

CRIMINAL ASSETS BUREAU
ANNUAL REPORT 2008

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Mr. Dermot Ahern, TD
Minister for Justice, Equality & Law Reform
94 St. Stephens Green
Dublin 2

Dear Minister,

In accordance with the terms of Section 21 of the Criminal Assets Bureau Act 1996 I am pleased to present to you the 2008 Annual Report of the Criminal Assets Bureau.

In a year where organised crime continued to impose a serious threat to our communities the Criminal Assets Bureau has again demonstrated the effectiveness of the multi-agency, multi-disciplinary and partnership approach in targeting the proceeds of such criminal conduct.

The continued development of the Divisional Assets Profiler's Programme, together with the Bureau's policy of targeting the lower value assets of up and coming and mid-ranking criminals, serves to present a more visible and effective presence amongst local communities. The success of Operation Platinum, where 163 searches were conducted in one day targeting organised crime in Limerick, is an example in point.

Continued international cooperation, both with Agencies abroad and within the frame work of CARIN and the European Commission, is generating results in relation to the identification, targeting and the deprivation of criminal assets, which have migrated to other jurisdictions.

The Bureau continues to explore the legal parameters which the courts will apply to the appointment of a Receiver. A Receiver has now been appointed over the assets, frozen some twelve years ago, in one long running case. Also, as it is an expanding remedy, a review is being conducted into the processes being applied in all Receiverships to ensure effective auditing and monitoring.

The Bureau continues to monitor the effective implementation of some elements of the legislation and will liaise in this regard with your Department and the Office of the Attorney General in the course of the coming year.

Since its inception in 1996 the Bureau has continued to discharge its statutory duties in an efficient, effective and progressive manner. As can be seen from this Report the Bureau plays a significant role in the fight against organised crime.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M F Murphy', written over a horizontal line.

M F MURPHY
COMMISSIONER OF
AN GARDA SIOCHANA

17 June 2009

Criminal Assets Bureau

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16th June, 2009

Commissioner
An Garda Síochána
Garda Headquarters
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Dublin 8

It is my pleasure to present to you the 13th Annual Report of the Criminal Assets Bureau for the calendar year 2008. This report is submitted for presentation to the Minister for Justice, Equality and Law Reform, pursuant to the provisions of Section 21 of the Criminal Assets Bureau Act, 1996.

This year has seen significant change within staffing levels of the Bureau, its structure and in its overall output. Staffing levels have increased by nine, with five extra Gardaí, one Revenue Officer, two Analysts and one Clerical Officer all appointed during the course of the year. The year also saw the Bureau embark on a building project which included renovations and extension work to the existing CAB Offices. This work was necessary as conditions within the office environment needed to be addressed due to the ever increasing work load and resultant increase in staff. The Bureau now has offices which befit the level of work conducted therein and the staff of the Criminal Assets Bureau are very proud of their new accommodation.

This year saw the Bureau continue to pursue its statutory remit. Twenty five new Proceeds of Crime cases were brought before the High Court. The majority of these actions were taken against persons suspected of drug trafficking or fuel smuggling, including laundering the suspected proceeds of these offences. The total sum forwarded to the Minister for Finance for the benefit of the Central Exchequer, utilising Proceeds of Crime, Revenue and Social Welfare legislation exceeded €12 million.

The year saw a significant increase in the use of the provisions of Section 4A of the Proceeds of Crime Act. In all, eleven (11) such cases were concluded under the consent disposal procedure, netting the Exchequer in excess of €2 million Euro.

The Bureau continued to assist in the development of the Divisional Assets Profilers programme. This Programme is now bearing fruit and allows the Bureau to demonstrate an effective presence in local communities, working closely with local Gardai and Customs Officials. The Bureau in particular welcomes this development in Limerick City, where local Garda Management have assigned full time asset profilers who have been working extensively with Bureau Officers throughout the year. The effectiveness of this coalition was demonstrated by the success of Operation Platinum where one hundred and sixty-three (163) searches were conducted in one day, targeting organised crime in Limerick.

The Bureau continues to work in close co-operation with Foreign Law Enforcement Agencies, including Interpol, SOCA, PSNI, UK Police and Customs, Immigration Control and Enforcement (ICE) – USA, and the FBI.

Following an E.U. Council Framework Decision, that Asset Recovery Offices (ARO) be established in all Member States, the Criminal Assets Bureau was appointed as the designated ARO for Ireland. Its function in this regard will be to deal with all the requests for information and cooperation directed towards the identification and seizure of assets linked to criminal activity.

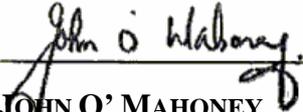
The significant downturn in the economy has created new challenges to be addressed and considered by the Bureau. For instance, the book value of Real Property the subject of receiverships must now be revised in light of that downturn. These properties, which must be retained for seven (7) years before disposal, many of which are subject to outstanding mortgages, will have been devalued significantly. Furthermore, some of the proceeds of criminal conduct in the State have been invested in the property market and may either have been lost or significantly reduced by this downturn. Evidence and intelligence collated from Bureau investigations would suggest that the value of the criminal assets portfolio within the State in this regard has reduced sharply. The Bureau is consulting with the Department of Finance to ensure its policy on property management reflects their own.

The Bureau continued to receive support from the public, the Financial Institutions, Accountancy Bodies and the Incorporated Law Society. This support is vitally necessary to ensure that the Bureau works to its full effect.

I wish to acknowledge with gratitude the support and cooperation afforded to the Bureau throughout the year by An Garda Síochána, the Revenue Commissioners, the Department of Social and Family Affairs, the Department of Justice, Equality and Law Reform, the Department of Finance, the Office of the Attorney General and the Office of the Chief State Solicitors, particularly the solicitors and staff allocated to the work of the Bureau. I also wish to acknowledge the contribution of Counsel engaged by the Bureau.

