chairman said that, ultimately, it was a commercial decision to settle with the lessee and the Board decided accordingly. The proposed development, however, did not go ahead because the area regeneration at that time did not extend as far as the Bord na gCon building. The Chairman said that the settlement would have been good value had the development gone ahead.

3.10 The CEO who negotiated the lease stated that at no time during his period of employment with Bord na gCon was there any discussion, proposal or plan to redevelop the Head Office property. He added that Bord na gCon had always considered the Head Office property as one of special architectural and historic merit and its redevelopment had never arisen. He went on to say that because of this, at the time of both leases, the question of buying out the tenant on foot of a redevelopment proposal was never considered.

3.11 Planning permission was never submitted for the proposed development and no development has been completed or proposed since. The Head Office is a listed building and planning would have been complicated. However, the annexe was not a listed building and there was no restriction in relation to its development on that score. The Board did not formally approve a development of the Limerick Head Office¹⁹.

3.12 Overall, Bord na gCon negotiated a settlement totalling €5,200 with a tenant in the context of a development project that was never approved by the Board and for which no planning was ever submitted. However, the vacated space together with other adjustments made by Bord na gCon has facilitated an expanded laboratory facility and the accommodation of IT facilities.

3.13 The handling of the revision of the lease by the CEO as a routine executive matter notwithstanding his connection to the solicitor and the fact that he made a significant change in the

¹⁸ The rental income was of the order of €3,300 per annum.

¹⁹ It is understood, however, that any proposed development would be confined to the annexe building which was not listed.

lease period upon the same rental terms²⁰ without reference to the Board had the effect of conferring a reversionary interest on the tenant thus impacting on Bord na gCon's property rights which ultimately cost them €95,200 to redress.

Catering Contracts

3.14 Concerns had been raised in regard to the contracting of catering services at the Tralee and Cork tracks. The following is the result of my inquiries in these cases.

Tralee Catering Contract

3.15 The bar and catering concession contract for the Tralee track (for a period of one year) was advertised in national newspapers with a closing date for receipt of tenders of 17 January 1997. The fee to be paid to the track company in respect of the concession was to be tendered on a fixed basis.

3.16 Four tenders were submitted on time²¹. Bord na gCon accepted an amendment to one of these after the tenders had been opened. Four further tenders were also submitted after the closing date. Interviews were held with three tenderers. The interviews were conducted by Bord na gCon's then Commercial Manager (appointed CEO in September 1997) and the Managing Director of Shelbourne Greyhound Stadium Ltd. As a result of the passage of time no record of the interviews and decision-making process or scoring sheets were available.

3.17 Of the three companies invited to interview, one had submitted the tender on time, another while having submitted a tender on time later submitted a replacement tender and a third company's tender was received after the closing date.

3.18 The Board of the Tralee track met on the same day as the interviews were conducted and awarded the contract for the bar and catering concession to the company which had submitted the replacement tender after the tender opening date. The contract was awarded for one year.

3.19 Two unsuccessful tenderers, who had submitted tenders prior to the closing date, took legal action on the basis that Bord na gCon had failed to complete an open and transparent public procurement process. One tenderer had sought a judicial review based on unfair procedures and received a settlement of €50,789. The second unsuccessful tenderer alleged flawed tender procedures, negligence, and misrepresentation and received €28,569 in settlement. In addition, legal costs were incurred by Bord na gCon²².

3.20 From a business perspective Bord na gCon justified its decision on the basis that Tralee was the first newly constructed track and it was of paramount importance to procure caterers who would lift the status of the track and attract patrons through the provision of high quality food and service.

3.21 However, this has to be balanced against the need to conform to the rules and guidelines governing public procurement. It is not acceptable for a State body to change the rules of a

²⁰ The revised lease provided for a rent review after two years.

²¹ The Company Secretary informed me that the tenders were opened on 20 January 1997 in the presence of the CEO, the Financial Controller and the Commercial Manager. Thereafter, the matter was dealt with by the Commercial Manager under delegation from the CEO.

²² Costs of €9,982 were incurred by Bord na gCon in one of the cases. Neither the costs of the plaintiff (if any) nor the costs of Bord na gCon in the second case could be quantified.

competition once started and give one tenderer an opportunity to alter its bid without affording an equal opportunity to others.

Renewal of Cork Catering Contract

3.22 An open tender procedure was conducted for the initial award of the catering contract at the new Cork track in 1999. The original tenders were rejected and resubmissions sought. The outcome of the new round of tenders was that the offer submitted by the successful tenderer represented an improved margin for Bord na gCon over the original offers. At the end of a twelve month period, the then CEO²³ negotiated an increased margin arrangement with the catering company and proposed to extend the contract for a further two years.

