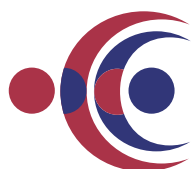
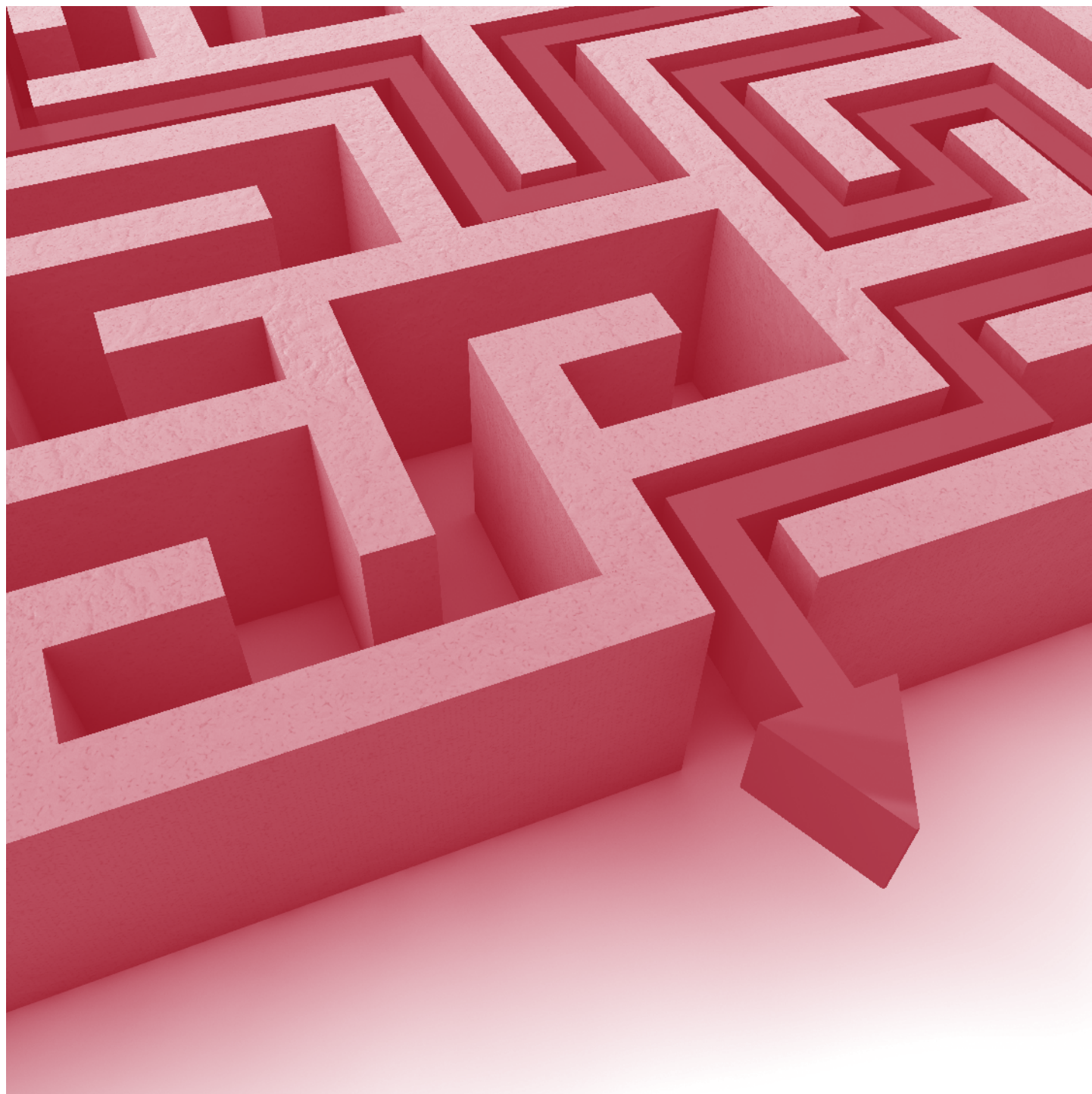


ANNUAL REPORT

Office of The Director of Corporate Enforcement

2013



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

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Glossary

DIRECTOR'S INTRODUCTION



DIRECTOR'S INTRODUCTION

Introduction

In accordance with the provisions of section 16(1) of the Company Law Enforcement Act 2001, I am pleased to submit the Office's 2013 Annual Report to the Minister for Jobs, Enterprise & Innovation, Mr. Richard Bruton, TD.

Enforcement principles

In last year's Annual Report, my first since taking up this position, I indicated that, having regard to a range of relevant factors - including the non-discretionary nature of the section 56 process and the consequential implications for other, discretionary, workstreams - we must seek to apply our available resources in the most effective manner possible.

In that context, and with a view to providing a greater degree of clarity and transparency around the resultant implications for our approach towards enforcement work, during the course of the year under review, the Office devised a set of Enforcement Principles which seek to articulate the considerations that inform the Office's enforcement-related decision making.

Specifically, in determining whether to initiate an enforcement process in response to a particular set of facts and circumstances and, if so, the nature of that enforcement process, the Office will have regard to the following broad principles:

- the scale and gravity of the issues involved;
- the wider potential impact of the apparent misconduct;
- the potential for further misbehaviour by the relevant individual/entity;
- the wherewithal of the complainant, where there is one, to resolve the underlying matter(s) without recourse to the Office;
- the probability of achieving a positive outcome; and
- public interest considerations.

The result of having regard to the foregoing principles should be a more consistent approach towards enforcement related

activities, with the Office's limited resources being focussed on those cases most likely to maximise the Office's likely effectiveness in seeking to achieve its statutory objectives.

Year under review

As can be seen from the body of this Report, the Office delivered a number of tangible outputs during the year, the combined effect of which has been to contribute to:

- assisting stakeholders to comply with their obligations and vindicate their rights respectively under company law; and
- confronting, and dissuading further, irresponsible and non-compliant behaviour.

Notable contributions in that regard included:

- the publication of 6 new guidance and information documents for stakeholders' benefit;
- the securing of the rectification, on a non-statutory basis, of directors' loans issues to an aggregate value of approximately €62m;
- successfully securing, in 230 cases, compliance on the part of a range of parties with their obligations under the Companies Acts through more formal measures;
- the securing of the disqualification of 25 individuals, and the restriction of a further 3, on foot of Court applications made by the Office;
- the restriction of 219 company directors, and the disqualification of a further 9, on foot of liquidators' applications made to the High Court subsequent to the Office's having scrutinised the underlying liquidators' reports; and
- the securing of 17 criminal convictions for breaches of the Companies Acts.

In addition to the foregoing, following protracted litigation regarding the past conduct of the directors of Bovale Developments, in December 2013, the High Court, having considered the evidence adduced, determined that, but for the mitigating circumstances, the appropriate period for which the two individuals concerned should be disqualified would be 14 years each. Having taken the mitigating factors into consideration, the Court determined that the actual period of disqualification should be 7 years each.

Criminal proceedings related to the former Anglo Irish Bank Corporation

At the time of writing of these remarks, the first of a number of scheduled criminal trials relating to events at the former Anglo Irish Bank Corporation is moving towards a conclusion. Following a lengthy, complex and highly resource intensive investigation, these matters have now come before the Courts and the defendants' guilt or innocence will, in accordance with their Constitutional rights, be determined by a jury of their peers. In that context, it is important to note that any accused person is, and remains, innocent unless and until proven otherwise

The current trial has been described as being the largest "white collar" criminal trial ever to have been mounted in the history of the State and it is, therefore, of considerable significance. Irrespective of the outcome, the fact that this case - despite its scale, complexity, many novel aspects and resource-intensive nature - has been brought to trial demonstrates that the system for investigating possible company law offences at the more serious end of the spectrum is capable of responding appropriately, albeit that, in the broader context, the Office's capacity has been significantly impacted. That, it is hoped, will serve to support and enhance public confidence in that system and, by extension, to contribute towards a strengthening of Ireland's reputation as a well regulated economy.

Two further trials are currently scheduled to take place, one of which is concerned with further alleged breaches of the Companies Acts. From experience, we know that supporting the prosecuting authorities in mounting a trial on indictment and in discharging their disclosure obligations to the defence represents a significant and ongoing challenge. Accordingly, we can reasonably anticipate that the Office will continue to be involved in these matters for some considerable time to come.

Workforce planning

During the course of the year under review, the Office completed a review of the extent to which its current skills mix is commensurate with its statutory mandate and shared the resultant analysis with the Department of Jobs, Enterprise & Innovation. This review also had regard to the implications for the Office's enforcement practices and likely future caseload of the Enforcement Principles referred to above.

The key issue arising from that review was the conclusion that, in the context of an ambition to concentrate on more complex and serious company law investigations (both civil and criminal), the Office requires to be further professionalised. Specifically, when one has regard to the fact that financial, and related, issues are integral components of most serious breaches of company law, if the Office is to reach its full potential and realise its ambitions of concentrating on suspected wrongdoing at the more serious end of the spectrum, the current insufficiency of in-house accountancy expertise will have to be addressed.

To put the foregoing in context, whilst the Office currently has an approved complement of two accountants, one of those posts is currently vacant by virtue of a recent retirement. Based on the aforementioned review, the Office has concluded that, over the coming years, it will require the appointment of an additional five, suitably qualified and experienced, accountants over and above its current approved complement if it is to be capable of operating credibly and on a sustained basis at the level to which it aspires.

Concluding remarks

In conclusion, I would like to thank my colleagues for their ongoing commitment and dedication to the achievement of the Office's objectives. During the year under review, the Office has continued to undergo significant change and I have been struck by colleagues' willingness to embrace that change and, as necessary, to assume significant additional levels of responsibility.

Ian Drennan
Director
31 March, 2014

AT A GLANCE

AT A GLANCE

Advocacy

- 6 new guidance and information publications issued
- 60 information presentations delivered and 16 exhibitions attended

Enforcement

Sources of our work

- In excess of 2,000 statutory reports received from liquidators, auditors and professional bodies
- Over 250 complaints received from members of the public
- Over 100 internally generated inputs

Outputs from our work

Following the scrutinising of reports submitted to the Office by liquidators of insolvent companies, 219 company directors restricted and 9 disqualified by the High Court

- Directors' loan infringements to the value of approximately €62m rectified on foot of Office actions
- Compliance with the Companies Acts secured in 230 separate instances through the exercise of the Director's civil powers
- 25 individuals disqualified and a further 3 individuals restricted on foot of applications made by the Office to the High Court
- 17 criminal convictions secured in the District Court, together with two associated disqualification Orders
- 11 separate matters referred to professional accountancy bodies regarding matters relevant to their members.

Investigation Relating To The Former Anglo Irish Bank Corporation PLC

Section 60, Companies Act 1963

- At the date of writing, the trial of three persons is moving towards a conclusion – each defendant having been charged with sixteen counts of alleged contraventions of section 60. In addition to the charges relating to section 60, one of the defendants is charged with a further seven counts of the alleged contravention of the provisions of section 243(2) of the Companies Act 1963

Financial

- The cost of running the Office during 2013 was €3.123m, some 58% of its allocation for the year and a reduction of 9% on the previous year.



OVERVIEW OF THE ODCE

CHAPTER 1

OVERVIEW OF THE ODCE

Statutory mandate

Office of the Director of Corporate Enforcement

The Company Law Enforcement Act 2001 ("CLEA")¹ provided for the creation of the position of Director of Corporate Enforcement ("the Director"). 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 CLEA². They include to:

- encourage compliance with the Companies Acts;
- investigate instances of suspected offences under the Companies Acts;
- enforce the Companies Acts, including by the prosecution of offences by way of summary proceedings³;
- refer cases, at his discretion, to the Director of Public Prosecutions ("DPP") where the Director has reasonable grounds for believing that an indictable offence⁴ under the Companies Acts has been committed; and
- 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 Companies Acts.

Independence of the Director

The CLEA⁵ 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:

- Promote a greater understanding of affected parties' rights and duties under company law;
- Confront unlawful and irresponsible behaviour insofar as it relates to company law; and
- 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

¹ Section 7

² Section 12(1)

³ i.e. before the District Court

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

⁵ Section 12(2)

Resources, organisational structure, governance arrangements & principal workstreams

Human resources

As at 1 January 2013, the Office had an approved staff complement of 49.1 (1 January, 2012: 52.1) whole time equivalents ("WTE") and an actual complement of 45.5 (1 January, 2012: 49.8) WTE. At year end, the Office's approved staff complement stood at 49.1 (31 December, 2012: 45.5) and the actual staff complement stood at 42.9 (31 December, 2012:44.4) WTE. The composition of the Office's staff complement as at 31 December, 2013 is set out in the Table below.

