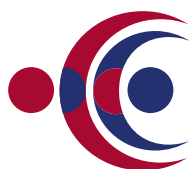


ANNUAL REPORT

Office of The Director of Corporate Enforcement

2014



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

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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 2014 Annual Report to the Minister for Jobs, Enterprise & Innovation, Mr. Richard Bruton, TD.

The year under review – principal outputs and outcomes

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 continue to contribute towards:

- 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:

- securing the rectification, on a non-statutory and therefore more cost effective basis, of a range of instances of non-compliance, including:
 - directors' loans issues to an aggregate value of approximately €66m;
 - issues relating to persons purporting to act as statutory auditors whilst not qualified to do so;
 - issues associated with the failure to maintain proper records of companies' financial affairs;
- successfully securing, in 281 separate instances, 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 6 individuals on foot of applications made to the High Court by the Office;
- the restriction of 177 company directors, and the disqualification of a further 16, on foot of liquidators' applications made to the High Court subsequent to the Office's having scrutinised the underlying liquidators' reports;
- the securing of 19 criminal convictions in the District Court for breaches of the Companies Acts; and
- in keeping with the strategic shift towards indictable cases, the prosecution of 2 separate cases in the Circuit Criminal Court, with 1 of those cases subsequently being successfully appealed to the Court of Criminal Appeal.

The year under review – significant events and developments

Criminal proceedings relating to the former Anglo Irish Bank Corporation

During the course of a 10 week period, the first trial to result from the Office's Anglo-related investigation – the so called "Section 60" trial – was heard before a Judge and jury. Having heard all the evidence, the jury found Mr. Pat Whelan and Mr. William McAteer guilty on 10 counts of alleged breaches of section 60 of the Companies Act 1963¹ and not guilty on a further 6 counts. The jury found the third defendant, Mr. Sean FitzPatrick, not guilty on 10 counts of alleged breaches of section 60 and, by direction of the trial Judge, returned verdicts of not guilty in respect of the other 6 charges. By direction of the trial Judge, the jury also returned not guilty verdicts in respect of a further 7 counts of alleged breaches of section 243 of the Companies Act 1990² against Mr. Whelan. In accordance with the provisions of section 160(1) of the Companies Act 1990, Mr. McAteer and Mr. Whelan are, by virtue of having been convicted on indictment of an offence under the Companies Acts, subject to Disqualification Orders for a period of 5 years commencing on the date of conviction.

A further trial, relating to alleged breaches of section 197³ of the Companies Act 1990 by Mr. FitzPatrick, is scheduled to commence on 13 April, 2015.

In addition, the Director of Public Prosecutions (“DPP”) has directed further charges against both Mr. Whelan and Mr. McAteer relating to alleged breaches of section 297 of the Companies Act 1963⁴. The associated trial is scheduled to commence on 16 January, 2017.

As stated in my remarks in last year’s Report, the fact that these trials – despite the scale, complexity, many novel aspects and resource-intensive nature of the underlying investigations – are being brought before the Courts for adjudication by a Judge and jury demonstrates that the system for investigating possible company law offences at the more serious end of the spectrum is capable of responding appropriately and is fit for purpose.

Appeals to the Court of Appeal – civil

Under the Companies Acts, the appropriate manner in which to bring to an orderly conclusion the existence of an insolvent company is by way of the appointment of a liquidator. This course of action, amongst other things, ensures that the behaviour of the company’s directors in the run up to the insolvency is subject to the liquidator’s scrutiny whereby, if the circumstances warrant it, the directors’ behaviour can then be brought to the attention of the Courts for an assessment as to whether restriction or disqualification is appropriate in the public interest.

For the foregoing reason, the Companies Acts provide that, where the directors of an insolvent company do not pursue this course of action but, rather, elect to allow the company to be struck off the Register, i.e., in effect abandon the company, it is open to this Office to apply to the Courts to have the company’s directors disqualified.

Since this Office’s establishment, it has been a strategic objective to seek to dissuade this form of behaviour and, in furtherance of that objective, this Office has taken many such applications over the past decade. Naturally, in selecting cases to bring to Court, this Office has sought, to the extent practicable, to focus on those cases where significant liabilities remain undischarged and extenuating circumstances have not been a feature. Notwithstanding that the Court has absolute discretion as to whether to impose disqualification, this workstream has been one that, over the years, has resulted in 115 company directors being disqualified, with a further 10 having been restricted as an alternative to disqualification. As such, it has been an effective strategy in sanctioning such behaviour, thereby serving as a deterrent to others.

During the year under review, four such applications were determined by the High Court and, whilst this Office was successful in two of those cases, in the other two cases, the Court declined to make Disqualification Orders. Having considered the two judgements in question, it was decided to appeal those decisions to the Court of Appeal. At the time of writing, one of those appeals has been withdrawn (due to the emergence of new information post the lodging of the appeal) and the other is scheduled to be heard by the Court of Appeal in October 2015.

Enactment of the ICAV Act

During the year under review, the Department of Finance continued to progress the Irish Collective Asset-management Vehicles (“ICAVs”) Bill through the Oireachtas, culminating in the Bill’s enactment and coming into effect in March 2015. ICAVs are special purpose corporate entities provided for as part of the Government’s IFSC Strategy and for which primary regulatory responsibility resides with the Central Bank. However, the legislative framework governing their establishment is largely based on company law. Under the ICAV Act 2015, this Office has been conferred with certain regulatory functions vis-à-vis ICAVs – for example, the ODCE now has functions relating to seeking the restriction and disqualification of ICAV directors in certain circumstances, applying to Court for Compliance Orders against non-compliant ICAVs and the summary prosecution of certain offences under the ICAV Act.

The regulation of entities by multiple Agencies can give rise to associated risks. In view of the fact that the Act confers functions upon the ODCE in respect of an entirely new cohort of entities, this Office engaged extensively with the Departments of Finance and Jobs, Enterprise & Innovation respectively during the year under review, with a particular emphasis on seeking to ensure that the legislative and regulatory framework will be appropriate, robust and effective.

3 Section 197 deals with false statements to auditors

4 Section 297 deals with criminal liability of persons concerned with fraudulent trading of a company

Appeals to the Court of Appeal – criminal

Having considered the file submitted by this Office, the DPP had previously directed that the Defendant, Mr. Ignatius Forde, be charged with fifty counts of alleged breaches of sections 187⁵ and 242⁶ of the Companies Act 1990. This case went to trial during the year under review. Mr. Forde entered guilty pleas in respect of thirteen counts on the indictment. Mr. Forde was convicted by the Circuit Criminal Court on one count of an offence under section 242(1) and fined €1,000. The Court took the remaining forty nine counts on the indictment into consideration.

The DPP appealed the above sentence to the Court of Appeal on the grounds of undue leniency. The Court of Appeal subsequently found the sentence imposed by the Circuit Criminal Court to have been unduly lenient and, accordingly, increased the original sentence such that Mr. Forde was ordered to serve 200 hours community service in lieu of a twelve month term of imprisonment and the original fine of €1,000 was increased to €3,000.

The year ahead

The coming year presents a range of challenges and opportunities for the Office.

Companies Act

A substantial volume of work has been undertaken, with more in progress, in preparation for the coming into effect of the Companies Act on 1 June. In addition to revising the current suite of information publications, and providing supplementary material as necessary, considerable work has been done in preparation for the coming into force of the legislative provisions governing restriction and disqualification undertakings. Upon the coming into force of the Act, the restriction undertakings regime in particular, is expected to give rise to a significant additional workstream for this Office. However, this new regime should yield benefits in terms of reducing the caseload of the Courts, reducing the administrative burden on company directors who would otherwise face Court proceedings and, by reducing liquidators' legal costs, increasing the levels of funds available in liquidations.

Staffing

Reference was made in last year's Report to the fact that a review of existing resources had identified, in particular, an insufficiency of in-house accountancy expertise and the limiting effect of that deficiency. During the year under review, and with the support of the Department, the Office was successful in securing sanction to recruit six new accountants together with an in-house IT forensics capability. At the time of writing, the Office is liaising with the Department with a view to putting in train the associated recruitment processes.

Strategic direction of enforcement work

As alluded to in last year's Report, the Office's enforcement focus has shifted towards more complex and serious company law investigations. Indeed, the Office's current portfolio of criminal investigations is reflective of that shift, with a number of cases that have the potential to result in referrals to the DPP now in train. Once in place and suitably inducted, it is anticipated that the aforementioned additional capabilities will significantly increase our capacity to realise our ambitions in that regard.

Concluding remarks

In conclusion, I would once again like to thank my colleagues for their ongoing commitment and dedication to the achievement of the Office's objectives. The year under review has, again, seen colleagues' willingness to promote and embrace change and to take on additional responsibility.

I would also like to express my gratitude to the Minister and his officials for their ongoing support, without which, in particular, securing approval for the key additional resources referred to above would not have been possible.

Ian Drennan

Director

31 March, 2015

AT A GLANCE



AT A GLANCE

ADVOCACY

- 2 new information and guidance publications issued
- 42 information presentations delivered and 15 exhibitions attended

ENFORCEMENT

Sources of our work

- In excess of 1,600 statutory reports received from liquidators, auditors and professional bodies
- Over 230 complaints received from members of the public
- Almost 50 internally generated inputs

Outputs from our work

- Following the scrutinising of reports submitted to the Office by liquidators of insolvent companies, 177 company directors restricted and 16 disqualified by the High Court
- Directors' loan infringements to the value of approximately €66m rectified on foot of Office actions
- 7 separate matters referred to professional accountancy bodies regarding matters relevant to their members
- Compliance with the Companies Acts secured in 281 separate instances through the exercise of the Director's civil powers
- 6 individuals disqualified on foot of applications made to the High Court by the Office
- 19 criminal convictions secured in the District Court, resulting in aggregate fines of €27,500 being imposed and costs of €4,750 being awarded to the Office
- In keeping with the strategic shift towards indictable cases, 2 separate cases were tried in the Circuit Criminal Court. One of these cases was subsequently successfully appealed to the Court of Criminal Appeal by the DPP on grounds of undue leniency.

