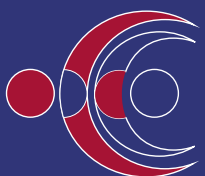


# ANNUAL **REPORT** 2016



Oifig an Stiúirhóra um  
Fhorfheidhmiú Corparáideach

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of Corporate Enforcement

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# DIRECTOR'S INTRODUCTION

## INTRODUCTION

In accordance with the provisions of section 954(1) of the Companies Act 2014, I am pleased to submit the 2016 Annual Report of the Office of the Director of Corporate Enforcement to the Minister for Jobs, Enterprise & Innovation, Ms. Mary Mitchell O'Connor, TD.

Having been appointed in August 2012, it is now approaching five years since I took up the role of Director. In that context, now is an opportune time to reflect on the more significant developments that have occurred over that period.

## HISTORICAL CONTEXT

### Enforcement

At the time of my appointment, the Office's various investigations into matters relating to the former Anglo Irish Bank Corporation ("Anglo") had been largely completed. Nevertheless, those matters continued to be highly resource intensive in that the Office had ongoing obligations to assist and support the Director of Public Prosecutions ("DPP") in examining the various investigation files that had been submitted and, thereafter, in supporting the DPP in the discharge of her disclosure obligations to accused persons.

Insofar as other criminal enforcement activity was concerned, the focus was largely on a narrow range of suspected company law offences, which were being investigated with a view to prosecution in the District Court. Specifically, the majority of open cases at that time concerned suspected offences relating to smaller companies' failure to maintain proper accounting records and to the activities of a number of individuals acting as auditors to smaller companies while not authorised to do so.

Civil enforcement at that time comprised principally of a cohort of long standing disqualification applications/appeals to the High Court and Supreme Court relating to issues connected with National Irish Bank and Bovale Developments respectively and a separate workstream concerned with seeking the disqualification of directors of companies that had been struck off while insolvent.

### Staffing and organisational structure

The Office had, at that time, a complement of staff comprising both civilians and members of An Garda Síochána, many of whom possessed significant experience in areas of relevance. However, as I have alluded to in previous Reports, a review of the Office's capabilities and skills base in the latter half of 2012 identified that, in particular, the Office had at that time a significant deficit in the area of in-house accountancy expertise. That deficit gave rise to a significant constraint on our ability to progress cases and to embark upon other enforcement initiatives. Similarly, due to an absence of in-house expertise in the area of IT forensics, the Office was reliant upon the assistance of the Garda Computer Crime Unit - which had its own well documented workload pressures to contend with. In addition, certain aspects of what was then the Office's structure also militated against organisational effectiveness.

### Environmental analysis - principal external inputs

At that time, most enforcement activity was driven by auditors' indictable offence reports and complaints from members of the public. Insolvent liquidations, which drive the liquidator statutory reporting process, were running at 1,400 per annum.

## DEVELOPMENTS OVER THE PAST FIVE YEARS

### Enforcement strategy & operations

In recent years, a conscious decision has been taken to shift the focus, insofar as criminal enforcement is concerned, away from summary prosecutions. District Court prosecutions tend to be concerned with wrongdoing of a less serious nature and, as such, the associated penalties can only be at the lower end of the spectrum, thereby providing limited dissuasive effect. In an effort to increase the Office's effectiveness, the focus has, therefore, shifted towards the investigation of more serious indications of wrongdoing. This activity, if subsequently considered appropriate by the DPP, results in prosecutions being initiated in the Circuit Criminal Court, where the available penalties, and associated potential for deterrent effect, are considerably higher. That change in emphasis has resulted in a substantial increase in the number of files being submitted to the DPP for consideration. Allied to this, the way in which we conduct investigations – both civil and criminal - has also evolved, with our primary investigative tools, i.e., the power to require the production of books and documents from companies under investigation and from third parties, now being more readily utilised. Moreover, in a digital age, requiring the production of “books and documents” is no longer confined to seeking paper records. Rather, demands in that regard now extend as far as requiring the production of email, text message and instant messaging app communications.

A further consequence of shifting the emphasis towards investigating more serious indications of wrongdoing is that, in addition to identifying possible offences under company law, an increasingly regular feature of such investigations is the identification of possible offences under other legislative codes such as, for example, Criminal Justice legislation. These investigations, which tend to be larger and more complex than the historical District Court cases alluded to above, have taken us into new areas such as theft, deception, the use of false instruments and invoice discounting fraud. Insofar as the legacy civil litigation referred to above is concerned, all of those cases have now been brought to a conclusion.

### Capability enhancement

A credible enforcement body must be self-sufficient in specialisms central to its remit and, as such, the absence of in-house expertise in the aforementioned areas of accountancy and IT forensics was not sustainable. Over recent years therefore, and with the support of successive Ministers and their officials, the Office's pre-existing capabilities have been further enhanced through the recruitment of five new investigative accountants (with a further two such positions currently in the process of being filled). These new staff members have come from a variety of backgrounds - including other law enforcement agencies and professional services firms – and, as such, have substantially increased our capacity. More recently, and again with the support of the Minister and her Department, we have engaged in a process to recruit a digital forensics specialist - a role that will be pivotal given the ever increasing extent to which documentation and other material is provided to us, or otherwise obtained by us, in electronic form. That appointment is expected to be made shortly.

At the time of writing, through a combination of retirement, transfer and, in the case of the former Head of Enforcement, appointment as Chief Executive of the Irish Auditing & Accounting Supervisory Authority, we have three vacancies in key senior positions. With the Department's support and assistance, we are currently working towards the filling of those positions. Until recently, we also had two vacancies at the more senior levels within our Garda contingent. In that context, I am pleased to be able to report that we have recently been assigned a new Detective Sergeant. At the time of writing, the key post of Detective Inspector remains vacant but the Garda authorities are fully aware of the necessity to fill that post as a matter of priority.

### Environmental analysis – trends and developments

In the realm of insolvent companies, giving administrative and operational effect to the statutory undertakings regime introduced by the 2014 Act was a major challenge. The Office's Insolvency team rose to that challenge admirably and that process is now fully embedded within the Office's insolvency activities. The results have been significant. During 2016 in excess of one hundred undertaking offers were accepted, in each case resulting in significant savings to both liquidators and the directors who accepted those undertaking offers and who otherwise would have had to incur the time, cost and disruption associated with being a party to High Court litigation. The undertakings regime has, therefore, significantly increased the effectiveness of the whole process under which we supervise liquidators' statutory reporting.

Increases in the audit exemption threshold have seen more companies avail of exemption, with a consequential reduction in the number of auditors' indictable offence reports being received. This has led to, for example, a reduction in the number of issues coming to our attention relating to contraventions of directors' loans provisions. This development, combined with our ongoing approach of seeking to address suitable cases through proportionate means (such as voluntary rectification, the issuing of cautions etc.), has enabled us to both focus on serial offenders and to devote resources towards new and emerging issues – such as, for example, issues arising from examiners' reports, non-compliance with accounting standards in certain sectors and issues arising under protected disclosure legislation.

## Issues relating to criminal investigation

Indications first emerged in late 2008 suggesting the existence of certain issues of concern regarding the conduct of the affairs of Anglo Irish Bank Corporation plc. As a licenced bank, Anglo was subject to the supervisory and enforcement remit of the then Financial Regulator. That being the case, the ODCE could, at that time, have sought to distance itself from events at the bank. However, it chose not to pursue such a course of action but, rather, to initiate an investigation - the scale, novelty and complexity of which could not have been envisaged and which ultimately transpired to be unprecedented in the history of both the ODCE and the State.

Following an initial assessment, several separate strands of inquiry were identified and a number of those strands of inquiry have subsequently resulted in persons being convicted before the Courts. Specifically, investigations undertaken by this Office have resulted in:

- the conviction during 2014 of both Mr. William McAteer and Mr. Pat Whelan for the giving of unlawful financial assistance by Anglo for the purchase of its own shares;
- the conviction of Mr. William McAteer during 2016 for fraudulent trading on foot of a plea of guilty; and
- the conviction of Mr. Pat Whelan during 2016 for failing to maintain a licensed bank's register of loans to directors on foot of a plea of guilty.

A further strand of inquiry resulted in Mr. Sean FitzPatrick being indicted, by direction of the DPP, on 27 charges - including 21 charges relating to allegations of having made misleading, false or deceptive statements to Anglo's then auditors Ernst & Young. The resultant trial, which is ongoing at the time of writing, has become the longest running criminal trial in the history of the State.

As has been widely reported in the media, during the course of that trial, the investigation that preceded those charges being directed has been the subject of significant criticism by counsel for the defence, particularly as regards the process by which witness statements were obtained from two Ernst & Young witnesses. Regrettably, certain aspects of that investigation, including the manner in which those statements were obtained, fell below appropriate standards. In that context, both this Office and counsel for the DPP have acknowledged that to be the case. Having carefully considered the matter after lengthy legal argument, the trial judge ruled that certain of those practices were unlawful. However, he further ruled that, notwithstanding the deficiencies detailed above, it was nevertheless appropriate that the two witnesses concerned be heard by the jury.

It will ultimately be for the trial judge and the jury, in discharging their respective roles, to determine the outcome of that case. More broadly, there is however a risk that the case-specific criticisms referred to above could lead to a perception that this Office's investigative procedures as they now exist are fundamentally flawed. Any such perception would not be supported by the facts. In that context, it is important to note that, quite aside from the extent to which the structure and capabilities of this Office and its investigative procedures have been enhanced over recent years, no such issues have arisen in the other trials that have resulted from this Office's Anglo-related investigations. Rather, the underlying issues arose several years ago, in this particular strand of the investigation only, and for reasons that are elaborated upon below.

By late 2008, and in an era when principles based/light touch regulation was being espoused - both nationally and internationally, and by regulators and the regulated alike - the ODCE had both firmly established its independence and, insofar as criminal investigation was concerned, had acquired significant experience of District Court prosecutions. Nevertheless, at this remove it is clear that, despite having acquired that experience, the Office was simply not equipped at that time to run multiple parallel investigations of the scale and complexity involved. While the Office demonstrated a willingness at that time to initiate a series of investigations, it is clear that there was a significant underestimation of the scale and complexity respectively of that strand of the investigation that was initially prioritised, i.e., the investigation that resulted in the conviction of Mr. McAteer and Mr. Whelan for the provision of unlawful financial assistance. This, in turn, resulted in that strand continuing to absorb resources, and, critically, Garda resources, to a greater extent and for considerably longer than had initially been anticipated. Against that backdrop, a course of action was adopted under which the lead role in obtaining statements from the two Ernst & Young witnesses was assumed by a small number of senior civilian staff. However, none of these individuals had any training or experience of taking witness statements. Moreover, the inappropriateness of the approach that was subsequently adopted in obtaining those statements was not sufficiently appreciated nor were the attendant risks responded to appropriately.

During the course of the trial, the jury has also heard of an earlier incident in which documents relating to the case were destroyed by an ODCE staff member. Further details of that incident, and the circumstances in which it occurred, have been ventilated in open court but not before the jury. Accordingly, I am at the time of writing precluded from commenting further on that matter. In the fullness of time all the facts concerning that incident will doubtless emerge.

No organisation is perfect and the pursuit of excellence, be it in the area of investigation or otherwise, is an ongoing organisational challenge. Several years on, as an organisation we have a broader skills base, a greater depth of experience and a far greater appreciation of the necessity to employ appropriate procedures and manage risk. In that context, Anglo-related



cases are only one aspect of this Office's criminal investigative activity. In that regard, as can be seen from the body of this Report, the DPP directed charges of deception, use of a false instrument and furnishing false information during 2016 based on one ODCE investigation file. On another file, the DPP the directed that the suspect be charged with fraudulent trading (based on an invoice discounting fraud) and, on 24 April 2017, the person charged with that offence was arrested by Gardaí from the ODCE and entered a plea of guilty to that charge. At the time of writing, the DPP is considering another file in which a range of serious charges have been recommended under both company law and Criminal Justice legislation. In addition to the foregoing, a number of other large scale and complex investigations are underway and are at various stages of advancement.

## CHALLENGES AHEAD

Change is an integral, and indeed a healthy, aspect of every organisation and, as new staff join us and existing staff seek new opportunities elsewhere, that change will inevitably continue and we will continue to evolve as an organisation. The immediate priorities and challenges in that regard are the filling:

- of the senior level vacancies referred to above and the two additional accountant posts with suitably qualified and experienced candidates; and
- by the Garda authorities of the vacant Detective Inspector post.

We also face challenges in terms of ongoing training and development, and, in particular, sourcing suitably specialised training. In a similar vein, keeping abreast of technological developments is an ongoing challenge. The appointment in the near future of a digital forensics specialist will be an important step in that regard.

## CONCLUDING REMARKS

For obvious reasons, much of the foregoing has dealt with our investigative activities. However, it is important not to lose sight of that fact that, alongside those activities, the Office:

- runs a large scale operation under which liquidators' statutory reports are examined and adjudicated upon and, depending on the underlying circumstances, matters are referred to the High Court and company directors are afforded the opportunity to avoid court proceedings by way of statutory undertakings;
- engages in advocacy activities aimed at assisting stakeholders to comply with their obligations and vindicate their rights respectively;
- operates a range of support services, including:
  - servicing freedom of information requests from members of the public;
  - servicing parliamentary questions from members of Dáil Éireann;
  - servicing press queries (within confidentiality parameters);
  - maintaining a website and associated information services for stakeholders' benefit; and
  - providing a full suite of support services to the Office and its staff complement.

In that context, I would once again like to thank my colleagues for their hard work and commitment during the year. I would also like to welcome those who have recently joined us, whose skills and experience will serve to enhance our existing skill sets. Similarly, I would like to thank those who left us during the year and subsequently, and who, by virtue of their expertise and experience, will be difficult to replace. In particular, I would like to thank Kevin Prendergast, whose endless willingness to assume greater responsibility is sorely missed. I would like to take this opportunity to wish them all the very best for the future.

Finally, I would like to thank most sincerely the Minister and her officials for their continued and ongoing support of the ODCE and of what we are seeking to achieve in terms of enhancing Ireland as a low risk economy in which to conduct business and in seeking to ensure that wrongdoing in a company law context is tackled and dealt with appropriately.

**Ian Drennan**  
*Director*  
**28 April, 2017**

# AT A GLANCE

## ENFORCEMENT

### Sources of our work

- In excess of 1,050 statutory reports and referrals received from liquidators, auditors, examiners, professional bodies and other regulatory and enforcement authorities
- Almost 250 complaints received from members of the public
- Almost 130 internally generated inputs

### Outputs from our work

- Following the scrutinising of reports submitted to the Office by liquidators of insolvent companies, 90 company directors restricted and a further 11 disqualified by the High Court
- 93 Restriction Undertakings obtained from directors of insolvent companies
- Directors' loan infringements, in 60 cases and to an approximate aggregate value of €17m, rectified on foot of Office actions
- As a proportionate and cost effective alternative to formal enforcement actions, cautions issued to a total of 61 companies
- 108 directions issued to relevant parties requiring them to comply with their statutory obligations under company law
- 7 demands issued for the production of companies' and third parties' books and records and other relevant documents
- in keeping with the ongoing strategic shift towards the investigation of more serious indications of wrongdoing:
  - submission of 5 investigation files to the DPP for consideration, with the recommendations including charges under both company law and the Criminal Justice (Theft and Fraud Offences) Act 2001
  - an ongoing caseload of large scale investigations where the intention is, depending upon the sufficiency of available evidence, to refer the underlying matters to the DPP for consideration as to whether to direct charges on indictment

## ADVOCACY

- 43 information presentations (to a combined audience of approximately 1,400) delivered and 14 exhibitions attended
- revised information and guidance published regarding the reporting of company law offences to the ODCE

## FINANCIAL

- The cost of running the Office during 2016 was €2.73m, some 54% of its allocation for the year and an decrease of 11% on the previous year

## INVESTIVATIVE CAPABILITIES

- Recruitment of five new forensic accountants and the initiation of a process towards the recruitment of a digital forensics specialist

# CHAPTER 1

## OVERVIEW OF THE ODCE

## STATUTORY MANDATE

### Companies Act 2014

The Companies Act 2014 ("the Act") came into effect in 2015. Except where the circumstances otherwise require therefore, all statutory references in this Report are to the Act as opposed to the various Companies Acts that it replaced. The full text of the Act can be accessed on the Irish Statute Book website<sup>1</sup>.

### Office of the Director of Corporate Enforcement

The position of Director of Corporate Enforcement ("Director") is provided for in Part 15, Chapter 3 of the Act. The Director, who is appointed by the Minister for Jobs, Enterprise & Innovation ("the Minister"), is assisted in the furtherance of his statutory mandate by:

- staff assigned by the Minister; and
- members of An Garda Síochána seconded for that purpose.

Collectively, the foregoing make up the Office of the Director of Corporate Enforcement ("ODCE"/"the Office").

### Principal functions of the Director

The Director's principal functions are set out in the Act<sup>2</sup>. They include to:

- i. encourage compliance with the Act;
- ii. investigate instances of suspected offences under the Act;
- iii. enforce the Act, including by the prosecution of offences by way of summary proceedings<sup>3</sup>;
- iv. refer cases, at his discretion, to the Director of Public Prosecutions ("DPP") where the Director has reasonable grounds for believing that an indictable offence<sup>4</sup> under the Act has been committed; and
- v. exercise, insofar as he feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Act.

In addition, section 192 of the Irish Collective Asset-management Vehicles Act 2015 ("ICAV Act") provides that, in addition to the functions conferred upon him by company law, the Director may perform the functions conferred upon him by the ICAV Act and do such acts or things as are necessary or expedient in the performance of those functions.

### Independence of the Director

The Act<sup>5</sup> provides that the Director shall be independent in the performance of his functions.