Table 1
Analysis of actual staff complement (WTEs) - as at 31 December, 2013

Grade	Number
Director	1
Heads of Function ⁶ (excluding Garda)	4
Legal Advisors	2
Accountants	1
Solicitors	2
Assistant Principals	4
Higher Executive Officers	8
Executive Officers	6.8
Clerical Officers	7.5 ⁷
Detective Gardaí (on secondment from the Garda Bureau of Fraud Investigation)	
Detective Inspector (Head of Function)	1
Detective Sergeants	2
Detective Gardaí	2.5
Garda	1
Superintendent	0.1
TOTAL	42.9

⁶ Includes 1 Legal Advisor and 1 Solicitor

⁷ 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 2013 allocation and expenditure respectively.

Table 2
Financial allocation and expenditure - 2013

	Allocation €000s	Expenditure €000s	%
Pay	2,475	2,394	97
Non-pay	2,855	729	26
Exceptional legal costs	50	0	0
Total	5,380	3,123	58

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

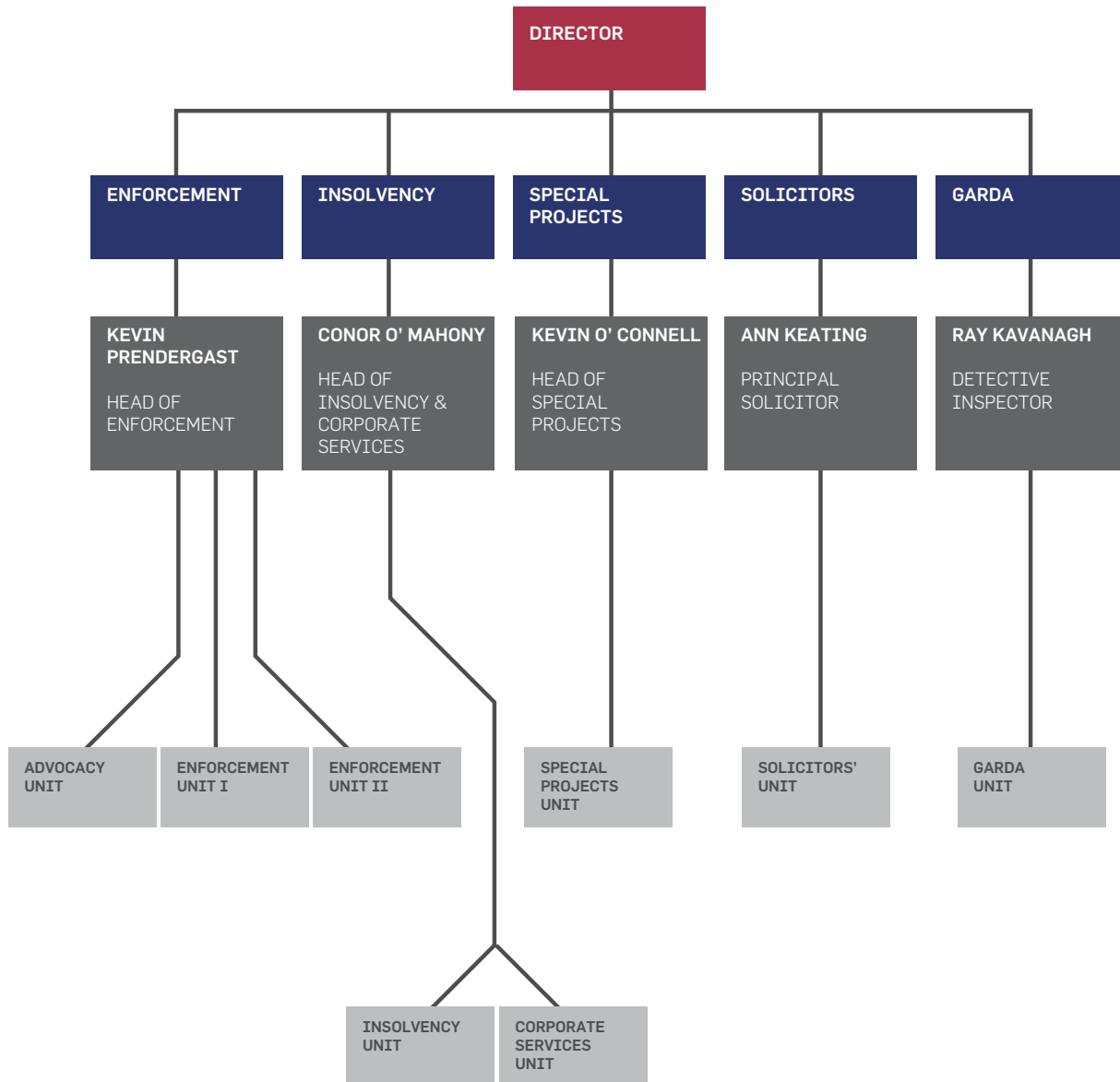
- savings on pay, resulting from staff reductions arising from vacancies arising during the year; and
- certain legal costs which had been anticipated might arise during the year did not do so. On determination of two cases, costs were successfully avoided. In other cases, the issue of costs was deferred as the hearing of those cases remained pending before the Courts at year end.

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

Organisational structure

During the course of 2012, certain amendments were effected to the Office's organisational structure, with those amendments, details of which were provided in the 2012 Annual Report, centring largely on the area of Enforcement & Professional Services. Certain further structural amendments were effected during the year under review in response to operational needs.

Having regard to the Director's principal statutory functions and the associated workstreams, the Office is structured into eight Units, with each Unit coming under the responsibility of one of five Heads of Function. The Office's organisational structure is set out in the organogram overleaf.



Governance arrangements

In conjunction with the amendments effected to the Office's organisational structure following the appointment of the new Director in 2012, certain amendments were made to the Office's governance structures. As a consequence, a reconfigured Management Board - which comprises of the Director and each Head of Function - meets regularly and discusses issues of Office wide relevance. Issues of key importance from the Management Board's perspective include organisational performance and risk management.

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 Management Board.

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

Table 3
Principal workstreams

Workstream	Unit(s) principally involved	Chapter
Encouraging compliance with the Companies Acts	Responsibility for encouraging compliance with the Companies Acts 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 reside in the Insolvency and Enforcement Units respectively.	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"> • address the issues itself, e.g., by way of voluntary rectification/remediation or through the use of certain of the Director's statutory powers; • refer the matter to the Enforcement Unit for further investigation; • refer the matter to the Insolvency Unit, e.g., where the issues is question relate to an insolvent company in liquidation; • refer the matter to a third party, for example, another regulatory or enforcement body. 	3

Civil enforcement litigation	<p>For the most part, civil enforcement litigation is managed by the Enforcement Unit in conjunction with the Principal Solicitor's Unit.</p> <p>Civil litigation, such as seeking the disqualification of directors of companies that have been struck off the Register whilst having undischarged debts, is managed jointly by the Insolvency and Principal Solicitor's Units.</p>	3
Criminal investigation and prosecution	<p>The investigation of possible criminal breaches of the Companies Acts 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 collaboration between the Enforcement, Garda and Principal Solicitor's 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, seeking the production of 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 Principal Solicitor's Unit becomes involved.</p>	3
Provision of support services	<p>The provision of support services 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 will, 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

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

02.

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 general company law enquiries from members of the public;
- advocating legislative and policy enhancements; and
- managing and developing relationships with external stakeholders.

Publications and outreach activities

Publications

The Office, from time to time, develops and publishes information and guidance for stakeholders' benefit. The publication of such material is typically on foot of the enactment of a new piece of legislation or in response to issues identified through other aspects of the Office's work (e.g., on aspects of company law that appear to be giving rise to significant levels of non-compliance). During the year, the Office issued 6 new publications (2012: 10). Details of those publications are set out in the Table below.

Table 4
Publications issued - 2013⁸

Date Issued	Publication
January - December 2013 ⁹	List of insolvent companies and reporting liquidators in respect of which the ODCE has identified the requirement for a section 56 Report in 2013
February 2013	Annual General Meetings – Quick Guide
February 2013	Keeping Books of Account – Quick Guide
May 2013	Annual Report
August 2013	Committees of Inspection – Quick Guide
September 2013	Information Notice I/2013/1 - Company Disclosure of Information

Throughout the year, the Office published bi-monthly lists of insolvent companies and the reporting liquidators in respect of whom the Office had identified the requirement for a section 56 Report in 2013. The purpose of this list is to enable interested parties to bring any matters of concern in relation to an affected insolvent company to the attention of the liquidator and/

⁸ All publications are available at www.odce.ie

⁹ Published every two months, available at <http://www.odce.ie/en-gb/publications/publicationsrelatingtoliiquidations/newliquidations20102013.aspx>

or the ODCE in order that any such concerns can be taken into account in assessing whether or not an application for the company's directors to be restricted should be made before the High Court. The section 56 process is discussed in greater detail in Chapter 3 of this Report.

During 2013, the Office also issued a number of further publications in its range of Quick Guides. These publications dealt with:

- Annual General Meetings;
- Keeping Books of Account; and
- Committees of Inspection.

All such guidance is produced in conjunction with the National Adult Literacy Agency ("NALA") and, as such, has obtained the "Plain English" stamp, which signifies a clear, concise and simple writing style allowing the reader to easily understand the message.

From time to time the Office publishes Information Notices on, for example, newly enacted legislation for stakeholders' benefit. In that context, the Office published one such document during the year - on the subject of the company information disclosure requirements under the Companies Acts and various EU Regulations.

In addition to the foregoing, the Office issued in excess of 15,000 copies of its various publications during 2013. In particular, the Office's updated information books proved to be popular, as did the Office's expanding range of Quick Guides. By agreement with the Office, the Companies Registration Office ("CRO") issued approximately half of these documents to persons registering new companies¹⁰. The remainder were, in the main, issued in response to public demand, either at events exhibitions and presentations or as a result of persons contacting the Office directly.

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 elements 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 businesses;
- professionals engaged in the provision of advice to companies and company directors, who are well placed to relay the compliance message to clients and so considerably expand the reach of the Office;
- students currently enrolled in business programmes at undergraduate and postgraduate level, many of whom will ultimately become directors of companies or professional advisors themselves; and
- the community and voluntary sectors, who by their nature tend to lack a knowledge of company law and, as a result, tend to need guidance on corporate governance and related matters.

During the year, Office staff delivered 60 presentations (2012: 47) to a combined audience of in excess of 2,500 people. Of particular note was that, in the first part of the year, the Office expanded its engagement with City and County Councils for the purpose of outlining the corporate governance issues that can arise in the context of the activities they undertake and services they provide respectively through the medium of companies. The Office also participated in the highly successful Taking Care of Business event held in Dublin Castle in October 2013. This event will be held in a number of regional venues during 2014. During the year, the Office was also represented at 16 exhibitions and events (2012: 16). Details of the presentations delivered and exhibitions attended respectively during the year are set out at Appendix 2 to this Report.

¹⁰ The CRO typically issues the ODCE Quick Guide on Company Directors as part of its pack as issued to newly incorporated companies.

Advocating legislative and policy enhancements

Given its mandate of promoting compliance, and enforcing non-compliance, with company law, the Office is well placed to offer an informed perspective on policy discussions and debates that take place at national and EU level regarding company law and associated topics. In that context, the Office made submissions in response to a number of policy proposals during the year. Further details are set out below.

The Companies Bill

During the year, the Office continued its work in assisting the Department in progressing the Bill (the primary purpose of which is to consolidate the current body of company law, which, at present, is contained in 16 Acts of the Oireachtas¹¹ as well as numerous Statutory Instruments and Regulations) through the legislative process. The Bill does, however, also include some proposed amendments and additions to company law as it currently stands.

Proposed ICAV legislation

Irish Collective Asset-management Vehicles ("ICAVs") are special purpose financial entities which, although not companies, feature some of the characteristics of a company. During the year, the Office was involved in extensive engagement with the Department, the Department of Finance and the Central Bank on the proposed introduction of ICAVs under Irish legislation, which resulted ultimately in a Government decision that the ODCE should have a limited role in the regulation of these entities (primary responsibility for the regulation of these entities is a matter for the Central Bank). It is understood by the ODCE that the details in relation to such regulation will be finalised during 2014.

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, 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 the Companies Acts are 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 Deputies¹² and Senators¹³.

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 the Companies Acts.

¹¹ Collective term for the Upper and Lower Houses of Parliament

¹² Members of the Lower House of Parliament

¹³ Members of the Upper House of Parliament

Garda Bureau of Fraud Investigation (“GBFI”)

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 GBFI. The Office's close working relationship with An Garda Síochána, and GBFI in particular, is critical to its criminal enforcement work. In that context, the Office meets with GBFI 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 Companies (Auditing and Accounting) Act 2003 (“2003 Act”), the Director is a member of IAASA and has the 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.