Finally, as Chief Bureau Officer, I wish to acknowledge with much appreciation the support, dedication and commitment of the Bureau Legal Officer, Mr. Francis Cassidy, all Bureau Officers and staff of the Bureau. Each and every one of them has approached their work in a highly professional, dedicated and mutually supportive manner. This multi-disciplinary approach continues to prove itself to be a successful formula in assisting the Bureau in pursuing its statutory remit.

Yours sincerely


D/CHIEF SUPERINTENDENT
JOHN O' MAHONEY
CHIEF BUREAU OFFICER

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Criminal Assets Bureau

Annual Report

2008

Chapter 1

1 INTRODUCTION

- 1.1 *This is the thirteenth annual report of the activities of the Criminal Assets Bureau (hereinafter referred to as the Bureau) and covers the period from 1st January 2008 to 31st December 2008 inclusive.*
- 1.2 *The Bureau was established in 1996 by the Criminal Assets Bureau Act 1996 (hereinafter referred to as “the Act”). The Act was amended by the Proceeds of Crime (Amendment) Act 2005. Sections 4 and 5 of the Act set out the statutory objectives and functions of the Bureau and these sections are attached at Appendix 1 of this report.*
- 1.3 *This report is prepared pursuant to Section 21 of the Act which requires the Bureau to present a report, through the Commissioner of An Garda Síochána, to the Minister for Justice, Equality & Law Reform, of its activities during the year.*

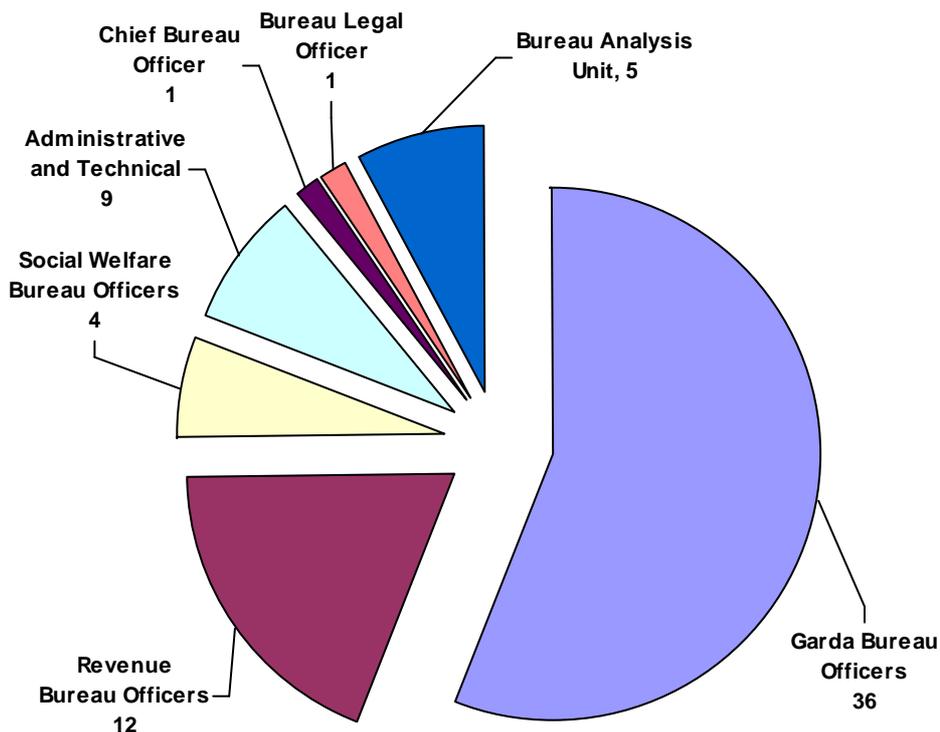
Chapter 2

2 PERSONNEL

- 2.1 *The Bureau is staffed by officers from An Garda Síochána, the Office of the Revenue Commissioners, the Department of Social and Family Affairs, the Department of Justice, Equality and Law Reform and the Bureau Legal Officer.*
- 2.2 *The Chief State Solicitor provides one Principal Solicitor, one State Solicitor, two Legal Executives and two Clerical Officers to provide the necessary legal support services to the Bureau.*
- 2.3 *During 2008 the Garda staffing of the Bureau was increased by five, i.e. one (1) Detective Sergeant and four (4) Detective Gardai.*
- 2.4 *In addition, the Department of Justice, Equality and Law Reform sanctioned the appointment of two additional Financial Crime Analysts and one additional Clerical Officer to the Bureau, all of whom took up appointment in the first half of 2008. This was a welcome additional resource both to the Bureau Analysis Unit and the Administrative area.*
- 2.5 *Also, in 2008 an additional Revenue Bureau Officer was seconded to the Bureau, this position having been sanctioned by the Office of the Revenue Commissioners in 2007.*
- 2.6 *The total number of staff at the Bureau as of 31st December 2008 was 68*

and the breakdown of this number is shown in Chart 1 below:

Chart 1:- Bureau Officers and Staff



2.7 *The Divisional Criminal Assets Profiler Programme continued throughout 2008 with the training of sixty-five (65) additional profilers, fifty-seven (57) of which were Gardaí and eight (8) Customs Officers. This increased the number of Assets Profilers to ninety-three (93). This number reduced to ninety (90) by year end due to the promotion of three (3) Garda Profilers. These profilers continued to assist the Bureau in pursuing its statutory remit. It is expected that further expansion of this area will continue in 2009.*

Chapter 3

3 FINANCE

3.1 *During the course of the year the Bureau expended monies provided to it through the Oireachtas by the Minister for Justice, Equality and Law Reform in order to carry out its statutory functions and to achieve its statutory objectives.*