## HIGH LEVEL GOALS

Based on the principal statutory functions as set out above, the ODCE's high level goals during the year under review were to:

- i. Promote a greater understanding of affected parties' rights and duties under company law;
- ii. Confront unlawful and irresponsible behaviour insofar as it relates to company law; and
- iii. Provide a quality customer service to internal and external stakeholders.

The strategies and activities pursued and undertaken respectively during the year under review to achieve these goals are elaborated upon in the remainder of this Report as follows:

- Chapter 2 – Promoting a greater understanding of affected parties' rights and duties under company law
- Chapter 3 - Confronting unlawful and irresponsible behaviour insofar as it relates to company law
- Chapter 4 - Providing quality customer service to internal and external stakeholders

<sup>1</sup> <http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/pdf>

<sup>2</sup> Section 949

<sup>3</sup> i.e. before the District Court

<sup>4</sup> An indictable offence is an offence capable of being tried on indictment, i.e., before a jury in the Circuit Court

<sup>5</sup> Section 949(3)

## RESOURCES, ORGANISATIONAL STRUCTURE & PRINCIPAL WORKSTREAMS

### Human resources

The ODCE's actual staff complements at the beginning and end of the year respectively are detailed in the Table below.

**Table 1 ODCE staff complement - 2016**

Staff Numbers (WTE <sup>6</sup> )	31 December, 2016	31 December, 2015
Actual complement in place	37.5	37.5

As is discussed in more detail elsewhere in this Report, 5 new accountants were recruited and appointed during 2016. However, a number of retirements and transfers out resulted in there being no net change in overall year-on-year numbers.

The composition of the Office's staff complement as at 31 December, 2016, together with comparative data, is set out in the Table below.

**Table 2 Analysis of actual staff complement (WTEs)**

Grade	31 December, 2016	31 December, 2015
Director	1	1
Heads of Function <sup>7</sup> (excluding Garda)	3	4
Legal Advisors	1	2
Accountants	5	0
Solicitors	1	1
Assistant Principal Officers	3	3
Higher Executive Officers	7	7
Executive Officers	4.8	5.8
Clerical Officers	6.7	7.7 <sup>8</sup>
<i>Detective Gardaí (on secondment from the Garda National Economic Crime Bureau)</i>		
Detective Inspector	0	1
Detective Sergeants	2	2
Detective Gardaí	2	2
Garda	1	1
<b>Total</b>	<b>37.5</b>	<b>37.5</b>

<sup>6</sup> Whole Time Equivalent

<sup>7</sup> Includes 1 Legal Advisor, 1 Solicitor and 1 Principal Officer

<sup>8</sup> Includes 1 temporary Legal Secretary

## Financial resources

The Office is funded via the Department of Jobs, Enterprise & Innovation's ("the Department") Vote (Vote 32). The Table below sets out details of the Office's 2016 allocation and expenditure respectively.

**Table 3 Financial allocation and expenditure - 2016**

	Allocation €000s	Expenditure €000s	%
Pay	2,808	2,006	71
Non-pay	2,207	722	33
Exceptional legal costs	50	0	0
<b>Total</b>	<b>5,015</b>	<b>2,728</b>	<b>54</b>

The principal reasons as to why actual expenditure differed from the allocation were as follows:

- savings on Pay resulting from vacancies that arose during the course of the year (principally retirements and transfers out) and the delay in the recruitment of new staff in respect of whom sanction had previously been granted; and
- the Non-pay allocation for the year included provision for estimated costs associated with litigation to which the Office was a party. The costs incurred during the year on these cases were less than might have been anticipated.

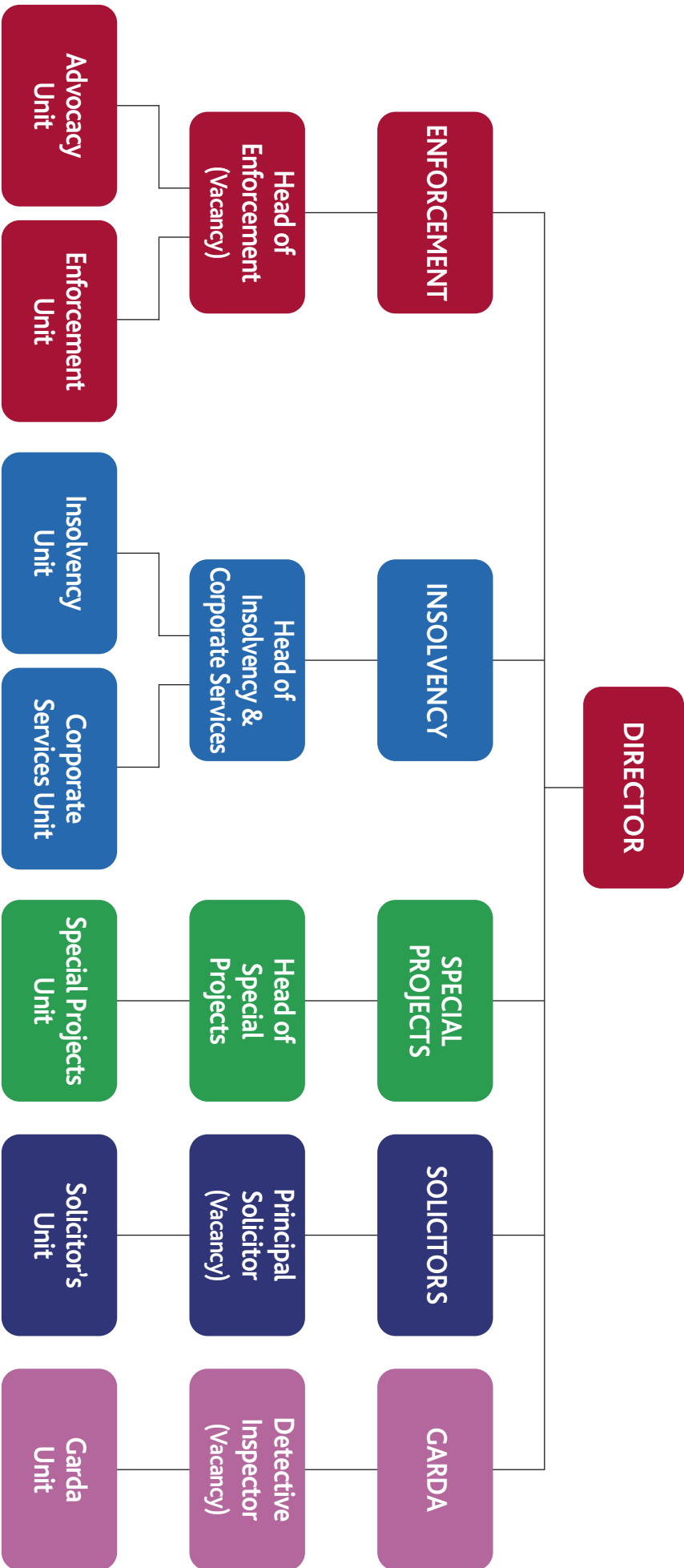
A more detailed analysis of expenditure incurred during the year is set out at Appendix 1 to this Report.

## Organisational structure

During the year under review the Office was divided into seven Units, with each Unit coming under the responsibility of one of five Heads of Function. That organisational structure is set out in the organogram below.

As elaborated upon in further detail elsewhere in this Report, the Office's structure and capabilities have been evolving in recent years with a view to bringing them into closer alignment with the Office's remit and mandate. With the recruitment of further specialist staff, that will continue to be the case over the coming years.

ORGANISATIONAL STRUCTURE





## Principal workstreams

The nature of the Office's principal workstreams is such that most of them require a multi-disciplinary approach involving ongoing interaction between Units and/or the active collaboration of Units with a view to achieving corporate objectives.

Accordingly, effective communication between Units, and that each Unit take an organisation-wide perspective when performing its functions, is a critical success factor. Accordingly, this is an approach that is both encouraged and facilitated by the Office's leadership team.

The Office's principal workstreams are set out in the Table below, together with details of where in this Report each workstream is primarily dealt with.

**Table 4 Principal workstreams**

Workstream	Unit(s) principally involved	Chapter
Encouraging compliance with the Companies Act	Responsibility for encouraging compliance with the Act resides in the first instance with the Advocacy Unit. However, the Advocacy Unit liaises with other relevant Units with a view to monitoring trends and identifying areas meriting focussed advocacy initiatives.	2
Advocating legislative and policy enhancements	Depending upon the nature of the subject matter, the development of ODCE submissions is assigned to one or more Units. Generally speaking, however, the development of submissions will be co-ordinated through the Advocacy Unit.	2
Reviewing, and adjudicating upon, liquidators' reports	Liquidators' reports are processed by the Insolvency Unit. Decisions on individual reports are made by Case Officers, who principally, although not exclusively, reside within the Insolvency Unit. This workstream also encompasses the recently implemented Undertakings regime, which is further elaborated upon later in this Report.	3
Examination of complaints and statutory reports	The examination of complaints and statutory reports (such as, for example, auditors' indictable offence reports) is the responsibility of the Enforcement function. Dependent upon the nature of the issues arising, the Enforcement function may: <ul style="list-style-type: none"> <li>• address the issues itself, e.g., by way of voluntary rectification/remediation or through the use of certain of the Director's statutory powers;</li> <li>• designate the matter as being one for further investigation;</li> <li>• refer the matter to the Insolvency Unit, e.g., where the issues in question relate to an insolvent company in liquidation;</li> <li>• following consultation with the Director, refer the matter to the Special Projects Unit;</li> <li>• refer the matter to a third party, for example, another regulatory or enforcement body.</li> </ul>	3
Civil enforcement litigation	For the most part, civil enforcement litigation is managed by the Enforcement Unit in conjunction with the Solicitors' Unit.  Civil litigation, such as seeking the disqualification of directors of companies that have been struck off the Register of Companies <sup>9</sup> whilst having undischarged debts, is managed jointly by the Insolvency and Principal Solicitor's Units.	3

<sup>9</sup> See [www.cro.ie](http://www.cro.ie) for further information regarding the Register.

Workstream	Unit(s) principally involved	Chapter
Criminal investigation and prosecution	<p>The investigation of possible criminal breaches of the Act is undertaken by the Enforcement Unit in conjunction with the Garda Unit.</p> <p>Once a decision has been taken to initiate summary criminal proceedings, the prosecution becomes a collaborative exercise between the Enforcement, Garda and Solicitors' Units. Investigations in which a prosecution on indictment is envisaged involve collaboration on the part of the Enforcement and Garda Units.</p> <p>In circumstances where, having reviewed an investigation file as submitted by the Office, a decision is taken by the DPP to initiate a prosecution on indictment, the provision of subsequent support to the Office of the DPP (for example, regarding disclosure to the defence), is primarily the responsibility of the Enforcement and Garda Units.</p>	3
Supervision of liquidators' behaviour	<p>Actions taken to supervise liquidators' behaviour (such as, for example, reviewing liquidators' books and records) is a collaborative effort between the Insolvency and Enforcement Units. In circumstances where such activities result in the necessity to engage in litigation, the Solicitors' Unit becomes involved.</p>	3
Provision of support services	<p>The provision of support services to other areas of the Office is the primary responsibility of the Corporate Services Unit.</p> <p>All Units have a responsibility to assist the Corporate Services Unit in ensuring that the ODCE's obligations as a publicly funded Office (e.g. in the areas of procurement, tax clearance procedures etc.) are fully complied with.</p>	4
Relationship management and development	<p>Whilst certain Units, by virtue of the nature of their principal operations, have a greater degree of interface with certain external stakeholders than others, the interlinked nature of the organisation is such that all Units have a role in ongoing relationship management and development.</p>	2



# CHAPTER 2

PROMOTING A GREATER  
UNDERSTANDING OF  
AFFECTED PARTIES'  
RIGHTS AND DUTIES  
UNDER COMPANY LAW

## INTRODUCTION

This Chapter provides details of the principal strategies pursued, and activities undertaken, by the Office during the year under review in the furtherance of the above stated goal. In summary, those strategies and activities included:

- the development and promulgation of publications and other guidance material;
- engaging in a range of outreach activities, including the delivery of presentations, attendance at seminars and exhibitions and dealing with company law enquiries on a range of issues from members of the public;
- advocating legislative and policy enhancements; and
- managing and developing relationships with external stakeholders.

## PUBLICATIONS AND OUTREACH ACTIVITIES

### Publications

Following on from 2015, during which the Office published an entirely revised suite of information and guidance publications to reflect the provisions of the Companies Act 2014, 2016 saw the publication of a further information publication directed towards company auditors. Specifically, Information Notice I/2016/1, which replaced the previously existing Information Notice I/2009/4 was published having been developed in conjunction with the accountancy profession. The revised document is available on the ODCE's website<sup>10</sup>.

During the year under review, approximately 16,000 copies of the various ODCE publications, principally revised Information Books and Quick Guides, were issued to interested parties. In agreement with the ODCE, the Companies Registration Office ("CRO") issued approximately half of these documents to persons registering new companies<sup>11</sup>. The remainder were, in the main, issued in response to public demand, either at, or as a consequence of attendance at, events, exhibitions and presentations or as a result of persons contacting the Office directly.

In January 2016, the Office published a list of insolvent companies and the associated liquidators in respect of whom the ODCE had identified the requirement for the submission to the ODCE of a liquidator's report in 2015. The purpose of publishing this list was to enable interested parties to bring any matters of concern in relation to an insolvent company in liquidation to the attention of the liquidator and/or the ODCE, in order that any such concerns could be taken into account in determining whether or not an application for restriction of the company's directors should be made to the High Court. Further detail regarding this aspect of liquidators' reporting obligations to the ODCE is set out in Chapter 3 of this Report.

During the year, the ODCE also published six bi-monthly lists setting out details of (i) insolvent companies in liquidation; and (ii) the associated liquidators for whom a section 682 reporting obligation would arise during 2016. The purpose of publishing these lists is to enable interested parties to bring any matters of concern in relation to the companies listed to the attention of the liquidator and/or the ODCE, in order that any such concerns can be taken into account when determining whether or not an application for restriction of one or more of the company's directors should be made to the High Court or whether a Restriction Undertaking should be sought by the ODCE from one or more of the company's directors as an alternative to Court proceedings. Further detail regarding both the section 682 and Undertakings processes is set out in Chapter 3 of this Report.

### Seminars and exhibitions

A key element of the Office's advocacy strategy is its outreach programme. This consists of, amongst other things, the delivery of presentations and speeches to stakeholder groups, as well as attendance at exhibitions and events where the audience is likely to include one or more subsets of the Office's target audience. The Office has identified certain constituencies as being its target audience, including:

- persons considering incorporation or persons that have recently incorporated companies;
- professionals engaged in the provision of advice to companies and company directors, who are, by virtue of those activities, well placed to relay the ODCE's compliance message to clients and so considerably expand the Office's reach;
- students currently enrolled in business programmes at undergraduate and postgraduate level, many of whom, it is anticipated, will ultimately become directors of companies or professional advisors themselves; and
- the community and voluntary sectors, who by their nature tend, as a general proposition, to have a less well developed knowledge of company law and, as a result, tend to need guidance on company law and associated corporate governance matters.

<sup>10</sup> <http://www.odce.ie/Portals/0/EasyDNNNewsDocuments/633/Reporting%20Company%20Law%20Offences.pdf>

<sup>11</sup> The CRO typically issues the ODCE Quick Guide on Company Directors as part of its pack as issued to newly incorporated companies.

During the year, Office staff delivered 43 presentations (2015: 70) to a combined audience of approximately 1,400 people. Many of these presentations dealt specifically with the, still relatively new, Act and the ODCE's enhanced remit and enforcement policies in that context. During the year, the Office was also represented at a total of 14 exhibitions (2015: 15). Details of the presentations delivered and exhibitions attended respectively during the year are set out at Appendix 2 to this Report.

## MANAGING AND DEVELOPING RELATIONSHIPS WITH EXTERNAL STAKEHOLDERS

In furtherance of its statutory objectives and associated goals, the Office seeks to develop and maintain strong and effective relationships with a range of key stakeholders. In addition to the general public, the Office's key stakeholders include the Oireachtas<sup>12</sup>, the Minister, the Department, other statutory/regulatory bodies and those providing professional services to companies and company directors and officers. The Office's interactions during the year with certain of its key stakeholders are summarised below.

### Members of the Oireachtas

The Office, from time to time, receives communications from members of the Oireachtas. Typically, these communications constitute expressions of concern as to whether company law is being breached by particular parties or relate to cases under review. Whilst the Office is constrained in the extent to which it can respond to such communications by virtue of its statutory confidentiality obligations, it endeavours to provide whatever assistance it can to Deputies<sup>13</sup> and Senators<sup>14</sup>.

### Department of Jobs, Enterprise & Innovation

Office staff continued to liaise with colleagues in the Department throughout the year on matters of mutual interest. The Office has been afforded representation at Departmental divisional management meetings and, outside of those formal structures, there are regular contacts as the need arises.

### CRO

As the public repository of information on companies and company officers, the CRO plays a critically important role in supporting the Office in its work. In addition to meeting regularly on matters of mutual interest, CRO staff regularly supply evidence in ODCE proceedings and, where identified, of *prima facie* breaches of company law.

### Garda National Economic Crime Bureau ("GNECB")

As referred to in Chapter 1 of this Report, the Office's staff complement includes a number of Gardaí. These Gardaí are on secondment from the GNECB. The Office's close working relationship with An Garda Síochána, and GNECB in particular, is critical to its criminal enforcement work. In that context, the Office meets with GNECB senior management on a regular basis on matters of mutual interest.