During the year, the IAASA Board met on 8 occasions. The ODCE nominee attended all of those meetings. IAASA's 2013 Annual Report will be available on its website¹⁴ 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.

Company Law Review Group (“CLRG”)

The CLRG 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 Office is represented at both plenary meetings and at meetings of Committees whose work is pertinent to its remit. During the year, the CLRG continued its work on its 2012/2014 work programme¹⁵. The Office contributed to, amongst others, the following issues as considered by the CLRG:

Use and re-use of CRO information

On this broad topic, the CLRG made a number of suggestions, including reiterating the proposal in its 2006/2007 programme that individual directors should be allowed to apply to An Garda Síochána to have their addresses removed from the public record if there is a risk to their personal security. The Group also recommended a statutory underpinning for the CRO's bulk redistribution of data regime and suggested the provision of new guidance relating to the CRO's archiving policy.

Audit exemption thresholds

The CLRG concluded that, in future and in line with most other European jurisdictions, companies should only have to meet two, rather than all three, of the current criteria for audit exemption. The CLRG also recommended that the ODCE should have certain means at its disposal for establishing whether audit exemption has been legitimately claimed.

Representation of a company before the Courts

The CLRG commenced a review on this topic towards the end of 2013 and its consideration is ongoing.

Central Bank

The ODCE and the Central Bank have in place a Memorandum of Understanding 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.

During 2013, the Central Bank hosted a meeting of the Regulators' Forum, where a range of senior officials from various regulatory bodies met to discuss issues of mutual interest. ODCE staff attended the meeting and it is anticipated that the Forum will continue to meet from time to time in the future.

¹⁴ www.iaasa.ie

¹⁵ A copy of the CLRG's 2012 Annual Report is available at www.clrg.org

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 24 separate matters (2012:10).

During 2013, the ability of the Office to utilise information received from the Revenue Commissioners continued to be impacted by a provision included in the Finance Act 2011. However, this issue was remedied during the year under review by the inclusion of an amendment to section 18 of the CLEA, as contained in section 6 of the Companies (Miscellaneous Provisions) Act 2013. The amendment came into force on 24 December, 2013. The effect of this amendment is to facilitate improved exchange and use of information between the Office and a range of other statutory Agencies, including the Revenue Commissioners.

Accountancy profession

The accountancy profession plays an important role in assisting the work of the Office, through both the mandatory reporting obligation for auditors to report suspected indictable offences under the Companies Acts and the wider support for the Office's compliance message which its members can deliver to their clients. As such, the Office seeks to work closely with the 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.

Office representatives held two formal meetings with the accountancy bodies' senior management during the year. In addition to these meetings, the Office also worked with the profession through a Technical Liaison Group, where matters of a more technical nature are discussed.

Irish Stock Exchange

The Office held one formal meeting with senior staff of the Irish Stock Exchange during 2013.

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.

Other interested parties

In addition to the stakeholder groups referred to above, the Office also met, and/or worked, with a range of other stakeholder groups and interested parties during 2013, including the Institute of Directors, the Competition Authority and the National Consumer Agency.

Media

The Office typically deals with hundreds of media queries annually. Whilst the Office is mindful of the important role 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 has already made its way into 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.

Where appropriate, members of Office staff contribute articles to the media and relevant publications. Office staff wrote, or contributed to, articles in a number of accountancy journals during 2013, on topics such as pre-pack receiverships and the phenomenon of unqualified auditors.

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

03.

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 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

	2013	%	2012	%
Statutory reports				
Liquidators' initial section 56 reports	1,226		1,315	
Liquidators' subsequent section 56 reports	577		472	
Total liquidators' section 56 reports	1,803	78.2	1,787	75.6
Liquidators' reports regarding possible criminality	10	0.4	2	0.1
Auditors' indictable offence reports	203	8.8	157	6.6
Professional Bodies' indictable offence reports	0	0	7	0.3
Reports under section 19 of the Criminal Justice Act 2011	0	0	1	0
Referrals				
Referrals from external parties	38	1.7	72	3
Complaints				
Complaints from members of the public	252	10.9	337	14.4
Total inputs from external sources	2,306	100	2,363	100

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

Liquidators' section 56 reports

Introduction – overview of the liquidator reporting regime

As can be seen from Table 5 above, liquidators' section 56 reports accounted for in excess of 78% of all external inputs received by the Office during 2013. In summary, liquidators of companies that are in insolvent¹⁶ liquidation are required by law¹⁷ to report to the Office on 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 restriction¹⁸ of each of the directors, unless relieved of that obligation by the Office¹⁹.

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 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, 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 a suitable recommendation on 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 anxious 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 directors respectively) to determine if a restriction declaration should be made in respect of any particular company director.

¹⁶ A company is insolvent when it is unable to pay its debts as they fall due

¹⁷ Section 56 of the CLEA

¹⁸ Where an individual is restricted under section 150 of the Companies Act 1990, 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 private company, a minimum called up share capital of €63,487 is required. In the case of a public limited company, the corresponding figure is €317,435.

¹⁹ 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

Companies entering liquidation

As a result of the severe economic downturn, company failures continued at a high level during 2013. As can be seen from the Table below:

- during the year, insolvent liquidations (i.e. creditors' and Court liquidations combined) accounted for 57% of all liquidations (2012: 59%);
- 2013 saw a 15% reduction in the number of insolvent liquidations compared to 2012 and reverses a trend which had seen four prior years in which the number of insolvent liquidations had exceeded 1,200; and
- solvent (i.e., members') liquidations fell by 8% during 2013, from 919 to 848.

Table 6
Companies entering liquidation: 2009 - 2013

	2009	2010	2011	2012	2013
Creditors' liquidations	1,124	1,258	1,311	1,210	1,043
Court liquidations	121	128	99	107	76
Total insolvent liquidations	1,245	1,386	1,410	1,317	1,119
Members' liquidations	1,158	899	1,054	919	848
Total solvent liquidations²⁰	1,158	899	1,054	919	848
Total liquidations	2,403	2,285	2,464	2,236	1,967

Liquidator reports received – 2013

As can be seen from Table 5 above, a total of 1,803 liquidators' reports were received during the year (2012: 1,787), of which:

- 1,226 were initial²¹ reports (2012: 1,315); and
- 577 were subsequent²¹ reports (2012: 472).

The 15% reduction in the number of insolvent liquidations compared to 2012 is welcome and, based on current indications, this downward trend is expected to continue during 2014. However, the high level of new liquidations continues to reflect the economic conditions that prevailed during the course of the year under review. Of particular note in that context was the fact that a number of the reports received related to large scale entities, the commercial affairs of which are particularly complex.

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

²⁰ 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.

²¹ 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.

Table 7
Sectoral analysis of liquidators' initial section 56 reports received - 2013

Sector	2013		2012	
		%		%
Wholesale & retail	271	22	318	24
Construction	236	19	273	21
Manufacturing & printing	159	13	172	13
Hotels, bars & catering	117	10	137	10
Community, social & other	103	8	116	9
Marketing & promotion	89	7	78	6
Real estate & renting	99	8	71	5
Transport & distribution	44	4	51	4
Technology & telecommunications	51	4	44	3
Financial & leasing	27	2	18	1
Recruitment & security services	13	1	19	1
Agriculture, mining & marine	17	1	18	1
Total	1,226	100	1,315	100

Timeliness of liquidators' reporting

Over the course of the year, the Office issued 224 (2012: 198) notices to 106 separate liquidators advising them that they were in default of their statutory reporting obligations. Many of these defaults were promptly rectified as a result of this action and, as a result, 97% of the first reports due during the year had been received by the end of the year (2012: 94%).

However, a small number of liquidators have repeatedly failed to comply with their reporting obligations. Such cases are a particular area of focus for the Office and appropriate enforcement action up to, and including, criminal prosecution may result from such persistent breaches of statutory obligations.

Standard of liquidators' reporting

The standard of liquidators' reports received during the year was considered to be broadly satisfactory. However, the quality of reporting in certain instances was not of the required standard. Indications would suggest that contributory factors in that regard include:

- the volume of insolvency assignments being taken on by some firms; and
- as a result of new entrants entering the market, a relative lack of experience of insolvency related work on the part of certain liquidators. In that context, Table 8 below provides an analysis of the profile of liquidators undertaking insolvency engagements over the period 2009 to 2013.

The foregoing issues necessitated a high level of engagement with relevant liquidators for the purpose of specifying Office requirements and clarifying aspects of reports submitted. In certain instances, it was considered necessary to request individual liquidators to attend the Office to discuss their reports and to review, inter alia, the basis for the conclusions set out therein.

Table 8
Profile of liquidators undertaking insolvent liquidations
by number of engagements 2009 – 2013

Number of liquidators	Number of Engagements				
	<3	3-6	7-12	>12	Total
2009	122	25	18	16	181
2010	169	48	33	26	276
2011	182	57	30	27	296
2012	187	63	37	22	309
2013	203	46	16	21	286

Sectoral distribution of other external inputs (i.e. external inputs other than liquidators' section 56 reports)

As can be seen from Table 5, in aggregate those external inputs other than liquidators' section 56 reports accounted for just over 20% 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 56 reports

Sector	2013		2012	
		%		%
Real estate & renting	80	16	92	16
Construction	65	13	54	9
Wholesale & retail	42	8	46	8
Manufacturing	42	8	34	6
Hotels, bars & catering	32	6	18	3
Community, social & personal	40	8	26	5
Finance & leasing	45	9	33	6
Transport & distribution	10	2	11	2
Agriculture, mining & marine	8	2	17	3
Health & social work	14	3	16	3
Technology & telecommunications	22	4	22	4
Marketing & promotion	5	1	54	9
Recruitment & security services	7	1	1	0
Other business sectors	38	8	60	10
Business sector not known	0	0	0	0
Not a company	53	11	92	16
Total	503	100	576	100

Complaints

The Office receives substantial numbers of complaints annually from members of the public. During the year a total of 252 complaints were received (2012: 337), which accounted for 11% (2012: 14%) 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 default)

	2013	%	2012	%
Allegations of reckless/fraudulent/insolvent trading	43	17	77	23
Annual/Extraordinary General Meeting related	15	6	50	15
Relating to the issue of unpaid debts	30	12	37	11
General shareholder rights issues	23	9	33	10
Relating to companies trading whilst struck off the Register	1	0	32	9
Directors' conduct	40	16	24	7
Audit/auditor related	28	11	17	5
Allegations of forgery/furnishing of false information	21	8	12	4
Other	51	20	55	16
Total	252	100	337	100

Auditors' indictable offence reports

Introduction – overview of the auditor reporting regime

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 Companies Acts²² has been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the Office²³. The Office has developed and published guidance to assist auditors in complying with their obligations in this regard²⁴.

Nature of suspected offences reported

During the year, a total of 203 indictable offence reports were received (2012: 157). 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 more than one suspected offence.

²² Other than offences under sections 125(2) and 127(12) of the 1963 Act, as amended

²³ Section 194(5) of the Companies Act 1990, as inserted by section 74 of the CLEA and subsequently amended by section 37 of the 2003 Act and section 73 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005

²⁴ 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

Table 11
Analysis of suspected indictable offences reported by auditors

	2013	%	2012	%
Directors' loan infringements	165	78	127	76
Failure to maintain proper books of account	26	12	28	17
Provision of false statements to auditors	2	1	1	1
Person not qualified to act as auditor to a company acting as such	2	1	5	3
Falsification of documents	4	2	4	2
Failure to convene Extraordinary General Meeting of a company	0	0	0	0
Other miscellaneous offences	13	6	2	1
Total	212	100	167	100

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 38 (2012: 72) such referrals from a variety of sources including:

- the Registrar of Companies;
- the Revenue Commissioners; and
- other State Departments/Bodies.

Professional bodies' indictable offence reports

RABs²⁵

Where a RAB's Disciplinary Committee or Tribunal has reasonable grounds for believing that an indictable offence under the Companies Acts 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 Office²⁶. No such reports were received during the year under review (2012: 7).

Prescribed Professional Bodies ("PPB")

Similarly, where the Disciplinary Committee or Tribunal of a PPB finds that a member conducting a liquidation or receivership has not maintained appropriate records, or has reasonable grounds for believing that the member has committed an indictable offence under the Companies Acts during the course of a liquidation or receivership, the PPB concerned is required to report the matter to the Office²⁷.

²⁵ 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)

²⁶ Section 192(6) of the Companies Act 1990, as amended by section 73 of the CLEA

²⁷ Section 58 of the CLEA

Pursuant to the Company Law Enforcement Act 2001 (Section 58) Regulations 2002²⁸, the following have been designated as PPBs:

- 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 (2012: 0).

Liquidators' reports regarding possible criminality

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 Office²⁹. This reporting obligation extends to all liquidations, solvent and insolvent (i.e. both Creditors' Voluntary liquidations and Court liquidations) alike. During the year, 10 such reports were received by the Office (2012: 2).