3.2 *The Bureau expended €7,509m as broken down in the following Table 1.*

Table 1:- Accounts for the period 1st January 2008 – 31st December 2008

Monies provided by the Oireachtas		€	€
Expenditure	Pay	5,546	
	Non-Pay	1,963	
	Total	7,509	7,509

3.3 *All such amounts are audited by the Comptroller and Auditor General, as is provided for by Statute.*

Chapter 4

4 ACTIONS BY THE BUREAU

- 4.1 *During the course of the year the Bureau undertook a number of actions in pursuit of its statutory objectives and in execution of its statutory functions in targeting the proceeds of criminal conduct. The information and statistics furnished in this report relate to cases in which the Bureau took action, through the courts or otherwise, in pursuit of this statutory remit.*
- 4.2 *These actions covered a wide range of Garda, Revenue and Social Welfare activities and also included other actions specific to the work of the Bureau.*
- 4.3 *Court applications were made by the Bureau, pursuant to Sections 14 and 14A of the Act, to obtain Search Warrants and Production Orders which were used by the Bureau to uplift evidence in carrying out its investigations. The numbers of Warrants and Orders obtained are set out in Table 2 below.*

Table 2:- Number of Warrants and Orders

Description	Number
Search Warrants under Section 14 of the Act	207
Orders to make material available under Section 14A of the Act	213

4.4 *A substantial part of the work of the Bureau is by way of proceedings in the High Court. During 2008 the Bureau initiated a number of actions under the Proceeds of Crime Act 1996 and 2005 (hereinafter referred to as the PoC Act) and other legislation and advanced other actions which had been initiated in the course of previous years.*

Proceeds of Crime Actions

4.5 *The Chief Bureau Officer, or the Bureau in its own name, may make an application to the High Court under Section 2 of the PoC Act seeking an interim Order, which prohibits dealing with property if the Court is satisfied, on the civil standard of proof, that such property is the proceeds of criminal conduct and which has a value of not less than € 13,000.*

4.6 *Subsequent to a Section 2 Order being granted, the Bureau must, to keep the prohibition in place, apply within twenty-one (21) days for an Order under Section 3 of the same Act. If such an application is successful the High Court makes an interlocutory Order, which in effect freezes the property until further notice, unless the court is satisfied that all or part of the property is not the proceeds of criminal conduct.*

4.7 *A Section 3 application may be made even where no Section 2 Order is in place or has been sought. An application for an Order under Section 2 is only made where there is an immediate concern that property may be dissipated or where a receiver needs to be appointed to preserve its value.*

4.8 *Once a Section 2 or Section 3 Order is in place it is open to any person to seek to vary or set aside such freezing Order (Section 2(3) or Section 3(3) of the Act), if that person can satisfy the court that they have a legitimate right to the property and/or said property is not the proceeds of criminal conduct.*

- 4.9 *A receiver may be appointed by the court under Section 7 of the same Act, either to preserve the value of or dispose of property which is already frozen under Section 2 or Section 3 Orders. In 2008 the Bureau obtained twenty-five (25) Receivership Orders and in all cases the Receiver appointed by the court was the Bureau Legal Officer. These cases involved properties, cash, money in bank accounts, jewellery, and motorcars. In some Receivership cases the High Court made Orders for possession and sale by the Receiver. A Receivership Order cannot be made unless a Section 2 or Section 3 Order is already in place.*
- 4.10 *Section 4 of the PoC Act provides for the making of ‘Disposal Orders’ whereby the High Court may make an order transferring assets, which have already been frozen under a Section 3 Order for at least seven years, to the Minister for Finance for the benefit of the Central Fund.*
- 4.11 *The Proceeds of Crime (Amendment) Act 2005 made provision for the obtaining of a ‘Section 4A consent disposal order’ whereby the High Court may make a similar Order to that of a Section 4 Order on consent, in cases where the Section 3 Order is in existence for less than seven years.*
- 4.12 *There were twenty-five (25) new cases taken under the PoC Act. Twenty-four (24) of these cases were by way of Section 2 Orders and one (1) was by way of a Section 3 Order. The number of Orders obtained under Sections 2, 3, 3(3), 4, 4A, and 7 of the Proceeds of Crime Act 1996 and 2005 are shown in Table 3 overleaf.*

Table 3:- Orders obtained under the Proceeds of Crime Act 1996 & 2005

Description	Number of Defendants	Number of Orders	Amount €	Amount STG £
Interim Orders under Section 2	26	24	5,022,050.89	4,860.00
Interlocutory Orders under Section 3(1)	23	14	2,501,802.57	150,314.76
Variation Orders under Section 2(3)	1	1	€49,665.42	Nil
Variation Orders under Section 3(3)	1	1	63,313.00	Nil
Disposal Orders under Section 4	7	2	785,246.17	Nil
Consent Disposal Orders under Section 4A	22	11	2,017,214.20	Nil
Receivership Orders under Section 7	35	25	10,350,492.19	4,860.00

Some figures include sums converted from other currencies

4.13 Arising from PoC actions, a total of €6,129,314 was paid over to the Minister for Finance during the course of the year. Of these funds, €2,599,974 related to the collection of Section 4 and Section 4A Orders. The remaining €3,529,340 related to the collection of money following a waiver and agreement with the parties concerned. The one Order under Section 2(3) referred to above relates to an occasion where the High Court revoked an earlier Section 2 freezing Order on the application of the

Respondent. The one Order under Section 3(3) above relates to the remainder of the funds provided to the liquidators in the Schachter case, detailed in last year's Annual Report.