3.23 In 2001, the Cork Greyhound Racing Company Ltd received oral legal advice to clarify if there was any legal reason why the contract should not be extended. The advice received was that since the value of the proposed contract was not expected to exceed EU thresholds there was no requirement to advertise in the Official EU Journal. However, the legal advice also noted that broader considerations may apply to the awarding of such contracts. In particular, it pointed out that whilst there was no legal obligation to tender, the need for openness and transparency in the tender process in a State body should be considered. The Chairman informed me that the Board unanimously approved the process adopted as they understood it was in the best commercial interest of Bord na gCon. He noted that the Public Procurement Guidelines suggest that ‘for contracts or purchases below EU threshold values and not part of a drawdown or framework contract less formal procedures may be appropriate’. The Board believe they acted appropriately having due regard to the guidelines.

3.24 However, a subsequent internal Bord na gCon report found that a commitment had already been made to the caterer to renew the contract and new legal advice given to the Board was to the effect that the contract had to be renewed without tender as Bord na gCon would be open to a claim for damages by the contractor if it was not renewed.

3.25 The company which was reappointed as caterers for a two-year period in 2001 was appointed for a further five-year period in March 2003 following a tender process. The company was the tenderer offering the best margin.

3.26 Although subsequent events tended to bear out the decision to extend the original contract, the giving of a prior commitment to the caterer runs counter to the principles underlying public procurement procedures.

Television Programme

3.27 Following a direct approach to Bord na gCon, a company was appointed in 2001 to produce 52 weekly television programmes. The series was subsequently transmitted under the title ‘Greyhound View’. The initial contract provided for Bord na gCon to pay €9,421 (inclusive of VAT) for each of the first 26 programmes. The contract provided for a review of service after 26 weeks. The cost per programme was to reduce to €8,888 inclusive of VAT for 26 further programmes after the review date²⁴. There is no evidence that this review was completed although it was clear to all concerned that the programme was a success.

²³ All references to the CEO in paragraphs 3.22 to 3.26 relate to the CEO who served during the period September 1997 to March 2003. See Appendix C.

²⁴ The downward adjustment was not effected until February 2003 when a credit note was issued.

3.28 At the end of the first year of the contract the Board decided that the service would be put out to tender and that in the interim the contract with the original company would be extended on a week to week basis. Bord na gCon has informed me that a tender process was held and the original company was successful but it was unable to supply me with the associated documentation. In March 2003, the Board approved the reappointment of the company.

3.29 My examination of payments to the contractor identified an overpayment of €48,129 on the contract with the company between December 2003 and July 2004. The overpayment arose because the fee per programme and the amount being invoiced was set at €9,960 including VAT. However, in December 2003, the company started to invoice Bord na gCon's Marketing Department for €9,960 and then added VAT. Bord na gCon is seeking recovery of the overpayment.

3.30 The programme was put to tender again in March 2004 and a second company was successful. The first company continued to provide the programme until August 2004. The second company began producing programmes from August 2004 but the contract agreement with Bord na gCon was not signed until January 2006. The contract was for 52 weeks from 4 August 2004 with an option to extend the contract for an additional two years on the same terms with an annual price increase to cover inflation. In December 2005, the Board agreed to reduce the 'Greyhound View' production to a nine month schedule to come into effect with the new contract and not to transmit the programme in December 2006, January 2007 and February 2007.

3.31 In response to my concerns about the non-tendering of the initial contract the Chairman has pointed out that the television programme 'Greyhound View' was a completely new concept devised by the principals of the first company who had already lined up television slots for fifty-two weeks of the year from the TnaG and Sky television channels to broadcast the programme. The Chairman went on to say that the programme represented good value for money given the level of exposure in terms of airtime received as against the cost of advertising on television for the same amount of time.

3.32 While the formal contract arrangements could have been handled better and the checking of invoices for payment had shortcomings, I am generally satisfied that Bord na gCon's management of the programme procurement was reasonable.

Contract for Tote Services

3.33 The provision of Tote services (the software and hardware to run the Tote) at six of Bord na gCon's tracks was put out to tender and published in the Official Journal of the EU in 2003. A number of companies received an invitation to tender. Four companies submitted tenders for the contract.

3.34 Bord na gCon established an Award Committee to adjudicate on the tenders. Having reviewed the prices quoted and after taking legal advice, it notified each of the tendering parties that it had rejected the pricing proposals of the original tenders and invited all parties to retender the margin element²⁵ of their pricing proposals.

3.35 Four companies re-tendered of which three proposed to supply a communications hub (two externally hosted and one internally hosted). Following a meeting of the Award Committee to evaluate the four re-tenders, the Committee decided to award the contract to a company which proposed an externally hosted hub solution.

²⁵ The margin element refers to a situation whereby all hardware and software is provided and maintained by the service provider who retains a percentage of the total Tote turnover as payment.

3.36 In December 2003, one of the unsuccessful companies sought a review of the award of the contract by the High Court. It sought a declaration that the contract was void and an order quashing the decision of Bord na gCon to award the contract.

3.37 In the first instance, the High Court concluded that while it was not clear that all of the strict requirements of the EU Directives had been met the process did not seem to breach the principle of equal treatment or of transparency. The company appealed the decision to the Supreme Court.