INVESTIGATION RELATING TO THE FORMER ANGLO IRISH BANK CORPORATION PLC

Following a 10 week trial that ran from February to April 2014:

- Mr. Pat Whelan found guilty on 10 counts of alleged breaches of section 60 of the Companies Act 1963 and not guilty on a further 6 counts
- Mr. William McAteer found guilty on 10 counts of alleged breaches of section 60 of the Companies Act 1963 and not guilty on a further 6 counts
- Mr. Sean FitzPatrick found not guilty on all 16 counts of alleged breaches of section 60 of the Companies Act 1963
- Mr. Pat Whelan found not guilty on all 7 counts of alleged breaches of section 243 of the Companies Act 1990
- Messrs. Whelan and McAteer sentenced to 240 hours of community service each
- Arising from having been convicted on indictment of an offence under the Companies Acts, pursuant to section 160(1) of the 1990 Act, Mr. McAteer and Mr. Whelan are both subject to Disqualification Orders for a period of 5 years commencing on the date of conviction.

FINANCIAL

- The cost of running the Office during 2014 was €3m, some 64% of its allocation for the year and a reduction of 4% on the previous year.

OVERVIEW OF THE ODCE

1



CHAPTER 1

OVERVIEW OF THE ODCE

Statutory mandate

Office of the Director of Corporate Enforcement

The Company Law Enforcement Act 2001 (“CLEA”)⁷ 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 CLEA⁸. They include to:

- i. encourage compliance with the Companies Acts;
- ii. investigate instances of suspected offences under the Companies Acts;
- iii. enforce the Companies Acts, including by the prosecution of offences by way of summary proceedings⁹;
- iv. refer cases, at his discretion, to the Director of Public Prosecutions (“DPP”) where the Director has reasonable grounds for believing that an indictable offence¹⁰ under the Companies Acts has been committed; and
- v. exercise, insofar as he feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Companies Acts.

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

Independence of the Director

The CLEA¹¹ provides that the Director shall be independent in the performance of his functions.

High level goals

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

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

7 Section 7

8 Section 12(1)

9 i.e. before the District Court

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

11 Section 12(2)

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

Resources, organisational structure, governance arrangements & principal workstreams

Human resources

As at 1 January 2014, the Office had an actual staff complement of 41.9 whole time equivalents (“WTE”) (1 January, 2013: 45.5). At year end, the Office’s actual staff complement stood at 40 (31 December, 2013: 41.9) WTE. The composition of the Office’s staff complement as at 31 December, 2014 is set out in the Table below.

Table 1
Analysis of actual staff complement (WTEs) – as at 31 December, 2014

Grade	Number
Director	1
Heads of Function ¹² (excluding Garda)	4
Legal Advisors	2
Accountants	1
Solicitors	2
Assistant Principals	3
Higher Executive Officers	7
Executive Officers	6
Clerical Officers	7.5 ¹³
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
Total	40

During the year under review, the Office was, in response to a request for same, granted sanction to recruit 6 additional accountants plus a Higher Executive Officer possessing IT forensics capabilities. At year end, the Office was liaising with the Department with a view to putting in train the associated recruitment processes.

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 2014 allocation and expenditure respectively.

¹² Includes 1 Legal Advisor and 1 Solicitor

¹³ Includes 1 temporary Legal Secretary

Table 2
Financial allocation and expenditure – 2014

	Allocation €000s	Expenditure €000s	%
Pay	2,465	2,216	90
Non-pay	2,207	796	36
Exceptional legal costs	50	0	0
Total	4,722	3,012	64

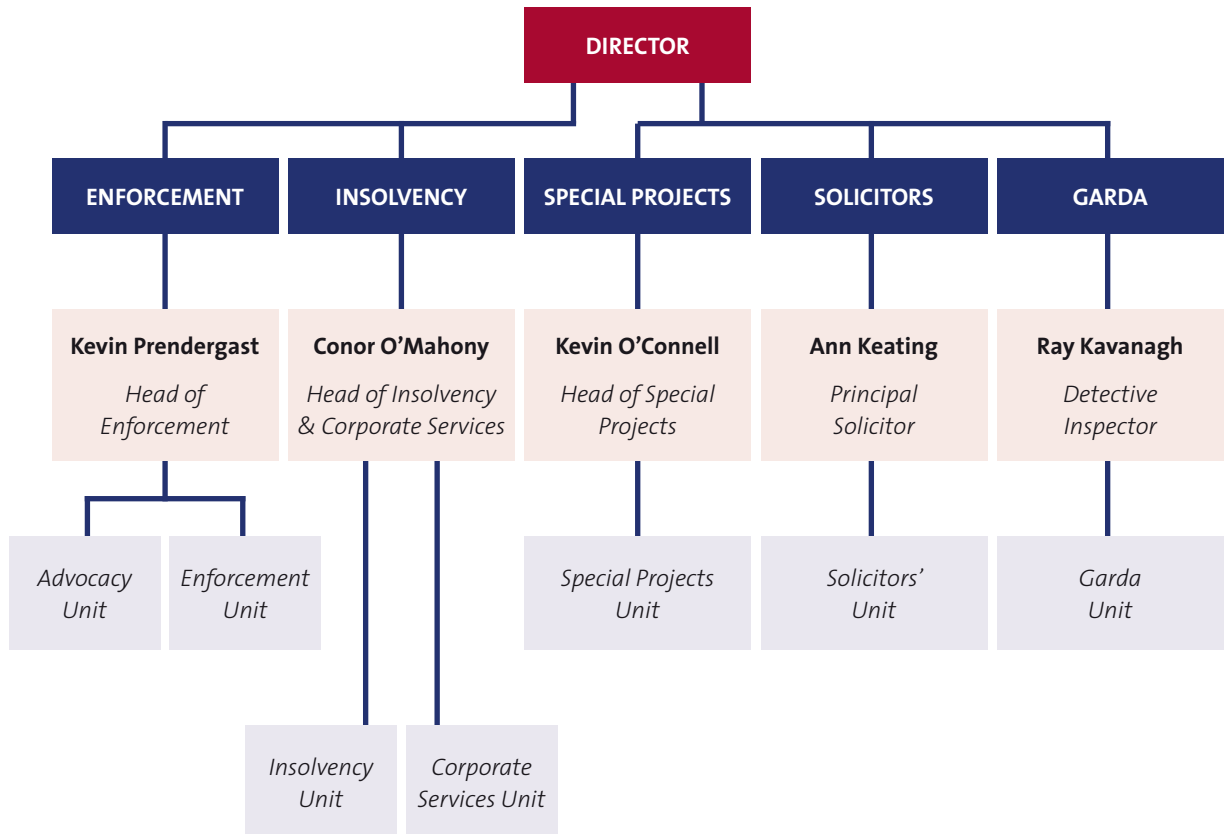
The principal reasons as to why actual expenditure differed from the allocation were as follows:

- savings on pay resulting from staff reductions arising from both vacancies carried forward from 2013 and arising during the year under review; and
- certain legal costs which had been anticipated as might arise during the year did not do so. These costs relate to certain long running litigation to which the Office has been party – the timing as to when those costs might crystallise is, therefore, uncertain.

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

Organisational structure

Having regard to the Director’s principal statutory functions and the associated workstreams, the Office is structured into seven 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 below.



Governance arrangements

A Management Board – which comprises of the Director and each Head of Function – considers issues of Office-wide relevance. Issues of key importance in that context 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 Office's leadership team.

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

Table 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; • designate the matter as being for further investigation; • refer the matter to the Insolvency Unit, e.g., where the issues in question relate to an insolvent company in liquidation; • following consultation with the Director, refer the matter to the Special Projects Unit; • refer the matter to a third party, for example, another regulatory or enforcement body. 	3

Workstream	Unit(s) principally involved	Chapter
Civil enforcement litigation	<p>For the most part, civil enforcement litigation is managed by the Enforcement Unit in conjunction with the Solicitors' 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 – or, in certain circumstances, by the Special Projects 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 Solicitors' Units. Investigations in which a prosecution on indictment is envisaged involve collaboration on the part of the Enforcement Unit, or Special Projects Unit as applicable, with the Garda and Solicitors' Unit.</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 – or Special Projects Unit as applicable – 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 Solicitors' Unit becomes involved.</p>	3
Provision of support services	<p>The provision of support services to other areas of the Office is the primary responsibility of the Corporate Services Unit.</p> <p>All Units have a responsibility to assist the Corporate Services Unit in ensuring that the ODCE's obligations as a publicly funded Office (e.g. in the areas of procurement, tax clearance procedures etc.) are fully complied with.</p>	4
Relationship management and development	<p>Whilst certain Units 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

2



CHAPTER 2

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

Introduction

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

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

Publications and outreach activities

Publications

In addition to its corporate 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 2 new publications (2013: 6). Details of those publications are set out in the Table below.

Table 4
Publications issued – 2014¹⁴

Date Issued	Publication
January 2014	List of insolvent companies and reporting liquidators in respect of which the ODCE has identified the requirement for a "Section 56 Report" in 2013
January 2014	Companies (Miscellaneous Provisions) Act 2013 – Information Notice

In January 2014, the Office published a list of insolvent companies and the reporting liquidators in respect of whom the ODCE had identified the requirement for a "Section 56 Report" in 2013. The purpose of this list was to enable interested parties to bring any matters of concern in relation to an insolvent company in liquidation to the attention of the liquidator and/or the ODCE, so that any such concerns could be taken into account in determining whether or not an application for restriction of the company's directors should be made to the High Court. Further detail regarding the section 56 process is set out in Chapter 3 of this Report.

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 Companies (Miscellaneous Provisions) Act 2013¹⁵.

In addition to the foregoing, the Office issued in excess of 22,000 copies of its various publications during 2014. 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 companies¹⁶. 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.

During 2014 the Office commenced work on redrafting its suite of Information Books to reflect the anticipated enactment of the Companies Act. It is intended that revised Information Books will be available for stakeholders' benefit in advance of commencement of the Act on 1 June, 2015.

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, it is anticipated, 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, and derive benefit from, guidance on corporate governance and related matters.

During the year, Office staff delivered 42 presentations (2013: 60) to a combined audience of in excess of 2,500 people. During the year, the Office was also represented at a total of 15 exhibitions (2013: 16), which included a continued involvement in the highly successful "Taking Care of Business" series of events. Details of the presentations delivered and exhibitions attended respectively during the year are set out at Appendix 2 to this Report.

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 Act

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 Oireachtas¹⁷ as well as numerous Statutory Instruments and Regulations) through the legislative process. The Companies Act¹⁸, which was signed into law on 23 December, 2014, also contains a number of new amendments and additions to company law, certain of which are dealt with in further detail elsewhere in this Report.

¹⁶ The CRO typically issues the ODCE Quick Guide on Company Directors as part of its pack as issued to newly incorporated companies.