Receivership Accounts

4.14 *The following Table 4 sets out the opening balance as of 1st January 2008, the activity during the year and the closing balance as of 31st December 2008 in receivership accounts held at the Bureau.*

Table 4:- Statement of Receivership Accounts

	€	STG £	US\$
Opening Balance Receivership Accounts 01/01/2008	13,200,540	931,037	92,090
Amounts realised	2,281,175	50,789	1,174
Payments Out	7,474,480	10,009	Nil
Closing Balance Receivership Accounts 31/12/2008	8,007,235	971,817	93,264

Revenue Actions

4.15 *The Bureau is empowered under the Act to apply, where appropriate, the relevant powers of the Taxes Acts to the profits or gains derived from criminal conduct and suspected criminal conduct. The application of these powers enables the Bureau to carry out its statutory remit and is an effective means of depriving those engaged in criminal conduct and suspected criminal conduct, of such profits or gains.*

- 4.16 *The provisions of the Disclosure of Information for Taxation and Other Purposes Act 1996 were used extensively during the year in providing for the transfer of information between the Revenue Commissioners and the Bureau.*
- 4.17 *Following investigations into the financial affairs of those engaged in criminal conduct, or suspected criminal conduct, the Bureau applied the provisions of the Taxes Acts to a number of persons. A number of investigations were concluded by agreement providing for the payment of tax, interest and penalties.*
- 4.18 *During 2008, Revenue Bureau Officers raised assessments on twenty-eight (28) persons and one (1) corporate entity. Persons have an entitlement to make an appeal to the Appeal Commissioners where they are aggrieved by an assessment. During the year, eight (8) individuals (two (2) of whom were assessed to tax in the previous year) invoked this right, whilst the remaining twenty-three (23) individuals assessed to tax did not invoke this right. Of these eight (8) individuals, six (6) had their appeal applications refused by the Bureau due to failure to comply with the relevant provisions of the Taxes Acts. Three (3) of these individuals appealed the refusal to Appeal Commissioners. In two (2) of these cases the Appeal Commissioners upheld the Bureau's decision, one (1) individual, following the Appeal Commissioners determination, made an application for a Case Stated to the High Court, the remaining case awaits determination by the Appeal Commissioners at the year end.*
- 4.19 *At 1st January 2008 there were seven (7) cases at the Appeal Commissioners stage. During the year the Appeal Commissioners determined the tax liabilities of one (1) of these cases by confirming the assessments made by the Bureau, (this determination was challenged by way of appeal to the Circuit Court), three (3) individuals withdrew their*

appeals prior to hearing by the Appeal Commissioner. During the year two (2) individuals invoked their right of appeal. At 31st December 2008 there were five (5) cases at various stages in the appeals process.

Two (2) individuals, who appealed the determination of the Appeal Commissioners to the Circuit Court, subsequently withdrew their appeals before the Circuit Court Judge and two (2) cases await hearing by the Circuit Court as of 31st December 2008.

4.20 In two (2) separate High Court Judicial Review proceedings initiated against the Appeal Commissioners and the Bureau, one (1) case was determined by Mr. Justice Gilligan in favour of the Bureau and the proceedings in the other case were discontinued by the taxpayer. The Determination of Mr. Justice Gilligan has been appealed to the Supreme Court.

4.21 The Bureau applied the enforcement procedures of the Taxes Acts (including the use of Attachment Orders) against the financial assets of tax defaulters and instituted High Court recovery proceedings in the pursuit of taxes due. The Bureau initiated Bankruptcy proceedings in the High Court against one (1) individual and that individual was adjudged Bankrupt on the 15th December 2008.

4.22 The following Tables 5 to 12 inclusive give details of Revenue actions by the Bureau, including the amounts of taxes charged by assessment, demanded and collected or otherwise recovered and cases at the Appeal Commissioner and Circuit Court stage.

Table 5: Tax charged by assessment

Description	€
Income Tax	18,743,475.77
Value Added Tax	204,778.76
Capital Gains Tax	1,122,664.00
Corporation Tax	3,364,293.85
TOTAL	23,435,212.28

Table 6: Tax and interest demanded

Description	€
Income Tax	11,504,774.32
Capital Gains Tax	2,359,298.56
Value Added Tax	58,357.95
TOTAL	13,922,430.83

Table 7: Tax and interest collected

Description	€
Income Tax	4,459,553.85
Capital Gains Tax	1,351,593.00
Value Added Tax	23,916.00
Corporation Tax	40,478.00
PAYE/PRSI	16,084.00
TOTAL	5,891,624.85

Table 8:- High Court proceedings instituted for recovery of tax and interest

	No. of cases	€
Total	14	6,747,606.97

Table 9:-Tax and interest recovered using Revenue Powers of Attachment

	No. of cases	€
Total	5	231,475.49

Table 10:-Outcome of Appeals at Appeal Commissioner Stage

Description	No. of cases
No. of cases at appeal stage at 1/1/2008	7
Appeals properly invoked in 2008	2
Appeals determined	1
Appeals withdrawn by individuals	3
No. of cases at appeal stage 31/12/2008	5

Table 11:-Outcome of Appeals refused by Bureau

Description	No. of cases
No. of cases on hand at 1/1/2008	0
Appeals refused in 2008	6
Refusals appealed to Appeal Commissioner	3
Bureau decision upheld by Appeal Commissioner	2
No. of cases on hand at 1/12/2008	1

Table 12:-Outcome of Circuit Court Appeals

Description	No. of cases
No. of cases on hand at 1/1/2008	3
Appeals to Circuit Court	1
Appeals withdrawn by individuals	2
No. of cases on hand at 1/12/2008	2

Social Welfare Actions

4.23 The Bureau also takes actions under the Social Welfare Acts in relation to persons engaged in criminal conduct. Arising from investigations by Bureau Officers, who are also officers of the Minister for Social and Family Affairs, a number of Social Welfare payments were terminated, resulting in savings to the Exchequer as set out at Table 13 overleaf.