### Irish Auditing and Accounting Supervisory Authority ("IAASA")

In accordance with the provisions of the Act, the Director is a member of IAASA and has the consequential right to nominate a member to its Board of Directors. Mr. Conor O'Mahony, the Office's Head of Insolvency & Corporate Services, is, in that context, a member of IAASA's Board of Directors. Mr. O'Mahony attended all relevant meetings of IAASA's Board held during 2016. IAASA's 2016 Annual Report will be available on its website<sup>15</sup> once it has been laid before the Oireachtas by the Minister.

In addition to this statutory relationship as outlined above, the Office engaged regularly with IAASA during the year on matters of mutual interest, and one formal meeting was held with senior staff of IAASA on matters of mutual interest during the year under review.

### Company Law Review Group ("CLRG")

The CLRG<sup>16</sup> is a statutorily established advisory body to the Minister on matters relating to company law. The Director is a member of the CLRG and the ODCE is represented at both plenary meetings and at meetings of Committees whose work is pertinent to its remit. During the year, the Office contributed to, amongst others, the following issues as considered by the CLRG:

<sup>12</sup> Collective term for the Upper and Lower Houses of Parliament

<sup>13</sup> Members of the Lower House of Parliament

<sup>14</sup> Members of the Upper House of Parliament

<sup>15</sup> [www.iaasa.ie](http://www.iaasa.ie)

<sup>16</sup> [www.clrg.org](http://www.clrg.org)

### **Corporate Insolvency**

The Office's Head of Insolvency & Corporate Services, Mr. Conor O'Mahony, is a member of the Corporate Insolvency Subcommittee, which has been examining, *inter alia*, the UNCITRAL Model Law on Cross-Border Insolvency, the European Proposal for a Directive on Insolvency, Restructuring and Second Chance, and has been tasked with reviewing the legislation on the winding up of companies.

### **Compliance & Enforcement**

The Director is the Chairman of the Compliance & Enforcement Subcommittee, which has been charged with examining current compliance and enforcement aspects of company law and reporting its recommendations back to the plenary.

### **Corporate Governance**

The Office's Head of Insolvency & Corporate Services, Mr. Conor O'Mahony, is a member of the Corporate Governance Subcommittee, which has been charged with examining certain submissions referred to the CLRG by the Department of Jobs, Enterprise and Innovation relating to measures (dealing with the governance of companies) contained in Part 4 of the Act and the appropriate chapters of Parts 16, 17, 18 and 19. The subcommittee will also consider other codes of best practice in corporate governance, as recommended and/or required by relevant regulators.

## **Central Bank**

The ODCE and the Central Bank have in place a Memorandum of Understanding ("MoU") which, based on their respective grounding legislation, allows each body to refer information to the other where they are satisfied that such information is relevant to the other's remit.

## **Office of the Revenue Commissioners**

The Revenue Commissioners are an important partner of the Office in the furtherance of its work, in particular in respect of insolvency related matters. In that context, the two bodies met on a number of occasions during the year. Moreover, the two bodies shared information in respect of five separate matters (2015: 4). This represents a reduced level of exchange compared with previous years and is explained by the decision to defer taking any new disqualification applications against the directors of struck-off companies pending the conclusion of an appeal taken by the Office to the Court of Appeal. This matter is elaborated upon further in Chapter 3 of this Report.

## **Accountancy profession**

The accountancy profession plays an important role in assisting the work of the Office, through both auditors' reporting obligations (which are elaborated upon in the next Chapter) and the profession's wider support for, and communication of, the Office's compliance message. As such, the Office seeks to work closely with the professional accountancy bodies to support them in ensuring that their members are fully informed of their statutory reporting obligations and to apprise them of the assistance that the Office can be to those of their members' clients that occupy positions as company directors and officers.

## **Irish Stock Exchange**

The Stock Exchange is another body with which the ODCE has an MoU in place and, in that context, one formal meeting was held with senior staff of the Irish Stock Exchange on matters of mutual interest during the year under review.

## **International Association of Insolvency Regulators ("IAIR")**

The IAIR is an international body that brings together the collective experiences and expertise of national insolvency regulators from 26 jurisdictions around the world. The IAIR, of which the Office has been a member since 2003, is a valuable forum for the promotion of liaison and co-operation between its members and for sharing information on areas of common interest and best practice.

## **Media**

The Office typically deals with a substantial volume of media queries annually. Whilst the Office is mindful of the important role that the media can play in informing the debate on company law, compliance and governance issues generally, and strives where possible to assist the media in dealing with general queries, it must equally take great care in how it does so. The Office is precluded under its governing legislation from making any public comment on the conduct of investigations, except in respect of information which is already in the public domain. In addition, the Office is mindful of the rights of individuals and other persons coming before the Courts, and, as such, it does not issue progress reports or any other information on its enforcement activity if to do so could potentially prejudice any future legal actions.

# CHAPTER 3

CONFRONTING UNLAWFUL  
AND IRRESPONSIBLE  
BEHAVIOUR INsofar AS IT  
RELATES TO COMPANY LAW

## STRUCTURE OF THIS CHAPTER

This Chapter is structured in a manner whereby, in the following three Parts, the Office's inputs, throughputs and outputs respectively are detailed.

## PART A: INPUTS

### EXTERNAL INPUTS

The Office's activities in confronting unlawful and irresponsible behaviour are driven to a substantial extent, both directly and indirectly, by inputs received from external sources. This is a function of the fact that:

- a number of parties, including liquidators, auditors, examiners and certain professional bodies, have statutory reporting obligations to the Office;
- the Office forms part of a broader statutory framework that provides for the referral of, otherwise confidential, information between regulatory and enforcement bodies where such information is considered to be relevant to those other entities' functions; and
- the Office receives a substantial number of complaints from members of the public annually.

In that context, the principal inputs received from external sources during the year were as follows:

**Table 5 Inputs from external sources**

	2016	%	2015	%
<i>Statutory reports</i>				
Liquidators' reports (initial) (s682)	683		875	
Liquidators' reports (subsequent) (s682)	261		394	
Total liquidators' reports (s682)	944	72.5	1,269	74.2
Liquidators' reports regarding possible criminality (s723)	0	0	2	0.1
Auditors' indictable offence reports (s393)	69	5.3	100	5.9
Examiners' reports (s534)	5	0.4	3	0.2
Professional Bodies' indictable offence reports (s931)	5	0.4	4	0.3
<i>Referrals</i>				
Referrals from external parties	28	2.1	40	2.3
<i>Complaints</i>				
Complaints from members of the public	248	19.0	290	17.0
<i>Other</i>				
Disclosures under the Protected Disclosures Act 2014 <sup>17</sup>	4	0.3	3	0
<b>Total inputs from external sources</b>	<b>1,303</b>	<b>100</b>	<b>1,711</b>	<b>100</b>



The principal external sources of inputs driving the Office's activities over the year under review are elaborated upon below.

## LIQUIDATORS' SECTION 682 REPORTS

### Introduction – overview of the liquidator reporting regime

As can be seen from Table 5 above, liquidators' section 682 reports accounted for almost 73% of all external inputs received by the Office during 2016 (2015: 74%). In summary, liquidators of companies that are in insolvent<sup>19</sup> liquidation are required by law<sup>19</sup> to report to the Office on the circumstances giving rise to the company's demise and on the conduct of any person who was a director of the company during the twelve months preceding the entry of the company into liquidation. The liquidator must also proceed to apply to the High Court for the restriction<sup>20</sup> of each of the directors, unless relieved of that obligation by the Office<sup>21</sup>.

The essential aims of this statutory reporting regime are to:

- afford the public a degree of protection by ensuring that persons who have been determined by the High Court as not having acted honestly and/or responsibly in the run up to a company's entering insolvent liquidation may, in respect of the mandatory five year period of restriction, only act as directors of other companies that meet minimum capitalisation requirements; and
- ensure that persons who, in the run up to a company's entering insolvent liquidation, have been judged to have acted honestly and responsibly can continue to engage in entrepreneurial activity through the medium of limited liability companies without sanction or penalty.

In discharging its role in this regard, the Office expects liquidators to provide it with all of the information which is relevant to the making of an appropriate decision. It also encourages liquidators to make evidence-based recommendations regarding relief/no relief by reference to the results of their investigations.

The Office considers granting relief where a liquidator advances an evidence-based justification in support of a claim that a director has acted honestly and responsibly in conducting the company's affairs. In making its decisions, the Office is keen to ensure that no director needlessly bears the burden of a High Court hearing where he or she has clearly demonstrated honest and responsible behaviour in the conduct of the affairs of the failed enterprise. In practice, the Office acts as a filter to remove the need for consideration by the High Court of those cases which do not appear to warrant its attention.

It is important to note, however, that ODCE decisions of '*no relief*' or '*partial relief*' do not constitute a finding of dishonesty or irresponsibility in respect of the directors concerned, and it would be inappropriate for any such inference or imputation to be drawn. It is solely a matter for the High Court (having heard the submissions of the liquidator and director(s) respectively) to determine if a Restriction Declaration should be made in respect of any particular company director.

### Restriction and Disqualification Undertakings

The Act<sup>22</sup> introduced, for the first time, a statutory framework under which individuals who might otherwise face the prospect of Court proceedings can avoid having to go to Court by voluntarily agreeing to a restriction or disqualification as applicable (i.e., by providing a legally binding Undertaking to that effect).

In summary, the Act provides the ODCE with discretion as to whether to offer an Undertaking. Where an offer is made by the ODCE, it must be made on the prescribed form, the layout and content of which is stipulated by the Statutory Instrument (the offer document being referred to as a "Notice"). The Notice must set out, *inter alia*, an outline of the circumstances, facts and allegations establishing the grounds for a restriction or disqualification together with details of the legal effects of an Undertaking for the person providing same.

There is no obligation on the recipient of a Notice to accept the offer (i.e., to provide the Undertaking). However, where the recipient intends to accept the offer, they must do so within 21 days (or within such longer period as may be allowed by the ODCE). During this offer period, neither the ODCE nor any other person who is aware of the issuing of the Notice may initiate proceedings for the restriction or disqualification of the recipient of the Notice on foot of the circumstances, facts and allegations as set out in the Notice.

<sup>18</sup> A company is insolvent when it is unable to pay its debts as they fall due

<sup>19</sup> Section 682 Companies Act 2014

<sup>20</sup> Where an individual is restricted under section 819 of the Companies Act 2014, s/he may only act as the director or secretary of a company for a period of five years thereafter provided that the company concerned meets certain minimum capitalisation requirements. In the case of a public limited company a minimum called up share capital of €500,000 is required. In the case of any other company, the corresponding figure is €100,000.

<sup>21</sup> The process and scope of liquidator reporting are outlined in three main ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1 and Information Notice I/2009/1. These documents are available at [www.odce.ie](http://www.odce.ie)

<sup>22</sup> Sections 849 to 854 of the Companies Act, 2014

Where a recipient of a Notice decides to accept the offer and to return a duly signed Undertaking Acceptance Form, they will be subject to a Restriction or Disqualification Declaration/Order on the same basis as if a restriction or disqualification had been imposed by the High Court. Therefore, any subsequent breach of the terms of the restriction or disqualification will constitute a criminal offence and will be the same as a breach of a Court-imposed restriction or disqualification.

Notwithstanding that company directors or other persons may have voluntarily provided Undertakings, they can, nevertheless, still apply to the Court – at any time during the currency of the restriction or disqualification – seeking to be relieved, in whole or in part, from the terms of the restriction or disqualification, as applicable. Whilst any such applications will be considered by the ODCE on a case by case basis in the context of the particular facts and circumstances, having regard to the need to uphold the integrity of the process, it is anticipated that the ODCE will, in most instances, oppose such applications.

With reference to disqualification, the legislation provides that the maximum duration of disqualification that the ODCE can offer by way of Undertaking is five years. Therefore, in circumstances where the ODCE forms the view that a period of disqualification of in excess of five years is warranted (a determination that is made by reference to the particular facts and circumstances of each case and any relevant jurisprudence), an offer will not be made. Rather, the matter will be dealt with by way of an application to the High Court.

### Companies entering liquidation

As can be seen from the Table below:

- the total number of insolvent liquidations (i.e. creditors' and Court liquidations combined) continued to decline – with the 2016 levels representing 49% of the levels in 2012; and
- during 2016, the level of solvent liquidations continued to increase, accounting for 63% of all liquidations.

**Table 6 Companies entering liquidation: 2012 - 2016**

	2012	2013	2014	2015	2016
Creditors' liquidations	1,210	1,043	929	746	581
Court liquidations	107	76	78	70	61
<i>Total insolvent liquidations</i>	<i>1,317</i>	<i>1,119</i>	<i>1,007</i>	<i>816</i>	<i>642</i>
Members' liquidations	919	848	1,001	1,034	1,112
<i>Total insolvent liquidations<sup>23</sup></i>	<i>919</i>	<i>848</i>	<i>1,001</i>	<i>1,034</i>	<i>1,112</i>
<b>Total liquidations</b>	<b>2,236</b>	<b>1,967</b>	<b>2,008</b>	<b>1,850</b>	<b>1,754</b>

### Liquidators' s682 reports received – 2016

As can be seen from Table 5 above, a total of 944 liquidators' s682 reports were received during the year (2015: 1,269), of which:

- 683 were initial<sup>24</sup> reports (2015: 875); and
- 261 were subsequent<sup>24</sup> reports (2015: 394).

The continued decline in insolvent liquidations, which reflects the improving business environment more generally, is welcome. Based on current indications, a further reduction, in the order of approximately 15%, is anticipated over the course of 2017.

<sup>23</sup> Whilst the Office has no role in solvent (i.e. members') liquidations, data in respect of same has been included in the interests of completeness.

<sup>24</sup> An initial report is the first report received from a liquidator and is required to be submitted within 6 months of his/her appointment. In the majority of cases, the decision as to whether or not to grant relief is made based on this report. However, in some cases a subsequent report is required from the liquidator when his/her investigations have progressed further. In circumstances where a subsequent report is considered to be necessary, 'relief at this time' is usually granted in respect of the initial report.

The Table below provides details of the sectoral distribution of companies in respect of which liquidators' initial reports were received during the year.

**Table 7 Sectoral analysis of liquidators' initial section 682 reports received - 2016**

Sector	2016		2015	
		%		%
Wholesale & retail	174	25.5	181	20
Construction	92	13.5	208	24
Community, social & other	89	13	103	12
Manufacturing & printing	82	12	93	11
Hotels, bars & catering	75	11	104	12
Marketing & promotion	46	7	57	6
Real estate & renting	44	6	24	3
Technology & telecommunications	31	5	36	4
Financial & leasing	17	2	24	3
Transport & distribution	15	2	29	3
Agriculture, mining & marine	12	2	9	1
Recruitment & security services	6	1	7	1
<b>Total</b>	<b>683</b>	<b>100</b>	<b>875</b>	<b>100</b>

### Timeliness of liquidators' reporting

Over the course of the year, the Office issued 106 (2015: 124) notices to 57 (2015: 64) separate liquidators advising them that they were in default of their statutory reporting obligations. Most of these defaults were promptly rectified as a result of this action and, as a consequence, 96% of the first reports due during the year had been received by year end (2015: 96%). However, a small number of liquidators have been observed to repeatedly fail to comply with their reporting obligations. Appropriate enforcement action, up to and including criminal prosecution, may result from such persistent breaches of statutory obligations.

### Standard of liquidators' reporting

As reported in previous years, the standard of liquidators' reports received during the year was considered to be broadly satisfactory. However, in a small number of cases, the quality of reporting was not of the required standard. Where this arises, it is dealt with through engagement with the relevant practitioners. One factor that has been observed as having a bearing in this context is certain practitioners' relative inexperience of preparing reports for the Office. In that context, Table 8 below provides an analysis of the profile of liquidators undertaking insolvency engagements over the period 2011 to 2016. As can be seen from the Table, 125 liquidators undertook less than three liquidations in 2016 while 33 liquidators undertook seven or more liquidations. The vast majority of persons acting as liquidators are members of Prescribed Accountancy Bodies and, as such, are under IAASA's supervisory remit (see further elaboration below).

**Table 8 Profile of liquidators undertaking insolvent liquidations by number of engagements 2011 – 2016**

Number of liquidators	Number of engagements				Total
	<3	3-6	7-12	>12	
2011	182	57	30	27	296
2012	187	63	37	22	309
2013	203	46	16	21	286
2014	177	39	19	17	252
2015	160	63	19	23	265
2016	125	42	18	15	200

### Qualification for appointment as a liquidator or examiner

Also of relevance in the context of the foregoing is section 633 of the Act, which introduced new rules for qualification to act as a liquidator. The Act defines five categories of individuals who are entitled to act as a liquidator. These are:

- i. members of a Prescribed Accountancy Body holding a practicing certificate;
- ii. solicitors holding a practicing certificate;
- iii. members of any other professional bodies recognised for this purpose by IAASA (none currently);
- iv. persons qualified to act as a liquidator in another EEA<sup>25</sup> state; and
- v. persons with practical experience of windings-up and knowledge of relevant law prior to the commencement of the Act who are authorised by IAASA. Before granting an authorisation of this type, IAASA has to be satisfied, having consulted the ODCE, that the person is a fit and proper person to act as a liquidator.

An individual who has applied to IAASA for authorisation under (v) above may continue to act pending the determination of their application. As of the end of 2016, IAASA had advised the ODCE of the names of 24 individuals who have applied for authorisation under this provision. It is understood that these applications are currently under consideration by IAASA.

In addition to the qualification requirements prescribed in section 633, section 634 provides that all liquidators must have in place adequate professional indemnity insurance ("PII"). IAASA has issued Regulations prescribing the required level of PII required and these Regulations are available on IAASA's website<sup>26</sup>.

A related provision, section 519 of the Act, provides that a person can only act as an examiner if they are qualified to act as a liquidator.