¹⁷ Collective term for the Upper and Lower Houses of Parliament

¹⁸ Number 38 of 2014

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. Pursuant to a Government Decision that the ODCE should have a role in the regulation of ICAVs, during the year under review the Office continued to engage extensively with the Department and Department of Finance respectively on the proposed introduction of ICAVs under Irish legislation and, in particular, on the robustness of the proposed regulatory framework that will apply to such entities given that primary responsibility for the regulation of these entities resides with the Central Bank.

Other advocacy activities

In addition to the foregoing, the Office contributed to the Department of Finance’s submission to the World Bank’s “Doing Business” Report on Ireland and also responded to the Department of Justice’s discussion paper on a single consolidated detention power for members of An Garda Síochána.

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 Deputies¹⁹ and Senators²⁰.

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.

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 consequential right to nominate a member to its Board of Directors. Mr. Conor O’Mahony, the Office’s Head of Insolvency & Corporate Services, is, in that context, a member of IAASA’s Board of Directors.

The ODCE nominee attended 8 of the 9 Board meetings that he was eligible to attend, together with 3 meetings of the Board’s Audit Committee of which he is also a member. IAASA’s 2014 Annual Report will be available on its website²¹ 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 programme²². The Office contributed to, amongst others, the following issues as considered by the CLRG:

Representation of a company before the Courts

The CLRG continued its review of this topic during the year under review and, at year end, its deliberations in that regard were ongoing.

Review of the enforcement of company law

The CLRG commenced an examination of this topic during the year under review and, at year end, its deliberations were 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.

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 29 separate matters (2013:24).

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 2 formal meetings with the accountancy bodies’ senior management during the year.

²¹ www.iaasa.ie

²² The CLRG’s Annual Reports are available at www.clrg.org

Irish Stock Exchange

The Office held 1 formal meeting with senior staff of the Irish Stock Exchange on matters of mutual interest during 2014.

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 2014, including the European Commission, the Department of Social Protection, the Health Service Executive and Pobal.

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. One such article was contributed to Public Affairs Ireland during 2014 on the subject of directors’ duties in the context of publicly funded organisations.

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

3



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

	2014	%	2013	%
Statutory reports				
Liquidators' initial section 56 reports	973		1,226	
Liquidators' subsequent section 56 reports	539		577	
Total liquidators' section 56 reports	1,512	78.9	1,803	78.2
Liquidators' reports regarding possible criminality	0	0	10	0.4
Auditors' indictable offence reports	121	6.3	203	8.8
Professional Bodies' indictable offence reports	2	0	0	0
Referrals				
Referrals from external parties	43	2	38	1.7
Complaints				
Complaints from members of the public	236	12.8	252	10.9
Total inputs from external sources	1,914	100	2,306	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 just under 79% of all external inputs received by the Office during 2014 (2013: 78%). In summary, liquidators of companies that are in insolvent²³ liquidation are required by law²⁴ to report to the Office on the circumstances giving rise to the company's demise and on the conduct of any person who was a director of the company during the 12 months preceding the entry of the company into liquidation. The liquidator must also proceed to apply to the High Court for the restriction²⁵ of each of the directors, unless relieved of that obligation by the Office²⁶.

The essential aims of this statutory reporting regime are to:

- afford the public a degree of protection by ensuring that persons who have been determined by the High Court as not having acted honestly and/or responsibly in the run up to a company's entering insolvent liquidation may, in respect of the mandatory 5 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.

Companies entering liquidation

Albeit at a reduced level, company failures continued at a relatively high level during 2014. As can be seen from the Table below:

- during the year, insolvent liquidations (i.e. creditors' and Court liquidations combined) accounted for 50% of all liquidations (2013: 57%);
- following the three year period from 2010 to 2012, during which insolvent liquidations exceeded 1,300 annually, 2014 saw a second consecutive year in which the comparable number was closer to 1,000 annually; and
- solvent (i.e., members') liquidations increased by 18% during 2014 (2013: decrease of 8%), from 848 to 1,001.

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

24 Section 56 of the CLEA

25 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.

26 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

Table 6
Companies entering liquidation: 2010-2014

	2010	2011	2012	2013	2014
Creditors' liquidations	1,258	1,311	1,210	1,043	929
Court liquidations	128	99	107	76	78
Total insolvent liquidations	1,386	1,410	1,317	1,119	1,007
Members' liquidations	899	1,054	919	848	1,001
Total solvent liquidations²⁷	899	1,054	919	848	1,001
Total liquidations	2,285	2,464	2,236	1,967	2,008

Liquidator reports received – 2014

As can be seen from Table 5 above, a total of 1,512 liquidators' reports were received during the year (2013: 1,803), of which:

- 973 were initial reports (2013: 1,226); and
- 539 were subsequent²⁸ reports (2013: 577).

The 10% reduction in the number of insolvent liquidations compared to 2013 is welcome. Based on current indications, a further reduction of in the order of 10% is anticipated over the course of 2015.

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

Table 7
Sectoral analysis of liquidators' initial section 56 reports received – 2014

Sector	2014		2013	
		%		%
Wholesale & retail	222	23	271	22
Construction	167	17	236	19
Manufacturing & printing	121	12	159	13
Hotels, bars & catering	105	11	117	10
Community, social & other	93	10	103	9
Marketing & promotion	80	8	89	7
Real estate & renting	60	6	99	8
Transport & distribution	47	5	44	4
Technology & telecommunications	34	4	51	4
Financial & leasing	20	2	27	2
Recruitment & security services	13	1	13	1
Agriculture, mining & marine	11	1	17	1
Total	973	100	1,226	100

²⁷ 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.

²⁸ 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.

Timeliness of liquidators' reporting

Over the course of the year, the Office issued 277 (2013: 224) notices to 124 (2013: 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 consequence, 96% of the first reports due during the year had been received by the end of the year (2013: 97%).

However, a small number of liquidators have repeatedly failed to comply with their reporting obligations. Such cases have been designated as 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 2010 to 2014.

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 2010-2014

Number of liquidators	Number of engagements				Total
	<3	3-6	7-12	>12	
2010	169	48	33	26	276
2011	182	57	30	27	296
2012	187	63	37	22	309
2013	203	46	16	21	286
2014	177	39	19	17	252

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 21% (2013: 22%) 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	2014		2013	
		%		%
Real estate & renting	112	28	80	16
Construction	37	9	65	13
Wholesale & retail	35	9	42	8
Manufacturing	32	8	42	8
Hotels, bars & catering	19	5	32	6
Community, social & personal	32	8	40	8
Finance & leasing	17	4	45	9
Transport & distribution	11	3	10	2
Agriculture, mining & marine	11	3	8	2
Health & social work	12	3	14	3
Technology & telecommunications	3	1	22	4
Marketing & promotion	5	1	5	1
Recruitment & security services	2	0	7	1
Other business sectors	3	1	38	8
Business sector not known	0	0	0	0
Not a company	71	17	53	11
Total	402	100	503	100

Complaints

The Office receives substantial numbers of complaints annually from members of the public. During the year a total of 236 complaints were received (2013: 252), which accounted for over 12% (2013: 11%) 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)

	2014	%	2013	%
Allegations of reckless/fraudulent/insolvent trading	65	28	43	17
Annual/Extraordinary General Meeting related	24	10	15	6
Relating to the issue of unpaid debts	27	12	30	12
General shareholder rights issues	19	8	23	9
Relating to companies trading whilst struck off the Register	10	4	1	0
Directors' conduct	22	9	40	16
Audit/auditor related	28	12	28	11
Allegations of forgery/furnishing of false information	7	3	21	8
Other	34	14	51	21
Total	236	100	252	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 Acts²⁹ has been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the Office³⁰. The Office has developed and published guidance to assist auditors in complying with their obligations in this regard³¹.

Nature of suspected offences reported

During the year, a total of 121 indictable offence reports were received (2013: 203). The Table below provides an analysis of the nature of suspected offences notified in those reports. It should be noted that the number of reports received does not accord with the number of suspected offences reported as, in a number of instances, reports included reference to more than one suspected offence.

Table 11
Analysis of suspected indictable offences reported by auditors

	2014	%	2013	%
Directors' loan infringements	101	74	165	78
Failure to maintain proper books of account	24	18	26	12
Provision of false statements to auditors	2	1	2	1
Persons not qualified to act as auditor to a company acting as such	3	2	2	1
Falsification of documents	1	1	4	2
Other miscellaneous offences	6	4	13	6
Total	137	100	212	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 43 (2013: 38) such referrals from a variety of sources including:

- the Registrar of Companies;
- the Central Bank; and
- other external statutory Bodies.

²⁹ Other than offences under sections 125(2) and 127(12) of the 1963 Act, as amended

³⁰ 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

³¹ 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

Professional bodies' indictable offence reports

Recognised Accountancy Bodies ("RABs")³²

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 Office³³. Two such reports were received during the year under review (2013: 0).

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 Office³⁴.

Pursuant to the Company Law Enforcement Act 2001 (Section 58) Regulations 2002³⁵, 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 (2013: 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 Office³⁶. This reporting obligation extends to all liquidations, solvent and insolvent (i.e. both Creditors' Voluntary liquidations and Court liquidations) alike. During the year, no such reports were received by the Office (2013: 10).

³² 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)

³³ Section 192(6) of the Companies Act 1990, as amended by section 73 of the CLEA

³⁴ Section 58 of the CLEA

³⁵ SI 544 of 2002

³⁶ Section 299 of the 1963 Act

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

It is open to the Office to apply to the High Court for the disqualification of the directors of such struck off companies³⁷. However, the law³⁸ 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 sanction to be imposed, the Court may instead restrict the directors where it adjudges that disqualification is not warranted under the particular circumstances³⁹.

Where there is evidence to suggest that a company was insolvent at the date upon which it was struck off the Register, it is the Office’s policy to consider seeking the disqualification of the company’s directors. This is because, by allowing the company to be struck off the Register, the directors avoid bringing the company’s existence to a conclusion in the appropriate manner, i.e., through the appointment of a liquidator. By not appointing a liquidator, the company’s directors also avoid the scrutiny of their behaviour as provided for by section 56 of the CLEA.

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.

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”⁴⁰.

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 CLEA⁴¹.

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

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

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

40 Section 12(1)(e) of the CLEA

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

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 and limitations, i.e.:

- the Office must inform the respondent liquidator of the reason(s) as to why the request is being made; and
- a request may not be made in respect of books relating to a liquidation that has concluded more than 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 – 2014

During the course of 2014, a total of 48 (2013: 107) internal inputs were generated.