Table 13:- Social Welfare savings by scheme type

Scheme Type	€
Jobseeker's Allowance	76,808.40
One Parent Family Payment	436,274.60
Disability Allowance	188,579.60
PRSI (Employer/Employee) Assessed	9033.00
Child Benefit	1920.00
Total	712,615.60

4.24 There were thirteen (13) appeals lodged with the Chief Appeals Officer against decisions made by Bureau Officers. The Chief Appeals Officer certified that the ordinary appeals procedure was inadequate to secure the effective processing of these appeals and directed that the appellants submit their appeals to the Circuit Civil Court. Five (5) appeals were so lodged and are listed for hearing as of 31st December 2008. Two (2) appeals were withdrawn at that point and as of 31st December 2008 it is still open to the remaining six (6) to bring their cases to the Court.

4.25 The other such appeal to the Circuit Court, carried forward from 2007, was listed for hearing in the course of the year. The Court upheld the decision made in that case.

4.26 The Bureau also identified overpayments of assistance resulting from determinations, details of which are set out in Table 14 below.

Table 14:- Social Welfare overpayments by scheme type

Scheme Type	€
Jobseeker's Allowance	96,226.27
One Parent Family Payment	69,245.90
Disability Allowance	191,453.06
Child Benefit	1800.40
Total	358,725.63

4.27 *The recovery of monies as per Table 15 below was effected by repayments, by instalments and by deductions, from current entitlements.*

Table 15:- Social Welfare recovery of monies by scheme type

Scheme Type	€
Jobseeker's Allowance	54,372.10
One Parent Family Payment	15,600.00
Disability Allowance	75,855.00
Invalidity Pension	6,900.00
Carer's Allowance	29,121.20
Child Benefit	350.00
Total	182,198.30

4.28 *In one (1) new case, Summary Summons proceedings commenced with a view to recovering amounts overpaid and are continuing as of 31st December 2008. In all other cases proceedings are continuing.*

4.29 *One (1) criminal prosecution against a claimant, who continued to claim unemployment payments while working on a full time basis, was initiated in 2006. The claimant pleaded guilty before the District Court in 2007 and the case has been adjourned again for sentencing until June 2009.*

Other Investigations

4.30 *During the course of 2008 the Criminal Assets Bureau submitted a total of six separate investigation files to the office of the Director of Public Prosecutions (DPP) for directions in respect of suspected offences contrary to Section 1078 of Taxes Consolidation Act 1997. The DPP directed charges in respect of two (2) cases, no prosecution in respect of two (2) others and directions are pending in respect of the remaining two (2).*

4.31 *In respect of the two (2) cases mentioned above for which the DPP had given directions, one (1) individual was charged and appeared before the Circuit Criminal Court where, following a plea of guilty to the charges, he was sentenced to thirteen (13) months in prison. In the second case an individual was charged with similar offences. He also pleaded guilty in the Circuit Criminal Court and his case is currently remanded for sentencing.*

4.32 *During the course of 2007 the Bureau was involved in the investigation of VRT Fraud relating to motorcars (Operation Tie). This investigation continued during 2008. In October 2008 an extensive investigation file in respect of four (4) individuals was forwarded to the DPP for his directions. At the time of completing this report directions have been received and four (4) people were charged and are currently before the Court.*

Chapter 5

5 LITIGATION AND CASE LAW

General

5.1 *This has been a busy year for the Bureau from the litigation point of view. Twenty five (25) new cases were instigated, a significantly higher figure than previously.*

Following the statutory seven (7) year restraint period, two (2) old cases were brought to an ultimate conclusion pursuant to Section 4 of the Act, netting the Department of Finance a sum of €785,246.17. A further eleven (11) cases were concluded utilising the Consent Disposal procedure under Section 4A of the Act netting the Department of Finance a sum of €2,017,214.20. While some of these cases had been initiated quite recently, some were identified following an earlier review of all the outstanding cases to see whether or not some old settlements could be brought under this new provision. This review is continuing.

Significant use has been made of the power to appoint a Receiver pursuant to Section 7 of the Act. Orders were made in twenty-five (25) cases in the course of the year, most notably over the Gilligan properties.

While the book value of all properties subject to receivership orders may be close to €20 million, these values must now be reassessed in the light of the current downturn in the property market.

Receiverships

5.2 *The total number of active receiverships, in which the Bureau is currently involved, is seventy-one (71). As there are many ongoing cases, involving*

significant sums of money being held over such an extensive period of time, it is considered prudent to ensure that appropriate, effective and reliable audit and property management procedures are in place. With this in mind the entire receivership process has been reviewed internally and certain procedures put in place, including the establishment of an Audit and Risk Committee. This committee is chaired by the Receiver, the Bureau Legal Officer, with the Chief Bureau Officer and the Detective Superintendent as the other members. A number of new procedures have already been put in place in line with recommendations made by the Mullarkey Report. Furthermore, following a suggestion by the Office of the Comptroller and Auditor General, an external auditor has been commissioned to conduct a full review on all receivership files in 2009, with her report to follow.

Significant Cases

5.3 Murphy –v- Gilligan and Others

As stated in last years Annual Report the Bureau was keen to bring to conclusion the numerous and discreet legal elements to this case. There were two particular developments in the course of the year:

The first development related to a Receivership Application made by the Criminal Assets Bureau in the High Court and judgement was delivered by Feeney J. in February 2008.