3.38 The Supreme Court in a judgment delivered on 23 March 2006 agreed with a number of the rulings made by the High Court but concluded that a criterion related to the location of the associated communication hub was of very considerable importance on grounds of both convenience and cost and that it played a large part in Bord na gCon's decision in the awarding of the contract. The Supreme Court went on to state that the necessary requirements of Article 36 of the Services Directive were not met in the award criteria set out in the invitation to tender documents. The criterion of the internal or external communications hub was neither mentioned nor listed in its proper ranking of importance. The Supreme Court decided that this criterion was not formulated in such a way as to allow all reasonably well-informed and normally diligent tenderers to interpret it in the same way.

3.39 Accordingly, the Supreme Court found that the procedure was lacking in necessary transparency and decided to allow the appeal on this ground. The case was referred back to the High Court for determination of damages. The claim for damages was settled for €500,000 before the High Court adjudicated on the claim. Costs of €39,926 were also incurred including €463,214 for the plaintiff's legal costs.

3.40 It is accepted that the running of EU procurement competitions for high tech IT contracts can be complicated and that the Award Committee acted at all times in good faith. However, the fact that the criterion of an IT communications hub was not specified ultimately led to significant expense that could have been avoided if it had been so specified and ranked in its proper order of importance.

Unapproved Capital Works at the Tralee Track 2004-2006

3.41 Between 2004 and 2006 work was conducted on the alteration and development of the greyhound kennels and rear car park at the Tralee Track. The work was tendered for €270,127. The Board approved the project. Additional work to the value of €50,000 was completed that was not part of the original work approved by the Board. This occurred because the project manager had interpreted comments made by a Board member (who was also a member of the Board of the Tralee subsidiary) as authorisation to proceed with the additional work, notwithstanding the fact that no formal approval had been received. The Board considered the matter at its meeting of 29 October 2005. While it accepted that the Board member had acted in good faith and that much of the work was necessary, it stressed that appropriate procedures should have been followed. The final cost of the works was €333,544.

3.42 The effect of this intervention by the Board member was to pre-empt the Board's authority to commit funds for capital works and resulted in the incurring of expenditure without proper authority. When presented with this fait accompli the Board ratified the transaction.

Appointment of Professional Advisers

3.43 A large capital works programme has been undertaken by Bord na gCon since 1997 necessitating the engagement of professional services particularly in the areas of project design and management.

3.44 The general approach adopted by Bord na gCon was that the services required were advertised in the national press, submissions received from interested parties and a shortlist selected for interview. A preferred firm would emerge from the interview process and Bord na gCon would negotiate around schedules of generally accepted industry fee rates.

3.45 Bord na gCon informed me that it was always concerned with quality and it negotiated on price. The percentage fee for the professional services would be mentioned at the selection interviews and Bord na gCon states that it always negotiated the price down.

3.46 My examination noted that the stated process operated in all cases with the exception of the appointment of project managers for developments at Galway and Harolds Cross. In the case of deviations, Bord na gCon informed me that appointments for developments were made on the basis of industry specific experience and because of the quality of previous work. Over the period of the capital programme Bord na gCon engaged five different architectural firms, six electrical engineering firms and four quantity surveying firms.

3.47 While the pragmatic approach to the exceptions is understandable, it does not conform in all respects to public procurement procedures applying in the State sector.

Litigation

3.48 Bord na gCon has a history of litigation arising out of its management of personnel matters and procurement. Overall, Bord na gCon was involved in 32 cases over the period 2000-2006. Costs in excess of €3.9 million were incurred in these cases which included court awards and settlements of €1.8 million, legal costs incurred by Bord na gCon of €1.1 million and €1.0 million in respect of plaintiffs' legal costs.

3.49 The three contract cases outlined already (the Tote case and the two cases for the Tralee track catering tender) resulted in total expenditure by Bord na gCon of €1.5 million including legal fees of €48,908.

3.50 Settlements in instances where employment relationships were terminated led to the incurring of expenditure of over €1.5 million including legal fees of €842,135 in cases involving three former senior managers

- The severance of the employment contract with one former senior manager in January 2006 resulted in a total cost to Bord na gCon of €561,890, including legal fees of €228,103.
- The settlement in June 2002 of a second case cost Bord na gCon a total of €532,933, including legal fees of €407,228.
- A third case was settled in November 2006 at a total cost to Bord na gCon of €412,804, including legal fees of €206,804.

3.51 A further 21 cases all but one of which related to redundancies and rationalisations resulted in total costs to Bord na gCon of €18,801, including legal fees of €236,811.

3.52 Five miscellaneous cases resulted in total costs to Bord na gCon of €51,857.

3.53 The Chairman has pointed out that during his tenure the decisions in regard to termination of certain employments were taken in the best interests of the industry. In his view, the demands on staff and for performance in Bord na gCon were no different than those placed on staff in successful commercial environments. He viewed terminations as a normal part of business operations and because issues of non performance had sometimes not been previously addressed, they fell to be confronted during his tenure.

4 Key Findings

4.1 In assessing the implications of the shortcomings outlined in Chapters 2 and 3 my expectations are based on the premise that where transactions are material in amount the prospect of achieving best value would be expected to be maximised in circumstances where there is systematic operation of appropriate procedures for

- procurement and contracting
- management of projects
- engagement and management of staff resources.