<sup>25</sup> European Economic Area

<sup>26</sup> <http://iaasa.ie/getmedia/1a9c9ab1-994e-4491-8f6c-6d8a40d27f64/S-I-No-127-of-2016.pdf>

## SECTORAL DISTRIBUTION OF OTHER EXTERNAL INPUTS (I.E. EXTERNAL INPUTS OTHER THAN LIQUIDATORS' SECTION 682 REPORTS)

As can be seen from Table 5, in aggregate those external inputs other than liquidators' section 682 reports accounted for over 27% (2015: 26%) of total external inputs received during the year. The Table below provides an analysis of the sectoral distribution of those other external inputs.

**Table 9 Sectoral distribution of external inputs other than liquidators' section 682 reports**

Sector	2016		2015	
		%		%
Real estate & renting	80	23	71	16
Not a company	55	15	108	25
Community, social & personal	39	11	12	3
Health & social work	33	10	33	7
Construction	24	7	39	9
Finance & leasing	23	6	30	7
Manufacturing & printing	19	5	21	4
Wholesale & retail	16	5	39	9
Technology & telecommunications	15	4	17	4
Transport & distribution	14	4	18	4
Hotels, bars & catering	14	4	17	4
Marketing & promotion	12	3	14	3
Agriculture, mining & marine	7	2	11	3
Recruitment & security services	4	1	4	1
Other business sectors	0	0	5	1
<b>Total</b>	<b>355</b>	<b>100</b>	<b>439</b>	<b>100</b>

## COMPLAINTS

The Office receives substantial numbers of complaints annually from members of the public. During the year a total of 248 complaints were received (2015: 290), which accounted for 19% (2015: 17%) of all external inputs received. The Table below provides an analysis of the subject matter of complaints received.

**Table 10 Complaints received (analysed by character of primary reported default)**

	2016	%	2015	%
Annual/Extraordinary General Meeting related	33	14	34	12
Directors' conduct (responsibilities & filing)	31	12	75	26
Allegations of reckless/fraudulent/insolvent trading	28	11	20	7
Other	26	10	12	4
Allegations of forgery/furnishing of false information/ falsified documents	23	9	24	8
Relating to the issue of unpaid debts	19	7	18	6
Access to accounting records/minutes of meetings	14	6	9	3
Register of members related	12	5	13	4
Audit/auditor related	10	4	38	13
Receivership related	9	4	0	0
Registered address related	8	3	11	4
General shareholder rights issues	7	3	8	3
Acting as a director while a bankrupt/restricted/disqualified	7	3	0	0
Companies trading whilst struck off the Register/dissolved	5	2	8	3
Relating to improper use of the word "Limited"	5	2	0	0
Liquidation/phoenix activity	5	2	0	0
Display of business particulars	4	2	0	0
Issues relating to change of accounting year end	2	1	0	0
Improper accounting records	0	0	20	7
<b>Total</b>	<b>248</b>	<b>100</b>	<b>290</b>	<b>100</b>

## AUDITORS' INDICTABLE OFFENCE REPORTS

### Introduction – overview of the auditor reporting regime

Section 393(1) of the Act provides that, where, in the course of and by virtue of their carrying out of an audit, information comes into the possession of a company's auditors which leads them to form the opinion that there are reasonable grounds for believing that an indictable offence under the Act has been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the Office. The Office has developed and published guidance to assist auditors in complying with their obligations in this regard<sup>27</sup>.

### Nature of suspected offences reported

During the year, a total of 69 indictable offence reports were received from auditors (2015: 100). The Table below provides an analysis of the nature of suspected offences notified in those reports. It should be noted that the number of reports received does not accord with the number of suspected offences reported as, in a number of instances, reports included reference to more than one suspected offence.

**Table 11 Analysis of suspected indictable offences reported by auditors**

	2016	%	2015	%
Directors' loan infringements	58	78	81	75
Failure to maintain proper accounting records	10	14	25	23
Issues relating to access to accounting records	2	3	0	0
Failure to prepare consolidated financial statements	3	4	0	0
Issues relating to the directors' approval of financial statements	1	1	0	0
Provision of false statements to auditors	0	0	2	2
<b>Total</b>	<b>74<sup>28</sup></b>	<b>100</b>	<b>108</b>	<b>100</b>

## EXAMINERS' REPORTS

Pursuant to section 534(6) of the Act, where an examiner is appointed to a company, s/he shall, as soon as may be after it is prepared, supply a copy of his or her report to the ODCE. Five such reports were received from examiners without prompting. A further 10 examiners submitted reports having been contacted and advised of their obligation to do so (total received 2015: 3).

## REFERRALS

As alluded to earlier in this Chapter, the Office forms part of a broader statutory framework that permits the exchange of confidential information between regulatory, enforcement and other relevant bodies, subject to safeguards and appropriate limitations. In that context, the Office receives referrals from other statutory bodies and entities from time to time. During the year under review, the Office received 28 (2015: 40) such referrals from a variety of sources.

<sup>29</sup> Decision Notice D/2006/2 – Revised Guidance on the Duty of Auditors to Report Suspected Indictable Offences to the Director of Corporate Enforcement. This was more recently supplemented by Information Notice I/2009/4 – Reporting Company Law Offences: Information for Auditors

<sup>30</sup> Whereas 69 auditors' reports were received, these included a total of 74 suspected indictable offences, i.e., some reports included indications of more than one suspected offence.

## PROFESSIONAL BODIES' INDICTABLE OFFENCE REPORTS

### Recognised Accountancy Bodies ("RABs")<sup>29</sup>

Where a RAB's Disciplinary Committee or Tribunal has reasonable grounds for believing that an indictable offence under the Act may have been committed by a person while that person was a member of the RAB, the RAB is required to report the matter to the Office<sup>30</sup>. Five such reports were received during the year under review (2015: 4).

### Prescribed Professional Bodies ("PPBs")

Similarly, where the Disciplinary Committee or Tribunal of a PPB finds that a member conducting a liquidation<sup>31</sup>, examinership<sup>32</sup> or receivership<sup>33</sup> has not maintained appropriate records, or has reasonable grounds for believing that the member has committed an indictable offence under the Act during the course of a liquidation, examinership or receivership, the PPB concerned is required to report the matter to the Office.

Pursuant to the Company Law Enforcement Act (Section 58) Regulations 2002<sup>34</sup>, the following were designated as PPBs (equivalent designations under sections 448, 558 and 688 of the Companies Act 2014 have yet to be given effect to):

- Association of Chartered Certified Accountants (ACCA);
- Chartered Institute of Management Accountants (CIMA);
- Institute of Certified Public Accountants in Ireland (ICPAI);
- Institute of Chartered Accountants in Ireland (ICAI);
- Institute of Incorporated Public Accountants (IIPA);
- Irish Tax Institute; and
- Law Society of Ireland.

No reports of this nature were received from PPBs during the year (2015: 0).

## LIQUIDATORS' REPORTS REGARDING POSSIBLE CRIMINALITY

In addition to their reporting obligations under section 682 as detailed above, in accordance with section 723(5) of the Act, liquidators are required, in circumstances where it appears that any past or present officer of the company concerned has been guilty of any offence in relation to the company, to make a report to the DPP and also to refer the matter to the ODCE. This reporting obligation extends to all liquidations, solvent and insolvent (i.e. both Members' and Creditors' Voluntary liquidations and Court liquidations) alike. No such reports were received by the Office during the year (2015: 2).

## DISCLOSURES UNDER THE PROTECTED DISCLOSURES ACT 2014<sup>35</sup>

Section 22 of the Protected Disclosures Act 2014 provides that every public body shall prepare and publish, not later than 30 June each year, a report in relation to the immediately preceding year in a form which does not enable the identification of the persons involved. The abovementioned report is required to specify:

- i. the number of protected disclosures made to the public body;
- ii. the action (if any) taken in response to those protected disclosures; and
- iii. such other information relating to those protected disclosures and the action taken as may be requested by the Minister for Public Expenditure & Reform from time to time.

The Office's report under section 22 is set out at Appendix 3 to this Report.

<sup>29</sup> A RAB is an accountancy body that is permitted to authorise its members and member firms, subject to those members having satisfied certain criteria, to act as statutory auditors and audit firms respectively. There are six RABs, i.e., the:

- Association of Chartered Certified Accountants (ACCA)
- Institute of Certified Public Accountants (ICPAI)
- Institute of Chartered Accountants in England & Wales (ICAEW)
- Institute of Chartered Accountants in Ireland (ICAI)
- Institute of Chartered Accountants of Scotland (ICAS)
- Institute of Incorporated Public Accountants (IIPA)

<sup>30</sup> Section 931(4) of the Act

<sup>31</sup> Section 688 of the Act

<sup>32</sup> Section 558 of the Act

<sup>33</sup> Section 448 of the Act

<sup>34</sup> S.I. 544 of 2002

<sup>35</sup> The Protected Disclosures Act 2014 is available at <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/pdf>



## INTERNAL INPUTS

### INTRODUCTION

As will be evident from the earlier part of this Chapter, the volume of external inputs received is such that most case files opened within the Office are opened in response to what are termed "external inputs", e.g., auditors' reports, liquidators' reports and complaints from members of the public. Alongside those external inputs, the Office also generates what are termed "internal inputs" through a proactive approach to enforcement of the Act.

The nature and composition of internal inputs varies from year to year having regard to a number of relevant considerations, including:

- the Office's particular compliance and/or enforcement objectives in that particular year or over a particular cycle;
- thematic and/or once-off issues arising;
- available staff resources and the associated skillsets; and
- other relevant facts and circumstances.

Internal inputs can, therefore, range across a variety of enforcement headings. Illustrative examples include:

- actions focussing on particular cohorts of persons, e.g., persons who are undischarged bankrupts, restricted or disqualified;
- civil or criminal enquiries commenced on own initiative;
- actions in respect of dissolved insolvent companies; and
- actions relating to liquidator performance/behaviour.

### ACTIONS FOCUSING ON PARTICULAR COHORTS OF PERSONS, E.G., PERSONS WHO ARE UNDISCHARGED BANKRUPTS, RESTRICTED OR DISQUALIFIED

During the course of the year enquiries were initiated in a number of instances in which suspicions arose that persons who were undischarged bankrupts, disqualified or restricted may have been acting as company directors or in other specified roles (e.g., such as auditors) while not permitted to do so.

### INVESTIGATIONS COMMENCED ON OWN INITIATIVE

As indicated above, the Office initiates civil and criminal enquiries and investigations on its own initiative where this is considered necessary or otherwise appropriate having regard to the underlying facts and circumstances. The triggers for such actions can include, for example:

- issues identified internally;
- issues referred internally;
- issues identified on foot of a review of material filed with the CRO or other relevant documentation;
- issues identified through monitoring of litigation;
- issues identified through a review of press reportage, the internet, social media etc.

Depending upon the nature of the underlying circumstances, these enquiries and investigations may be furthered through the use of:

- the Director's civil investigative powers;
- the Director's criminal investigative powers; and/or
- the powers vested in the Gardaí seconded to the Office by virtue of those officers being members of An Garda Síochána.

## DISSOLVED INSOLVENT COMPANIES

The Office characterises as “*dissolved insolvent companies*” those companies that:

- are struck off the Register for failure to file their annual returns; and which
- at the date of strike off, had liabilities, whether actual, contingent or prospective.

It is open to the Office to apply to the High Court for the disqualification of the directors of such struck off companies<sup>36</sup>. However, company law also provides<sup>37</sup> that the Court cannot disqualify a person who demonstrates to the Court that the company had no liabilities at the time of strike off or that those liabilities had been discharged before the initiation of the disqualification application. In considering the sanction to be imposed, the Court may instead restrict the director(s) where it adjudges that disqualification is not warranted under the particular circumstances<sup>38</sup>.

Where there is evidence to suggest that a company was insolvent at the date upon which it was struck off the Register, it is the Office's policy to consider seeking the disqualification of the company's directors. This is because, by allowing the company to be struck off the Register, the directors avoid bringing the company's existence to a conclusion in the appropriate manner, i.e., through the appointment of a liquidator. By not appointing a liquidator, the company's directors also avoid the scrutiny of their behaviour as provided for by section 682 of the Act.

Where it appears to the Office that a director is liable to be disqualified in these circumstances, it may offer the individual concerned the opportunity to voluntarily submit to a Disqualification Undertaking. In the context of the foregoing, also worthy of note is the fact that, where a company is struck off the Register, its remaining assets are vested in the Minister for Public Expenditure & Reform in accordance with the provisions of the State Property Act 1954.

## ACTIONS RELATING TO LIQUIDATOR PERFORMANCE/BEHAVIOUR

One of the statutory functions of the Director is to:

“...exercise, insofar as the Director considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under this Act”<sup>39</sup>.

Whilst the section 682 process, as outlined earlier in this Chapter, provides the Office with a means of indirectly supervising certain aspects of liquidators' work, from time to time the Office considers it appropriate or otherwise necessary to engage in more direct supervision of liquidators' work. This, more direct, supervision is effected through the exercise of the powers conferred by section 653 of the Act<sup>40</sup>.

Section 653 of the Act provides that the Director may:

- either on his own initiative or on foot of a complaint from a member, contributory or creditor of a company, request production of a liquidator's books for examination – either in relation to a particular liquidation process, or to all liquidations undertaken by the liquidator; and
- seek the liquidator's answers to any questions concerning the content of such books, and all such assistance in the matter as the liquidator is reasonably able to give.

The powers conferred upon the Director by section 653 are accompanied by certain safeguards and limitations, i.e.:

- the Office must inform the respondent liquidator of the reason(s) as to why the request is being made; and
- a request may not be made in respect of books relating to a liquidation that has concluded more than six years prior to the request.

## QUANTUM OF INTERNAL INPUTS - 2016

During the course of 2016, a total of 128<sup>41</sup>(2015: 69) internal inputs were generated.

<sup>36</sup> Section 842(h) of the Companies Act 2014

<sup>37</sup> Section 843(3) of the Companies Act 2014

<sup>38</sup> Section 845(3) of the Companies Act 2014

<sup>39</sup> Section 949(1)(e) of the Companies Act 2014

<sup>40</sup> Section 446 of the Act includes a similar provision relating to receivers

<sup>41</sup> Relating to the broad categories of bankruptcy, disqualification, restriction and examinership.

## PART B: THROUGHPUTS

Generally speaking, inputs, irrespective of whether from internal or external sources, result in the opening of a case file. In the case of liquidators' section 682 reports, cases generally reach a natural conclusion when a decision has been taken as to whether or not to relieve the liquidator of the obligation to seek the company's directors' restriction and, where relief is granted, the file is usually closed.

Where relief is not granted, or only partially granted (i.e., granted in respect of some, but not all, of the directors), the Office will usually invite the relevant director(s) to provide a Restriction (or Disqualification, if applicable) Undertaking. If the offer of an Undertaking is not accepted (or if the case is not one in which, in the Office's assessment, an Undertaking offer is appropriate), a Court application will have to be made by the liquidator. The Office monitors the progress through the Courts of the relevant restriction or disqualification proceedings and the outcome is recorded once the proceedings have been determined. However, the Office also reviews cases from time to time where concerns come to its attention regarding, for example:

- credible suggestions of excessive liquidators' fees;
- apparent failures to distribute assets on a timely basis; and
- apparent failures to conclude a liquidation within a reasonable timeframe.

In the case of other inputs, such as, for example, auditors' reports, public complaints, protected disclosures, referrals etc., a file is opened and the subject matter is examined to determine, in the first instance, whether the matter is one that comes within the Office's remit. Thereafter, cases are progressed on the basis deemed most appropriate to their individual circumstances, with methods of progression including, for example:

- meeting the complainant, typically with a view to obtaining an enhanced understanding of the issues being complained of;
- meeting the directors (for example, in a case relating to directors' loans);
- exercising civil powers, such as, for example, issuing demands to:
  - companies and their directors for the production of the minutes of meetings and statutory registers;
  - companies and their directors for the production of the company's books and records;
  - liquidators for the production of their books and records, i.e., the liquidator's own books and records as distinct from those of the company in liquidation (which may, in parallel, be sought);
  - auditors requiring the provision of supplementary information regarding an indictable offence report received;
  - persons acting, or purporting to act, as auditors for the production of evidence of their qualifications;
  - bankrupts who are acting as company directors and secretaries, seeking sworn statements relating to their insolvency status;
  - liquidators requiring that they file outstanding section 682 reports;
- exercising criminal powers, such as, for example, executing search warrants, exercising the powers of arrest and detention etc.;
- liaising with other statutory authorities potentially being in a position to assist the Office's enquiries, for example through the sharing of relevant information.

Upon completion of the Office's enquiries, a decision is made as to the most appropriate course of action to be taken. This can include, for example:

- the decision to take no further action (for example, where enquiries suggest that there has been no breach of company law or where the breach is minor in nature and enforcement action would, as a consequence, be disproportionate);
- a decision not to take enforcement action on this occasion but, rather, to issue a warning that any recurrence will precipitate enforcement action (for example, where the breach has been rectified and/or remediated and rectification/remediation has been evidenced to the ODCE's satisfaction);
- referral to other statutory authorities or professional bodies of matters relevant to their respective remits;
- the issuing of civil directions, e.g., directions to companies and/or their directors requiring the remedying of stated defaults within prescribed timeframes;
- the initiation of civil proceedings, i.e., Court applications for the purpose of seeking specified remedies;
- the initiation of summary criminal proceedings or referral of the matter to the DPP for consideration as to whether charges should be directed on indictment.

Set out in the following Tables are details of the various caseloads progressed by the Office during the year under review.

Details of the outputs that flow from the processing of the Office's various caseloads are detailed in the next section of this Chapter.

**Table 12 Throughput of liquidators' section 682 reports - 2016**

Section 682 reports on hand at 1 January, 2016		478
New reports received during 2016	683	
Less: Reports in respect of which determinations made during 2016	737	
<b>Section 682 reports on hand at 31 December, 2016</b>		<b>424</b>

Detail regarding the Office's determinations on liquidators' reports is provided later in this Chapter.