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 through the Courts of the relevant restriction or disqualification proceedings and the outcome is recorded once the proceedings have been determined. However, the Office also reviews cases from time to time where concerns come to its attention regarding, for example:

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

In the case of other inputs, such as, for example, auditors' reports, 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;
 - liquidators for the production of their liquidation books and records;
 - persons acting, or purporting to act, as auditors for the production of evidence of their qualifications;
 - liquidators requiring that they file outstanding section 56 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 – 2014

Section 56 reports on hand at 1 January, 2014		765 ⁴²
New reports received during 2014	1,512	
Less: Reports in respect of which determinations made during 2014	1,701	
Section 56 reports on hand at 31 December, 2014		576

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

Table 13
Throughput of other cases – 2014

Other cases on hand at 1 January, 2014		154 ⁴³
New cases opened during 2014	450 ⁴⁴	
Less: Cases concluded during 2014	514	
Other cases on hand at 31 December, 2014		90

42 Restated from the 2013 Report

43 Restated from the 2013 Report

44 402 external inputs (Table 9 refers) plus 48 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 1,174 liquidators' reports during 2014 (2013: 1,356), with a further 527 decisions made to grant 'Relief at this time' (2013: 622).

Of the definitive decisions taken during 2014, a total of 1,098 were made in respect of initial reports (2013: 1,014), with a further 603 being made in respect of subsequent reports (2013: 342).

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	2014	%	2013	%
Full relief ⁴⁵	753	68	951	69
No relief ⁴⁶	44	4	47	4
Partial relief ⁴⁷	8	1	16	1
Relief at this time ⁴⁸	293	27	359	26
Total	1,098	100	1,373	100

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

Decision type	2014	%	2013	%
Full relief ⁴⁵	250	41	239	39
No relief ⁴⁶	90	15	80	13
Partial relief ⁴⁷	29	5	23	4
Relief at this time ⁴⁸	234	39	263	44
Total	603	100	605	100

Complete lists of the directors, and associated companies, in respect of which full relief and relief at this time respectively were granted during 2014 are available at www.odce.ie.

45 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.

46 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.

47 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.

48 '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.

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 – 2014

	Cases	Directors affected
Restriction Orders granted	118	182
Disqualification Orders granted	11	16
No Orders granted	12	25
Total	136⁴⁹	218⁴⁹

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:

- three related companies were placed in liquidation following a petition by the Revenue Commissioners. The companies had tax liabilities which included assessments for the years 2007-09. The directors failed to maintain proper books of account and the Statement of Affairs presented to the liquidator was unreliable;
- a company involved in construction activity, and having a deficiency of €3.83m, was involved in an unfinished development that had been purchased personally by the directors. The directors failed to deliver up or safeguard the assets and books and records of the company and also failed to co-operate with the liquidator. The company had used VAT funds as working capital and had failed to discharge its responsibilities in respect of other non-VAT returns. Credit cards and other funds were also used for personal expenditure;
- in the case of two related companies involved in the property/construction sector, the Revenue Commissioners were owed €165k and €161k respectively, with bank borrowings of €24.4m and €5m respectively. Cumulative trading losses exceeded €10m and, in both companies, there was a complete absence of cost control and allocation of costs to individual jobs. Significant company funds were used to pay personal expenses of directors, with an unexplained deterioration of assets and payments to related parties;
- the Revenue Commissioners petitioned the High Court for the winding up of two companies on foot of demands for unpaid PAYE, PRSI, VAT and RCT. The sums involved were €444k and an estimated €288k respectively. The directors failed to maintain proper books of account and also failed to co-operate with both the liquidator and Orders of the High Court to provide financial information. Assets were transferred to a related company, displaying evidence of phoenix activity. Company resources had been used for the construction of a house for family members without payment. In addition, two of the directors breached the terms of their respective restrictions arising from their involvement in a previous company;

- the directors of a company engaged in a systematic and deliberate under-payment and under-declaration of taxes for a period of at least three years, resulting in debts to the Revenue Commissioners of in excess of €346k. A director's loan of in excess of €216k was found to be false and the directors had also misrepresented trading figures. The directors failed to respond to the liquidator's requests for information and explanations of substantial differences found in the financial records. As a result, the liquidator concluded that the directors had failed to maintain proper books of account. The directors were also in breach of employment and related obligations regarding the non-payment of the national minimum wage and breaches of the Organisation of Working Time Act;
- a company was the subject of a Revenue audit, which identified that tax liabilities were grossly understated. The actual amount owing was €1.31m as opposed to the declared figure of €128k. This arose as a result of the company not having disclosed, or having under-declared, its PAYE and PRSI liabilities;
- a company involved in the sale and repair of agricultural machinery failed to maintain proper books of account. The Statement of Affairs provided by the directors did not accurately reflect the financial position of the company. During a Revenue audit the company was unable to produce sufficient evidence of purchases for a number of years, which resulted in the Revenue Commissioners issuing a demand for payment of almost €1.5m, which the company was unable to pay;
- a company that had been under investigation by the Criminal Assets Bureau in relation to Vehicle Registration Tax fraud and other matters had a VAT liability of in the order of €1m rather than the declared amount of €70k;
- a company continued to trade whilst insolvent, having built up a significant debt to its main UK supplier. A further Irish based supplier served a demand for payment pursuant to section 214 of the Companies Act 1963 in respect of the debt outstanding. The company's bank had returned 27 cheques unpaid to an aggregate value of approximately €147k. The Revenue Commissioners had served a final demand with a Notice of Attachment. Stock recorded in the financial records could not be reconciled with physical stock and customer deposits taken in respect of goods not subsequently supplied amounted to €132k.

Civil outputs from the section 56 process

Three cases in which documents and other materials had been sought from liquidators pursuant to section 57 of the CLEA were progressed during the year. In one case, following examination by the Office, the liquidator proceeded to distribute in excess of €70,000 to the Revenue Commissioners and other State Agencies. In the second case, having sought and obtained certain information and explanations from the liquidator concerned, the Office referred certain matters to the Revenue Commissioners. The third case was closed following completion of the Office's examination of the issues involved.

Criminal outputs from the section 56 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.

During the year under review, the Office continued to address the failure, on the part of a small number of liquidators, to comply with reporting obligations on a timely basis. At the beginning of the year, 1 prosecution was in progress and, during the course of the year, a further 3 prosecutions were initiated. Three prosecutions were concluded during the year, with the following outcomes:

- one liquidator was fined €500 (in respect of two separate section 56 Reports) and ordered to pay prosecution costs of a further €1,250;

- in the second case, the two summonses were struck out at the ODCE's request and the defendant discharged prosecution costs of €1,250; and
- in the third case, in light of circumstances peculiar to the defendant, the ODCE had the summonses struck out with no Order for costs.

A fourth case was ongoing at year end.

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 115 cases (2013: 175) 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 €66m (2013: €62m). 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 8 separate companies.

The Office also formally cautioned:

- 14 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; and
- the directors of 13 companies in relation to matters associated with the keeping of proper books of account.

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

A variety of legislative provisions were successfully used during the course of 2014 in order to secure compliance with the Companies Acts. These included:

- 2 directions under section 131(3) of the Companies Act 1963 (as amended) ("the 1963 Act") requiring the convening of companies' Annual General Meetings ("AGM") (2013: 2). 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;
- 277 directions (2013: 227), pursuant to section 371(1) of the 1963 Act, requiring liquidators to comply with their reporting obligations under section 56 of the CLEA;

- 4 demands (2013: 2) under section 19 of the Companies Act 1990 (“the 1990 Act”), 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 provision⁵⁰ 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, 7 referrals (2013: 11) 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, 4 cases (2013: 14) involving applications by the Office for directors’ disqualification were determined by the High Court. In 2 of these cases, the Court made Disqualification Orders in respect of a total of 4 persons (2013: 25 Disqualification Orders and 3 Restriction Orders). In the other 2 cases, the Court declined to make Disqualification Orders. Having considered the judgements in the latter two cases, the Office decided to appeal both judgements. Consequently, Notices of Appeal were lodged with the Court of Appeal and, at year end, these appeals were pending.

As can be seen from the data above, there was a significant drop off in applications of this nature by the Office during the year under review. That was largely as a consequence of the decision to lodge appeals and to defer the making of further applications pending consideration of the issues involved by the Court of Appeal.

The Office determined a further 17 cases (2013: 41) without Court action and, at year end, determinations were awaited from the High Court in respect of a further 2 cases. Thus, a total of 23 cases (2013: 64) were dealt with during the year under review. Further details of Orders made by the High Court are set out in the Table below.

⁵⁰ Section 17 of the CLEA

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

Company Name	Company Number	Persons Disqualified	Start Date	End Date
Peter Redmond Limited	384914	Peter Redmond	19.05.14	19.05.19
		Helena Redmond	19.05.14	19.05.19
Alford Construction Limited	372457	Derek Alford	01.09.14	01.09.18
		Denise Alford	01.09.14	01.09.17

Other civil enforcement proceedings

Aventine Resources plc/John Francis Liwosz and Anthony William Brown

As outlined in the 2013 Report, 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 160(2)(f) (persistent default) of the 1990 Act. Following a hearing of the action during the year under review, the High Court made Disqualification Orders under sections 160(2)(b) and (f) respectively against both Mr. Liwosz (7 years) and Mr. Brown (6 years). In addition, the High Court awarded the Office its costs, to be taxed in default of agreement.

This litigation was noteworthy in that this was the first occasion on which the Office has obtained Disqualification Orders pursuant to section 160(2)(f) (persistent default). In that regard, the High Court held that not only had the Respondents shown a persistent failure to comply with the requirements of the Companies Acts, but they were also in breach of the terms of two High Court Orders, on which latter ground alone it would be reasonable and appropriate to make a Disqualification Order.

Messrs Michael and Thomas Bailey/Bovale Developments⁵¹

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.

On 21 October, 2013, the case was heard before Ms. Justice Finlay Geoghegan and, on 9 December, 2013, the Court delivered judgement, making an order pursuant to section 160 of the 1990 Act (as amended) disqualifying Messrs Michael and Thomas Bailey for 7 years. In arriving at the term of disqualification, the Court held that, but for the mitigating circumstances, the appropriate period of disqualification would have been 14 years but that, taking the mitigating factors into consideration, a 7 year term was appropriate.

The Court placed a stay on the coming into effect of the Order at that time given that the Respondents had indicated their intention to bring an application, pursuant to section 160(8) of the 1990 Act, seeking a degree of relief from the Disqualification Order. The Respondents' application for relief was heard on 1 May, 2014. At that hearing the Court lifted the stay (i.e., the Disqualification Order came into effect) but authorised the Respondents to continue as directors, or to be concerned in the management, of certain companies – as listed in a Schedule provided to the Court – up to and including 30 September, 2014 on condition that a minimum of two additional directors be appointed to the relevant companies.