Reports under section 19 of the Criminal Justice Act 2011

Section 19 of the Criminal Justice Act 2011 ("CJA") created a statutory obligation on persons generally to report certain information to An Garda Síochána concerning certain so-called "relevant offences". Relevant offences are those listed in the Schedule to the CJA. They include some of the more serious offences under the Companies Acts including:

- fraudulent trading³⁰;
- the making of false statements to company auditors³¹;
- the furnishing of false information³²;
- the destruction, mutilation or falsification of company documents³³;
- failure to maintain proper accounting records³⁴;
- the giving of unlawful financial assistance by a company for the purchase of its shares³⁵;
- certain instances of the withholding of information or property from liquidators³⁶; and
- pre-liquidation frauds³⁷.

The reporting obligation extends to any person who has information which s/he knows, or believes, might be of material assistance in:

- i. preventing the commission by any other person of a relevant offence; or
- ii. securing the apprehension, prosecution or conviction of any other person for a relevant offence.

²⁸ SI 544 of 2002

²⁹ Section 299 of the 1963 Act

³⁰ Section 297 of the 1963 Act

³¹ Section 197(1) of the Companies Act 1990

³² Section 242 of the Companies Act 1990

³³ Section 243 of the Companies Act 1990

³⁴ Section 202 of the Companies Act 1990

³⁵ Section 60 of the Companies Act 1963, as amended

³⁶ Paragraph (a), (d), (e), (f), (g), (i), (j), (k), (l), (m), (n), (o) or (p) of section 293(1) of the Companies Act 1963

³⁷ Section 295 of the Companies Act 1963

The obligation is to disclose that information “...as soon as it is practicable to do so to a member of An Garda Síochána.” A person who fails without reasonable excuse to so disclose any such information commits a criminal offence contrary to section 19.

It is important to note that Section 19 of the CJA does not impose an obligation to report to the ODCE. Rather, the obligation is to report to “...any member of An Garda Síochána”. However, as detailed in Chapter 1 of this Report, the officers of the ODCE include seconded members of An Garda Síochána³⁸. Accordingly, it is possible in practice for persons who have information regarding relevant offences that are company law offences to comply with their obligations under section 19 of the CJA by reporting such information to one of the Office’s Garda officers.

No such reports were received during the year under review (2012: 1).

INTERNAL INPUTS

Introduction

Whilst, 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 external inputs received, the Office also generates internal inputs through a proactive approach to enforcement of the Companies Acts. Inputs in this regard include, for example, internal initiatives relating to:

- dissolved insolvent companies;
- the supervision of liquidators; and
- other investigations and enquiries commenced on own initiative.

Dissolved insolvent companies

The Office characterises as “*dissolved insolvent companies*” those companies that are struck off the Register of Companies due to the non-filing of 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 struck off companies³⁹. However, the law⁴⁰ also provides 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 penalty to be imposed, the Court may instead restrict the directors where it adjudges that disqualification is not warranted⁴¹.

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. Where a company is struck off the Register of Companies, its remaining assets are vested in the Minister for Public Expenditure & Reform in accordance with the provisions of the State Property Act 1954. In any case where a struck off company identified appears to possess significant assets at the time of strike off, the Office brings this to the attention of the Department of Public Expenditure & Reform.

Supervision of liquidators

One of the statutory functions of the Director is: “...to exercise, insofar as the Director feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Companies Acts”⁴².

³⁸ Who, under Section 12(4) of the Company Law Enforcement Act 2001, continue to be vested with, and capable of exercising or performing, any of their ordinary powers or duties as members of An Garda Síochána

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

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

⁴¹ Section 160(9A) of the Companies Act 1990 (as amended)

⁴² Section 12(1)(e) of the CLEA

Whilst the section 56 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 57 of the CLEA⁴³.

Section 57 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 57 are accompanied by certain safeguards, 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 6 years prior to the request.

Investigations commenced on own initiative

As indicated above, the Office initiates 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;
- issues identified through monitoring of litigation;
- issues identified through a review of *press reportage*, the internet etc.

By way of example, the subject matter of enquiries initiated during the year included suspicions of bankrupt persons acting as company directors, persons acting as auditors whilst not authorised to do so and the possible falsification of documents.

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

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

Quantum of internal inputs - 2013

During the course of 2013, a total of 107 (2012: 170) internal inputs were generated.

⁴³ Section 323A of the 1963 Act includes a similar provision relating to receivers

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 56 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 monitors the progress 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:

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

In the case of other inputs, such as, for example, auditors' reports, complaints, 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 company directors for the production of companies' books and records;
 - issuing demands to liquidators for the production of their liquidation books and records;
 - issuing demands to persons acting, or purporting to act, as auditors for the production of evidence of their qualifications;
 - issuing demands requiring liquidators to file outstanding s56 reports;
- exercising criminal powers, such as, for example, executing search warrants, exercising the power of arrest 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);
- referral to other statutory authorities or professional bodies of matters relevant to their respective remits;
- the initiation of civil proceedings;
- the initiation of criminal proceedings.

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 56 reports - 2013

Section 56 reports on hand at 1 January, 2013		917 ⁴⁴
New reports received during 2013	1,803	
Less: Reports in respect of which determinations made during 2013	1,978	
Section 56 reports on hand at 31 December, 2013		742

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

Table 13
Throughput of other cases - 2013

Other cases on hand at 1 January, 2013		184 ⁴⁵
New cases opened during 2013	610 ⁴⁶	
Less: Cases concluded during 2013	633	
Other cases on hand at 31 December, 2013		155

⁴⁴ Restated from the 2012 Annual Report

⁴⁵ Restated from the 2012 Annual Report

⁴⁶ 503 external inputs (Table 9 refers) plus 107 internal inputs

PART C: OUTPUTS

Outputs from the section 56 process

Decisions made on liquidators' reports

The Office made definitive decisions (i.e. decisions other than to grant 'Relief at this time') on 1,356 liquidators' reports during 2013 (2012: 1,246), with a further 622 decisions made to grant 'Relief at this time' (2012: 474).

Of the definitive decisions taken during 2013, a total of 1,014 were made in respect of initial reports (2012: 1,026), with a further 342 being made in respect of subsequent reports (2012: 220).

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 56 reports

Decision type	2013	%	2012	%
Full relief ⁴⁷	951	69	979	73
No relief ⁴⁸	47	4	39	3
Partial relief ⁴⁹	16	1	8	1
Relief at this time ⁵⁰	359	26	298	23
Total	1,373	100	1,324	100

Table 15
Analysis of decisions taken in respect of subsequent liquidators' section 56 reports

Decision Type	2013	%	2012	%
Full relief ⁴⁷	239	39	135	34
No relief ⁴⁸	80	13	71	18
Partial relief ⁴⁹	23	4	14	4
Relief at this time ⁵⁰	263	44	176	44
Total	605	100	396	100

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ 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.

⁵⁰ '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.

Complete lists of the directors, and associated companies, in respect of which full relief and relief at this time respectively were granted during 2013 are available at www.odce.ie.

Outcome of liquidators' Court applications

As indicated earlier in this Chapter, where not granted relief by the Office, liquidators are required to apply to the High Court seeking the restriction of relevant company directors. In certain instances, liquidators will, as a consequence of their own investigations, 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 16
Results of liquidators' Court applications – 2013

	Cases	Directors affected
Restriction Orders granted	116	219
Disqualification Orders granted	7	9
No Orders granted	14	20
Total	137	248

Further analysis of the Orders made by the Court on foot of liquidators' applications is provided in Appendices 3 to 5 of this Report.

Facts and circumstances considered by the High Court in making Disqualification Orders

Set out below, for illustrative purposes, are examples of the types of issues that were considered by the High Court in making the Disqualification Orders listed in Appendix 4 to this Report. These Orders were made on foot of disqualification applications made by the appointed liquidators following the submission of their respective section 56 reports to the Office.

- a director pleaded guilty in a US Court to a number of fraud related offences, an element of which related to a fraud perpetrated against an investor using an Irish registered company;
- a director had failed to record significant property sales through company books of account, with proper books and records not being maintained. The director had falsified an official Local Authority certificate arising from which significant payments were made to the company and in excess of €244,000 in pension deductions and employer contributions had not been remitted to the statutory employee pension scheme;
- a tax liability in excess of €2.6m (including estimates) had accrued in the case of a company that provided static guard/security services. A Receiver had been appointed in respect of undischarged financing and the Private Security Authority had revoked its license to operate security services. The directors had failed to maintain proper books and records or to deliver these up to the liquidator or co-operate with the liquidation;
- in a small company operation, the directors' salaries constituted a significant percentage of overheads and the directors did not properly account for, or discharge, PAYE/PRSI or VAT throughout the 3 years of trading. In year 2, the directors drew down director loans rather than a taxable wage at a time when the company was struggling to meet revenue targets. The liquidator concluded that these loans starved the company of working capital, allowed the directors to have a tax free lifestyle for three years and that the directors failed to engage with, or respond to, the liquidator on the outstanding loans. At liquidation, the company had a tax liability of €96,000;
- a company had engaged in systematic under-declaration of tax liabilities for amounts in excess of €356,000 over a two-year period. Misleading and inaccurate financial statements had been filed with the Registrar of Companies and proper books and records had not been kept. The Revenue Commissioners had planned to undertake a VAT audit when the company was placed in liquidation;

- a company director had failed to account, or provide an adequate explanation, for the whereabouts of €3.1m of shareholders' funds. Significant sums provided by shareholders could not be traced in the company's records. The funds were obtained through the company director and were meant to be provided for the benefit of the company. This did not appear to have happened and no satisfactory explanation was offered. A payment of €500,000 from company funds also had the effect of relieving the director of a personal guarantee given by him;
- relevant facts included the insolvency of a company related to its inability to meet its tax liabilities, a failure to maintain proper books and records or to deliver these up to the liquidator or co-operate with the liquidation. Assets were transferred to another company and company funds had been used for lifestyle expenditure. The Revenue Commissioners petitioned the High Court for the wind up of the company on foot of a liability of approximately €203,000.

Civil outputs from the s56 process

Late in 2012, the Office issued notices under section 57 of the CLEA to liquidators in two separate cases, requiring them to produce the books and records in respect of named liquidations. In one case, the liquidator in question was subsequently interviewed pursuant to section 57(2). Section 57(2) requires liquidators to answer any questions concerning the content of the books and records requested and to provide such assistance in the matter as the liquidator is reasonably able to provide. The Office's enquiries in these cases were ongoing at year end.

Criminal outputs from the s56 process

From time to time the Office's review of liquidators' reports identifies issues that are considered to warrant action over and above the making of a determination as to whether relief should be granted or not. Such actions typically include:

- making internal referrals of matters considered to warrant further investigation and/or enforcement action; and
- making referrals to other regulatory bodies.

Arising from an analysis carried out during the year, the Office identified a small number of liquidators who were persistently failing to comply with their reporting obligations on a timely basis. The Office contacted those liquidators, advised them that their level of non-compliance would no longer be tolerated and that future breaches would result in criminal prosecutions being initiated. Following this contact, the levels of compliance amongst this cohort of liquidators improved dramatically. However, instances of non-compliance still arose in a limited number of cases and prosecutions were initiated in relation to two liquidators during 2013 for the failure to file their section 56 Reports within the statutory deadlines. In the case of one of the liquidators concerned, on a plea of guilty, section 1(1) of the Probation of Offenders Act 1907 was imposed on the defendant in respect of two charges, with the defendant paying a sum of €500 on each of the two charges to the Court's poor box and agreeing to pay prosecution costs of €1,250. The second liquidator concerned failed to attend Court and, as a consequence, a bench warrant was issued for the individual's arrest. This latter case will be progressed during 2014. To the extent that it is considered necessary, it is also the intention of the Office to initiate further prosecutions in appropriate cases.

Outputs of 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 civil powers to secure compliance;
- 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);
- seeking civil remedies in the High Court, such as, for example, applying to the High Court for company directors' disqualification for stated reasons;
- taking summary criminal proceedings before the District Court; and
- where, having conducted a detailed 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.

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

Securing voluntary rectification/remediation

In 175 cases (2012: 124) where suspected directors' loan infringements had been reported, or had otherwise come to attention, the Office's actions resulted in rectifications (including the repayment/reduction of loans) totalling €62m (2012: €55m). Actions taken by the Office in pursuit of the objective of securing rectification on a voluntary basis included the holding of meetings with company directors of 15 separate companies.

The Office also formally cautioned 4 individuals in respect of whom there were concerns that they might have been purporting to be auditors whilst not qualified to act in that capacity.