4.2 Apart from the safe and proper management of transactions there is also an obligation on State bodies to structure their affairs so that there is a consistent and coherent administrative process based on best corporate governance principles.

4.3 An overriding consideration is that public entities should take care to spend public funds to good effect. They should use their resources lawfully, effectively and efficiently - avoiding waste and acting with probity and financial prudence.

4.4 In this chapter I will outline my key findings in regard to

- corporate governance at Bord na gCon
- propriety concerns
- the management of capital projects.

4.5 It should be noted that the findings relate to events which occurred in some cases as far back as the 1990s. They should not be read as a commentary on the current operation of Bord na gCon.

Corporate Governance

4.6 It is recognised that in a period of development, essential elements in promoting change are energy, dynamism and innovation. At key points in the organisation's history these attributes could have been managed more effectively. To a greater or lesser extent this was a reflection of the organisation's governance style. This style manifested itself in

- considerable day-to-day involvement of directors in the business of the organisation including the provision of services
- a failure to clearly outline the functions reserved to the Board and those delegated to the Executive until September 2002 when Bord na gCon formally adopted a Code of Corporate Governance
- a division of duties which served to limit the CEO's involvement in a key part of the organisation (Shelbourne Park and Harolds Cross) in the period from 1997 to 2003
- a tendency for the Chairman to adopt a hands-on approach
- at a later stage, ineffective communication between the Board and the CEO and a failure to adequately involve the Board in the planning of a development at Shelbourne Park in 2005
- significant legal costs from personnel related cases involving, amongst others, the senior management of Bord na gCon.

4.7 The lack of clarity between the Board and the CEO over their respective roles impacted most prominently in the area of capital projects.

4.8 The CEO who served between 1997 and 2003 informed me that, acting on the advice of the Chairman he concentrated on developments outside the two Dublin tracks and that the MD of the Dublin tracks took responsibility for the management and development of those tracks. The Chairman pointed out that this division of responsibilities was done for sound commercial reasons and was intended only to apply to the redevelopment works. He stated that it should be viewed against the background of a period of change within Bord na gCon when a considerable effort was being made to transform the organisation into a successful commercial semi-state body.

4.9 It is acknowledged that this division of responsibilities may have been motivated by the fact that by 1997 Shelbourne Park had been greatly transformed from its earlier rundown state and was recognised as an attractive night entertainment venue. Consequently, it would have been reasonable for the Board to direct its energies and those of the CEO to improving other facilities.

4.10 Nonetheless, the lack of clarity around the respective responsibilities of the CEO and the MD led to a division of responsibility which was at variance with the formal contractual position of the CEO and could not but give rise to fragmented leadership and an absence of coherent internal control and management with de facto authority shared among a number of actors.

4.11 Given the significant problems that arose in Shelbourne Park this fragmentation can be regarded as a factor that contributed to the control problems at that track in the period 2000-2002.

4.12 After initial Board approval for the Shelbourne Park 2005 project, the CEO believed he could go ahead while the Board awaited a detailed plan that they believed required their final sign off. The Chairman stated that Board approval was dependent on the Department of Arts, Sport and Tourism approval for increased borrowing. The CEO's opinion was that once expenditure on a capital project was approved in principle by the Board the progression of the project was delegated to him.

4.13 This failure to align the authorisation, project definition, funding and procurement actions that should accompany a major capital work was primarily due to failure to agree corporate governance procedures which respected the input and functions of both the Board and its executive.

4.14 An Audit Committee was established in 1999. While the Audit Committee Charter requires the committee to meet at least four times a year, the committee met once a year from 2002 to 2005 and no meeting was held between February 2005 and June 2006. The Audit Committee was chaired by the Chairman of Bord na gCon until October 2003 in contravention of the Code of Practice for the Governance of State Bodies.

4.15 A properly functioning Audit Committee is a critical element in the overall corporate governance regime particularly by providing a mechanism for the review of the organisation's compliance with procedures, approving the internal auditor's work plan, reviewing reports and tracking the implementation of recommendations made.

4.16 Between 2003 and the end of 2006 thirty-five reports had been issued by Internal Audit. At the meeting of the Audit Committee in February 2005, the internal auditor said that in terms of attitude and compliance the internal audit report was not getting the attention it should at Shelbourne Park. At the same meeting the Financial Controller stated that Shelbourne Park was not giving the emphasis to the internal audit system that it should and added that a sanction would have to be applied for non-compliance unless there was a commitment to comply with the internal audit procedures. The Audit Committee did not meet again until June 2006.

4.17 The infrequent meetings of the Audit Committee until 2006 were not conducive to the effective oversight of the system of internal financial control.

Propriety Concerns

4.18 Without a clear understanding on the part of management and staff of the requirements for conducting business in the public sector there is a greatly increased risk that transactions engaged in by the staff or agents of Bord na gCon will not be directed to the optimum benefit of the organisation. Some transactions engaged in on behalf of Bord na gCon did not meet this criterion.