Following a further application for relief by the Respondents, which came before the Court on 17 July, 2014, the Court directed that the aforementioned Order of 1 May, 2014 be varied to the effect that the Respondents be permitted to continue as directors, or to be concerned in the management, of the companies listed in the abovementioned Schedule on condition that a minimum of one additional director be appointed to each relevant company on or before 20 July, 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 1990 Act) to investigate the Affairs of NIB and NIBFS⁵².

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 2014 the position was that 6 of the cases had been fully concluded and Supreme Court hearing dates were awaited in respect of 3 appeals⁵³ from earlier decisions of the High Court.

During the year under review, 2 of the appeals came before the Supreme Court. Both of these cases involved appeals by the Respondents against Disqualification Orders made by the High Court. By consent, the Supreme Court made Orders vacating the High Court Orders and it imposed Declarations of Restriction to take effect from the dates of the making of the Orders in 2014. In both cases, the Appellants made contributions towards the Office's legal costs. At year end, a date for the hearing of the one remaining Supreme Court appeal was awaited.

Applications for relief under section 152 of the 1990 Act

Section 152 of the 1990 Act provides, inter alia, that:

- a person who is subject to a restriction declaration may, within one year of the Court making the declaration, apply to the Court for relief, either in whole or in part, from the restriction and the Court may, if it deems it just and equitable to do so, grant such relief on whatever terms and conditions it sees fit; and
- on receipt of a notice of the intention to make such an application for relief, the liquidator shall forthwith notify such creditors and contributories of the company as have been notified to him/her or become known to him/her, that s/he has received such notice.

During the year under review, the Office became aware of intended applications for relief pursuant to section 152 in two separate instances. In one case, the Office engaged with the applicant and advised the applicant of the information that, in the Office's assessment, should be brought to the Court's attention in the context of the proposed application. The applicant subsequently withdrew the application. In the second case, the application was still pending at year end.

Other civil litigation

During the year under review, a Plaintiff instituted High Court proceedings against a number of Defendants, including the Office. Insofar as the Office was concerned, the Plaintiff alleged that the ODCE had failed to investigate properly a matter that had been referred to it by the Plaintiff some years prior.

At the earliest opportunity the Office issued a Motion to have the Plaintiff's proceedings dismissed as failing to disclose a cause of action and/or being both frivolous and vexatious. The High Court, having considered the matter, made an Order striking out the Plaintiff's claim against the Office and no Order as to costs was made against the Office.

⁵² 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.

⁵³ 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.

Criminal enforcement

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 2014 the position was that the DPP had directed that three persons, i.e., Mr. William McAteer, Mr. Patrick Whelan and Mr. Sean FitzPatrick – all former directors of Anglo – should be tried on indictment, each in respect of 16 alleged breaches of the provisions of section 60 of the 1963 Act⁵⁴. The DPP had further directed that one of those persons, i.e., Mr. Sean FitzPatrick, should be tried on indictment in respect of 12 alleged breaches of the provisions of section 197 of the 1990 Act⁵⁵.

During the year under review, the trial of the alleged contraventions of section 60 was heard in the Dublin Circuit Criminal Court before His Honour Judge Martin Nolan and a jury. The trial ran for more than 10 weeks between February and April, with a final sentencing hearing being held in July. In addition to the existing charges for alleged breaches of section 60 on foot of which all three defendants had been returned for trial, the DPP added 7 further charges to the indictment against Mr. Whelan alleging offences contrary to section 243 of the 1990 Act⁵⁶.

Mr. McAteer and Mr. Whelan were each found guilty of 10 of the section 60 charges brought against them and not guilty in respect of the other 6 such charges. Mr. Whelan was furthermore found not guilty, by direction of the trial Judge, of the 7 section 243 charges for which he had been indicted and tried. Arising from having been convicted on indictment of an offence under the Companies Acts, pursuant to section 160(1) of the 1990 Act, Mr. McAteer and Mr. Whelan are both subject to Disqualification Orders for a period of 5 years commencing on the date of conviction.

Mr. FitzPatrick was found not guilty of all the charges against him. In the case of 10 of those charges, the jury returned verdicts of not guilty and, in the case of the other 6 charges, the trial Judge directed the jury to return verdicts of not guilty.

On 31 July, 2014, His Honour Judge Nolan sentenced Mr. McAteer and Mr. Whelan to 240 hours of community service each, in respect of the charges of which they had been found guilty.

Regarding the prosecution of Mr. Sean FitzPatrick for alleged contraventions of section 197 of the 1990 Act, this trial had been provisionally fixed for hearing on 7 October, 2014. In July 2014, the Court acceded to an application brought on Mr. FitzPatrick's behalf for the adjournment of the trial, and it is now listed to commence on 13 April, 2015.

A further set of proceedings arising from the ODCE's Anglo-related investigations was initiated by the DPP in August 2014. Mr. William McAteer and Mr. Patrick Whelan are the defendants in those proceedings, which concern alleged offences contrary to section 297⁵⁷ of the 1963 Act. In each instance it is alleged that the accused, on 29 September, 2008, was

“...knowingly a party to the carrying on of the business of a company, for a fraudulent purpose, namely the granting by Anglo Irish Bank Corporation plc of a loan to [William McAteer] in an amount of €8,426,307.00 secured only upon [Mr. McAteer's] shares in Anglo Irish Bank Corporation plc so that [Mr. McAteer] could pay off a loan to Bank of Ireland in that amount for which [Mr. McAteer was] personally liable, which in the circumstances then pertaining to Anglo Irish Bank Corporation plc caused a gain to [Mr. McAteer] and, a loss to the said bank.”

54 Section 60 deals with the provision of financial assistance by a company for the purchase of its own shares

55 Section 197 deals with false statements to auditors

56 Section 243 deals with the destruction, mutilation or falsification of documents

57 Section 297 deals with criminal liability of persons concerned with fraudulent trading of a company

In November 2014 the Court listed these proceedings for trial in the Dublin Circuit Criminal Court over a four week period beginning on 16 January, 2017.

As regards the pending trials, the Office continued, during the course of the year under review, 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 disclosure⁵⁸ 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 also to

*"...any [other] material which may be relevant to the case which could either help the defence or damage the prosecution"*⁵⁹.

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.

Regarding the two other files which this Office has previously submitted to the DPP (which have been dealt with in previous Annual Reports), no charges have been directed by the DPP to date in respect of one of those matters⁶⁰. Regarding the other matter, the DPP directed that a charge be preferred against a named individual. However, that charge is no longer in being and, consequently, the Office's involvement in this matter has come to a conclusion.

Director of Public Prosecutions v Mr. Ignatius Forde

At the beginning of the year under review, and arising from files submitted to the DPP by this Office, the position was that the DPP had directed that Mr. Ignatius Forde should be tried on indictment in respect of 50 alleged offences contrary to sections 187⁶¹ and 242⁶² of the 1990 Act.

During the year under review, Mr. Forde was arraigned and pleaded guilty to 13 counts on the indictment on a full facts basis as follows:

- 11 counts of producing false audit reports contrary to section 242(1) of the 1990 Act; and
- 2 counts of acting as an auditor whilst disqualified from so doing contrary to sections 187(6) and 187(9) of the 1990 Act.

Mr Forde was subsequently sentenced in the Circuit Criminal Court as follows:

- on 1 count of producing a false audit report contrary to section 242(1) of the 1990 Act, on which he had entered a guilty plea, convicted and fined €1,000;
- the other 12 counts on which he had entered a guilty plea (i.e., 10 counts of producing a false audit report contrary to section 242(1) of the 1990 Act and 2 counts of acting as an auditor whilst disqualified from doing so contrary to sections 187(6) and 187(9) of the 1990 Act), were taken into consideration;
- the remaining 37 counts on the indictment were taken into consideration without pleas having been entered.

58 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).

59 *McKeivitt v DPP*, unreported, Supreme Court, 18 March, 2003

60 It is important to emphasise, however, that the use of the phrase "no charges have been commenced by the DPP to date" 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 DPP and available at <http://www.dppireland.ie/publications/category/14/guidelines-for-prosecutors/>

61 Section 187 deals with the qualifications necessary for appointment as an auditor

62 Section 242 deals with the furnishing of false information

Having consulted with this Office and having considered the matter, the DPP appealed the above sentence on the grounds of undue leniency. This appeal was determined during the year under review by the Court of Appeal, which found that the sentence imposed on Mr. Forde by the Circuit Criminal Court was unduly lenient. The Court of Appeal increased the penalties imposed such that Mr. Forde was ordered to serve 200 hours community service in lieu of a 12 month term of imprisonment and the fine of €1,000 was increased to €3,000⁶³.

Arising from having been convicted on indictment of an offence under the Companies Acts, pursuant to section 160(1) of the 1990 Act, Mr. Forde is also the subject of a Disqualification Order for a period of 5 years commencing on the date of his conviction, i.e., 1 May, 2014.

Other criminal cases referred to the DPP

Following a lengthy investigation and the subsequent submission of a file to the DPP, a suspect was arrested in May 2014 and charged with alleged offences contrary to section 242 of the 1990 Act⁶². In September 2014, the accused was charged with further alleged offences contrary to section 242. The total number of charges before the Courts now stands at 37. By year end, a Book of Evidence had been served and the accused had been sent forward for trial in the Circuit Court.

Other criminal investigations

In addition to the foregoing, a number of other criminal investigations were ongoing at year end that, depending upon their outcomes, may result in matters being referred to the DPP for consideration.

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 10 occasions (2013: 5), resulting in:

- 19 convictions (2013: 17), with the Probation of Offenders Act 1907 being applied in respect of a further 3 charges in 2 of the aforementioned cases;
- aggregate fines of €27,500 (2013: €10,000) being imposed; and
- the Office being awarded costs of €4,750 (2013: €6,250).

Details of those prosecutions are summarised in the Table below.