It had been noted that the premises at Jessbrook had been suffering dilapidation and were uninsured. An application was made to appoint a Receiver. Following an extended hearing, the Court concluded it had a power to appoint a Receiver where it was necessary to preserve the value of the asset for the ultimate recipient. The Bureau Legal Officer was appointed as Receiver over all the properties, including the residence, lands and buildings at Jessbrook, and the houses at Willsbrook, Weston Green and Corduff Avenue. He was directed to insure the properties forthwith, to determine whether any other parties had any estate in the

properties, assess and outline repairs that were necessary and to make suggestions as to how revenue might be generated. The Court also

directed that, as Geraldine and Darren Gilligan had had the use of their particular residences for the last twelve years, they should continue to be allowed to reside therein subject to a Caretaker's Agreement with the Receiver. In relation to Jessbrook the Receiver entered into a Rent and Repair Lease with the Office of Public Works whereby a proportion of the rent is written off every year against funds expended in the repair and maintenance of the property. Significant work has been done on the property in the meantime. Both Willsbrook and Weston Green are now the subject of Tenancy Agreements. This judgement is subject to appeal.

The second development related to the outstanding appeals to the Supreme Court and their decision was delivered by Justice Geoghegan in November 2008.

As outlined in last year's Annual Report, the Supreme Court identified all the numerous outstanding appeals, gave them priority and listed them for a date for hearing in October of this year. While many issues were brought up by the appellants and subsequently dismissed, the Court in its judgement primarily focused on the following issues:

- (i)*** *The fact that the Supreme Court had earlier concluded that the Section 3 application was a substantial final hearing, something the appellants claim they had misunderstood, did not prejudice their current position as it was still open to them to bring an application pursuant to Section 3(3) of the Act outlining on evidence any legitimate interest they may have in the property.*

- (ii)*** *It was inaccurate for the appellants to claim that the Bureau had a similar misunderstanding, as is evidenced by a letter sent on their behalf by the Chief State Solicitor's Office in 1997 pointing out that*

the appellants, should they wish to make a proprietary claim over the property, could do so by the application pursuant to Section 3(3).

- (iii)** *That in any case all appellants, or any person with an alleged legitimate proprietary interest in any property subject to the Act, had numerous remedies by which such rights could be established before the Court, including Sections 2(3), in the course of the Section 3(1) application, their own application under Section 3(3) or in the course of the Section 4 hearing.*

The Court concluded that all outstanding appeals should be dismissed, that the Section 4 application brought by the Bureau should proceed to conclusion. It is now incumbent on all appellants to bring an application pursuant to Section 3(3) if they wish to establish any rights in the property.

5.4 McKenna –v- David P. Belton, Judgement Feeney J. 14th March 2008

This case was referred to in last years Annual Report, it having taken almost three (3) weeks to be considered with judgement reserved. Judgement was delivered by Mr. Justice Feeney in favour of the Bureau. In summary it concluded as follows:

- *It reviewed, endorsed and applied the seven step procedure for a trial judge in hearing an application pursuant to Section 3 of the Act as set out in McCracken’s Judgement (McK –v- D. May 2004).*
- *That evidence adduced relating to offences committed after the initiation of the proceedings was admissible, as such evidence demonstrates a consistent behaviour in relation to criminality.*
- *That the opinion evidence, both of the Bureau Forensic Accountant and a Senior Customs Investigator, was admitted under the category of expert testimony.*

- *That even though the primary offence may have been committed in Northern Ireland, the smuggling of fuel requires criminal activity in both jurisdictions. The ability and capacity to smuggle oil products is dependent upon the product being dealt with outside the regulatory schemes of both jurisdictions. Accordingly, profits thereby generated are the proceeds of criminal conduct within the state.*
- *That the movement of money from one jurisdiction to another to enable oil product which is sold in one particular jurisdiction to be paid for in another jurisdiction where it is sourced, constitutes activity which is the offence of money laundering within the provisions of Section 31 of the Criminal Justice Act 1994.*
- *That it is clear that the statutory scheme in relation to money laundering created under Section 31 encompasses money which is laundered in this State which is the proceeds of crime occurring outside the State.*
- *That in assessing whether there are reasonable grounds for the belief deposed to by the Chief Superintendent the court is entitled to have regard to information which was in his possession when he formed the belief without the necessity for the plaintiff to prove all that information. Accordingly hearsay evidence is admissible in support of the grounds of that belief. The legal contention put forward on behalf of the defendant that all matters from which the Chief Bureau Officer relied upon to form his opinion must be formally proved in evidence is inconsistent with the provision in Section 8(1) admitting evidence of a member or an authorised officer's belief.*

This judgement gives the Bureau a clear guidance as to the manner in which all similar applications should be dealt with before the High Court.

5.5 CAB-v- Brian Meehan; Judgement Feeney J. - September 2008

There is provision within the new Rules of Court procedures that an application may be made “Viva Voche” where the matter is urgent. The Bureau became aware that there were two (2) valuable watches being held in Portlaoise Prison by the Governor on behalf of Brian Meehan which were due to be collected the following day. In those circumstances the Court, having satisfied itself of the urgency of the application, was happy to consider it without the usual necessity of motion and sworn affidavits. It is clear, however, that a court would only consider such applications in exceptional cases where urgency is clearly demonstrated.

5.6 REVENUE: CAB –v – Troy Jordan: Gilligan J.

The Bureau referred to this case in its last Annual Report where it noted Tax Appeal Commissioner Kelly refused an application for discovery or disclosure of any papers or report prepared by the Tax Inspector in making his assessment. The Judge, in refusing an order for certiorari confirmed that there is no requirement at law for a Tax Inspector to provide working notes or reports prepared by him when raising his assessments. The onus is on the tax appellant to prove the assessment is incorrect. This judgment has positive implications not only for the Bureau but also for the Revenue Commissioners and the collection of taxes generally.