- the informal arrangements for the provision of security services during the period April 2000 to December 2001 and for the supervision of building works at Shelbourne Park during the period 2000 to 2002
- the supply and acceptance of a 20 year old second-hand generator in 2001 instead of the new model which had been ordered
- the making of cash payments to security staff through the catering company in Shelbourne Park
- the payment of travel expenses to a manager in Shelbourne Park while he had the benefit of a car between 2000 and 2005
- the renewal of a lease in Limerick that conferred property rights on the tenant.

4.19 While most of the foregoing transactions relate to a period prior to 2002 when Bord na gCon did not have a Code of Conduct for employees, that in itself, does not mitigate the inappropriateness of the transactions undertaken at the time.

Management of Capital Projects

4.20 In order to ensure that capital projects are undertaken and administered in a controlled way they should be fully scoped, authorised, a budget established, monitoring arrangements agreed in advance and periodic reports made to the Board. Alterations in scope should be treated similarly.

4.21 Good planning in the early stages of a project should ensure that

- the objectives are clear
- the steps for achieving them are sensible and well thought out
- costs and benefits have been carefully weighed
- foreseeable risks or difficulties are identified and provided for and
- the project is focused on its objectives.

The need for planning does not cease when the initial scope has been set. Further project planning may be needed to provide for the details of how the project is to be carried out.

4.22 Where transactions are material in amount they should be authorised by the Board and procedures put in place for the regular monitoring of those transactions and their periodic reporting to the Board. In the case of recurring transactions a framework policy should be adopted to guide the actions of management and provide for monitoring by the Board.

4.23 My examination found that, at certain stages, procedures for planning, tendering and managing capital projects did not operate effectively.

- While it is accepted that the scope of capital projects has to be in line with available funding (the changes in Bord na gCon's cash flow position at that time are outlined in paragraphs 2.11 to 2.13) considerable additional works were added to existing contracts at Shelbourne Park in 2000-2002. The cost of these works amounted to 68% of the original contracted values.
- Ancillary work to a value of €279,612 was completed in 2000-2002 on a Shelbourne Park project without a tender process or the involvement of the project managers.
- A preferred contractor was appointed for the Shelbourne Park project in 2005 prior to finalisation of design work, notification to the Board or finalisation of funding arrangements.
- Work on foot of this appointment was approved at Shelbourne Park in 2005 to a value of €300,000 without agreement of a schedule of works or a costing of the work elements.
- Expenditure of €158,560 was incurred on professional fees in respect of the latter development which was postponed and subsequently cancelled.

General Views of Bord na gCon

4.24 The current CEO of Bord na gCon has informed me that he has restructured the organisation, introduced new performance management procedures and that a new strategic plan for the organisation has been developed.

4.25 The restructuring changes in the executive since February 2007 are set out in Appendix B. He noted that the changes are designed to flatten the organisation's structure in order to achieve greater accountability and clarity in all roles. They are also designed to obtain a more efficient management performance and meet some of the concerns raised by the Dalton report. He informed me that the revised structure will allow Bord na gCon to be in a better position to avoid some of the incidents noted in my report. One of the more significant changes involves the Track Managers reporting directly to the CEO which helps to

- achieve a greater level of visibility in stadia operations
- provide support and guidance to stadia managers from other specialist management functions like Tote, Finance, Regulation etc.

4.26 In addition, the creation of a designated manager to handle and monitor all legal and procurement matters means that Bord na gCon is better positioned to comply with corporate governance requirements. The earlier consideration of legal problems should result in effective resolutions.

4.27 The creation of a new Head of Tote role and its separation from the financial functions will allow the finance manager more time to concentrate on financial control and governance as the organisation moves forward. He considered that Bord na gCon now has a more effective Human Resource function which should facilitate an identification of major personnel issues before they escalate. It will allow Bord na gCon to proactively put relevant employee policies and procedures in place to assist line managers. Overall, Bord na gCon now has a management structure with significantly improved role definition and certainty of responsibilities.

4.28 Aside from the changes in organisational structure a new performance management system has been introduced. Under the new system most managers report on specific key performance indicators on a monthly basis. This review is also conducted in a team environment to encourage collective capability of the team and to identify and resolve any performance lapses.

4.29 The CEO also informed me that the industry has also come together to put in place a five year strategic plan. This assists Bord na gCon from an organisational perspective and has helped to develop improved organisational unity by virtue of the open and inclusive process involved. The plan facilitated the formulation of key strategies and the identification of people on the executive who would be responsible for the delivery of those strategies.

4.30 The CEO noted that taking the revisions to strategy, structure and performance management into account, he believed that the organisation was better positioned to manage the problems identified in the area of corporate governance in the future. In regard to the functioning of the Audit Committee it is now chaired by a board member who is highly experienced. In addition, the committee also contains a member of the Board who has a strong financial accounting and business background. The committee has been very active in 2007 having met five times and it provides strong financial stewardship and adherence to procedures. Bord na gCon has also engaged the services of a senior audit partner from Deloitte and Touche to provide independent advice on how to derive maximum value from the Audit Committee.