Securing compliance through the exercise of the Director's civil powers

A variety of legislative provisions were successfully used during the course of 2013 in order to secure compliance with the Companies Acts. These included:

- 3 directions under section 131(3) of the Companies Act 1963 (as amended) ("the 1963 Act") requiring the convening of companies' Annual General Meetings ("AGM"). These directions were issued following the consideration of complaints received from members of the companies concerned;
- 2 directions under section 145(3A) of the 1963 Act requiring production of the minutes of companies' AGMs as well as meetings of the directors/Committees of the directors. Similarly, these directions were issued following the consideration of complaints received;
- 224 directions, pursuant to section 371(1) of the 1963 Act, requiring liquidators to comply with their reporting obligations under section 56 of the CLEA;
- 1 direction, pursuant to section 371(1) of the 1963 Act, requiring compliance with certain aspects of the Companies Acts, including the obligations to prepare audited financial statements and file annual returns with the CRO; and
- 2 demands under section 19 of the Companies Act 1990, requiring the production of documents.

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 provision⁵¹ 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, 11 referrals (2012: 18) were made to RABs 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.

Civil enforcement

Dissolved insolvent companies

As outlined earlier in this Chapter, in the case of companies that, at the time of being struck off the Register, were insolvent, it is the Office's policy to consider seeking the disqualification of such companies' directors in appropriate cases.

Several thousand companies are struck off the Register in any given year. However, only some of these would actually be insolvent. Many more would not have traded or would have discharged all outstanding liabilities prior to being struck off. Against this background, the Office seeks to identify companies where there is evidence of material unpaid debts having existed at the date of strike off. During the year under review, 14 cases (2012: 10) involving applications by the Office for directors' disqualification were determined by the High Court. In all of these cases, the Court made a total of 25 (2012: 17) Orders for directors' disqualification and a further 3 Orders (2012: 1) for directors' restriction.

The Office determined a further 41 cases (2012: 38) without Court action. Cases do not proceed to the Courts where, for example, the former directors satisfy the Office that all liabilities had been settled prior to the issuing of the intended Court proceedings or where the company had been restored to the Register following initiation of the Office's enquiries.

At year end:

- proceedings had been issued in a further case (which was awaiting determination by the High Court); and
- a further 8 cases were under examination by the Office.

Thus, a total of 64 cases (2012: 67) were dealt with during the year under review. Further details of Orders made by the High Court are set out in the Table below.

Table 17
Disqualification and Restriction Orders obtained pursuant to section 160(2)(h) of the Companies Act 1990

Company Name	Company Number	Persons Sanctioned (Disqualification applies unless Restriction indicated)	Start Date	End Date
Alliance Systems Buildings Ltd	133079	Michael Potter	29.01.13	29.01.17
Alliance System Manufacturing Ltd	139950	Geraldine Potter	29.01.13	29.01.17
Hillvale Developments Limited	372457	Francis Beggan	04.02.13	04.02.17
Ferns Close Management Company Limited	412634	Virginia Beggan	04.02.13	04.02.17
Grangeport Developments Ltd	403259	Jerry Martin	04.02.13	04.02.18
J & C Martin Investments Ltd	456505	Catherine Martin	04.02.13	04.02.17
John (Jerry) Martin & Company Ltd	131778			
Doon Sewage Up-Grade Ltd	421764			
Eirkey Forecourt Advertising Ltd	344659			
Mayo Truck Spares Limited	341850	Eamon McGreal	11.02.13	11.02.18
		Keri Louise McGreal	11.02.13	11.02.18
Valen Construction Limited	234709	Gillian Lowry	22.04.13	22.04.16
		Christopher Lowry	22.04.13	22.04.16
Fastnet Broadband Holdings Ltd	407380	Lawrence O' Neill -	04.03.13	04.03.18
Teocom Limited	453877	Restricted		
Alonvert Limited	269073	Aidan O'Regan - Restricted	29.04.13	29.04.18
		Alicia Comiskey- Restricted	29.04.13	29.04.18
Peter & Yuk Company Limited	421556	Yuk Chan	17.06.13	17.06.18
Yo Thai Co. Limited	345596	Joon Hong Yong	17.06.13	17.06.18
O'Grady Excavations & Enterprises Limited	334550	Gerard F. O' Grady	22.07.2013	22.07.2018
		Declan O' Grady	22.07.2013	22.07.2018
Tony Burke Furniture Centre Limited	110004	Anthony Burke	29.07.2013	29.07.2018
		Delia Burke	29.07.2013	29.07.2018
Oakcourt Construction Limited	422397	Eamonn O'Loughlin	14.10.2013	14.10.2017
		Michele O'Loughlin	14.10.2013	14.10.2016
Cibo Foods Retail Limited	395275	Ciaran O'Donovan	14.10.2013	14.10.2017
Cibo Food Catering Limited	395274	Deborah Hughes	11.11.2013	11.11.2015
Cibo Food Company Limited	361570	Brian Hearne	11.11.2013	11.11.2017
D & G Electrical Services Limited	417365	Darren McKibben	11.11.2013	11.11.2018
		Catherine Johnston	11.11.2013	11.11.2018
Belmont Hotels	129129	Michael Morris	16.12.2013	16.12.2018
Efrt Limited	397664	Joan Morris	16.12.2013	16.12.2018

Other civil enforcement proceedings

Messrs Michael and Thomas Bailey/Bovale Developments⁵²

As has been adverted to in previous Annual Reports, the Office initiated disqualification proceedings against Messrs Michael and Thomas Bailey (the Respondents), the directors of Bovale Developments ("Bovale"), in 2006. Following a number of pre-trial applications (most of which have been summarised in previous Annual Reports) the substantive application for the Respondents' disqualification was heard by the High Court in October 2013 and was the subject of a reserved judgment delivered by the Court on 9 December, 2013.

The Respondents did not dispute that the evidence adduced by the Office of misconduct by them as directors of Bovale was such that the Court should now be satisfied (for the purposes of sections 160(2)(a), (b) and (d) of the Companies Act 1990) that they were, whilst directors, guilty of a fraud in relation to Bovale and the Revenue Commissioners; were guilty of breach of duty as officers of Bovale and that their conduct as officers was such that it now makes them unfit to be concerned in the management of a company. However, the Respondents sought to rely upon a number of mitigating factors for the purpose of submitting to the Court that, notwithstanding the gravity of the misconduct now acknowledged by them and in respect of which they had offered apologies, the Court should only make disqualification orders for a relatively short period.

Following a detailed review of the evidence and the mitigating factors relied upon by the Respondents, the High Court held that, but for the mitigating circumstances, the appropriate period for which the Respondents should be disqualified would be 14 years. However, taking those mitigating factors into consideration, the Court concluded that the actual period for which the Respondents should be disqualified is 7 years.

The Court placed a stay on the coming into effect of this disqualification Order in circumstances where the Respondents had indicated their intention to bring an application before the Court pursuant to Section 160(8) of the Companies Act 1990 for a degree of relief from the intended disqualification Order. As at 31 December, 2013, that relief application had not yet been determined and the stay on the coming into effect of the disqualification order remained in place.

The written decision of the High Court in this case has a neutral citation of [2013] IEHC 561. A copy of the judgment of Ms. Justice Finlay Geoghegan is available on the website of the Courts Service at www.courts.ie and on the ODCE website.

Aventine Resources plc/John Francis Liwosz and Anthony William Brown

In 2013, the Office initiated High Court disqualification proceedings against Messrs. John Francis Liwosz and Anthony William Brown, the directors of Aventine Resources plc for Orders pursuant to Sections 160(2)(b) (breach of duty) and (f) (persistent default) of the Companies Act 1990. During 2013, the pleadings were advanced and ultimately closed at the end of 2013, with a view to applying for a hearing date in 2014.

National Irish Bank Limited (NIB)/National Irish Bank Financial Services Limited (NIBFS)

As has been outlined in previous Annual Reports, the Office has been involved in a series of inter-related civil cases, all of which stem from the Report of the Inspectors (appointed under Section 8 of the Companies Act 1990) to investigate the Affairs of NIB and NIBFS⁵³.

⁵² Formerly known as Bovale Developments Limited (prior to re-registration as an unlimited company)

⁵³ The Inspectors were appointed by the High Court in March 1998 and carried on their investigations over a period of slightly in excess of 6 years. Their Report was published by Order of the High Court made in July 2004.

In July 2005, the Office commenced disqualification proceedings against nine persons who had formerly been directors and/or officers of NIB and/or NIBFS. At the beginning of 2013 the position was that four of the cases had been fully concluded, one case was still pending at High Court level and Supreme Court hearing dates were awaited in respect of four appeals⁵⁴ from earlier decisions of the High Court.

During the year under review one of the appeals was listed for hearing before the Supreme Court. This was the Office's appeal of a decision of the High Court that no disqualification Order should be made against the Respondent. By agreement between the parties, the Office's appeal was withdrawn and the Court was asked to vacate the Order for costs (as against the Office) that the High Court had made in the Respondent's favour. In addition, the case pending at High Court level was resolved on the basis that the Office's High Court proceedings were withdrawn with no Order for costs against either party. As at year end, dates for the hearing of the three remaining Supreme Court appeals were awaited.

Criminal enforcement

Summary prosecutions

In accordance with the provisions of the CLEA, the Director can bring summary prosecutions before the District Court. During the year the Office brought and prosecuted summary proceedings on 5 occasions (2012: 4), resulting in:

- 17 convictions (2012: 16), with the Probation of Offenders Act 1907 being applied in respect of a further 6 charges in 2 of the aforementioned cases;
- aggregate fines of €10,000 (2012: €8,208) being imposed;
- 2 automatic disqualifications being imposed (by virtue of a conviction for acting in contravention of a restriction Order) (2012: 1); and
- the Office being awarded costs of €6,250 (2012: €6,000).

⁵⁴ One of those appeals had been taken by the Office against a decision of the High Court rejecting the Office's contention that the relevant respondents should be disqualified. Three of the appeals had been taken by respondents against decisions of the High Court affirming the Office's contentions that the respondents should be disqualified.

Details of those prosecutions are summarised in the Table below.

Table 18
Summary prosecutions brought - 2013

Case	District Court hearing, date & venue	Charges	District Court Outcome
ODCE v. Mr. Adrian Kelly t/a Kelly & Co	28 January 2013 Dublin District Court	4 offences contrary to section 187(1) ⁵⁵ of the Companies Act 1990 and 6 offences contrary to section 242(1) ⁵⁶ of the same Act	10 convictions recorded. Aggregate fines of €2,500 imposed in respect of four section 187(1) offences and six section 242(1) offences. Prosecution costs of €1,250 to be paid by the defendant.
ODCE v. Mr. Declan Walker t/a Declan Walker & Co	13 February 2013 Arklow District Court, County Wicklow	5 offences contrary to section 187(1) of the Companies Act 1990	5 convictions recorded. Aggregate fines of €6,000 imposed in respect of five section 187(1) offences. Prosecution costs of €1,250 to be paid by the defendant.
ODCE v. Ballyrye Ltd & Mr Frank Kilbride, director of Ballyrye Ltd	19 July 2013 Longford District Court	3 offences by the company and 1 offence by the director, contrary to section 202 ⁵⁷ of the Companies Act 1990	On pleas of guilty, section 1(1) of the Probation of Offenders Act 1907 was imposed in respect of all four offences. Aggregate prosecution costs of €1,250 to be paid by the defendants.
ODCE v. Mr. Declan Moloney & Mr Séamus Moloney	14 November 2013 Newcastle West District Court, County Limerick	1 offence each, contrary to section 161(1) ⁵⁸ of the Companies Act 1990	1 conviction recorded against each person. Fines of €750 imposed on each person. Aggregate prosecution costs of €1,250 to be paid by the defendants. Also, consequential disqualifications of two years imposed (dating from the conviction date) under section 161(2) of the Companies Act 1990.
ODCE v. Mr. Gerard Murphy	17 December 2013 Dublin Metropolitan District Court	2 offences contrary to section 56(1) and (3) ⁵⁹ of the Company Law Enforcement Act 2001	On a plea of guilty, section 1(1) of the Probation of Offenders Act 1907 was imposed in respect of both offences, with the defendant paying €500 to the Court's Poor Box in respect of each offence. Prosecution costs of €1,250 to be paid by the defendant.

⁵⁵ Acting as an auditor whilst not qualified to do so

⁵⁶ Furnishing false information

⁵⁷ Failing to keep proper books of account

⁵⁸ Acting as a director whilst subject to a High Court Restriction Order

⁵⁹ As a liquidator, failing to provide statutory reports to the ODCE

Cases referred to the DPP for consideration as to whether to prosecute on indictment

Whereas the Director can initiate summary prosecutions before the District Court, the initiation of prosecution on indictment (i.e. before a jury in the Circuit Court) is a matter solely for the DPP.

The former Anglo Irish Bank Corporation plc (“Anglo”)

Previous Annual Reports have detailed the general nature of the issues that the Office has been investigating and the extent to which files have been submitted to the Office of the DPP as a result of those investigations.