Other Issues

5.7 *A legislative area which the Bureau is monitoring is how Part VI of the Criminal Justice Act 1994 is being interpreted by the Courts. This provision permits the seizure and detention by the Gardaí, and eventual forfeiture on the application of the Director of Public Prosecutions, of cash which is the proceeds of criminal conduct.*

Differing views as to how these provisions should be interpreted has, on occasion, resulted in the Bureau having to consider applications under its own legislation, with some urgency. The Bureau proposes developing protocols with the Director of Public Prosecutions to ensure effective co-

ordination of their respective functions within the separate legislative frameworks.

5.8 Over the last thirteen (13) years Supreme and High Court decisions have helped inform the application of the Proceeds of Crime Act. While some specific issues were addressed by the 2005 Act, it may now be the appropriate time to consider a comprehensive review of the operation of the legislation. Accordingly, the Bureau proposes to prepare a submission to both the Department of Justice, Equality and Law Reform and the Attorney General on this subject.

CHAPTER 6

6 INTERNATIONAL DEVELOPMENTS

- 6.1 *The Bureau participated in a number of parallel international investigations during the year.*
- 6.2 *During the course of 2008 the Bureau received delegations and working groups from the following countries: Bulgaria, Canada, Moldova, the Seychelles, Northern Ireland and the United Kingdom. Bureau Officers attended and made presentations at a number of international conferences which included Belgium, Bulgaria, Hungary, Kazakhstan, Lithuania, Poland and the United Kingdom.*
- 6.3 *During 2008 following an E.U. Council Decision Framework that Asset Recovery Offices (ARO) be established in all Member States, the Criminal Assets Bureau was appointed as the designated ARO for Ireland. Its function in this regard will be to deal with all the requests for information and cooperation regarding the identification and seizure of assets linked to criminal conduct.*
- 6.4 *The Europol Financial Crimes and Property Unit (EFCPU) has been assisting a number of member states by providing expert knowledge in establishing their ARO. The Criminal Assets Bureau along with representatives from the Netherlands and Belgium were invited by Europol to provide this expert knowledge. During 2008 the Bureau participated in these expert missions to Hungary, Poland and Lithuania.*

6.5 *During 2008 the Criminal Assets Bureau together with representatives from the Department of Justice, Equality and Law Reform and the Department of Foreign Affairs participated in the United Nations Open-Ended Intergovernmental Working Group on Asset Recovery targeting the proceeds of corruption. Two (2) Working Group Conferences were held and to this effect representatives from the Bureau travelled to Vienna and Bali.*

CAMDEN ASSETS RECOVERY INTER-AGENCY NETWORK (CARIN)

6.6 *The Bureau continues to be involved with and support CARIN. The Annual Conference was held in September 2008 in Paris. The conference focused on promoting the creation of National Asset Recovery Offices and improving the management of seized and confiscated assets. Arising from this conference, eight (8) recommendations were made as follows:*

1. *To the extent consistent with domestic laws and national strategies, jurisdictions should consider establishing a National Asset Management Office (AMO).*

In respect of AMOs, each jurisdiction should consider:

- *establishing the office independently from investigation units*
- *ensuring that AMOs are appropriately funded*
- *co-ordinating pre-seizure planning with all stakeholders*
- *putting in place an independent audit of the AMO*
- *establishing a centralised database to track all assets seized or restrained for confiscation*
- *having provisions for International co-operation with other AMOs, in respect to both operational matters and also sharing expertise of asset management issues*

2. *Jurisdictions should have the legal possibility to sell assets before any confiscation or forfeiture order is made, if the costs of management are high or the value of the asset could depreciate quickly.*
 3. *Jurisdictions should consider dedicating a percentage of annually realised assets for Law Enforcement purposes and a percentage specifically for asset forfeiture activities.*
 4. *National level cooperation between all authorities involved in the process of asset tracing, freezing, seizure and confiscation should be actively promoted by CARIN.*
 5. *CARIN should be represented within the Asset Recovery Office (ARO).*
 6. *Best practice and success stories from existing AROs should be used to promote the establishment of AROs in those jurisdictions having difficulty in achieving this.*
 7. *The collation of statistics on freezing, seizure and confiscation orders should be undertaken by the relevant national authorities and supplied to the national ARO. Also, AROs should establish close contacts to judicial or central authorities and should receive feedback on seizures carried out under mutual legal assistance procedures not involving AROs.*
 8. *AROs should consider training programs involving the exchange of personnel.*
- 6.7 *All recommendations made at this conference, and all recommendations made in the course of the previous conferences, can be sourced on the CARIN website at carin@europol.europa.eu.*

CO-OPERATION WITH THE AUTHORITIES IN THE UNITED KINGDOM

6.8 *In an effort to combat the growing problem of cross border fuel smuggling and oil laundering a Cross Border Fuel Enforcement Group was established by the Northern Ireland Office under the auspices of the Organised Crime Task Force, specifically to target the criminal gangs involved in fuel smuggling along the Border. The Criminal Assets Bureau was invited to participate on this group along with the Office of the Revenue Commissioners. This invitation was accepted by the Irish Government and the Bureau now work in close cooperation with Her Majesty's Revenue and Customs, the Police Service of Northern Ireland and the Serious Organised Crime Agency.*

This group has met on a number of occasions to discuss the issues surrounding the smuggling and laundering of hydrocarbon oil. As part of the work of the group a number of targets have been identified as being suitable for a cross border multi-agency action. We believe that this multi-agency approach will bring improved results during 2009 and beyond.

6.9 *The members of the Bureau Analysis Unit, along with senior Garda Management of the Criminal Assets Bureau, attended the Analysts Workshop in Newcastle, Co. Down on 21st and 22nd February, 2008. The workshop was also attended by representatives from the PSNI Analysis Centre, the PSNI Economic Crime Bureau and the Assets Recovery Agency. The main theme of the cross border workshop was to foster closer working relationships and to identify and develop best practice in tracking criminal finance.*

6.10 *In March 2008 the Bureau attended a meeting with the Head of the Assets Recovery Agency (ARA) and Serious Organised Crime Agency (SOCA). This meeting was to discuss the amalgamation of ARA into SOCA which occurred on the 1st April 2008. In addition to this the Bureau also met with*

SOCA on a number of occasions during the course of the year to discuss matters of a mutual interest.