Table 18
Summary prosecutions determined – 2014

Case	District Court hearing, date & venue	Charges	District Court Outcome
ODCE v. Mr. Lauri Quinn t/a Quinn & Company	1 April, 2014 Sligo District Court	7 offences contrary to section 187(1) ⁶⁴ of the Companies Act 1990 and 7 offences contrary to section 242(1) ⁶⁵ of the same Act	1 conviction recorded. Aggregate fines of €1,500 imposed in respect of one of the section 187 offences, taking all other offences into consideration. Prosecution costs of €1,250 to be paid by the defendant.
ODCE v. Mr. Patrick Gleeson	7 April, 2014 Dublin Metropolitan District Court	2 offences contrary to section 56(1) and (3) of the Company Law Enforcement Act 2001	On a plea of guilty, the Defendant was convicted and fined €250 on each of the two offences. Prosecution costs of €1,250 to be paid by the defendant.
ODCE v. Deneview Management Company Ltd	26 May, 2014 Dublin Metropolitan District Court	2 offences contrary to Section 119(3) of the Companies Act 1963, as amended.	Defendant was convicted and fined the sum of €2,000 on each of the two offences. Prosecution costs of €1,250 to be paid by the defendant.
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	10 March, 2014 Dublin Metropolitan District Court This case continued for a further 3 dates.	4 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	On pleas of guilty, Defendant Carmel Bolger was convicted on one offence under section 131(6) and fined €250. Section 1(1) of the Probation of Offenders Act 1907 was imposed in respect of one offence under Section 131(6). The other 3 offences were struck out.
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	2 July, 2014 Dublin Metropolitan District Court	3 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	On pleas of guilty, Defendant Enda Heneghan was convicted on one offence under section 131(6) and fined €750. Section 1(1) of the Probation of Offenders Act, 1907 was imposed in respect of one offence under Section 131(6) and one offence under Section 145(4). The other offence was struck out. Prosecution costs of €250 to be paid by the defendant.

64 Acting as an auditor whilst not qualified to do so

65 Furnishing false information

Case	District Court hearing, date & venue	Charges	District Court Outcome
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	2 July, 2014 Dublin Metropolitan District Court	3 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	On pleas of guilty, Defendant Michael O'Flynn was convicted on two offences under section 131(6) and fined a total of €1,000. The other two offences were struck out. Prosecution costs of €250 to be paid by the defendant.
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	28 July, 2014 Dublin Metropolitan District Court	4 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	On pleas of guilty, Defendant Castle Elms Management Limited was convicted on each of the 5 offences against the company and was fined €9,000. Prosecution costs of €250 to be paid by the defendant.
ODCE v. David Cleary	8 October, 2014	2 offences contrary to Section 56(1) and (3) of the Company Law Enforcement Act 2001.	Summonses were struck out. Prosecution costs of €1,250 to be paid by the Defendant.
ODCE v. Castle Elms Management Ltd; Carmel Bolger; Enda Heneghan; Michael O'Flynn and Jerry Beades.	10 November, 2014 Dublin Metropolitan District Court	4 offences contrary to Section 131(6) of the Companies Act 1963, as amended. 1 offence contrary to Section 145(4) of Companies Act 1963, as amended.	Defendant Jerry Beades was convicted on each offence and fined €10,500. Prosecution costs of €250 to be paid by the defendant. The Accused has since appealed to the Circuit Court from the decision of the District Court. That appeal has not yet been determined.
ODCE v. Anonymous ⁶⁶	25 November, 2014	2 offences contrary to Section 56(1) and (3) of the Company Law Enforcement Act 2001	Summonses were struck out.

PROVIDING QUALITY CUSTOMER SERVICE TO INTERNAL AND EXTERNAL STAKEHOLDERS

4



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 website⁶⁷. 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 engagement⁶⁸ 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 website⁶⁹. 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 191 queries (2013: 280) in this manner. Whilst queries received related to a broad range of issues, the most frequently occurring topics included:

- issues relating to the holding of AGMs;
- access to Registers of Members/Shareholders;

67 www.odce.ie

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

69 www.odce.ie

- the appointment of company directors, their duties and powers; and
- issues relating to residential property owners' management companies.

Website

During the year under review, the Office's website (www.odce.ie) was regularly updated with new information, as outlined below.

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 over 14,000 views during the year. The search facility was used over 6,400 times. Just over 0.6% (2013: 0.5%) of website traffic was to the Irish language pages of the website, which are accessible at www.osfc.ie.

New material posted to the website during the year included:

- new/updated Office guidance/information material, as outlined at Chapter 2 of this Report;
- press statements, articles, announcements, etc.; and
- the results of civil and criminal enforcement litigation undertaken by the Office.

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

PAGE	Views
Directors' & Secretaries' Responsibilities	16,393
Company Law and You	9,277
Publications	9,003
Company Law Guidance Publications	6,936
Company Law Guidance – Information Books	6,857
About the ODCE	6,631
Functions of the ODCE	5,524
FAQs – Directorship of a Company	5,029
Company Law & You – Directors and Secretaries	4,672
Company Law Guidance – Quick Guides	4,017
Contact Us	3,867
Court Decisions	3,778
Prosecutions	3,544
Prosecution Cases	3,104
Publications – Liquidators	3,042
Our Role – ODCE	2,889
FAQs – Winding Up and Liquidations	2,816
Auditors' Responsibilities	2,812
Media & Publications	2,697
Corporate & Statutory Publications	2,582

Social media

The Office has continued to utilise social media to deliver its message to interested parties.

The Office operates on 4 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 1,156 followers across these various fora (2013: 755).

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 in the public service, 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 30 Office staff received a total of 117 days training in 2014 (2013: 153), including:

- training provided by in-house resources – 53 days, relating to 17 staff; and
- training provided by the Department – 60 days, relating to 21 staff.

During 2014, the Office assisted a number of staff members to undertake the following training and development:

- King's Inn's Advanced Diploma in Corporate, Regulatory & White Collar Crime;
- Law Society's Diploma in Arbitration Law;
- King's Inn's Diploma in Corporate Law & Governance;
- Chartered Accountants Ireland's Diploma in Forensic Accounting;
- accountancy staff members' CPD⁷⁰ 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

Protected Disclosures Act 2014

The Protected Disclosures Act 2014 requires every public body to prepare and publish a report in relation to the immediately preceding year, in a non-identifying format, detailing the number of protected disclosures made to it, and the action, if any, taken by the public body in response to those protected disclosures. One such disclosure was made to the ODCE during the year under review. The matter was examined but was ultimately found to be outside the Office's remit.

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 37 PQs (2013: 21).

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 100% of payments were made on time, the Office’s policy of settling all invoices within prescribed timeframes was adhered to during the year under review.

Risk management action plan

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

Freedom of Information (Fol) Acts

All records of the Office (other than records concerning its general administration) are exempt from the Fol Acts. During 2014, no valid requests for information were received. That said, 5 queries regarding Office records were received. These were dealt with by the Office’s Fol Officer outside of the Fol 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.

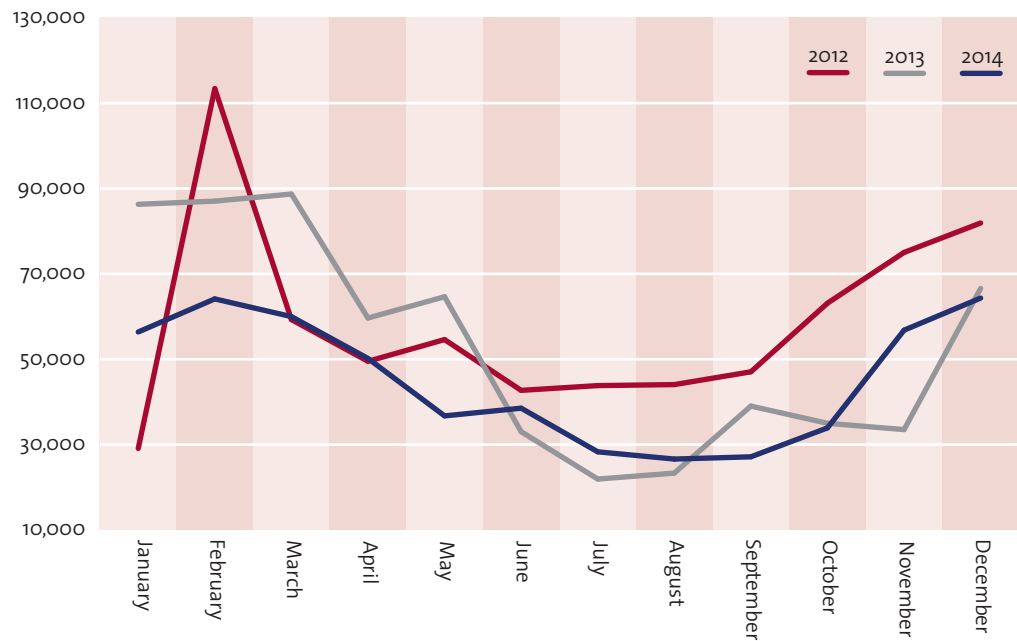
Energy consumption

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.

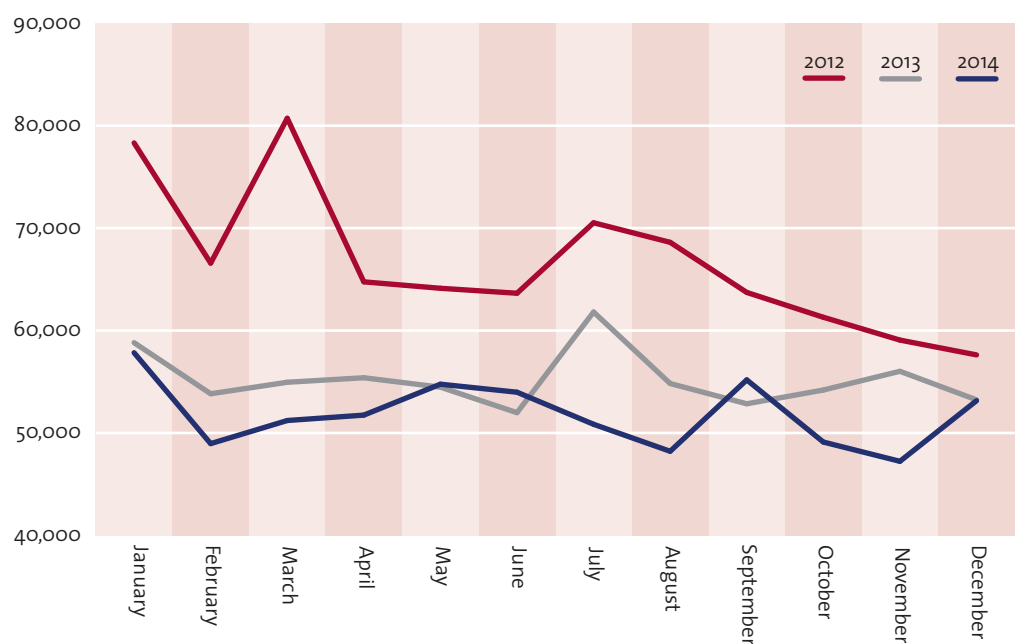
Gas consumption for the year (which is primarily used for heating air and water) was 543,000 kilowatt hours (kwh) (2013: 666,000 kwh), of which the ODCE was responsible for approximately 248,000 kwh. Electricity consumption was 622,000 kwh (2013: 662,000 kwh), of which the ODCE was responsible for approximately 284,000 kwh. These figures represent a year on year reduction in overall energy consumption of 10%. The target reduction for the year was 5%.