At the beginning of 2013 the position was that the DPP had directed that three persons, i.e., Mr. Sean FitzPatrick, Mr. William McAteer and Mr. Patrick Whelan - all former directors of Anglo Irish Bank Corporation – should be tried on indictment, each in respect of sixteen alleged breaches of the provisions of section 60 of the 1963 Act. The DPP had further directed that one of those persons, i.e., Mr. Sean FitzPatrick, should be tried on indictment in respect of twelve alleged breaches of the provisions of section 197 of the Companies Act 1990.

During the year under review, the trial of the alleged contraventions of section 60 was listed to commence on 13 January, 2014 and the trial of the section 197 allegations was provisionally fixed for hearing on 7 October, 2014. During December 2013 the commencement date for the section 60 trial was put back to 31 January, 2014 and, at the time of writing, that trial is continuing in the Dublin Circuit Criminal Court before His Honour Judge Martin Nolan and a jury. An additional seven alleged contraventions of the provisions of section 243(2) of the Companies Act 1990 by Mr. Patrick Whelan were added to the indictment before the commencement of this trial. Those additional charges are also based on evidence gathered in the course of the Office's investigations and subsequently submitted to the Office of the DPP for consideration.

During the course of 2013 the Office continued to commit substantial resources to assisting the Office of the DPP in the discharge by that Office of its obligations to disclose to the defence all relevant evidence in its possession. That obligation of disclosure⁶⁰ extends not simply to the material which the DPP's Office has seen fit to include in the Books of Evidence (on the basis that it is evidence on which the prosecution proposes to rely at trial), but to

“...any [other] material which may be relevant to the case which could either help the defence or damage the prosecution”⁶¹.

In addition, the Office continued to gather further evidence as it became available, or in response to directions from the DPP's Office as to further investigative steps that it considered necessary or desirable.

⁶⁰ Which has its roots in the constitutional rights to a trial in due course of law (found in Article 38.1 of the Constitution of Ireland) and to fair procedures (found in Article 40.3).

⁶¹ *McKevitt v DPP*, unreported, Supreme Court, 18 March, 2003

As recorded in previous Annual Reports, the Office has submitted files to the DPP concerning three other issues stemming from its Anglo investigations. To date no charges have been directed by the DPP in respect of those matters. It is important to emphasise, however, that the use of the phrase “*to date no charges have been commenced by the DPP*” is not intended to convey the impression that further charges will definitely, or probably, be directed at some future date. The DPP is independent in the performance of her functions. Accordingly, it is entirely a matter for her to determine if, and to what extent, any investigation files submitted to her Office warrant prosecution; and, if so, what particular charges ought to be prosecuted. Those decisions are based on a number of considerations, further information regarding which can be found in Chapters 4 and 6 of the *Guidelines for Prosecutors* published by the Office of the DPP⁶².

Other criminal cases referred to the DPP

At the beginning of the year, the DPP was continuing to review two cases in respect of which files had been submitted during 2012. In one of those cases, three supplementary files were submitted to the Office of the DPP in early 2013. On the direction of the DPP, the Defendant in this case was arrested and charged with 50 alleged offences pursuant to sections 187 of the Companies Act 1990 and section 242 of the Companies Act 1990 respectively. This case is currently pending before the Courts.

PROVIDING QUALITY
CUSTOMER SERVICE
TO INTERNAL
AND EXTERNAL
STAKEHOLDERS

04.

CHAPTER 4

PROVIDING QUALITY CUSTOMER SERVICE TO INTERNAL AND EXTERNAL STAKEHOLDERS

Provision of a quality customer service to external stakeholders

Customer Charter

The Office has developed and published a Customer Charter, which is available on its website⁶³. The Charter provides detail of, amongst other things:

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

Nature of principal engagements with external stakeholders

The Office's principal engagement⁶⁴ 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, are elaborated upon in Chapter 2 of this Report. With the exception of complaints, 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. 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.

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 website⁶⁵. The FAQ section of the website is regularly reviewed and supplemented as necessary having regard to the nature of queries being received. As well as consulting the website, queries may also be directed to the Office's information email address (info@odce.ie), as well as 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. During the year, the Office handled a total of 280 queries (2012: 210) in this manner. Whilst queries received related to a broad range of issues, the most frequently occurring topics included:

- failure on the part of companies to convene AGMs;
- auditors' reporting obligations in relation to directors' loans;

⁶³ www.odce.ie

⁶⁴ i.e. excluding parties being engaged with in the context of the Office's enforcement remit

⁶⁵ www.odce.ie

- companies' Registers of Members; and
- residential property owners' management companies.

Website

During the year under review, the Office's website (www.odce.ie) underwent a change to its content management system, thereby reducing the level of expenditure necessary to maintain the site. To increase accessibility, the site was also redeveloped in order to facilitate access from mobile devices such as smart phones. From mid-September to year end, there were 647 connections to the site's home page from mobile devices.

Table 19 below lists the 20 pages most frequently viewed by visitors to the website during the year (excluding the site's home page). As before, the FAQ section of the website featured in the most viewed pages. Taking all the FAQ pages together, they attracted around 20,000 views during the year. The search facility was used over 4,000 times. Less than 0.5% of website traffic was to the Irish language pages of the website, which are accessible at www.osfc.ie, a figure well below that in 2012.

New material posted to the website during the year included:

- new/updated Office guidance/information material, as outlined at Chapter 2 of this Report;
- new Statutory Instruments relevant to company law;
- copies of certain presentations made by Office staff to stakeholder groupings;
- press statements, articles, announcements, etc.; and
- the results of civil and criminal enforcement litigation undertaken by the Office.

At year end, some 932 persons had registered to receive website notifications by email.

Table 19
Top 20 most viewed pages - www.odce.ie

Page	Views
Publications Page	51,372
Companies, Directors' & Secretaries' Responsibilities	16,040
Prosecution Cases Page	11,625
Companies, Directors & Secretaries Page	8,400
Disqualification Cases	8,269
Press Releases Page	6,145
Company Law and You	5,141
FAQ/Directorship of a Company	4,990
Our Role	4,596
Winding Up & Insolvencies Cases Page	4,586
Contact Us	4,464
Investigations Page	3,908
Media & Presentations Page	3,526
Functions	3,261
FAQ/Membership of a Company	3,248
FAQ/Winding Up & Liquidations	3,023
Prosecution Cases 2013	2,981
Liquidators, Receivers, Examiners & Legal Responsibilities	2,714
FAQ Page	2,673
Consultation Papers Page	2,352

Social media

The Office has continued to utilise social media to deliver its message to interested parties. The Office operates on four platforms, i.e., Facebook, Twitter, LinkedIn and Google+. These 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 755 followers across these various fora.

Research on the Office's effectiveness

In previous years the Office has periodically engaged the services of market research consultancies to assist it in assessing its effectiveness in promoting and facilitating compliance with company law and dissuading non-compliant behaviour respectively. Due to the general moratorium on consultancy expenditure, no such research was commissioned during the year under review. Whilst the Office seeks to gauge its effectiveness through other means, the inability to commission such research periodically does affect the Office's capacity to assess its effectiveness having regard to independently gathered data.

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 42 Office staff received a total of 153 days training in 2013 (2012: 134), including:

- IT training – 15 days, relating to 12 staff;
- training provided by in-house resources – 109 days, relating to 29 staff; and
- training provided by the Department – 37 days, relating to 32 staff.

During 2013, the Office assisted a number of staff members to undertake the following training and development:

- King's Inn's Diploma in White Collar Crime;
- accountancy staff members' CPD⁶⁶ requirements; and
- solicitor staff members' CPD requirements.

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.

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 21 PQs.

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.

As evidenced by the fact that only 2 payments were not made on time, the Office's policy of settling all invoices within prescribed timeframes was adhered to during the year under review. The interest payable as a result of these late payments amounted to €41.83, with compensatory penalties totalling €110.00.

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 (FoI) Acts

All records of the Office (other than records concerning its general administration) are exempt from the FoI Acts. During 2013, no valid requests for information were received. That said, 5 queries regarding Office records were received. These were dealt with by the Office's FoI Officer outside of the FoI Acts.

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 17 of the Company Law Enforcement Act 2001.

Energy consumption

The Office shares its premises with several other occupants, and the proportion of space allocated to the Office is just under 50% of the total. Approximately 60% of all electricity used in the building is for lighting and 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 666,000 kilowatt hours (kwh) (2012: 690,000 kwh), of which the ODCE was responsible for approximately 304,000 kwh. Electricity consumption was 662,000 kwh (2012: 799,000 kwh), of which the ODCE was responsible for approximately 302,000 kwh. These figures represent a year on year reduction in overall energy consumption of 11%.

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 occupants, the Office continues to seek to devise initiatives to further curtail energy consumption. Two information sessions for staff on ways to reduce energy consumption at home and in the office took place during the year. The Green Team arranged to reduce the hours during which the heating system is used, giving significant savings on energy usage. Usage charts for 2012 and 2013 respectively are set out below.



The target for further energy consumption reduction in 2014 is 5%. It is hoped to achieve this by:

- enhancing insulation of boiler room plant;
- installing lighting sensors for stairwells;
- running an Energy Awareness Campaign throughout the building, including a workshop for staff; and
- introducing further energy-saving changes to the schedule for heating in the building

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. During the year under review, the Office of An Coimisinéir Teanga contacted the Office's Official Languages Officer to request a copy of the draft 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 to monitor its compliance with that legislation and with its Scheme.

APPENDICES

Appendix 1

Allocated vs. actual expenditure: 2011 – 2013

	2011		2012		2013	
	€000s	€000s	€000s	€000s	€000s	€000s
Allocation						
Exchequer Grant	5,967		5,697		5,330	
Exceptional Legal Costs	491	6,458	300	5,997	50	5,380
Expenditure						
Salaries	2,629		2,463.0		2,394.4	
Advertising & Publicity	34		28.8		31.8	
Office Premises	270.7		327.7		299.0	
Legal Expenses	191.6		287.2		124.5	
Consultancy	69.6		100.0		120.6	
Computerisation	37.9		44.5		28.0	
Printing	53.6		44.4		29.00	
Incidental Expenses	5.4		8.8		6.3	
Travel & Subsistence	19.5		17.3		17.0	
Telecommunications	41.4		54.6		36.8	
Postal/Courier Services	22.6		17.1		12.4	
Office Machinery & Photocopying	17.9		31.1		9.5	
Human Resource Development	3.7	3,396.9	12.0	3,436.5	14.2	3,123.5
Amount surrendered		3,061.1		2,560.5		2,256.5

Appendix 2

Presentations delivered – 2013

Promoter	Event Type	Subject	Venue	Speaker
IPA Corporate Governance Forum	Presentation	The work of the ODCE	IPA Offices, Dublin	Kevin Prendergast
MSc in Management and Corporate Governance	Presentation	The ODCE – setting the standard	Marino College, Dublin	Kevin Prendergast
NUI Galway	Presentation	Enforcement as a tool of compliance – the work of the ODCE	NUI, Galway	Kevin Prendergast
Longford County Council	Presentation	Corporate healthcheck	County Hall, Longford	Kevin Prendergast
Louth County Council	Presentation	Corporate healthcheck	County Hall, Dundalk	Kevin Prendergast
South Tipperary County Council	Presentation	Corporate healthcheck	County Hall, Clonmel	Kevin Prendergast
Cavan County Council	Presentation	Corporate healthcheck	Council Chamber, Courthouse, Cavan	Kevin Prendergast
Letterkenny Institute of Technology	Presentation	The ODCE – encouraging compliance, enforcing the law	Letterkenny IT	Kevin Prendergast
Kerry County Council (x 2)	Presentation	Corporate healthcheck	Council Chamber, Tralee	Kevin Prendergast
Cork County Council (x 2)	Presentation	Corporate healthcheck	County Hall, Cork	Kevin Prendergast
Galway County Council	Presentation	Corporate healthcheck	Council Chamber, Galway	Kevin Prendergast
Rathmines College of Commerce	Presentation	Corporate healthcheck	Rathmines College	Kevin Prendergast
Chartered Institute of Management Accountants	Conference	Integrating risk into performance – reporting to the Board of Directors	Iveagh Court, Harcourt Road, Dublin	Ian Drennan