4.31 In terms of the issues raised regarding propriety, the CEO believes that the establishment of a specialist Human Resource Manager with clearly detailed employee policies should reduce the likelihood of such issues arising again. As the management of capital projects is highly critical to the achievement of overall success, the CEO informed me that Bord na gCon now has a highly capable design team in place and will shortly be appointing a project manager under a public procurement process with a brief to ensure projects are delivered in accordance with best project management standards. Bord na gCon is confident that future capital projects will be delivered to agreed budgets and value for money will be obtained. It has invested in IT and systems to establish proper document management. It also plans to invest in electronic systems which will allow for more robust invoicing procedures to assist with the authorisation, payment and tracking of transactions.

4.32 In conclusion, the CEO drew attention to what he considered was a significantly improved level of organisational performance in 2007 with an operating surplus of nearly €5.5 million and attributed this to the changes in structures and processes introduced. He noted that a particular feature of this performance was that it was driven by the very strong performance of Shelbourne Park which contributed over €1 million to operating profit. Another factor was the avoidance of costly legal cases. He assured me that the newly structured organisation is very conscious of maximising the use of government funds and that the current Chairman and Board operate as a very strong team where all issues are discussed to provide proper strategic direction to the executive.

General Views of the Department

4.33 The Accounting Officer of the Department expressed surprise at the comment attributed to the Chairman set out at Appendix D and in particular that the Chairman experienced a deterioration in the working relationship when the supervisory functions were transferred to the Department. The Accounting Officer pointed out that the role of the Department, at all times, in relation to all the agencies under its aegis has been to endeavour to ensure that all financial procedures and corporate governance requirements were met. He added that since the appointment of the current Chairman of Bord na gCon the reporting relationship between Bord na gCon and the Department had significantly improved with mutual understanding and respect for each other's roles and responsibilities and, in particular, for the requirements of corporate governance.

Overall Conclusion

4.34 Attempting to effect change in public sector organisations can be challenging. Tensions will inevitably arise at times when commercial practice demanding a focus on flexibility and output has to be reconciled with a mode of operating which favours systematic processing. Notwithstanding the difficulties, the risks associated with such tensions have to be managed in a way that reflects the public service ethos and codes of behaviour governing semi-state bodies. This was not always the case in Bord na gCon during the period reviewed. That said, my primary concern has been to satisfy myself that the funds of the organisation were properly applied and I have concluded, subject to the reservations, mostly related to deficiencies in systems and procedures, outlined in this report that in material respects they were. On a number of occasions the Board was called upon to address shortcomings which came to its notice. On all occasions, it sought and acted upon the professional advice of lawyers and tax experts as appropriate.

Appendices

Appendix A Schedule of Matters Reserved for Board Decision

Following the issue of the Code of Practice for Governance of State Bodies, as approved by the Government on 2 October 2001, members of the Board of Bord na gCon were sent the following summary of matters for Board decision on the 28 August 2002. This schedule was subsequently approved by the Board on 4 September 2002.

The following matters are matters for Board decision.

- Capital expenditure proposals in excess of €100,000.
- All proposed changes in relation to rules of racing.
- All proposals in relation to amendments to prize money payments/trainer incentives/private track incentive schemes.
- Capital Grants to private and subsidiary tracks in excess of €100,000.
- Sanction for all borrowing requirements by the Board or subsidiary companies.
- Changes to remuneration of executive staff. The Remuneration Committee, a sub committee of the Board, decides the salaries of the senior managers. The salaries of other staff members are delegated to the Executive.
- All security mechanisms required by the Board in relation to the grant-aiding of private greyhound stadia.
- All documents which purport to be Board policy statements must be ratified by the Board.
- All proposed changes in admission price structures.
- All matters of a litigious nature (in excess of €50,000) which are not covered by the Board's insurance.
- Contracts pertaining to the sale/distribution of proprietary information rights.
- All purchase of shares or acquisitions.
- All asset disposals in excess of €100,000.
- Approval of Annual Report and Statutory Accounts of subsidiary companies.
- Cash flow proposals and cash flow budgets.
- The appointment of senior management staff requires the approval of the Board. The appointment of all other staff is the responsibility of the Executive.
- All changes in pensions scheme benefits and entitlements of employees in excess of present value €100,000.
- Approval of terms of all contracts with an annual cost in excess of €100,000.
- Approval of Trainer/Bookmaker licences.
- Approval of all new greyhound track licences.
- Approval of all new sales licences.

Appendix B Composition of the Executive

For most of the period up to January 2006, the executive was made up of a CEO with the following functions reporting into the CEO's office.

- Financial Controller
- Head of Regulation
- Commercial and Operations Manager
- Marketing and PR Manager
- Human Resource Manager²⁶.

From 2005 onwards a number of new managers were also appointed. In January 2006, the Financial Controller was appointed acting CEO and this continued until January 2007 when a new CEO was appointed. The overall executive team was reorganised in February 2007. The executive is led by a CEO with the following functions reporting directly into the CEO's office.