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 tenants, 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. In November 2014, the building co-occupied by the Office won the National Award for Air Conditioned Buildings, having achieved a saving in energy usage of 23.5% since 2012. Gas and electricity usage charts for 2012 to 2014 are set out below.

Gas Usage



Electricity Usage



The target for further energy consumption reduction in 2015 is a further 5%. It is hoped to achieve this by:

- installing further lighting sensors;
- 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 to the extent practicable.

Official Languages Act 2003

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

APPENDICES



APPENDIX 1

ALLOCATED VS. ACTUAL EXPENDITURE: 2012-2014

	2012		2013		2014	
	€000s	€000s	€000s	€000s	€000s	€000s
Allocation						
Exchequer Grant	5,697		5,330		4,672	
Exceptional Legal Costs	300	5,997	50	5,380	50	4,722
Expenditure						
Salaries	2,463.0		2,394.4		2,215.8	
Advertising & Publicity	28.8		31.8		23.6	
Office Premises	327.7		299.0		308.0	
Legal Expenses	287.2		124.5		239.8	
Consultancy	100.0		120.6		85.8	
Computerisation	44.5		28.0		25.2	
Printing	44.4		29.0		13.9	
Incidental Expenses	8.8		6.3		7.9	
Travel & Subsistence	17.3		17.0		24.3	
Telecommunications	54.6		36.8		34.5	
Postal/Courier Services	17.1		12.4		13.1	
Office Machinery & Photocopying	31.1		9.5		5.5	
Human Resource Development	12.0	3,436.5	14.2	3,123.5	15.0	3,012.4
Amount surrendered		2,560.5		2,256.5		1,709.6

APPENDIX 2

PRESENTATIONS DELIVERED – 2014

Promoter	Subject	Venue	Speaker
Marino College	The ODCE – Setting the Standard	Marino College	Eileen McManus
Crime & Operational Training Faculty, Garda HQ	Function of ODCE/Garda	Garda HQ, Phoenix Park, Dublin	Detective Sergeant Michael Prendergast
Ugandan Delegation	The ODCE – Company Law Enforcement	ODCE Offices, Dublin	Kevin Prendergast
Letterkenny Institute of Technology	The ODCE – Encouraging Compliance, Enforcing the Law	Letterkenny I.T., Donegal	Kevin Prendergast
Honourable Society of King's Inns	White Collar Crime & the ODCE	King's Inns	Detective Inspector Ray Kavanagh, Kevin O'Connell
North & East Kerry Development	Corporate Healthcheck for Company Directors	I.T.Tralee, Co. Kerry	Kevin Prendergast
KPMG & Galway Chamber	ODCE Update – Focus & Strategy	The G Hotel, Galway	Kevin Prendergast
Institute of Public Administration	The Work of the ODCE	IPA Offices, Dublin	Kevin Prendergast
Department of Jobs, Enterprise & Innovation	Helping Your Business	Strand Hotel, Limerick	Kevin Prendergast
Grafton College	Encouraging Compliance, Enforcing the Law	Gardiner Row, Dublin	Kevin Prendergast
Dublin Institute of Technology	Why Corporate Governance?	Aungier Street, Dublin	Kevin Prendergast
Department of Jobs, Enterprise & Innovation	Helping Your Business	Radisson Blu Hotel, Galway	Kevin Prendergast
Dublin Solicitors' Bar Association	Update on Company Law	Brooks Hotel, Dublin	Kevin Prendergast
Department of Jobs, Enterprise & Innovation	Helping Your Business	Silver Springs Hotel, Cork	Kevin Prendergast
Institute of Public Administration	Role & Responsibilities of Company Directors	IPA Offices, Dublin	Kevin Prendergast
Chartered Accountants Ireland	The New Companies Bill – Some Practical Pointers	Cork	Kevin Prendergast
Remember Us	Corporate Healthcheck	Sarsfield Business Centre, Balbriggan	Eileen McManus
Dublin Solicitors' Bar Association	The New Enforcement Provision Under Company Law	The Radisson Hotel, Golden Lane, Dublin	Kevin Prendergast
Public Affairs Ireland	Directors' and Officers' Responsibilities	Shelbourne Hotel, Dublin	Kevin Prendergast
IFG Pensions, Investments & Advisory Services	Corporate Healthcheck	IFG Offices, Booterstown, Dublin	Kevin Prendergast
Shannon Chamber	The New Enforcement Provision Under Company Law	The Inn at Dromoland, Co. Clare	Kevin Prendergast

Promoter	Subject	Venue	Speaker
The Arts Council	Corporate Healthcheck for Company Directors	Merrion Square, Dublin	Kevin Prendergast
MSc Group	The ODCE – Encouraging Compliance, Enforcing the Law	Irish Times House, Dublin	Kevin Prendergast
Cork Institute of Technology	Corporate Healthcheck for Company directors	Rubicon Centre, Cork I.T.	Kevin Prendergast
Sonia McEntee Solicitors	Role & Duties of Director/ Secretary/Auditor	The Marker Hotel, Dublin	Eileen McManus
Galway City & County Childcare Committee	Corporate Healthcheck for Company Directors	The Menlo Park Hotel, Galway	Kevin Prendergast
Omnipro	ODCE Enforcement Strategy	Crowne Plaza Hotel, Blanchardstown	Ian Drennan
ICLF Conference	ODCE Enforcement Strategy in the Context of the Companies Bill	Farmleigh, Phoenix Park, Dublin	Kevin Prendergast
Taking Care of Business	Helping Your Business	Dublin Castle, Dublin	Kevin Prendergast
Garda Bureau of Fraud Investigation	Functions & Role of ODCE/ Garda	Westmanstown Conference Centre, Dublin	Detective Sergeants Brian Mahon & Michael Prendergast
Chartered Accountants Ireland	Enforcement and the Companies Act	CA House, Dublin	Kevin Prendergast
Crime & Operational Training Faculty, Garda HQ	Functions & Role of ODCE/ Garda	Garda Headquarters, Phoenix Park, Dublin	Detective Sergeants Brian Mahon & Michael Prendergast
Galway/Mayo Institute of Technology	Role & Responsibilities of Company Directors	GMIT, Galway	Kevin Prendergast
Dun Laoghaire Rathdown Properties Ltd.	Role & Responsibilities of Company Directors	County Hall, Dun Laoghaire, Dublin	Eileen McManus
UCD Commerce (1)	The ODCE – Setting the Standard	UCD, Belfield, Dublin	Kevin Prendergast
UCD Commerce (2)	The ODCE – Setting the Standard	UCD, Belfield, Dublin	Kevin Prendergast
Carlow Institute of Technology	Roles & Responsibilities of Company Directors	Carlow I.T., Carlow	Kevin Prendergast
Health Service Executive	Role & Responsibilities of Company Directors	HSE Offices, Dublin	Kevin Prendergast
Omnipro	Directors' Duties under the Companies Acts – ODCE Update	Sheraton Hotel, Athlone	Kevin Prendergast
Law Society of Ireland	The Role of the ODCE	Blackhall Place, Dublin	Aoife Raftery
Omnipro	Directors' Duties under the Companies Acts – ODCE Update	Silver Springs Hotel, Cork	Kevin Prendergast
Omnipro	Directors' Duties under the Companies Acts – ODCE Update	Citywest, Dublin	Kevin Prendergast

EXHIBITIONS/EVENTS ATTENDED – 2014

Promoter	Venue
Taking Care of Business	Strand Hotel, Limerick
Taking Care of Business	Radisson Blu Hotel, Galway
Taking Care of Business	Silver Springs Hotel, Cork
Institute of Certified Public Accountants in Ireland	Crowne Plaza Hotel, Blanchardstown, Dublin
Institute of Chartered Secretaries & Administrators	Royal College of Physicians, Kildare Street, Dublin
Business Information Centre, Central Library	Central Library, Ilac Centre, Dublin
Institute of Certified Public Accountants in Ireland	Crowne Plaza Hotel, Blanchardstown, Dublin
Small Firms' Association	Clyde Court Hotel, Ballsbridge, Dublin
Wicklow Town & District Chambers of Commerce	The Grand Hotel, Wicklow
Tipperary County Council	LIT Campus, Thurles, Co. Tipperary
National Ploughing Association	Ratheniska, Stradbally, Co. Laois
Department of Jobs, Enterprise & Innovation	Dublin Castle, Dublin
Limerick Local Enterprise Office	Galway Bay Hotel, Salthill, Galway
Irish Small & Medium Enterprise	RDS, Dublin
Newbridge Chamber	Keadeen Hotel, Newbridge

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 2014, 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 1990 Act (where the Office had not relieved the liquidator under section 56 of the CLEA).