**Table 13 Throughput of other cases - 2016**

Other cases on hand at 1 January, 2016		70
New cases opened during 2016	483	
Less: Cases concluded during 2016	460	
<b>Other cases on hand at 31 December, 2016</b>		<b>93</b>

## PART C: OUTPUTS

### OUTPUTS FROM THE SECTION 682 PROCESS

#### Relief decisions made on liquidators' reports

The Office made definitive decisions (i.e. decisions other than to grant 'Relief at this time') on 736 liquidators' reports during 2016 (2015: 1,005), with a further 254 decisions made to grant 'Relief at this time' (2015: 362).

Of the definitive decisions taken during 2016, a total of 545 were made in respect of initial reports (2015: 784), with a further 191 being made in respect of subsequent reports (2015: 221).

The decisions taken in respect of initial and subsequent reports respectively are analysed in the following two Tables.

**Table 14 Analysis of decisions taken in respect of initial liquidators' section 682 reports**

Decision type	2016	%	2015	%
Full relief <sup>42</sup>	503	74	744	79
No relief <sup>43</sup>	27	4	28	3
Partial relief <sup>44</sup>	15	2	12	1
Relief at this time <sup>45</sup>	137	20	156	17
<b>Total</b>	<b>682</b>	<b>100</b>	<b>940</b>	<b>100</b>

**Table 15 Analysis of decisions taken in respect of subsequent liquidators' section 682 reports**

Decision type	2016	%	2015	%
Full relief <sup>42</sup>	138	45	174	41
No relief <sup>43</sup>	43	14	33	8
Partial relief <sup>44</sup>	10	3	14	3
Relief at this time <sup>45</sup>	117	38	206	48
<b>Total</b>	<b>308</b>	<b>100</b>	<b>427</b>	<b>100</b>

Complete lists of the directors, and associated companies, in respect of which full relief and relief at this time respectively were granted during 2016 are available at [www.odce.ie](http://www.odce.ie).

<sup>42</sup> Full relief is granted in cases where the Office forms the opinion that, based on the information available (including the liquidator's report(s)), all of the directors of the insolvent company appear to have acted honestly and responsibly in the conduct of the company's affairs.

<sup>43</sup> No relief is granted in cases where the Office forms the opinion that, based on the information available (including the liquidator's report(s)), there is insufficient evidence to demonstrate that any of the directors of the insolvent company acted honestly and responsibly in the conduct of the company's affairs.

<sup>44</sup> Partial relief is granted in circumstances where, based on the information available (including the liquidator's report(s)), the Office forms the opinion that some, but not all, of the directors of the insolvent company appear to have acted honestly and responsibly in the conduct of the company's affairs.

<sup>45</sup> 'Relief at this time' is granted in cases where the Office is satisfied that the liquidator needs more time in which to progress/complete his/her investigations into the circumstances giving rise to the company's demise. Similarly, on occasion, the Office considers it necessary to postpone making a definitive decision due to the complexity of certain companies' affairs and the associated necessity for supplemental engagement with the liquidators concerned. Where 'Relief at this time' is granted, the liquidator will be required to submit a subsequent report.

## Restriction and Disqualification Undertakings

As detailed earlier in this Chapter, following the commencement of the Act on 1 June, 2015, the Office introduced a procedure whereby those directors, in respect of whom it is determined that the liquidator should not be relieved of the obligation to apply to the High Court for their Restriction, may be invited to voluntarily submit to a Restriction (or Disqualification, if applicable) Undertaking. The Table below sets out the number of Undertaking offers issued during the year under review, together with details of the number of Undertaking offers accepted and declined respectively.

**Table 16 Undertaking offers issued, accepted and declined**

	2016		2015	
	Cases	Directors	Cases	Directors
Number of cases eligible for the issue of Undertaking offers	<b>89</b>	<b>151</b>	<b>26</b>	<b>49</b>
<i>Comprising of:</i> Restrictions	84	143	26	49
Disqualifications	5	8	0	0
Number of cases in which offers actually issued	<b>85</b>	<b>146</b>	<b>22</b>	<b>39</b>
<i>Comprising of:</i> Restrictions	80	138	22	39
Disqualifications	5	8	0	0
Number of cases in which offers were accepted, i.e., one or more Undertakings provided	<b>65</b>	<b>101</b>	<b>13</b>	<b>22</b>
<i>Comprising of:</i> Restrictions	60	93	13	22
Disqualifications	5	8	0	0
Number of cases in which offers were not accepted	<b>17</b>	<b>28</b>	<b>4</b>	<b>7</b>
<i>Comprising of:</i> Restrictions	17	28	4	7
Disqualifications	0	0	0	0
Number of cases in which offers were still under consideration at year end:	<b>3</b>	<b>17</b>	<b>5</b>	<b>10</b>
<i>Comprising of:</i> Restrictions	3	17	5	10
Disqualifications	0	0	0	0
<b>Total</b>	<b>85</b>	<b>146</b>	<b>22</b>	<b>39</b>

## Outcome of liquidators' Court applications

As indicated earlier in this Chapter, where not granted relief by the Office and where invitations to submit to Undertakings are not accepted, liquidators are required to apply to the High Court seeking the restriction of relevant company director(s). In certain instances, liquidators will, as a consequence of their own investigations and based on their assessment of director behaviour, opt to seek to have directors disqualified rather than restricted. The Table below sets out details of the results of liquidators' Court applications as delivered by the High Court during the year.

**Table 17 Results of liquidators' Court applications**

	2016		2015	
	Cases	Directors	Cases	Directors
Restriction Declarations granted	48	90	83	150
Disqualification Orders granted	7	11	10	14
Declarations or Orders not granted	11	23	14	34
<b>Total</b>	<b>62<sup>46</sup></b>	<b>124</b>	<b>107</b>	<b>198</b>

<sup>46</sup> Total does not equate to the sum of the above due to the fact that, in five cases, some directors were restricted while others were disqualified.

On foot of Undertakings or Court Orders, a total of 183 (2015: 172) directors were restricted and 19 (2015: 14) directors disqualified. Further analysis of the Orders made by the Court on foot of liquidators' applications and Undertakings is provided in Appendices 4 to 6 of this Report.

### Facts and circumstances considered by the High Court in making Disqualification Orders and by the ODCE in offering Disqualification Undertakings

Set out below, for illustrative purposes, are examples of the types of issues that were considered by the High Court in making Disqualification Orders or to which regard was had by the ODCE in offering Disqualification Undertakings (and in response to which Undertakings were accepted). The full list is set out at Appendix 5 to this Report. In all instances the Orders/Undertakings were on foot of liquidators' section 682 reports following, where necessary, the provision of additional information and clarification as sought by the ODCE:

- a company involved in operating a nursing home had its registration cancelled by the local District Court on the application of the Health Information & Quality Authority. Following the withdrawal of the registration, the directors left the State and took no further role in the affairs of the company. They failed to place the company in liquidation, allowing it to be struck-off for the non-filing of statutory returns. An uncontested Employment Appeals Tribunal hearing awarded former employees in the region of €181k and one of the former employees eventually had to petition for the winding up of the company in order for payment of the award to be made. The directors failed to co-operate with the liquidation, failed to provide any books and records to the liquidator, failed to provide a sworn Statement of Affairs and failed to respond to the questionnaire issued by the liquidator (High Court Disqualification);
- a director of a contract cleaning company had failed to declare in excess of €600,000 in tax liabilities in respect of PAYE/PRSI, VAT and Corporation Tax, which were identified by the Revenue Commissioners through an audit. The majority of the PAYE/PRSI liability arose from the transfer of a personal asset (office premises) as consideration for a director's loan balance with no independent valuation carried out at the time (High Court Disqualification);
- the Revenue Commissioners petitioned the High Court for the winding up of a company that was engaged in the provision of security services. The petition was in response to estimated accumulated tax liabilities in excess of €300,000. The liquidator reported that the directors made excessive wage payments to themselves and to individuals believed to be related parties and, moreover, withdrew cash from the company's bank account for wages in an amount that was substantially in excess of employees' wages. The directors also failed to account for all sales made by the company (High Court Disqualification);
- the longest disqualification in the history of company law was handed down by the High Court against a director of a collapsed investment firm who was found to have misappropriated approximately €66.5m in client funds. Two other directors were also given lengthy disqualifications from acting as company directors. The firm's failure to maintain proper accounting records rendered it difficult, and in some cases impossible, to determine where misappropriated client funds had been diverted to. The company was liquidated in 2011 after a High Court-appointed investigation by two Central Bank inspectors found "...systemic and deliberate misuse" of clients' money, the majority of which represented transfers to syndicated property investments. Sums of more than €2.3 million were diverted for the benefit of two of the directors and the company's books and records were kept in such a manner as to conceal the improper transfer of those funds (High Court Disqualification);
- a company that operated a self-service online event registration website was placed in liquidation when clients experienced difficulties in collecting receipts from the company. The company allowed customers to use the site to create their own web pages to advertise and sell tickets for events. It subsequently emerged that the main director was siphoning off significant amounts of funds from the company. The software developed for the company should have been intended and designed to direct payments to a trust account or the actual account of the event organiser. A total of €967,276 had been siphoned off by this director to a PayPal account controlled exclusively by him (High Court Disqualification);
- the directors of a company involved in operating a public house engaged in systematic and deliberate under-declaration and under-payment of VAT for a period of at least two years, resulting in undeclared debts to the Revenue Commissioners of in excess of €200,000. The directors continued to trade while insolvent during these two years. The liquidator reported concerns over the maintenance of proper accounting records and had serious concerns that cash was being withdrawn from the business in an improper manner (Disqualification Undertaking);
- a company involved in the construction industry failed to discharge tax liabilities of in excess of €700,000. Moreover, bank liabilities may have been discharged from property sale proceeds in preference to tax liabilities and following the issuing of payment demand proceedings by the Revenue Commissioners (Disqualification Undertaking);

- the directors of a company involved in selling overseas properties sold a number of properties in both Turkey and Bulgaria on behalf of clients but, instead of forwarding the net proceeds to the owners of the properties, used those proceeds to pay amounts to other clients and to discharge company salary costs. The Revenue Commissioners petitioned for the winding up of the company following a Revenue Attachment Order being placed on the company's bank account. The liquidator reported that limited tax payments were made during the lifetime of the company. The sworn Statement of Affairs indicated tax liabilities of approximately €102k at liquidation and approximately €715k in unsecured creditors, much of which related to property owner funds not repaid. The company had also been prosecuted for various breaches of the Property Services Regulations for carrying on unlicensed property service activities (Disqualification Undertaking);
- in a further unrelated case, directors of a construction company failed to discharge the VAT arising on the sale of houses by the company in circumstances where the VAT liability was, or ought to have been, known at the time of sale of each of the houses (the amounts that should have been remitted to the Revenue Commissioners instead being used to discharge loan liabilities). The directors also transferred two houses each for their own benefit or for the benefit of their families (Disqualification Undertaking);
- a company involved in operating two retail outlets failed to record cash receipts for one retail outlet for nearly 12 months and for the second outlet for some 3 months prior to the cessation of trading (or, at a minimum, failed to make any such records available to the liquidator). The absence of proper books and records meant that the liquidator was unable to determine the correct amount of tax liabilities owed by the company or to otherwise review tax compliance by the company. The liquidator indicated that tax returns had been filed on the basis of guesses of the amount of tax due, which he considered reckless. The liquidator also confirmed that he was unable to satisfy himself that cash payments to the directors or staff were properly recorded. This left open the possibility that PAYE/PRSI returns made were false (Disqualification Undertaking);
- a company engaged in the provision of financial advisory and accounting services failed to discharge a VAT liability of close to €160,000, which was raised following a Revenue audit. A substantial distribution of company assets - in excess of €212,000 - was made to a connected company despite the commencement of the audit. Notwithstanding that a body corporate is not permitted to perform audit services, the company in question issued a number of audit reports that it was not eligible to do so and a principal director of the company may have forged client signatures in various accounts filed with CRO. The liquidator also believed that the company acted as its own auditor in breach of company law (High Court Disqualification);
- a company involved in operating a public house engaged in a practice whereby recorded cash takings were used to fund an abnormally high level of cash payments for goods and services throughout the lifetime of the company. Company stock was routinely transferred from the company to the principal director's new venture and product for this new venture was paid for from company cash assets. Cash wage payments were made to staff and remittances in respect of PAYE and other payroll taxes were made irregularly and tax returns were not made for some periods. The liquidator estimated that the undischarged liability for PAYE and other payroll taxes was €186,814. The undischarged VAT liability was €84,512. During the 12 months prior to liquidation, payments totalling €42,428 were made for the principal director's personal benefit and for his associated businesses (Disqualification Undertaking).

## OUTPUTS FROM ENFORCEMENT WORK

The Office's enforcement work takes a variety of forms, including:

- engaging with company directors and other interested parties with a view to securing the voluntary rectification/remediation of instances of non-compliance;
- exercising the Director's powers to secure compliance and/or to progress enquiries and investigations;
- exercising the Director's functions to permit/facilitate compliance;
- seeking civil remedies in the High Court in response to indications of non-compliance;
- taking summary criminal proceedings before the District Court;
- where, having conducted an investigation and concluded on the basis of same that the indications of suspected criminality are such that trial on indictment may be warranted, referring investigation files to the DPP for consideration as to whether the matters therein warrant criminal prosecution before the Circuit Court; and
- referring indications of possible breaches of regulatory provisions other than those relating to company law to other relevant regulators (incorporating also the referral of relevant matters to professional bodies).

The principal outputs associated with the Office's enforcement activities are detailed below.



## SECURING VOLUNTARY RECTIFICATION/REMEDATION

### Directors' loans infringements

In 60 cases (2015: 89) where suspected directors' loan infringements had been reported by auditors, or had otherwise come to attention, the Office's actions resulted in rectifications (including the repayment/reduction of loans) totalling €17m (2015: €21m). Such rectifications are in the interests of affected companies' members and creditors.

### Failure to comply with accounting standards

Section 291(3) of the Act requires companies to prepare their financial statements, *inter alia*, in accordance with applicable accounting standards. Section 291(9) provides that failure to comply with that requirement is a Category 2 offence on the part of the company and any officer in default. In 2 (2015: 0) instances where companies' failure to comply with accounting standards had been reported to the Office by way of indictable offence reports, warnings issued to the companies in question. Specifically, the directors of the companies in question were afforded the opportunity to address the underlying non-compliance and warned that, in the event of reoccurrence, enforcement action was the likely response.

### Persons acting as company directors while not permitted to do so

During the year, the registers of disqualified, deemed disqualified and restricted persons, as maintained by the Registrar of Companies, were reviewed. Arising from that review, a total of 83 instances were identified where persons appeared to be acting in contravention of such Orders/provisions. Following intervention by the Office, the individuals' positions were regularised.

### Total cautions issued

In addition to the foregoing, cautions issued to a total of 59 companies (2015: 73) on a variety of matters.

## SECURING COMPLIANCE AND PROGRESSING ENQUIRIES AND INVESTIGATIONS THROUGH THE EXERCISE OF THE DIRECTOR'S STATUTORY POWERS

A broad range of legislative provisions were utilised during the course of the year under review in order to both secure compliance with company law and to progress enquiries and investigations respectively. Specific outputs in that regard included:

- serving 3 statutory directions under section 778 of the Act (2015: 4), requiring the recipient companies to produce specified books and documents;
- serving 2 statutory directions under section 780 of the Act (2015: 0), requiring third parties to produce specified books and documents relating to books and documents required under production orders served under section 778;
- serving 2 statutory requests under section 653(3) of the Act (2015: 0), requiring former statutory auditors of a company, now in liquidation, to produce certain books and records for examination;
- serving 3 orders under section 7A of the Bankers' Books Evidence Act 1879 (2015: 0), requiring that the respondent banks should permit an officer of the Director to be at liberty to inspect and take copies of certain banking records required for the investigation of specified indictable offences under the Companies Act;
- 106 statutory directions (2015: 128), pursuant to section 797(1) of the Act, requiring liquidators to comply with their reporting obligations under section 682;
- 2 directions under section 175(5) of the Act requiring the convening of companies' Annual General Meetings ("AGM") (2015: 2). These directions were issued following the consideration of complaints received from members of the companies concerned.

## PERMITTING/FACILITATING COMPLIANCE THROUGH THE EXERCISE OF THE DIRECTOR'S STATUTORY FUNCTIONS

During the year, two requests (2015: 0) were received from companies seeking a direction disapplying the limitation in section 288(9) of the Act, under which, ordinarily, a company may not alter its current or previous year end date more than once in a five year period. In both instances, the requisite approval was granted under section 288(10)(c) of the Act.

## CIVIL REMEDIES SOUGHT

### High Court application

During the year one application was made to the High Court in the context of proceedings that had been initiated by a company seeking that it be wound up by the High Court. The company in question was one in respect of which a criminal investigation by the Office had already been commenced. On the consent of all relevant parties, the High Court made an order directing the provisional liquidator (who the Court had, on that same day, appointed to the company) to allow the Office to forthwith take possession of certain original and copy documentation of, or relating to, the company's affairs, subject to certain specified safeguards which were put in place to vindicate the privacy entitlements of certain third parties.

### Dissolved insolvent companies

Several thousand companies are struck off the Register in any given year. However, only some of these would actually be insolvent (i.e., unable to discharge their debts as they fall due) at the date of strike off. Many more would typically never have traded or would have discharged all outstanding liabilities prior to being struck off. Against this backdrop, the Office has historically pursued a policy of seeking to identify companies where there is evidence of material unpaid debts having existed at the date of strike off. In the case of such companies, the Office's policy has historically been to consider seeking the disqualification of such companies' directors by way of applications to the High Court.

During 2016, two pre-existing applications were adjudicated upon by the High Court, details of which are set out in the Table below.