Promoter	Event Type	Subject	Venue	Speaker
PwC	Presentation	Update on ODCE activities	PWC, Dublin	Ian Drennan
National Business Expo	Presentation	Top ten corporate governance sins – and how to avoid them	RDS, Dublin	Kevin Prendergast
Chartered Accountants Ireland	Conference	ODCE Update	CA House, Pearse Street, Dublin	Ian Drennan
Shannon Chamber	Breakfast Briefing	ODCE and company law – the new Companies Bill	Bunratty Castle Hotel, Co. Clare	Kevin Prendergast
School of Restaurant & Kitchen Management	Presentation	Corporate healthcheck	Abbeyleix Hotel, Portlaoise	Kevin Prendergast
IBEC/Siemens	Presentation	Promoting a compliance culture	IBEC offices, Dublin	Ian Drennan
Nova UCD	Presentation	Corporate healthcheck	UCD, Dublin	Kevin Prendergast
Law Society Finuas Network	Presentation	The role of the ODCE	Law Society, Blackhall Place, Dublin	Aoife Raftery
DCU	Presentation	The ODCE – setting the standard	DCU, Dublin	Kevin Prendergast
UCD Quinn School	Presentation	The ODCE – setting the standard	UCD, Dublin	Kevin Prendergast
Institute of Public Administration	Presentation	The ODCEs contribution towards promoting good governance & effective risk management	IPA Offices, Dublin	Ian Drennan
The Companies Bill conference	Conference	Factors likely to affect future enforcement strategy	Ballsbridge Hotel, Dublin	Ian Drennan
CMG Events	Presentation	New enforcement provisions under Company Law	Royal Marine Hotel, Dun Laoghaire	Kevin Prendergast

Promoter	Event Type	Subject	Venue	Speaker
Ennis Chamber	Presentation	Corporate governance & directors' responsibilities	Ennis Chamber Offices, Co Clare	Kevin Prendergast
Irish Times Training	Presentation	The ODCE – encouraging compliance, enforcing the law	Irish Times House, Dublin	Kevin Prendergast
Institute of Public Administration	Presentation	Roles & responsibilities of company directors	IPA offices, Dublin	Kevin Prendergast
Grant Thornton	Presentation	ODCE update	City Quay, Dublin	Kevin Prendergast
National College of Ireland	Presentation	The role of the ODCE	IFSC, Dublin	Kevin Prendergast
Leinster CPA/SFA	Presentation	ODCE update	No. 10 Ormond Quay, Dublin	Ian Drennan
Midlands Solicitors' Bar Association	Presentation	Update on company law	Mullingar Park Hotel	Kevin Prendergast
Dundalk IT	Presentation	Corporate healthcheck	DCU, Dublin	Kevin Prendergast
Cork Institute of Technology	Presentation	Corporate healthcheck	Rubicon Centre, Cork	Kevin Prendergast
Enterprise Ireland	Presentation	Enterprise Ireland workshop	East Point Business Park, Dublin	Kevin Prendergast
Walkers Ireland	Presentation	Update on ODCE activities	Sir John Rogerson's Quay, Dublin	Ian Drennan
Irish Franchise & Start Up Expo 2013	Presentation	Ten most common corporate governance sins	RDS, Dublin	Kevin Prendergast
DCU	Presentation	The role of the ODCE	Dublin City University	Kevin Prendergast
Law Society of Ireland (x 2)	Presentation	The role & functions of the Director of Corporate Enforcement	Law Society of Ireland, Dublin	Adrian Brennan
Department of Jobs, Enterprise & Innovation Seminar	Presentation	Helping your business	Dublin Castle	Kevin Prendergast

Promoter	Event Type	Subject	Venue	Speaker
Enterprise Ireland	Presentation	Focus on funding	East Point Business Park, Dublin	Kevin Prendergast
Carlow IT	Presentation	Corporate healthcheck	Carlow IT	Kevin Prendergast
Galway-Mayo Institute of Technology	Presentation	Corporate healthcheck	GMIT, Castlebar	Kevin Prendergast
AMROP & Grant Thornton	Presentation	Update on ODCE activities	Fitzwilliam Place, Dublin	Ian Drennan
UCD Quinn School (x 2)	Presentation	The ODCE – setting the standard	University College, Dublin	Kevin Prendergast
Apartment Owners' Network	Presentation	Calling and holding AGMs	Dublin City Council offices, Wood Quay, Dublin	Kevin Prendergast
Mazars	Presentation	New Companies Bill	Harcourt Road, Dublin	Kevin Prendergast
NUI Maynooth	Presentation	The ODCE – setting the standard	NUI Maynooth	Kevin Prendergast
Omnipro	Presentation	ODCE update – focus & strategy	Sheraton Hotel, Athlone	Kevin Prendergast
Omnipro	Presentation	ODCE update – focus & strategy	Radisson Hotel, Limerick	Kevin Prendergast
Blanchardstown IT	Presentation	Corporate healthcheck	IT, Blanchardstown	Eileen McManus
Omnipro	Presentation	ODCE update – focus & strategy	Silver Springs Hotel, Cork	Conor O'Mahony
Tipperary North County Enterprise Board	Presentation	Corporate healthcheck	Thurles Chamber Enterprise Centre	Kevin Prendergast
Omnipro	Presentation	ODCE update – focus & strategy	Citywest Hotel, Dublin	Kevin Prendergast
DCU	Presentation	The ODCE – setting the standard	Dublin City University	Kevin Prendergast

Exhibitions/events attended – 2013

Event Type	Venue	Promoter	Stand Attendees
Exhibition	Keadeen Hotel, Newbridge	Kildare CEB	Kevin Prendergast
Exhibition	RDS	Inline Events Ltd.	Eileen McManus Maria Leavy
Conference	Clonmel Park Hotel, Clonmel	Abbott Vascular and County Tipperary Skillnet.	Eileen McManus
Lecture Series	Business Information Centre ILAC	Central Library ILAC Centre Dublin	Eileen McManus
Annual Conference	College of Physicians, Dublin	Institute of Chartered Accountants & Administrators	Eileen McManus
Exhibition	Thurles Chamber Enterprise Centre	Tipperary North CEB	Kevin Prendergast
Annual Conference	Kildare	Institute of Certified Public Accountants	Eileen McManus
Annual Conference	Clyde Court Hotel	Small Firms' Association	Eileen McManus
Annual Convention	Aviva Stadium, Dublin	Irish Institute of Credit Management	Eileen McManus
Exhibition	Ratheniska, Co. Laois	National Ploughing Association	*Note 1
Exhibition	RDS, Dublin	Sunday Business Post	Maria Leavy Marie Breen Eileen McManus
Enterprise Day	The Heritage Hotel, Portlaoise	Limerick CEB	Eileen McManus
Information Day	Stamping Building Dublin Castle	Dept. of Jobs, Enterprise & Innovation/HAS	Eileen McManus Maria Leavy Marie Breen
Lecture Series	Business Information Centre, ILAC	Central Library ILAC Centre Dublin	Eileen McManus
Annual Conference	Concert Hall, RDS, Dublin	ISME	Eileen McManus
Networking Event	Knockranny House Hotel, Westport		Eileen McManus

* Maria Leavy, Eileen McManus, Desmond O'Neill, Phil Flood, Dermot Morahan, Kevin Prendergast

Appendix 3

Cases where restriction orders were made by the High Court pursuant to section 56 of the CLEA

Note: In respect of those companies marked with an asterisk (*), the Court, at the end of 2013, 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 150 or 160 of the Companies Act 1990 (where the Office had not relieved the liquidator under section 56 of the CLEA).

Company Number	Company Name	Director Name		Date Restricted
417939	A.I.T. Software Limited	Daly	Stephen	21-Oct-13
		McCann	Conor	21-Oct-13
398083	Airtech Security Limited	O'Donovan	Morgan	18-Feb-13
340972	Andrew Redmond & Sons Limited	Redmond	Matthew	29-Jul-13
		Redmond	Paula	29-Jul-13
306061	Ardfinnan Oil Limited	Bridges	Carl	08-Apr-13
		Scanlon	James	08-Apr-13
		Scanlon	Mary	08-Apr-13
		Scanlon	Yvonne	08-Apr-13
294452	Armada Fleet Services Limited	Hughes	Cormac	09-Dec-13
		Hughes	Maura	09-Dec-13
169197	Arthur Armstrong Suspended Ceilings Limited	Armstrong	Kathleen	10-Jun-13
		Armstrong	Arthur	10-Jun-13
165894	B C Transport Limited	O'Leary	Donal	28-Jan-13
		O'Leary	Valerie	28-Jan-13
377601	Balmaford Limited	Burke	Michael	04-Feb-13
		Clancy	Liam Joseph	04-Feb-13
		White	James	04-Feb-13
240826	Bawnmanor Limited	Boyce	Gerard	16-Dec-13
193527	Black Shore Holdings Limited	Duffy	Hugh	14-Jan-13
		Sweeney	John	14-Jan-13
		Sweeney	Treena	14-Jan-13
339787	Bluebell Telecom Limited	O'Brien	Timothy	09-Dec-13
		O'Brien	Julie	09-Dec-13

Company Number	Company Name	Director Name		Date Restricted
271992	Braldi Limited	Luby	Brian	08-Apr-13
		Bonnar	Brendan	13-May-13
		Butler	John	13-May-13
67653	Carty Building (Ballaghaderreen) Limited	Carty	Martin	21-Jan-13
		Carty	Fiona Marie	21-Jan-13
		Carty	Karina	21-Jan-13
331355	Castlewarren Construction Limited	Fenlon	Aoife	24-Jun-13
		Fenlon	Brian	24-Jun-13
482798	CBROH Trading Limited	Brannigan	Conor	16-Dec-13
		O'Hagan	Ryan	16-Dec-13
242713	Cedar Construction Limited	Gannon	Mary Ann	02-Dec-13
		Gannon	Terence	02-Dec-13
76367	Christopher Knight Electrical Limited	Knight	Robert	22-Mar-13
		Knight	Christopher	22-Mar-13
242975	Congil Construction Limited	Connolly	Padraic	28-Nov-13
		Connolly	Delia	28-Nov-13
361015	Cullen Foodstores Limited	Petrelli	Teresa	19-Mar-13
395730	Cupa Natural Materials Limited	Fernandez	Javier	22-Jul-13
		Garcia	Aureliano Fernandez	22-Jul-13
		Gayoso	Ulpiano Rodriguez	22-Jul-13
		Hernandez	Noemi	22-Jul-13
354634	D. & J. McCarthy Haulage Ltd	McCarthy	Denis	18-Feb-13
		McCarthy	Jeremiah (Jerry)	18-Feb-13
423284	Dalex Limited	Healy	Jason	14-Oct-13
		Healy	Sharon	14-Oct-13
470781	Darger Limited	Caffrey	Darren	04-Nov-13
		Gough	Shauna	04-Nov-13
488606	Derek McDonnell Limited	McDonnell	Derek	09-Dec-13
398033	Doppler Lifts Limited	Lyons	Paul	08-Oct-13

Company Number	Company Name	Director Name		Date Restricted
179532	Dover Transport Limited	Keville	David	17-Jun-13
415164	Drever Construction Limited	Cosgrave	Edward	04-Nov-13
292121	Dunican High Reach Equipment Limited	Dunican	Edmond	08-Apr-13
245007	Dunne Contracting Limited	Flynn	Jeremy	29-Jul-13
		Kavanagh	William	29-Jul-13
		Thompson	Glenn	29-Jul-13
477167	Durkan Ryan Formwork Limited	Ryan	Edward	04-Mar-13
293022	Dwyer Properties Limited*	Dwyer	Caroline	11-Mar-13
412979	Europet Limited	Jackson	Louise	02-Dec-13
		Jackson	Gerry	02-Dec-13
374761	F & F Catering Limited	Fagan	Niall	09-Sep-13
41528	Fergus Haynes (Developments) Limited*	Fergus	Cathal	08-Feb-13
		Fergus	Joanne	08-Feb-13
257799	Fintan Phelan Construction Limited	Phelan	John	22-Apr-13
		Phelan	Fintan	22-Apr-13
258090	Formcrete Limited	Herron	Michael	18-Feb-13
		Herron	Carmel	18-Feb-13
420785	Franeua Security Services Limited	Hormanski	Zdislaw	14-Jan-13
		Pankiewicz	Tadeusz	14-Jan-13
322845	Frowsley Services Limited	Bolger	Patrick	16-Dec-13
		Bolger	Anne	16-Dec-13
		Bolger	David	16-Dec-13
154815	G. & A. Manifold Limited	Manifold	Gaye	09-Dec-13
		Manifold	Arthur	09-Dec-13
252828	G.B.Manning Electrical Contractors (Cork) Limited	Manning	Kenneth John	08-Jul-13
154508	Gerard J. McPhail Limited	McPhail	Gerard	21-Jan-13
		McPhail	Margaret	21-Jan-13