- Deputy CEO with Responsibility for Regulation
- Financial Controller
- Head of Legal Affairs
- Marketing and PR Manager
- Human Resource Manager
- Head of Tote
- Head of IT
- General Manager Shelbourne Park
- General Manager Harolds Cross
- General Manager Waterford
- General Manager Cork
- General Manager Tralee
- General Manager Galway
- General Manager Mullingar.

²⁶ The Human Resource Manager was on sick leave for a very significant amount of time and save for the presence of some external HR consultants this office was largely vacant in the years 2003, 2004 and 2005.

Appendix C Conduct of the Examination

The examination was conducted as follows:

The documentary evidence available in Bord na gCon in relation to the issues identified for investigation was examined and an initial statement of facts and evidence was drafted in relation to each individual issue.

Contact details for all of the individuals involved irrespective of whether they were still employed by Bord na gCon or had since left the organisation were sought.

Bord na gCon provided these details in all but one case, that of the Building Overseer appointed in Shelbourne Park Greyhound Stadium in 2001 whose whereabouts was unknown.

Relevant segments of a statement of facts and evidence were sent to the individuals involved. Each individual was asked to review the relevant segment and provide any corrections or clarifications they felt were appropriate in order to correct any inaccuracies or to provide a more complete understanding of each transaction and the general context in which it took place.

A revised version of the statement was then sent to each individual incorporating the comments received in the submissions and each individual was invited to a meeting in order to provide further clarification on the issues concerned in the specific transactions.

Subsequently, a draft report (or excerpts from the draft report relating to specific transactions) was sent to each individual and their comments were sought.

Figure C1 sets out a list of the persons who provided information and explanations in the course of the examination.

Figure C1 **Persons who provided information for the purpose of this examination**

| Name | Role | Period of service | Type of assistance | |
|--------------------------------|--|---|--------------------|-----------|
| | | | Correspondence | Interview |
| Mr Paschal Taggart | Chairman | 1996 to 2006 | √ | √ |
| Mr Aidan Tynan | CEO | October 2004 to January 2006 | √ | √ |
| Mr Michael Field | CEO | September 1997 to March 2003 | √ | √ |
| Mr Sean Collins | CEO | 1989 to 1997 | √ | √ |
| Mr Michael Foley | Financial Controller | 1999 to date | √ | √ |
| | Acting CEO | April 2003 to September 2004 and January 2006 to January 2007 | | |
| Ms Ruth Rogers | Board member - Bord na gCon | 1996 to 2001 | √ | √ |
| Mr Daniel Reilly ^a | Board member - Bord na gCon | December 2001 to date | √ | |
| Mr John Hegarty ^a | Board member - Bord na gCon | January 2003 to January 2006 | √ | |
| Mr Dermot Cross | Company Secretary | 1991 to 2002 | √ | √ |
| | Personnel and Development Manager | September 1996 to July 2005 | | |
| Mr Noel Hynes ^b | MD Dublin Stadia | 1996 to 2001 | √ | |
| Mr Peter Franklin ^a | Marketing/ PR Manager | 2001 to 2006 | √ | |
| Mr Paddy Ryan | MD Dublin Stadia (previously General Manager Shelbourne Park) | 2003 to date | √ | √ |
| Mr David Morgan | Commercial Manager | 2002 to 2007 | √ | √ |

Note: a Because of the small number and the nature of issues with which they were involved these individuals were interviewed by telephone and provided evidence by correspondence.

b Mr Hynes was on sick leave between February and May 2001 and available on a restricted hours basis between June and December 2001. Thereafter he was absent on long term sick leave. Because of ill health Mr Hynes did not attend for interview in person but provided evidence by correspondence.

While a number of other persons submitted observations on matters relating to Bord na gCon, none of these related to the subject matter of the examination as outlined in paragraph 1.11.

Appendix D General Views of the Chairman

In response to my inquiries the Chairman pointed out that during the ten and half years of his tenure the greyhound industry had been transformed from an ‘absolute basket case’ to one of the greatest success stories of the past decade. On a personal basis, he had probably averaged 30 hours a week in that time on Bord na gCon business without taking Directors’ Fees, mileage allowances or expenses. In that time, there had been dramatic increases in attendances and betting revenues. He had also managed to generate resources from land sales of approximately €20 million.

He distinguished between the relationship he had with the two supervising Departments. Without the support and assistance of the Department of Agriculture, Fisheries and Food for the first six and half years the growth of the industry would have been harder to achieve – if at all. He experienced a deterioration in the working relationship when the supervisory functions transferred to the Department of Arts, Sport and Tourism.