**Table 18 Dissolved Insolvent Companies: High Court Determinations**

Company	High Court determination
Prorep Limited	On 11 April, 2016 the Court disqualified two persons for three years each. The Court further measured costs in the sum of €3,500 towards the ODCE's costs.
Sally Anne's Temple Limited	On 11 April, 2016 the Court disqualified one person for three years. The Court further measured costs in the sum of €3,500 towards the ODCE's costs.

No new applications were made during the year. The primary factors contributing to the lack of new applications were:

- the knock-on implications of the Office's appeal to the Court of Appeal in the case of "Director of Corporate Enforcement V Walsh & Ors" [2016] IECA 2 (the circumstances surrounding which were set out in detail the Office's 2015 Annual Report). Specifically, pending clarification of the principles and issues involved by the Court of Appeal, the office had taken a decision not to initiate any new applications;
- competing enforcement priorities; and
- staffing issues.

The Court of Appeal allowed the Office's appeal and overturned the High Court's decision. The principal aspects of the Court of Appeal's judgement were set out in the Office's 2015 Annual Report. In delivering its judgement, the Court of Appeal imposed Orders of Restriction for five years each on the three respondents pursuant to section 150 of the Companies Act 1990. The Court of Appeal further made an order for costs in the sum of €4,000 towards the ODCE's costs.

## Other civil litigation

During the year under review, the Office was also involved in miscellaneous civil proceedings, details of which are set out in the Table below.

**Table 19 Miscellaneous Civil Proceedings**

<p>Relief applications under section 152 of the Companies Act 1990 / section 822 of the Companies Act 2014</p> <p>In three instances during the year, persons who were the subject of Restriction or Disqualification Orders indicated to the Office their intention to apply to the High Court for relief from the terms of those orders.</p>	<p>In the first case (Mr. Keith McGowan / Camlin Electric Limited / Tarmonbarry Hydroelectric Limited), given that the individual concerned (who was seeking relief for the purposes of facilitating employment abroad) had served more than 4 years of the 5 year restriction term and in light of his relative youth, the ODCE did not object to the application. The Court granted the relief sought.</p> <p>In the second case (Mr. Fearghal O’Nolan / Pierce Contracting Limited), having elicited further information and clarification as considered necessary, the ODCE did not object to this application. The Court granted the relief sought.</p> <p>In the third case (Mr. Michael Keane / National Irish Bank Limited), following engagement with the ODCE, the prospective applicant withdrew his proposed application for relief and agreed to make a contribution of €5,000 towards the ODCE’s costs.</p>
<p>Application by the Director of Corporate Enforcement to be joined as a Notice Party to existing High Court proceedings</p> <p>Newbridge Credit Union Limited (In liquidation) – the High Court – 2016 No. 362 COS – Jim Luby v Ben Donnelly + Others</p>	<p>In September 2016, proceedings were served on the ODCE. The litigation dealt with the winding up of a Credit Union, which was taking place pursuant to Part 7 of the Central Bank and Credit Institutions (Resolutions) Act 2011 and, specifically, whether the restriction provisions of the Companies Act 2014 should/would apply to the winding up. The ODCE was successful in its application on 21 November, 2016 to be joined to the liquidation proceedings as a Third Party, on the same day that the Credit Union Development Association (CUDA) also successfully applied to be joined to the proceedings as an <i>Amicus Curiae</i><sup>47</sup>. The parties were directed to exchange Outline Written Legal Submissions in advance of the hearing then scheduled for 6 March, 2017. That hearing date has now been vacated with the hearing now listed to take place over two days commencing Tuesday 20 June 2017.</p>

## SUMMARY CRIMINAL PROCEEDINGS

As has been set out in detail in previous Annual Reports, in recent years the Office has made a conscious policy decision to devote less resources towards pursuing criminality on the less serious end of the spectrum in favour of concentrating its resources on investigating more serious indications of wrongdoing. Consistent with that repositioning policy, the Office did not initiate any summary prosecutions during the year.

<sup>47</sup> Friend of the Court

## INDICTABLE CRIMINAL PROCEEDINGS

Consistent with the aforementioned policy, during the year the Office had a significant level of engagement with the Office of the DPP, details of which are set out below.

### Files referred to the DPP

During 2016, the ODCE submitted 5 files to the DPP, details of which are set out in the Table below.

**Table 20 Files submitted to the DPP in 2016**

File	Status at year end
1	Charges directed (summary disposal): <ul style="list-style-type: none"> <li>• one count of Deception contrary to section 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001</li> <li>• one count of Using a False Instrument contrary to section 26 of the Criminal Justice (Theft and Fraud Offences) Act 2001</li> <li>• one count of Furnishing False Information contrary to section 242(1) of the Companies Act 1990</li> </ul>
2	File under consideration by the DPP
3	File under consideration by the DPP
4	File under consideration by the DPP
5	File under consideration by the DPP

### Criminal trials

Previous Reports have included details of the proceedings initiated by the DPP in which Mr. Sean FitzPatrick, the former Chairman and Chief Executive of Anglo Irish Bank Corporation plc, was charged with 21 alleged breaches of section 197 (i.e., false statements to auditors) and 6 alleged breaches of section 242 (i.e., furnishing false information) of the Companies Act 1990. Mr. FitzPatrick's retrial in connection with those charges began before His Honour Judge Aylmer and a jury in the Dublin Circuit Criminal Court on 21 September 2016. At that time it was envisaged that the trial would be likely to conclude by the end of 2016. However, the bulk of the Court's time between September and December was taken up with legal issues which required to be dealt with in the absence of the jury, and in respect of which no reporting is permissible during the currency of the trial. As at the date of submission of this Report, the trial is still ongoing.

A separate trial of Mr. William McAteer and Mr. Patrick Whelan, also former directors of Anglo Irish Bank Corporation plc, was scheduled to commence in the Dublin Circuit Criminal Court on 16 January 2017. The DPP had directed that both accused should be tried on indictment in respect of alleged breaches of section 297 of the Companies Act 1963 (i.e., fraudulent trading). On 19 December 2016, in advance of the trial date, Mr. McAteer entered a plea of guilty. On 21 December 2016, Mr. Whelan entered a plea of guilty to a charge of a breach of Section 44(1) of the Companies Act 1990 (i.e., licensed bank's register of lending to directors and connected persons) in lieu of the alleged offence under section 297. In early 2017 His Honour Judge Martin Nolan sentenced Mr McAteer to imprisonment for a term of two and a half years, and fined Mr Whelan €3,000, in respect of the offences to which they had pleaded.

During the year His Honour Judge Terence O'Sullivan directed that the trial of Mr David Drumm, a former director and Chief Executive of Anglo Irish Bank Corporation plc, should commence on 12 January 2018 for the following offences with which he was charged:

- 1 alleged contravention of Regulation 76(2) & (4) of the Transparency (Directive 2004/109/EC) Regulations 2007, as applied by section 21 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006;
- 7 alleged contraventions of section 25 of the Criminal Justice (Theft and Fraud Offences) Act 2001;
- 7 alleged contraventions of section 243(1) of the Companies Act 1990 and section 240(1)(b) of the Companies Act 1990, as inserted by section 104 of the Company Law Enforcement Act 2001;
- 16 alleged contraventions of section 60(1) & (15) of the Companies Act 1963, as amended by section 15 of the Companies (Amendment) Act 1982 and section 240(8) of the Companies Act 1990, as inserted by section 104 of the Company Law Enforcement Act 2001.

As at the date of this Report, that trial is still scheduled to commence in January 2018. However on 7 April 2017 another trial of Mr Drumm, that had been scheduled to commence on 24 April 2017, was adjourned and a new trial date has not yet been fixed. In the light of the postponement of that (earlier) trial of Mr Drumm, it is conceivable that the commencement date of 12 January 2018 for the second trial might yet have to be put back.

## REFERRALS TO PROFESSIONAL AND OTHER REGULATORY BODIES

Whilst there is an obligation upon the Office to keep confidential information that comes into its possession, there is statutory provision<sup>48</sup> for the disclosure of information to certain third parties (including other regulatory bodies and certain professional bodies) provided that certain prescribed criteria are satisfied.

Pursuant to the foregoing provision, 1 referral (2015: 7) was made to a RAB during the year. Having regard to its statutory remit *vis-à-vis* the RABs, such referrals are always copied to IAASA.

Issues typically referred to RABs include:

- suspected instances of members purporting to conduct audits whilst not authorised by their professional bodies to do so or where otherwise precluded from doing so by virtue of law or professional obligations;
- non-reporting, or delayed reporting, of suspected indictable offences;
- matters relating to the nature of audit opinions provided in respect of companies limited by guarantee;
- failure to respond to queries raised by the Office subsequent to receipt of indictable offence reports.

In addition to the foregoing, the Office makes referrals to other regulatory bodies as considered necessary or otherwise appropriate.

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<sup>48</sup> Section 956 of the Companies Act 2014

# CHAPTER 4

PROVIDING QUALITY  
CUSTOMER SERVICE TO  
INTERNAL AND EXTERNAL  
STAKEHOLDERS

## PROVISION OF A QUALITY CUSTOMER SERVICE TO EXTERNAL STAKEHOLDERS

### Customer service standards

During the year under review, the Office remained committed to providing a quality customer service to its own staff and to all members of the public with whom it has dealings. The feedback and formal complaints services, as provided for on the Office's website, are integral to that commitment.

### Customer Charter

Following a public consultation process, the Office published a new suite of customer care documents during 2016. These documents, which are available on the ODCE's website, provide detail of, amongst other things:

- the Office's service standards;
- the standards that customers may expect from the Office; and
- principal contact points.

No formal customer complaints were received during the year.

### Nature of principal engagements with external stakeholders

The Office's principal engagement<sup>49</sup> with external stakeholders includes:

- i. the provision of guidance and related material;
- ii. outreach activities;
- iii. handling queries and complaints from members of the public;
- iv. managing and developing relationships with external stakeholders; and
- v. website/social media.

Activities associated with (i), (ii) and (iv) above, which for the most part fall within the remit of the Head of Enforcement (currently vacant), are elaborated upon in Chapter 2 of this Report. With the exception of complaints regarding alleged breaches of company law, which are dealt with in Chapter 3, the activities associated with (iii) and (v) above, which also fall within the remit of the Head of Enforcement, are further elaborated upon below.

### Public enquiries

The Office provides, to the extent practicable, information on general company law matters to interested parties.

In order to further assist querists, the Office has developed a series of Frequently Asked Questions ("FAQ") and responses thereto, which are available on the website<sup>50</sup>. The FAQ section of the website is regularly reviewed and supplemented as necessary. As well as consulting the website, queries may also be directed to the Office's information email address (info@odce.ie) as well as being submitted by telephone.

While the Office deals with the majority of queries by reference to the services outlined above, some queries require a more detailed and considered response and the Office deals with numerous such queries each year. The Office is not, however, in a position to provide querists with legal advice and, in circumstances where the nature of an enquiry suggests it to be the case, querists are advised that they should consider seeking independent professional advice.

### Website

The Table below details those sections of the website that attracted the most traffic during the year under review. The number of visits to the website as a whole from mobile devices was over 2,880.

<sup>49</sup> i.e. excluding parties being engaged with in the context of the Office's enforcement remit

<sup>50</sup> www.odce.ie/faq.aspx

**Table 21 Top 5 most visited sections of the website - www.odce.ie**

Page	Views
Publications	46,607
Court Decisions	37,996
Company Law and You	31,213
FAQs	14,076
About the ODCE	12,045

By way of further elaboration, the Table below details the 20 most frequently visited individual pages (i.e., as opposed to sections) on the website during the year (excluding the site's home page). As in previous years, the FAQ section featured heavily in the most viewed pages. Taking all the FAQ pages together, they attracted over 15,400 views during the year.

**Table 22 Top 20 most viewed pages - www.odce.ie**

Page	Views
Information Books Page	8,193
Company Law & You / Companies, Directors, Secretaries - Responsibilities	7,911
Publications Page	6,279
Quick Guides Page	6,064
Company Law & You Page	4,359
About the ODCE Page	4,157
Company Law Guidance Publications Page	3,576
Company Law & You / Corporate Governance	3,111
FAQ - Directorship of a Company	2,898
Functions of the ODCE Page	2,868
Court Decisions Page	2,801
FAQs Page	2,728
Our Role Page	2,257
Contact Us Page	2,197
Company Law & You / Companies, Directors, Secretaries	2,145
FAQ - Membership of a Company	2,075
Prosecution Cases 2015	1,752
Functions of the Director Page	1,749
Prosecution Cases Page	1,658
Media Presentations Page	1,619

In addition, the website's search facility was used over 4,500 times during the year. At year end, some 955 persons were registered to receive website notifications by email. The Office also provides an Irish language version of its website and just under 1.7% of website traffic was to the Irish version (www.osfc.ie).



## Social media

The Office continues to utilise various social media platforms to communicate with its stakeholders. Specifically, the Office operates on three platforms, i.e., Facebook, Twitter and LinkedIn. These media are used to highlight and promote the Office's advocacy and enforcement activities respectively, as well as to inform followers of developments on the wider company law landscape. By year end, the Office had attracted 1,675 followers across these various fora (2015: 1,547).

## PROVISION OF A QUALITY CUSTOMER SERVICE TO INTERNAL STAKEHOLDERS

### Staff training & development

Performance management applies across all Government Departments and Offices and is implemented each year by the Office. It seeks to ensure that the roles of individual staff are clear and that they are aligned with overall corporate objectives, while facilitating performance review and management. It also directly links Office training programmes and expenditure to the role of each staff member. To the extent practicable, the Office supports staff members in their training and development needs.

A total of 21 Office staff received a total of 30 days' training during 2016 (2015: 102), including:

- training provided by in-house resources – 23 days, relating to 14 staff; and
- training provided by the Department – 7 days, relating to 9 staff.

During 2016, the Office assisted a number of staff members to undertake the following education, training and development:

- Regulatory Investigations & Prosecutions;
- Expert Evidence 2016 – The New Regime;
- B. Sc. in Police Leadership & Governance (run by UCD in conjunction with An Garda Síochána);
- accountancy staff members' CPD<sup>51</sup> requirements; and
- solicitor staff members' CPD requirements.

### Association of Law Enforcement Forensic Accountants ("ALEFA")

ALEFA was formally established in October 2014 within the Europol Headquarters in The Hague. ALEFA Network was established to develop the quality and reach of forensic accountancy throughout law enforcement agencies, to better assist the courts, victims, witnesses, suspects, defendants, and their legal representatives in relation to the investigation of alleged fraud, fiscal, financial and serious organised crime.

The ALEFA network involves all EU Member States, representatives from the USA, Australia, Canada, and other European countries, together with organisations including Europol, Eurojust and OLAF. ODCE investigative accountants attended the second ALEFA Conference held at Europol Headquarters in November 2016. ODCE's investigative accountants also hold membership on the ALEFA Steering Group which manages European Commission funded projects related to law enforcement forensic accounting. One of the stated objectives of ALEFA is to develop chapters in each country and individual membership for forensic accountants employed in a law enforcement capacity. The ODCE investigative accountants are members of the ALEFA UK and Ireland chapter and participate in conferences, training and networking events.

<sup>51</sup> Continuing Professional Development

## COMPLIANCE WITH OBLIGATIONS ON FOOT OF LAW, REGULATION AND BY VIRTUE OF THE OFFICE'S STATUS AS A PUBLIC SECTOR ENTITY ESTABLISHED BY STATUTE

### Parliamentary Questions ("PQ")

The Office is regularly requested to provide information/material to the Department to assist it in preparing Ministers' responses to Deputies' PQs. In addition, the Office is sometimes itself the subject of Deputies' PQs. During the year, the Office provided material in response to 31 PQs (2015: 31).

### Prompt Payment of Accounts Act 1997

The Prompt Payment of Accounts Act provides for the payment of interest to suppliers whose invoices are unpaid at a prescribed date (usually 30 days after receipt of the invoice). In the current economic climate where cash flow is vital to business, Government policy is to pay suppliers within 15 days of receipt of an invoice. During the year there were two instances of invoices being paid outside of the time limits, as a result of which prompt payment interest of €10.94 was paid together with penalties of €360 (2015: nil).

### Risk Management Action Plan

During the year, the ODCE reviewed and updated the Office's risk management plan in consultation with the Department.

### Freedom of Information (Fol)

Most records of the Office (i.e., all records other than records concerning its general administration) are exempt from the Fol Acts. During 2016, three requests were received. Two requests sought records not covered by the Fol Acts and were, as a consequence, refused. The third request concerned records held by both the Office and the Department and, as such, records were furnished by both the Office and the Department.

As required under Fol Legislation, the Office's draft Fol Publication Scheme was published during the year.

### Data Protection Acts

During the year, the Office maintained its registration as a data controller with the Office of the Data Protection Commissioner. The Data Protection Acts 1988 to 2003, and associated Statutory Instruments, protect against the improper use or disclosure of any information held about an individual. These obligations are consistent with the Office's own strict confidentiality requirements, as stipulated by section 956 of the Act.

During the year under review, three requests for information were made to the Office under the Data Protection Acts. All three of these requests had to be refused due to the nature of the records held by the Office, in accordance with the legislation under which the Office operates.