Company Number	Company Name	Director Name		Date Restricted
445915	GTR Security Limited*	Reilly	Tara	29-Apr-13
		Crothers	Suzanne	01-Jul-13
		Reilly	Ian	01-Jul-13
353943	Gym Installations Limited	Boyle	Paul	22-Jul-13
170434	H M Yachts Limited	Mockler	Amy	29-Jul-13
353926	Harrmack Developments Limited	Harris	Stephen	21-Jan-13
85703	Hele Windows Limited	Lentzy	Natalie	04-Nov-13
449925	Hewcon Limited	Hewson	Brian	16-Dec-13
		Hewson	Bernadette	16-Dec-13
380440	Hibernia Tours Limited	Tempesta	Claudia	22-Jul-13
261314	Higgins Civil Engineering & Construction Limited*	Higgins	Gary	14-Jun-13
441776	Intelligent Data Fusion Limited	O'Sullivan	Dennis	25-Nov-13
467215	Itzala Limited	Farrelly	Kim	10-Jun-13
		Doyle	Anthony	15-Jul-13
322125	J R Shaft Bearings Limited	Kenny	Noreen	19-Mar-13
		Kenny	Joseph	19-Mar-13
358007	JKD Couriers Limited	Rice	John	15-Jul-13
		Rice	William Kenneth	15-Jul-13
315744	John Conroy Mechanical Contractors Limited	Conroy	Nuala	08-Apr-13
		Conroy	John	08-Apr-13
440892	John Galvin Roofing & Building Contractor Limited	Galvin	John	09-Dec-13
		O'Donoghue	Lorraine	09-Dec-13
403489	John J Dolan Scaffolding Limited	Dolan	Cara	10-Jun-13
		Dolan	John James	10-Jun-13
192510	K.C. Properties Limited	Casey	Gerard	24-Jun-13
480901	Kamdy's Limited	Macken Belhout	Deirdre	11-Nov-13
218903	Kart World Limited	Walsh	David A.	04-Nov-13
440022	Kavanagh Wholesale & Distribution Co. Limited	Kavanagh	Stephen	13-May-13
		Kavanagh	Audrey	13-May-13

Company Number	Company Name	Director Name		Date Restricted
39144	Kielys Distribution Limited*	Kiely	Adam	11-Mar-13
373994	Kilcarty Steelfixing Limited	Byrne	Joe	08-Apr-13
		Byrne	Mary	08-Apr-13
411649	Kylemore Inns Limited	Nolan	James	09-Dec-13
		Sweeney	John	09-Dec-13
485997	Lucca Food Trading Company Limited	Pieri	Roberta	02-Dec-13
		Pieri	Sandro	02-Dec-13
301182	M & P Developments Limited	McLaughlin	Hubert	29-Jul-13
		McLaughlin	Mark	29-Jul-13
		McLaughlin	Mark	29-Jul-13
376109	Max IT Computer Services Limited	Kearns	Seamus	15-Apr-13
		Tinkler	Sean	15-Apr-13
282000	McDermott Nolan Limited	McDermott	Patrick	24-Jun-13
		McDermott	Michael	24-Jun-13
440234	Mebel Limited	Jackson	Louise	02-Dec-13
		Jackson	Gerry	02-Dec-13
423043	Mercar Limited	Conlon	Bernard	28-Jan-13
		Roddy	Tony	28-Jan-13
393700	Monastic Investments Limited	Dunne	Martin	09-Dec-13
		Dunwoody	Paul	09-Dec-13
283902	N 17 Electric Limited	Naughton	Thomas	08-Apr-13
		Naughton	Bernadette	08-Apr-13
417919	National Directories of Ireland Limited	McNally	Michael	08-Apr-13
		Earls	Paul	08-Apr-13
		Buckley	Joanne	08-Apr-13
		McNally	Brenda	08-Apr-13
475135	Nationwide Express Limited	Cope	Paul	22-Apr-13
		Cope	Ian	22-Apr-13
490128	Nolnoc Technologies Limited	Conlon	Ursula	02-Sep-13
		Conlon	Michael	02-Sep-13
369883	NPJS Sales Limited	Brady	Bernard	08-Jul-13
		Brady	Bernadette	08-Jul-13

Company Number	Company Name	Director Name		Date Restricted
367766	Ocean Brand Opportunities Limited	Baxter	Douglas Alexander	16-Dec-13
		Baxter	Victoria Ann	16-Dec-13
		Clarke Hurles	Timothy	16-Dec-13
		Baxter	William Douglas	16-Dec-13
		France	Timothy	16-Dec-13
		O'Leary	Rodi	16-Dec-13
236350	Owens Concrete Limited	Owens	John	18-Nov-13
		Owens	Maree	18-Nov-13
450564	P O'Hare Developments Limited	O'Hare	Linda	08-Apr-13
		O'Hare	Paul	08-Apr-13
381074	Paddy Macs Taverns Limited	Carr	Michael	09-Dec-13
		Carr	Clair	09-Dec-13
378791	Paymount Limited (Smart Recycling Group)	McCabe	Stephen	17-Jun-13
463541	Peri Catering Limited	Chong	David	18-Feb-13
		Liu	Jackie	18-Feb-13
355088	Pharma Plaz Limited	Holden	Welton	09-Dec-13
		Macken	Michael	09-Dec-13
62478	Pierse Contracting*	Cahalin	Brendan	14-Oct-13
		O'Reilly	Michael	14-Oct-13
		Murphy	Martin Edward	11-Nov-13
		O'Nolan	Fearghal	11-Nov-13
		Duggan	Matthew	02-Dec-13
419693	PL Retail Limited	Larkin	Sandra	14-Oct-13
		Larkin	Paul	14-Oct-13
324076	Polywood Limited	Gilmartin	Michael	25-Nov-13
457524	Premier Team Limited	Al-Kaddo	Khalil	25-Nov-13
275807	Presswell Labels Limited	Guinevan	Alfred Thomas	11-Mar-13

Company Number	Company Name	Director Name		Date Restricted
473373	Purple Lake Limited	Doyle	David	08-Jul-13
		Doyle	Catherine	08-Jul-13
284487	R Madden Limited	Madden	Richard	17-Jun-13
469853	Rainey Conservation Limited	Rainey	Brendan	04-Mar-13
		Rainey	Paul	04-Mar-13
		Rainey	Desmond	04-Mar-13
328470	Real Time Distribution Limited	Argue	Frederick	09-Dec-13
		Argue	Daphne	09-Dec-13
370820	Red Civil Engineering Limited	Flynn	Jeremy	29-Jul-13
		Kavanagh	William	29-Jul-13
		Thompson	Glenn	29-Jul-13
232719	Redmond Civil Engineering Limited	Redmond	Bernadette	14-Oct-13
		Redmond	Ciaran	14-Oct-13
106266	Rialto Motors Limited	O'Neill	Frank	11-Nov-13
		O'Neill	Thomas	11-Nov-13
		O'Neill	Brendan	11-Nov-13
479874	Rushout Recruitment Limited	Connolly	Alan	21-Oct-13
		Nolan	Connor	21-Oct-13
403754	Salamander Agencies Limited	O'Neill	Seamus	04-Mar-13
		O'Neill	Grainne	04-Mar-13
170516	Sean Kiernan Limited	Kiernan	Rosemary	02-Dec-13
		Kiernan	Sean	02-Dec-13
79057	Shannon Minerals Limited	O'Mara	Brendan	18-Feb-13
		O'Mara	Ann	03-Jun-13
380052	Southwestern Power Services Limited	Marshall	Thomas Kieran	08-Apr-13
		Marshall	Ann Philomena	08-Apr-13
429471	Sp Asphalt & Tarmacadam Contracts Limited	McDaid	Majella	21-Oct-13
		Sean Paul	McDaid	21-Oct-13
396883	Spectron M & E Engineering Limited	Walsh	Philip	22-Jul-13
		Walsh	Tom	22-Jul-13

Company Number	Company Name	Director Name		Date Restricted
479388	Spillane Logistics Limited	Spillane	Thomas	21-Jan-13
		Spillane	Liam	21-Jan-13
366251	Stone Mad Limited	Costello	Susan	17-Jun-13
		Costello	Joseph	17-Jun-13
302852	Survey Sales & Hire Limited	Dolan	Kevin	25-Nov-13
245192	T & J Transport Limited	Kelly	John	25-Nov-13
		Kelly	Martina aka (Tina)	25-Nov-13
300220	Terence McCarthy Building Limited	McCarthy	Terence	24-Jun-13
		McCarthy	Mary	24-Jun-13
446888	The Cork Depot Logistics & Business Services Limited	Cooke	Kevin	01-Jul-13
		McCarthy	Paddy	01-Jul-13
390212	The Wedding Gallery Limited	Donnelly	Pauline	21-Oct-13
		Murray	Patrick	21-Oct-13
396195	Tonara Limited	Ennis	James	14-Jan-13
427421	Tuskar Asset Management Public Limited Company	Hynes	Alan	09-Oct-13
172460	W & W (Eng) Limited	Ward	James	09-Dec-13
		Ward	Seamus	09-Dec-13
344536	Walsh Maguire & Co. Limited*	Maguire	James Vincent	22-Apr-13
		Moran	Liam William Thomas	17-Aug-13
474088	Wellwish Limited	Fisher	Maree	14-Oct-13
		Wrynn	Anne Marie	14-Oct-13
		Wrynn	Paul	14-Oct-13
205026	Westcan Developments Limited	Cummins	Gerald	29-Apr-13
		Cummins	Veronica	29-Apr-13
164255	Wood-systems Limited	Moran	John	08-Jul-13
467305	Zahir Limited	Kidd	Damien	22-Jan-13
		Kidd	Pascal	22-Jan-13

Appendix 4

Cases where disqualification orders were made by the High Court pursuant to section 56 of the CLEA

Company Number	Company Name	Director Name		Disqualified From	Disqualified To
325074	Bellisle Properties Limited	Stritch	Peter Kenneth	25-Nov-13	24-Nov-23
456648	Blue Data Services Limited	Kingsley	Trevor	29-Apr-13	28-Apr-19
456648	Blue Data Services Limited	Woodland	Michele	29-Apr-13	28-Apr-19
170434	H M Yachts Limited	Mockler	Hugh	29-Jul-13	28-Jul-17
127663	Mossway Limited	Deering	David	16-Aug-13	15-Aug-14
127663	Mossway Limited	Deering (Junior)	David	02-Aug-13	01-Aug-14
378791	Payment Limited (Smart Recycling Group)	McCabe	David	15-Jul-13	14-Jul-20
450381	TMC Mediaworks Limited	Levin	Drew	18-Nov-13	17-Nov-25
427421	Tuskar Asset Management Plc	Hynes	Alan	09-Oct-13	08-Oct-16

Appendix 5

Cases where no restriction or disqualification orders were made by the High Court pursuant to section 56 of the CLEA

Company Number	Company Name	Date of Court Order	No. of Directors
359718	Business Interiors & Design (Bid) Limited	22-Feb-13	3
84000	Kerr Aluminium Limited	19-Mar-13	2
417731	The Palace Bar Limited	08-Apr-13	2
376791	Matrix Contracting Limited	30-May-13	2
373242	Ipos Investment 4 Limited	25-Jun-13	4
351995	Ipos Investment 3 Plc	25-Jun-13	-
337167	Ipos Investment Plc	25-Jun-13	-
351533	Ipos Investment Two Plc	25-Jun-13	-
366541	Ipos Locums Limited	25-Jun-13	-
364478	Uniprop Limited	25-Jun-13	-
360035	Dial -A - Tyre Limited	28-Jun-13	2
221941	Freestand Limited	15-Jul-13	2
260714	Zyder Developments Limited	14-Oct-13	2
31721	Milford Inn Limited	11-Nov-13	1

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.
2. The Ipos and Uniprop companies, as referred to above, had common directors against whom proceedings were taken.
3. In the case of Milford Inn limited, as referred to above, there was only one director remaining at liquidation.

GLOSSARY

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AGM	Annual General Meeting
Anglo	The former Anglo Irish Bank Corporation plc
CJA	Criminal Justice Act 2011
CLEA	Company Law Enforcement Act 2001
CLRG	Company Law Review Group
CRO	Companies Registration Office
Department	Department of Jobs, Enterprise & Innovation
Director	Director of Corporate Enforcement
DPP	Director of Public Prosecutions
FoI	Freedom of Information
GBFI	Garda Bureau of Fraud Investigation
IAASA	Irish Auditing & Accounting Supervisory Authority
IAIR	International Association of Insolvency Regulators
ICAV	Irish Collective Asset-management Vehicle
Minister	Minister for Jobs, Enterprise & Innovation
NALA	National Adult Literacy Association
ODCE/Office	Office of the Director of Corporate Enforcement
Oireachtas	Collective term for the Upper and Lower Houses of Parliament
PPB	Prescribed Professional Body
PQ	Parliamentary Question
RAB	Recognised Accountancy Body
SI	Statutory Instrument
WTE	Whole Time Equivalent
1963 Act	Companies Act 1963 (as amended)
2003 Act	Companies (Auditing and Accounting) Act 2003 (as amended)