6.11 The Bureau also attended the Organised Crime Cross-Border Cooperation Seminar held in Northern Ireland, the purpose of which was to identify new crime trends and to agree on areas of cooperation between the law enforcement authorities on both sides of the Border.

6.12 In October 2008 the Criminal Assets Bureau was invited to attend at the Annual General Meeting of the Criminal Taxes Unit in the United Kingdom and to give a presentation on the work of the Bureau.

Chapter 7

7 CONCLUSION

- 7.1 *In a year where organised crime continued to pose a serious threat to Irish Society the Criminal Assets Bureau has again demonstrated the effectiveness of the multi-agency, multi-disciplinary and partnership approach in targeting the proceeds of such criminal conduct. During 2008 the Bureau continued to pursue its statutory remit by carrying out investigations into suspected proceeds of criminal conduct and applying the proceeds of crime, revenue and social welfare legislation.*
- 7.2 *Greater use of the provisions of Section 4A, including a review of many of the older cases pre-2005 which enabled the Bureau to bring some of them within the terms of the Section, netted the Minister for Finance a sum in excess of €2 million Euro, under this heading alone.*
- 7.3 *The Bureau continues to work with International crime investigation agencies, successfully targeting proceeds of foreign criminality and continues to develop its relationships with Interpol, Europol and CARIN. The Bureau is also now the designated Assets Recovery Office in Ireland.*
- 7.4 *The confirmation by the High Court that there is no requirement for a Tax Inspector to provide working papers, notes or reports prepared by him in raising assessments, has positive implications not only for the Bureau but also for the Revenue Commissioners and the collection of taxes generally.*

- 7.5 *The Bureau continues to monitor the effective implementation of the legislation, in particular, incremental and repetitive litigation and the difficulties occasioned by the delay in concluding such cases. It proposes to prepare a report, with recommendations for consideration by the Minister for Justice, Equality and Law Reform and the Attorney General.*
- 7.6 *The Bureau views the recent analysis outlined by the Courts in relation to the appointment of Receivers, particularly in the Gilligan case, as a significant expansion of the remedy. The Bureau also proposes to conclude its review on the procedures and auditing process within the Receivership process and to put appropriate recommendations in place by the conclusion of next year.*
- 7.7 *The additional Gardaí and Revenue staff now permits the Bureau to operate six (6) separate and discreet teams all with the requisite multi-disciplinary autonomy. Furthermore, the two extra staff which were assigned to the Bureau Analysis Unit significantly enhances the Bureau's ability to forensically examine both financial and computer records uplifted in the course of its searches and present expert testimony to the Court. Such testimony has now become a significant part in almost every case presented by the Bureau to the Court.*
- 7.8 *During the course of the year the Bureau noted a significant downturn both in the value of real property and motor vehicles which were subject to its orders. The Bureau proposes to consult with the Department of Finance to consider whether alternative methods of disposing of such assets may be of more benefit to the State.*

- 7.9 *The Bureau noted the difficulties encountered by the Courts in interpreting the provisions of Section 38 of the Criminal Justice Act of 1994 and maintains liaison both with the Director of Public Prosecutions and the Gardaí to co-ordinate legal remedies in the pursuit of the proceeds of criminal conduct.*
- 7.10 *While maintaining a focus on major criminal targets the Bureau still continues its policy of also targeting lower value assets. This policy, while not necessarily returning a significant income to the State, does engender public confidence in the criminal justice system as a whole and acts as a deterrent in general.*
- 7.11 *The Bureau continues to co-ordinate its own strategy with the Policing Plan and overall strategy of An Garda Síochána. It continues to support the rollout of the Garda Divisional Profiler Programme, providing ongoing lectures, training and expertise and receiving in turn intelligence, information and evidence from said profilers. The Bureau will continue to support and utilise the fruits of this programme.*

Appendix

OBJECTIVES OF THE BUREAU

Section 4 of the Criminal Assets Bureau Act 1996 as amended by the Proceeds of Crime (Amendment) Act 2005

- 4.—*Subject to the provisions of this Act, the objectives of the Bureau shall be—*
- (a) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct,*
 - (b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and*
 - (c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in paragraphs (a) and (b).*

FUNCTIONS OF THE BUREAU

Section 5 of the Criminal Assets Bureau Act 1996 as amended by the Proceeds of Crime (Amendment) Act 2005 –

- 5.—*(1) Without prejudice to the generality of Section 4, the functions of the Bureau, operating through its Bureau Officers, shall be the taking of all necessary actions—*
- (a) in accordance with Garda functions, for the purposes of, the confiscation, restraint of use, freezing, preservation or seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from criminal conduct,*

- (b) under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the proceeds of criminal conduct or suspected criminal conduct are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or conduct, as the case may be,*
- (c) under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993) by any person engaged in criminal conduct, and*
- (d) at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of section 204 of the Social Welfare (Consolidation) Act, 1993, where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, officers of the Minister for Social Welfare may be subject to threats or other forms of intimidation,*

and such actions include, where appropriate, subject to any international agreement, cooperation with any police force, or any authority, being an authority with functions related to the recovery of proceeds of crime, a tax authority or social security authority, of a territory or state other than the State.

(2) In relation to the matters referred to in subsection (1), nothing in this Act shall be construed as affecting or restricting in any way—

- (a) the powers or duties of the Garda Síochána, the Revenue Commissioners or the Minister for Social Welfare, or*
- (b) the functions of the Attorney General, the Director of Public Prosecutions or the Chief State Solicitor.*