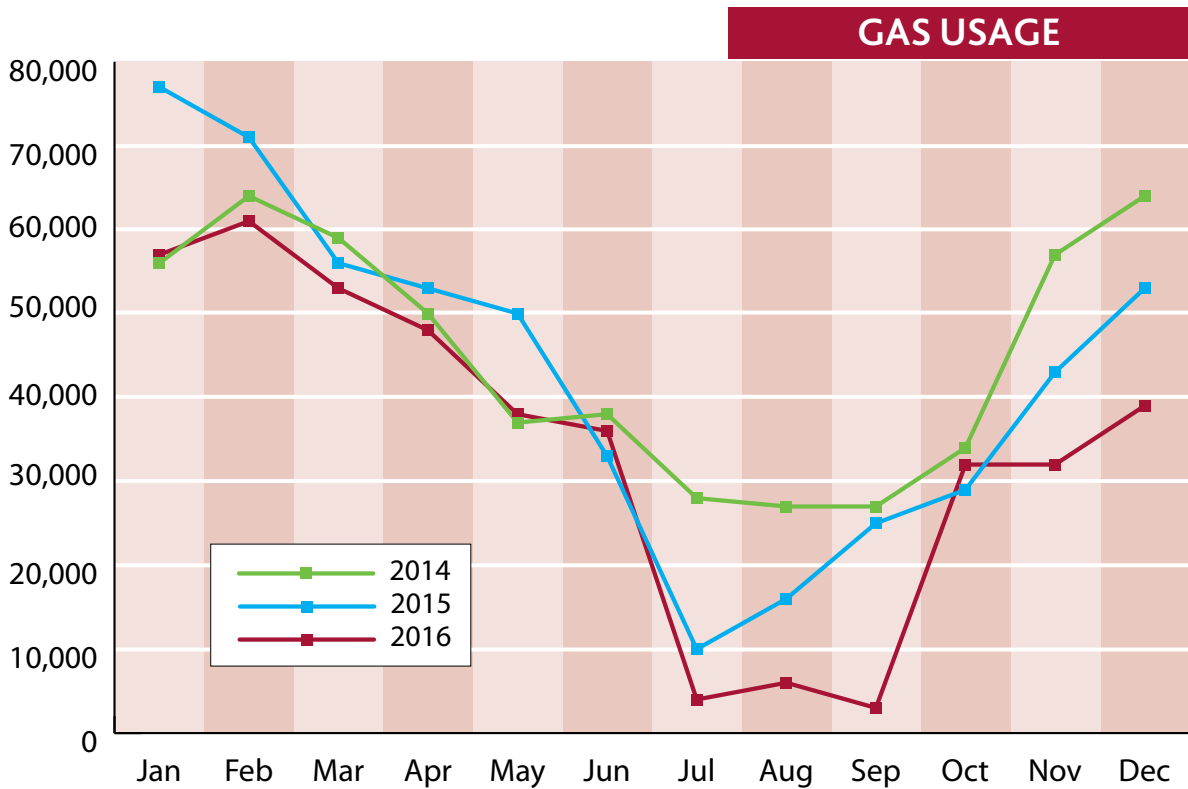
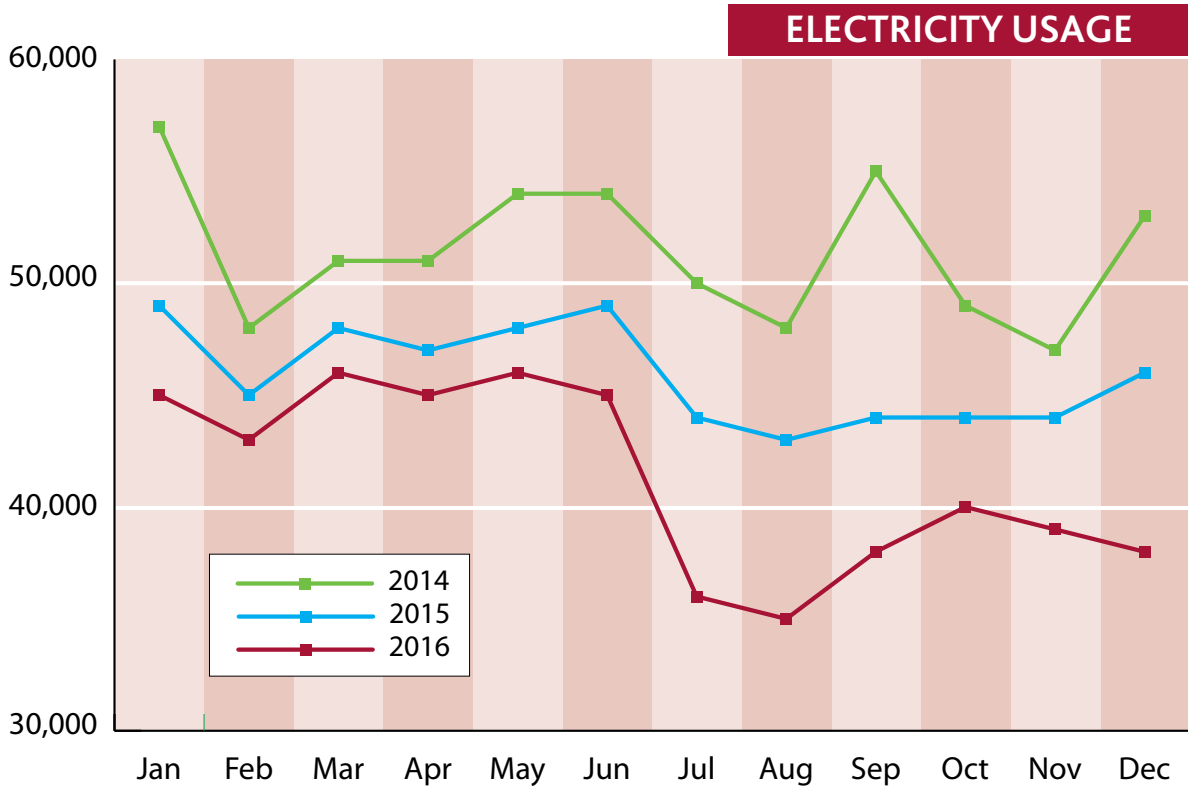
### Energy consumption

The Office shares its premises with several other occupants, and, at 45.62%, the proportion of space allocated to the Office is slightly less than half. Approximately half of all electricity used in the building is for lighting and the powering of office equipment, while heating and air conditioning accounts for the remainder. Gas consumption is primarily used for heating water used in the building's heating system.

Gas consumption for the year (which is primarily used for heating air and water) was 410,000 kilowatt hours (kwh) (2015: 517,000 kwh), of which the ODCE was responsible for approximately 187,000 kwh. Electricity consumption was 499,000 kwh (2015: 553,000 kwh), of which the ODCE was responsible for approximately 228,000 kwh.

During the year, the Office continued to monitor its energy usage. By way of participation in a "Green Team" comprising of representatives of the building's various occupants, the Office continues to seek to devise initiatives to further curtail energy consumption. Two information sessions for staff on ways to reduce energy and water consumption at home and in the office took place during the year. The Green Team reviewed the hours during which the heating system is used, balancing staff comfort and a reduction in energy usage. Usage charts for 2014 to 2016 are set out below.

The target for energy consumption reduction in 2016 was 5%. Ongoing problems with the heating and air conditioning system resulted in the system having to be switched off for much of the summer, and this is reflected in the drop in energy usage. The energy performance outturn represented a reduction of 10% in electricity usage and a reduction of 21% in gas usage, giving an overall saving of 15% on the previous year.



#### Official Languages Act 2003

The Office drafted a second Scheme under the Act in 2011 and awaits agreement with An Coimisinéir Teanga on that Scheme. In the interim, the previous Scheme remains in force, as well as the statutory requirements of the Act. The ODCE, therefore, continued during the year under review to monitor its compliance with that legislation and with its Scheme.

# APPENDICES

# APPENDIX 1

## ALLOCATED VS. ACTUAL EXPENDITURE: 2014 – 2016

	2014		2015		2016	
	€000s	€000s	€000s	€000s	€000s	€000s
<i>Allocation</i>						
Exchequer Grant	4,672		5,091		5,015	
Exchequer Legal Costs	50	4,722	50	5,141	50	5,065
<i>Expenditure</i>						
Salaries	2,215.8		2,156.0		2,006.0	
Advertising & Publicity	23.6		23		25.7	
Office Premises	308.0		346.8		320.5	
Legal Expenses	239.8		131.8		81.7	
Consultancy	85.8		245.1		50.0	
Computerisation	25.2		26.5		176.6	
Printing	13.9		64.4		23.2	
Incidental Expenses	7.9		8.4		12.0	
Travel & Subsistence	24.3		15.8		15.8	
Telecommunications	34.5		37.5		23.7	
Postal/Courier Services	13.1		4.9		14.7	
Office Machinery & Photocopying	5.5		3.6		60.6	
Human Resource Development	15.0	3,012.4	8.6	3,072.4	17.0	2,827.6
<b>Amount surrendered</b>		<b>1,709.6</b>		<b>2,068.6</b>		<b>2,237.4</b>

## APPENDIX 2

### PRESENTATIONS DELIVERED – 2016

Promoter	Subject	Venue	Speaker
Marino College	The ODCE – Setting the Standard	Marino College, Dublin	Eileen McManus
Blanchardstown Institute of Technology	Roles & Responsibilities of Company Directors	IT, Blanchardstown	Kevin Prendergast
Local Government Management Agency	Overview of Corporate Insolvency – Powers of Creditors	LGMA House, Dublin	Kevin Prendergast
The Honorable Society of King's Inns	Recent developments in enforcement	The Honorable Society of King's Inns, Henrietta Street, Dublin	Ian Drennan
Sutherland School of Law	The ODCE – Encouraging Compliance, Enforcing the Law	UCD	Kevin Prendergast
Letterkenny Institute of Technology	The ODCE – Encouraging Compliance, Enforcing the Law	IT, Letterkenny	Kevin Prendergast
Waterford Institute of Technology	Roles & Responsibilities of Company Directors	IT, Waterford	Kevin Prendergast
School of Hospitality Management & Tourism	Good Corporate Governance	Dublin Institute of Technology, Cathal Brugha Street, Dublin	Kevin Prendergast
National University of Ireland, Maynooth	The ODCE – Encouraging Compliance, Enforcing the Law	NUI, Maynooth	Kevin Prendergast
National University of Ireland, Galway	The ODCE – Encouraging Compliance, Enforcing the Law	NUI, Galway	Kevin Prendergast
Garda Economic Crime Bureau	Detective Sergeant's Money Laundering Course	Garda HQ, Phoenix Park, Dublin	Detective Garda Gary Callanan
KPMG/ICSA	ODCE and the Companies Act – One Year on	The Ballsbridge Hotel, Dublin	Kevin Prendergast
Dell Bank International	Role of the ODCE	Cherrywood, Dublin	Kevin Prendergast
Sligo Local Enterprise Office	Company Law Update and Companies Act 2014	Council Chamber, City Hall, Sligo	Kevin Prendergast
Insolvency Practitioners of Ireland	Insolvency functions of the ODCE	Chartered Accountants House, Pearse St, Dublin	Conor O'Mahony
Dublin Solicitors Bar Association	Companies Act 2014 – One year on	McCann FitzGerald Dublin	Kevin Prendergast
Chartered Accountants Ireland	A Regulator's Practical Experience of Criminal Investigations and Forensic Accounting	Chartered Accountants House, Pearse Street, Dublin	Kevin Prendergast
MSc Executive Leadership	The ODCE – Encouraging Compliance, Enforcing the Law	Vienna Woods Hotel, Cork	Kevin Prendergast
Mallow Chamber	Company Law Update and the Companies Act 2014	Hibernian Hotel, Mallow, Cork	Kevin Prendergast
Clare Local Enterprise Office	Company Law Update and the Companies Act 2014	Clare County Council Offices, Clare	Kevin Prendergast
Mayo Local Enterprise Office	Corporate Healthcheck	LEO Office, Castlebar	Kevin Prendergast

Promoter	Subject	Venue	Speaker
Carlow Chamber	Company Law Update and the Companies Act 2014	Talbot Hotel, Carlow	Kevin Prendergast
Omnipro	ODCE and the Companies Act – One Year on	Crowne Plaza Hotel, Dublin Airport	Kevin Prendergast
Enniscorthy & District Chamber	Company Law Update and the Companies Act 2014	Treacy's Hotel, Enniscorthy, Co. Wexford	Kevin Prendergast
Chief State Solicitors Office	ODCE and the Companies Act 2014	Ship Street, Dublin	Kevin Prendergast
Dublin City Local Enterprise Office	Company Law Update and the Companies Act 2014	Civic Offices, Wood Quay, Dublin	Kevin Prendergast
Irish Times Training	The Work of the ODCE	D'Olier Street, Dublin	Kevin Prendergast
Taking Care of Business	Corporate Healthcheck	National Ploughing Championships, Tullamore, Co. Offaly	Eileen McManus
Omnipro	ODCE Update	Crowne Plaza Hotel, Blanchardstown	Kevin Prendergast
Tipperary Local Enterprise Office	Corporate Healthcheck – Update	LIT Campus, Thurles	Kevin Prendergast
Plato	Corporate Healthcheck – Update	Guinness Enterprise Centre, Dublin	Kevin Prendergast
Garda Economic Crime Bureau	Role of the ODCE	Abbey Court Hotel, Nenagh	Detective Garda Gary Callanan
Fraud Conference	Enforcement under the Companies Act 2014	Griffith College, Dublin	Kevin Prendergast
DCU	The Work of the ODCE	DCU, Dublin	Kevin Prendergast
Tipperary Local Enterprise Office (2)	Company Law Update and the Companies Act 2014	LIT Campus, Thurles	Kevin Prendergast
Carlow Institute of Technology	Roles & Responsibilities of Company Directors	IT, Carlow	Kevin Prendergast
Mayo Local Enterprise Office (clients)	Company Law Update and the Companies Act 2014	LEO Office, Castlebar	Kevin Prendergast
Clonmel Chamber	Company Law Update and the Companies Act 2014	Raheen House Hotel, Clonmel	Kevin Prendergast
Galway Mayo Institute of Technology	Roles & Responsibilities of Company Directors	GMIT Innovation Hub, Castlebar, Co. Mayo	Mary Daly
Law Society of Ireland	Presentation to Students Undertaking the Certificate in Company Secretarial Law & Practice	Blackhall Place, Dublin	Kevin Prendergast
Garda National Economic Crime Bureau	Roles of the ODCE	Westmanstown Conference Centre, Dublin	Detective Garda Gary Callanan
Law Society of Ireland	Enforcement of Company Law in Ireland, the Role and Functions of the ODCE	Blackhall Place, Dublin	Adrian Brennan
Omnipro	The Current Enforcement Regime	Citywest Hotel, Dublin	Adrian Brennan

## EXHIBITIONS/EVENTS ATTENDED – 2016

Name of Event	Promoter	Venue
'Who To Talk To'	Tipperary Local Enterprise Office	Anner Hotel, Thurles
CPA Annual Conference	Institute of Certified Public Accountants in Ireland	Croke Park, Dublin
Creating the Best Business Plan for your Business	Dublin Business Library	Central Library, Ilac Centre, Dublin
All Ireland Business Summit	All Ireland Business Summit	Croke Park, Dublin
Essential Supports & Services for Entrepreneurs	Dublin Business Library	Central Library, Ilac Centre, Dublin
ICSA Annual Conference	Institute of Chartered Secretaries & Administrators	Ballsbridge Hotel, Dublin
SFA Annual Conference	Small Firms' Association	O'Reilly Hall, UCD
National Ploughing Championships	National Ploughing Championships	Screggan, Tullamore, Co. Offaly
National Women's Enterprise Day	Fingal Local Enterprise Office	Radisson Blu Hotel, Dublin Airport
Bizfest	Kilkenny Local Enterprise Board	Lyrath Hotel, Kilkenny
Wexford Business Expo	Wexford Chamber of Commerce	Wexford County Hall
ISME Annual Conference	Irish Small & Medium Enterprises	RDS, Dublin
Big Business Breakfast	Sligo Local Enterprise Office	Glasshouse Hotel, Sligo
BizConnector	Carlow Local Enterprise Office	Seven Oaks Hotel, Carlow



## APPENDIX 3

### REPORT UNDER SECTION 22 OF THE PROTECTED DISCLOSURES ACT 2014

Section 22 of the Protected Disclosures Act 2014 provides that every public body shall prepare and publish, not later than 30 June each year, a report in relation to the immediately preceding year in a form which does not enable the identification of the persons involved. The abovementioned report is required to specify:

- i. the number of protected disclosures made to the public body;
- ii. the action (if any) taken in response to those protected disclosures; and
- iii. such other information relating to those protected disclosures and the action taken as may be requested by the Minister for Public Expenditure & Reform from time to time.

### REPORTS RECEIVED DURING 2016

During the year ended 31 December, 2016 the ODCE received 4 protected disclosures.

### ACTION (IF ANY) TAKEN IN RESPONSE TO THE PROTECTED DISCLOSURES RECEIVED

Two were, upon examination, determined to fall outside the remit of the Office. The third was satisfactorily resolved following intervention by the Office. The matters contained in the fourth protected disclosure received were examined with a view to determining whether they came within the Office's statutory remit. It was concluded that they did and, at year end, the Office's examination of the matter was ongoing.

### SUCH OTHER INFORMATION RELATING TO THOSE PROTECTED DISCLOSURES AND THE ACTION TAKEN AS MAY BE REQUESTED BY THE MINISTER FOR PUBLIC EXPENDITURE & REFORM FROM TIME TO TIME

Not applicable.

## APPENDIX 4

### CASES WHERE RESTRICTION DECLARATIONS WERE MADE BY THE HIGH COURT OR RESTRICTION CONSENT UNDERTAKINGS WERE GIVEN BY COMPANY DIRECTORS PURSUANT TO SECTION 683 OF THE COMPANIES ACT 2014

**Note:** In respect of those companies marked with an asterisk (\*), the Court, at the end of 2016, had either yet to complete its hearing of matters against certain directors or had restricted or disqualified one or more but not all of the directors against whom the liquidator had taken restriction or disqualification proceedings pursuant to sections 819 or 842 of the Companies Act 2014 (where the Office had not relieved the liquidator under section 683 of the Companies Act 2014).