In regard to the specific matters outlined in the foregoing report he made the following general observations

- The fraud perpetrated on the Board in connection with the generator was unfortunate but he had no doubt that, when they became aware of it, both the executive and the Board took the correct actions.
- The arrangements entered into by the two managers who received the benefit of cars from a private company were out of order but once the matter was discovered it was dealt with professionally.
- In his view, the cancelled redevelopment project at Shelbourne Park in 2005-2006 resulted from a misinterpretation of the Board’s wishes by the then CEO and at all times he and the Board took the proper course of action.
- The Greyhound View television programme was a completely new and innovative programme with proposed weekly television slots. As such, it did not lend itself to tendering in the first round of procurement. He considered it an absolutely brilliant marketing concept which in his opinion it turned out to be.
- He considered that the overrun on the Tralee development was a minor issue because the small overspend was incurred in an effort to run the business to the high standards that were expected.
- In regard to the catering contracts both the executive and board viewed quality to be a priority over price. The recent success of the industry was led by the quality of the associated restaurants and it was this introduction of quality caterers and surroundings at the tracks that contributed to their success.
- In regard to the contract for tote services the board having won the High Court case acted on the legal advice that the claimants had little chance of being successful at the Supreme Court. It was likely that they would have settled much earlier and at a lower cost if the advice had not been so strong.

Appendix E Notification of Appointment of Building Overseer

Mr. M. Field
Chief Executive
Irish Greyhound Board
104, Henry Street
Limerick

6th November, 2000

Re: Shelbourne Park Development - Operations/Project Supervision

Dear Michael,

I enclose herewith a detailed file note which highlights the critical function of operations and project supervision in achieving timely completion of Development Phase 1 without disruption of racing, sales, trials or bingo sessions. You will appreciate how essential this continuity has been for our group hospitality business.

The final phase of development, just now commenced involves a much more complex and demanding programme of works, with the same need for tight day-to-day supervision and control. I have discussed this need with the Chairman, who is in full agreement.

Accordingly, I have retained [REDACTED] as Operations/Project Supervisor for the duration of the project - i.e. for the 6-month period November - April, at a monthly retainer of £2000 plus VAT. [REDACTED] will report directly to me throughout the period.

Yours sincerely,

Noel Hynes
Managing Director

SHELBOURNE PARK DEVELOPMENT - PROJECT SUPERVISION

The initial phase of the current development was effectively completed in 4 months, having commenced at the end of April. This time-scale is almost certainly without precedent in Irish construction within the current industry boom and was achieved by an extremely committed design / construction team.

What may not be readily appreciated is the project was delivered without the loss of a single race meeting, sales date, trials session or bingo night. This in effect meant that, unlike any other stadium construction project, the Shelbourne Park facility was in use continuously for 6 nights of every week during the construction period. The task of converting from building site to hospitality facility each evening - both outside and within the grandstand - involved major equipment movement and cleaning operations. Following on from this was the essential checking and testing of PA, CCTV, heating, plumbing/sanitation and electrical systems. Experience during this project and also during the previous development in 1995 has shown that contractors will invariably cause havoc to wiring, water pipes, heating ducts etc - damage that will be discovered only when systems are switched on for racing or bingo. We had repeated examples of this type of damage during the project, necessitating rapid reaction to effect necessary repairs in time.

The pivotal role played by [REDACTED] in bringing this project in on time cannot be overstated. Originally retained at a monthly retainer of £1000 (i.e less than a groundsman's wages) to organise and control stadium security, following the armed robbery at Shelbourne Park in late March, [REDACTED] took on himself, at no extra cost to the stadium company, the multi-faceted task of ensuring that the building / refurbishment progressed at speed and that stadium operations (racing, sales, bingo etc) continued without hindrance. His extensive experience in the construction industry provided contacts for fast materials deliveries which would not always have been available to [REDACTED] who were and are most appreciative of this support, realising, as they did, that every day saved was critical in a fast-track project of this nature.

Between the third week of May and the end of August, [REDACTED] was on site at Shelbourne Park every day, 7 days a week. His average hours of attendance ranged from 12-18 hours on typical weekdays to 4 hours on Sundays when no builders were working. When, as was necessary on a number of occasions, works had to be done over weekend or round - the - clock, he invariably attended, taking personal responsibility for securing the facility and keeping a watching brief on contractor staff (who would have had little concern for completion deadlines in time for racing or bingo). In addition, he attended at all race nights at Shelbourne Park and (from July) Harold's Cross, overseeing security in both stadia throughout the period.

During this time, he personally identified, reported to management and on instruction, arranged for rectification of the following fundamental problems:

- # Defective fire-alarm system in the grandstand (despite regular "servicing" by the original installing company).
- # Defective, hazardous wiring throughout the grandstand resulting from shoddy workmanship by previous contractors.
- # Broken / missing fire barriers in the grandstand roof space.
- # Absence of safe walkways in roof space (essential under Health & Safety regulations).
- # Exposed water storage tanks in roofspace.
- # Air-handling units in roof space, uncommissioned / inoperative from installation date.

[REDACTED] was also instrumental in achieving cost savings through lower quotations for a number of items of supply for the grandstand refurbishment programme, notably light fittings and floor coverings, TV monitors and security equipment.

In summary, his presence on site was invaluable in keeping the stadium secure and fully operational, safe for customers and staff during a high-pressure, demanding construction / refurbishment programme, while at the same time making a critical contribution (to which the contractors will readily attest) to the timely delivery of the project.