Company Number	Company Name	Director Name		Date Restricted
504443	2N2L Professional Limited	Andrew Brendan	Munnelly Munnelly	17-Aug-16 17-Aug-16
409467	AAB Eurosonics Limited	Alan	Mulready	12-Jan-16
401307	AH Leisure Limited	Ann Martin	Hoban Hoban	10-Aug-16 10-Aug-16
485403	Aon Logistics Limited	Killian Gillian	Cleary Quinn	05-Feb-16 05-Feb-16
219354	Architectural & Industrial Coatings Limited *	John	O'Brien	25-Jan-16
468857	Autogate Limited	Seona Michael	Ward Ward	28-Mar-16 28-Mar-16
369004	Avondale Nursing Home Limited	Hayley	Holmes	05-Dec-16
433210	Ballykisteen Hotel Limited	Patrick Paul	Murray O'Rourke	24-Oct-16 24-Oct-16
368094	B Bet Limited	Eamonn Laura	Byrne Byrne	10-Aug-16 10-Aug-16
395821	Bagenalstown Transport Services Limited	Andrew Claire	Cowman Cowman	14-Nov-16 14-Nov-16
464121	Ballaghkeen Construction Limited	Dermot Lisa	Corrigan Cowman	01-Jul-16 01-Jul-16
309881	BB Leisure Limited	Laura Thomas Ann	Byrne Byrne Hoban	10-Aug-16 10-Aug-16 10-Aug-16
455677	Bio Foam Spray Insulation (Europe) Limited	Jason Padraig Winifred Ibrahim	Carvill Fagan Fagan Amer	20-Jun-16 20-Jun-16 20-Jun-16 20-Jun-16
221820	Bod Investments (Irl) Limited *	William	O'Flynn	18-Apr-16
75835	Brennan Butchers Supplies (Leitrim) Limited	Kieran	Brennan	10-Jun-16
131137	Browne's Lounge Bar Limited	Barry Claire	Browne Browne	04-Aug-16 04-Aug-16
206881	C Moore & Sons Contractors Limited	Carl Alice	Moore Moore	18-Apr-16 18-Apr-16

Company Number	Company Name	Director Name		Date Restricted
242138	Calicon and Associates Limited	Pat Carol	Condon Condon	27-Jan-16 27-Jan-16
455463	Calicon Property Management Limited	Pat Carol	Condon Condon	27-Jan-16 27-Jan-16
390750	Callokee Limited	Mark	O'Keefe	16-Jan-16
314556	Carraway Investments Limited	Marie Colin	Blount Bourke	25-Apr-16 25-Apr-16
282535	Cendant Limited	Mark John	Ricketts Simpson	12-Dec-16 24-Oct-16
518926	Coast To Coast Tyre Distributor Limited	Collette James	Foley Foley	08-Nov-16 08-Nov-16
501344	Colleary Landscaping Limited	Shane	Colleary	09-Dec-16
270314	College Freight Limited	Michelle Ann Seamus	Cunningham McBrien McBrien	11-Mar-16 11-Mar-16 11-Mar-16
397610	Creative Sounds Limited	James Lee	Hyland Walsh	19-Dec-16 19-Dec-16
304165	David Moor Agencies Limited	David	Moore	15-Mar-16
485799	Day By Day Limited	Barry Frank	McGovern McGovern	05-May-16 05-May-16
381164	DCH Partners Limited	Nicholas Alec	Cloake Drew	22-Apr-16 22-Apr-16
462857	Dermot Stapleton Building Services Limited	Dermot Liz	Stapleton Stapleton	04-Apr-16 04-Apr-16
483648	Dinglow Limited	Andrea Martin	Dunphy Dunphy	25-Apr-16 25-Apr-16
368595	Doherty Quarries & Waste Management Limited	James	Doherty	14-Mar-16
224241	Erlemo Limited	Pearse Colin John	McCamley McNeill Whearty	20-Jun-16 20-Jun-16 20-Jun-16
452571	Eventelephant Limited	Ronald	Downey	27-Jul-16
468499	Excel Linen Limited	Woon Alan Peggy	Hang Fung Yeung Yeung	11-Aug-16 11-Aug-16 11-Aug-16
522188	F&R Hospitality Limited	Gustavo Rocha	De Paula	29-Feb-16
499376	Failte Logistics & Distribution Limited	Michael Gerard	O'Keefe O'Keefe	21-Oct-16 21-Oct-16
361450	FF Couriers Limited	Willie Alan Steve	Day Fleming Fuller	30-May-16 30-May-16 30-May-16
491667	Ger Keating Life & Pensions Limited	Brenda Gerard	Keating Keating	16-Sep-16 16-Sep-16
340897	Gerry Rabbitte Agri-Sales Limited	Denise Gerard	Rabbitte Rabbitte	21-Sep-16 21-Sep-16

Company Number	Company Name	Director Name		Date Restricted
420609	Gibbons Trades & Services Limited	Paul Mark	Gibbons Gibbons	25-Apr-16 25-Apr-16
298760	Gingersnap Limited	Breda Declan	Doyle Doyle	08-Apr-16 08-Apr-16
489571	Glendalough Confectionery Limited	Kevin John	Ginty Linnane	08-Jan-16 17-Oct-16
228247	Goldalley Limited	Sujon Soyodur	Alamgir Rahman	14-Sep-16 14-Sep-16
240297	Graphic Media Management Limited	Mark Michelle	Brady Swords	01-Feb-16 01-Feb-16
379070	Indie Spice Restaurants Limited	Tariq Kamrun	Salahuddin Tariq	06-Sep-16 06-Sep-16
351490	JMA Contracts Limited	James Maria	McAvennia Sheridan	16-Nov-16 16-Nov-16
434286	Joc Construction Hire Limited	Justin Wendy	O'Connor O'Connor	14-Nov-16 14-Nov-16
504682	Joes Place Limited *	Niall	Fagan	10-Oct-16
197105	John Carroll Car Sales (Tullamore) Limited	Pamela Thomas	Carroll Carroll	07-Jun-16 07-Jun-16
531453	Joseph M Wall Limited	Joseph	Wall	30-Aug-16
327438	JP Transpeed Express Portlaoise Limited	Bergin	Linda	01-Jun-16
69435	Kenneth Jones Pipe Organs Limited	Derek Shay	Byrne Byrne	07-Mar-16 07-Mar-16
325897	Kessow Limited	Gary Amanda	Smith Smith	25-Apr-16 25-Apr-16
122093	Kingswood Plant Hire Limited	Monica John	Cogan Cogan	01-Feb-16 01-Feb-16
439494	KR Security Services Limited	Kieran Raymond	Cripps Lawlor	08-Feb-16 08-Feb-16
485502	Ladaney Limited	Ann Ronan Finbar	Carter Carter Daly	02-Nov-16 02-Nov-16 03-Nov-16
368092	Laragh Betting Limited	Paula Thomas	Byrne Byrne	10-Aug-16 10-Aug-16
483700	Laragh Civils Limited	Ann Marie	Connaughton	14-Oct-16
266302	Letterkenny Indoor Karting Co. Limited *	John Stephen	Russell Russell	12-Aug-16 12-Aug-16
254637	Manvik Ireland Limited *	Philip Ciara Mark	Kershaw Kershaw Kershaw	16-Feb-16 16-Feb-16 16-Feb-16
313478	Martin Guerin Financial Services Limited	Connie Martin	Guerin Guerin	08-Apr-16 08-Apr-16
495111	McDermott Cahalan Hotels Limited	Amanda	Cahalan	16-Mar-16
163179	MCG Loss Assessors Limited	Shane	McGuinness	06-Jun-16

Company Number	Company Name	Director Name		Date Restricted
501189	Meehan Engineering Limited *	John	Meehan	16-Feb-16
460022	Mil-Tek North East Limited	Mary Paul	Connolly Connolly	06-May-16 06-May-16
520430	Mixgreens Franchising Limited	Shanmugam	Sundaram	15-Apr-16
420803	MJBCH Limited	Ross Sean	Connolly Dunne	13-Apr-16 13-Apr-16
371107	Mod Catering Limited	Declan Michael	O'Dwyer O'Dwyer	25-Apr-16 25-Apr-16
111677	N.D.M.C. Investments Limited *	David	McCarthy	19-May-16
264140	N.D.T. Spirosafe Limited	Albert Gary Oliver	Fitzsimons Gilson Toner	11-Apr-16 11-Apr-16 11-Apr-16
283735	Newgold Limited	Mark John	Ricketts Simpson	12-Dec-16 24-Oct-16
125547	North Western Wool and Hide Company Limited	Eamonn Patricia	Duffy Duffy	12-Dec-16 12-Dec-16
440711	O'Dochartaigh Hardware Teoranta	Derena Martin	Doherty Doherty	11-Jul-16 11-Jul-16
396242	Orlifine Foods Limited	Caroline Joseph	Stafford Stafford	18-Jul-16 18-Jul-16
467216	Park Refreshments Limited	Kerry Anne Davidine	Grimes Grimes	25-Apr-16 25-Apr-16
327645	Paul Driscoll Electrical Contractors Limited *	Paul	Driscoll	05-Aug-16
359519	Paul Kendrick Decorators Limited	Paul	Kendrick	06-Oct-16
311716	Pauraic Larkin & Associates Limited *	Pauraic	Larkin	11-Aug-16
478404	Perpetual Concepts Limited	Terry	Doyle	01-Sep-16
451374	Premco Distributors Limited	Amanda Mary James	Finan Finan	27-Oct-16 27-Oct-16
503969	Pro-Evo Fitness Limited *	Paul	O'Callaghan	21-Dec-16
383842	Pro-Vision Sound & Lighting Limited	Timmy John	O'Connor O'Connor	29-Feb-16 29-Feb-16
398392	Purple Plum Productions Limited	Antoinette Spencer	Redmond Simmonds	29-Feb-16 29-Feb-16
252644	Realm Communications Limited	Gavin Maxine	Hickey Payne	31-Mar-16 31-Mar-16
491402	Red Monkey Limited	Gail Ian	Fox Fox	04-Oct-16 04-Oct-16
415219	Ronan Pubs Limited	Elma Thomas	Young Young	25-Apr-16 25-Apr-16
468968	Rubi Underfloor Safes Installation Limited	Noel Mary	Kavanagh Kavanagh	23-Jun-16 23-Jun-16
396473	Scappa Limited	Declan Breda	Doyle Doyle	08-Apr-16 08-Apr-16

Company Number	Company Name	Director Name		Date Restricted
29673	Sean Behan Limited	Sean Rose	Behan Behan	13-Jun-16 13-Jun-16
238089	Sheffs Limited *	Darryl	Kavanagh	29-Jan-16
513071	Spa Retreat Limited	Pauline	Lynch	18-Apr-16
335792	Spur (Liffey Valley) Restaurants Limited	Helen Jayne Denis Stephen James	Baily Cremin Logue	28-Oct-16 28-Oct-16 28-Oct-16
471226	Start 2 Finish Planning & Design Consultants Limited	Derek	Alford Hennessy	01-Jun-16
210700	Strongrose Limited *	Sabrina Kaleish	(Nee Douglas)	14-Dec-16
498319	Suits Distributors International Limited	Paul Padraig	Byrne O'Connor	29-Nov-16 29-Nov-16
432765	Suits Distrubutors Ireland Limited	Bryan David	O'Connor O'Connor	29-Nov-16 29-Nov-16
489418	Tacketdale Limited	Niall	Kelleher	15-Aug-16
282981	Tekel Consultancy Limited	Edmond Margaret	Murphy Murphy	25-Mar-16 25-Mar-16
373383	The Really Good Company Limited	Michael Declan	Hayes O'Grady	25-Nov-16 25-Nov-16
516891	The Power Of Film Limited	Jerry	Foley	14-Nov-16
104364	Thomas Duffy (Builder) Limited	Thomas	Duffy	11-Jan-16
80902	Thomas Nevin Limited	Shane Thomas	Nevin Nevin	25-Apr-16 25-Apr-16
497270	Truffle Business Services Limited	Andreas	Seibert	22-Feb-16
466256	Walkinstown Glass Limited *	Maurice	Sexton	16-Jun-16
11920	Weston	Patrick Anthony	Mansfield Mansfield	26-Feb-16 26-Feb-16
456764	Yum Catering Limited	Eoin Karen	Fanning Fanning	12-Dec-16 12-Dec-16
510409	Zafer Bars Limited	Noel Joseph	Bateson	25-Apr-16

## APPENDIX 5

### CASES WHERE DISQUALIFICATION ORDERS WERE MADE BY THE HIGH COURT OR DISQUALIFICATION CONSENT UNDERTAKINGS WERE GIVEN BY COMPANY DIRECTORS PURSUANT TO SECTION 683 OF THE COMPANIES ACT 2014

Company Number	Company Name	Name	Surname	Disqualified From	To
369004	Avondale Nursing Home Limited	Hayley	Holmes	05-Dec-16	04-Dec-21
97031	Barty O'Brien Limited	Martin	O'Brien	28-Nov-16	27-Nov-21
481549	Crofton Security Limited	Cornelius Jerry	O'Sullivan O'Sullivan	11-Jul-16 11-Jul-16	10-Jul-21 10-Jul-21
269794	Custom House Capital Limited	Harry John John	Cassidy Mulholland Whyte	02-Dec-16 02-Dec-16 02-Dec-16	01-Dec-30 01-Dec-28 01-Dec-26
452571	Eventelephant Limited	Alan	Barrett	27-Jul-16	26-Jul-21
497435	Eleventh Hour Taverns Limited *	Marie Brian	Fitzgerald Fitzgerald	05-Feb-16 05-Feb-16	04-Feb-21 04-Feb-21
390786	HOC Construction Limited *	Brendan James	O'Connor O'Connor	18-Mar-16 18-Mar-16	17-Mar-21 17-Mar-21
448327	M And M Marketing Strategies Limited	Sean Colin	Boylan Horan	17-Oct-16 17-Oct-16	16-Oct-21 16-Oct-19
413491	Marktech Developments Limited *	Joseph Ciaran	Cassidy Hourican	27-Jul-16 27-Jul-16	26-Jul-20 26-Jul-20
517083	Take Me Home Limited *	Brendan	Carey	14-Dec-16	13-Dec-21
410290	Whitefox Properties Limited	Shay	Daly	11-Jul-16	10-Jul-24
510409	Zafer Bars Limited *	Philip Michael	Roe	27-Apr-16	26-Apr-21

## APPENDIX 6

### CASES WHERE NO RESTRICTION DECLARATIONS OR DISQUALIFICATION ORDERS WERE MADE BY THE HIGH COURT PURSUANT TO SECTION 683 OF THE COMPANIES ACT 2014

Company Number	Company Name	Date of Court Order	No. of Directors
147867	Alliance Taverns Limited	11-Mar-16	2
337886	Andiamo Properties	16-Feb-16	2
375299	Commercial Wireless Limited	13-Jun-16	2
209601	Doherty Brothers Timber Company Limited	21-Oct-16	3
362735	Doors Plus Limited	05-Jul-16	1
366997	Galvins Wholesale Limited	23-Jun-16	3
176739	Lacrombs Limited	28-Apr-16	3
63365	High Degree Construction Limited	22-Jul-16	2
351754	Koger (Dublin) Limited	20-Dec-16	2
338077	Hiranha Acquisitions Limited	24-Mar-16	1
252490	Olympic Wholesalers Limited	27-Apr-16	2

#### Notes:

1. The "No. of Directors" column relates to those directors against whom proceedings were taken. This may differ from the actual total number of directors on record at liquidation, as some directors may have been exempted from proceedings by the Office and others may not have been recorded with the Registrar of Companies, e.g., persons acting as shadow directors.

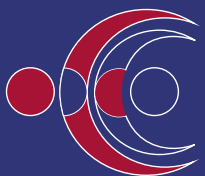


## GLOSSARY

<b>Act</b>	Companies Act 2014
<b>AGM</b>	Annual General Meeting
<b>ALEFA</b>	Association of Law Enforcement Forensic Accountants
<b>Anglo</b>	The former Anglo Irish Bank Corporation plc
<b>CAB</b>	Criminal Assets Bureau
<b>CLRG</b>	Company Law Review Group
<b>CPD</b>	Continuing Professional Development
<b>CRO</b>	Companies Registration Office
<b>Department</b>	Department of Jobs, Enterprise & Innovation
<b>Director</b>	Director of Corporate Enforcement
<b>DPP</b>	Director of Public Prosecutions
<b>FAQs</b>	Frequently Asked Questions
<b>FoI</b>	Freedom of Information
<b>GNECB</b>	Garda National Economic Crime Bureau
<b>IAASA</b>	Irish Auditing & Accounting Supervisory Authority
<b>IAIR</b>	International Association of Insolvency Regulators
<b>ICAV</b>	Irish Collective Asset-management Vehicle
<b>ICAV Act</b>	Irish Collective Asset-management Vehicles Act 2015
<b>Minister</b>	Minister for Jobs, Enterprise & Innovation
<b>MoU</b>	Memorandum of Understanding
<b>NALA</b>	National Adult Literacy Association
<b>ODCE/Office</b>	Office of the Director of Corporate Enforcement
<b>Oireachtas</b>	Collective term for the Upper and Lower Houses of Parliament
<b>PAYE</b>	Pay As You Earn
<b>PII</b>	Professional Indemnity Insurance
<b>PPB</b>	Prescribed Professional Body
<b>PQ</b>	Parliamentary Question
<b>PRSI</b>	Pay Related Social Insurance
<b>RAB</b>	Recognised Accountancy Body
<b>Register</b>	Register of Companies maintained by the CRO
<b>RCT</b>	Relevant Contracts Tax
<b>SI</b>	Statutory Instrument
<b>VAT</b>	Value Added Tax
<b>WTE</b>	Whole Time Equivalent







Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement

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