Company Number	Company Name	Director Name		Date Restricted
419038	ANF Scaffolding Services Limited*	Foley	Noel	13-Jan-14
212889	A.Cashguard Systems Limited	Manning	John	10-Mar-14
		Manning	Francis	10-Mar-14
355691	A.H.P. Electrical Limited	Heneberry	Patrick	03-Mar-14
		Heneberry	Angela	03-Mar-14
482549	Adams Design & Build Limited	Adams	Mark	07-Apr-14
		Kelly	Bernadette	07-Apr-14
422990	Adamstown Quarries Limited	Murphy	Liam	30-Jun-14
		Murphy	Angela	30-Jun-14
462825	AGC Temps Ireland Limited	Finnegan	Laura	23-Jun-14
		Finnegan	Sean	23-Jun-14
408732	AGL Transport Limited	Grufferty	Lisa	13-Oct-14
		Lynch	Andrew	13-Oct-14
323127	Aidan McGurn Construction Limited	McGurn	Aidan	03-Jul-14
393489	AMC Labour Hire Limited	McGurn	Aidan	03-Jul-14
282831	American Style Restaurant Limited	O'Neill	Yvonne	27-Jan-14
		O'Neill	Michael	27-Jan-14
419038	ANF Scaffolding Services Limited	Foley	Adrian	04-Jul-14
379123	Auto Trace Solutions Limited	Byrne	Graham	13-Jan-14
372591	Autohouse (Rathgar) Limited	Jacobson	Carla	24-Mar-14
		Jacobson	Adam	24-Mar-14
94405	Balbriggan Glass & Glazing Company Limited	Carew	Eamonn	28-Apr-14
304504	Barnaculla Developments Limited	Goff	Francis	07-Apr-14
373717	Barraduff Motors Limited	Murphy	Timothy	16-Dec-14
		Murphy	Michael	16-Dec-14
412205	Barry Brennan Plant Trans Limited	Brennan	Jakki	13-Oct-14
		Brennan	Barry	13-Oct-14
240826	Bawnmanor Limited	O'Dwyer	William	16-Mar-14
		O'Dwyer	Peter	16-Mar-14

Company Number	Company Name	Director Name		Date Restricted
392962	Belles Fleurs Limited	Hendricken	Marie	20-Oct-14
		Hendricken	Peter	20-Oct-14
348517	Beverage World Beers Limited*	Dermody	Padraig	24-Nov-14
473727	Bizou Café Bar Limited	Farrell	Eugene	03-Nov-14
		Farrell	Juanita	03-Nov-14
342399	Blackwater Taverns Limited	West	Leo	27-Jan-14
383901	Brennan Builders (Donabate) Limited	Brennan	Damien	27-Jan-14
		Brennan	Elaine	27-Jan-14
365545	C & N Restaurant Limited	Brady	Christina	03-Nov-14
		Rawe	Neil	03-Nov-14
285446	Caislean Homes Limited	Kelly	Patrick	20-Oct-14
		Kelly	Sean	01-Dec-14
433162	Canopus Biopharma Limited	Prendergast	Leo	12-Dec-14
		Prendergast	Patrick	12-Dec-14
363920	Carrignagour Limited	Stack	Mary	13-Jan-14
371431	Carroll Civil Engineering and Building Limited	Carroll	Vincent	28-Apr-14
143268	City Furniture Limited	Fitzpatrick	Kevin	03-Mar-14
		Fitzpatrick	Pamela	03-Mar-14
354329	Concrete Recycling Specialists Limited	Daly	Kevin	10-Feb-14
		Daly	Michelle	10-Feb-14
468949	Cork Citog Limited	Casey	John	24-Feb-14
		Casey	Ian	24-Feb-14
109622	Custom Joinery Limited	Reynolds	Frank	03-Mar-14
		Reynolds	Michael	03-Mar-14
332761	David F. Kearney Surveyors Limited*	Kearney	David	24-Nov-14
468434	Dec Brennan Developments Limited	Brennan	Orla	27-Jan-14
		Brennan	Celine	27-Jan-14
		Brennan	Damien	27-Jan-14
375244	Denis Corbett Construction Limited	Corbett	Denis	24-Nov-14
		Corbett	Gerard	24-Nov-14
436489	Dock Eight Bar Limited	Sheridan	Thomas	28-Jul-14
		Furey	Patrick	20-Oct-14
401096	Drumlynn Mill Limited	Crooks	Adrienne	19-May-14
		McConnon	Jim	19-May-14
403525	Duggan Security Services Limited	Byrne	John	01-Dec-14
		Duggan	Michael	01-Dec-14
334669	Dunphy Express Limited*	Dunphy	Brian	24-Nov-14
92527	Eurekacolourprint Limited	Mughal	Abdul	20-Oct-14
		Mughal	Margaret	20-Oct-14

Company Number	Company Name	Director Name		Date Restricted
327688	European Design & Construction Limited	Flood	Laurence	08-Apr-14
		Flood	Thomas	08-Apr-14
		Flood	Joseph	08-Apr-14
		Flood	Frank	08-Apr-14
327476	Eurowaste & Recycling Limited	Woods	Kimberly	30-Jun-14
167750	Ever Ready Car Valeting Limited	Hayes	Colm	20-Oct-14
413155	Farrell Brothers Crushing Limited	Farrell	John	03-Mar-14
		Farrell	Charlie	03-Mar-14
		Farrell	James	03-Mar-14
		Farrell	Michael	03-Mar-14
452924	Farrell Brothers Quarry Products Limited	Farrell	Charlie	03-Mar-14
		Farrell	John	03-Mar-14
		Farrell	James	03-Mar-14
		Farrell	Michael	03-Mar-14
371532	Fernwalk Traders Limited*	Bradley	Tom	13-Oct-14
63662	Flanagans Of Buncrana Limited	Flanagan	Peter	04-Jul-14
		Flanagan	Brian	04-Jul-14
388347	Folamh Limited	Bebbington	Stephen	01-Dec-14
363412	Gateway Rental Limited	Maguire	Carmel	07-Apr-14
495923	Glan Tyres Limited	O'Riordan	Laurance (Lance)	10-Mar-14
419138	Global Property Care Limited	Fisher	Mark	28-Jul-14
		McNelis	Ann	28-Jul-14
205489	Golden Farm Products Limited	O'Connor	Jeffrey	13-Jan-14
		O'Connor	John	13-Jan-14
424510	Griffeen Centra Limited	Dowd	Kevin	28-Apr-14
		Dowd	Vivienne	21-Jul-14
336894	Halcyon Contract Cleaners Limited	Kirwan	Peter	20-Oct-14
		Meakin	Linda	20-Oct-14
479596	Highpen Limited	Douglas	Austin	05-Jun-14
		Leydier	Alain	05-Jun-14
267311	Hillcross Enterprises Limited	Ward	George (Jnr)	19-May-14
		Ward (Snr)	George	19-May-14
20858	Home Payments Limited	O'Connor	Eamonn	20-Jan-14
		O'Connor	Conor	20-Jan-14
		Ryan	Niamh	20-Jan-14
323811	Hoygrove Limited	Campbell	Shane	08-Dec-14
		Hoyne	Paul	08-Dec-14
396049	HSE Salon Limited	Dempsey	Elaine	28-Apr-14
358199	HWT Taverns Limited	West	Leo	27-Jan-14
480511	Impress Ventures Limited	Dunne	Matthew	21-Jul-14
		Mahony	Brian	21-Jul-14

Company Number	Company Name	Director Name		Date Restricted
499945	Independent Homestores Limited	Murray	Kevin	27-Jan-14
432097	Inspiration Office Limited*	Keating	Richard	31-Jan-14
356746	Irish Dispenser Products Limited	Blackburn	Damien	27-Jan-14
395220	J & J Service Station Limited	Beirne	John	20-Oct-14
		Beirne	Caroline	20-Oct-14
424929	Jambo Sana Limited*	Chatham	Frank	23-Jun-14
		O'Loughlin	Kevin	23-Jun-14
209289	James Finnerty Construction Limited	Finnerty	James	20-Jan-14
		Finnerty	Peter	20-Jan-14
432096	JPM Cad Design Limited	Monson	Jason	09-Dec-14
452232	K2NY Limited	Reynolds	Patrick	24-Feb-14
466653	K2NY Trans4mation Limited	Reynolds	Patrick	24-Feb-14
394559	Kennedy O'Hagan Limited	O'Hagan	Garrett	12-Mar-14
498301	KLD Wellness And Chiropractic Limited*	Chatham	Frank	23-Jun-14
		O'Loughlin	Kevin	23-Jun-14
378068	Kocoon Ladies Wear Limited	Coleman	Laurence	03-Feb-14
92434	Liam Carroll Refrigerated And Dry Freight Haulage Limited*	Carroll	Liam	10-Nov-14
162616	Managh International Transport Limited	O'Keeffe	Stephen	28-Apr-14
		O'Keeffe	Seamus	28-Apr-14
234747	Manning Ireland Limited	Manning	Justin	24-Nov-14
		Manning	Terence Joseph	24-Nov-14
420528	MB Refrigeration & Air Conditioning Limited	Murphy	Shane	20-Oct-14
		Murphy	Gerard	20-Oct-14
		Murphy	Mark	20-Oct-14
481315	Meisterhaus Limited	Kuechenmeister	Jens	04-Jul-14
232938	Meisterwerk Limited	Kuechenmeister	Anett	04-Jul-14
		Kuechenmeister	Jens	04-Jul-14
290232	Michael Brogan Tractor Sales Limited*	Brogan	Michael	10-Nov-14
377380	Mint Restaurant Limited*	Courtney	Patricia	25-Jul-14
487757	New Force Consulting Limited	Cooper	Derek	13-Oct-14
153745	Newpark Holdings Limited	Flood	Joseph	08-Apr-14
		Flood	Thomas	08-Apr-14
513405	Nisbett & Nisbett Limited	Nisbett	Maria	10-Mar-14
		Nisbett	Malcolm	10-Mar-14
149660	Noel Leavy & Co Limited	Leavy	Noel	21-Jul-14
350169	Noel Thompson Builders Limited*	Thompson	Noel	14-Jul-14
258833	Noxtad Limited	Esmonde	James Edward	05-Jun-14
		O'Toole	Patrick	05-Jun-14

Company Number	Company Name	Director Name		Date Restricted
189596	O'Hagan Contract Interiors Limited	O'Hagan	Garrett	12-Mar-14
50851	O'Sullivan, Campbell and Company Limited	MacGillicuddy	Sean	28-Jul-14
		Waldron	Liam	28-Jul-14
439994	P. Fitzpatrick Construction Limited	Fitzpatrick	Bernie	24-Feb-14
		Fitzpatrick	Patrick	24-Feb-14
149009	Parkes Homes Limited	Parkes	Alan	28-Apr-14
		Parkes	Brian	28-Apr-14
		Parkes	Derek	28-Apr-14
417551	Piccolina Limited	Carroll	Jacqueline	10-Mar-14
		Carroll	Richard	10-Mar-14
381309	PSD Developments Limited	O'Dowd	Patricia	31-Mar-14
		O'Dowd	Seamus	31-Mar-14
340905	R. T. Plastering Limited*	Thomas	Rodney	07-Apr-14
410422	Real Gourmet Burger Limited	Larkin	Emma	27-Jan-14
		Larkin	David	27-Jan-14
438905	Real Gourmet Catering Limited	Larkin	Emma	27-Jan-14
		Larkin	David	27-Jan-14
349834	Rebel Bar Company Limited	O'Leary	James	13-Jan-14
		Scriven	Sam	13-Jan-14
		Scriven	Tom	13-Jan-14
466980	Rushglade Limited	Fitzgerald	Deirdre	17-Feb-14
		Sexton	Darren	17-Feb-14
412115	Simply Direct Limited	Capaldi	Mark	03-Feb-14
		Capaldi	Fiona	03-Feb-14
295518	Slaneyside Carpets Limited	Murphy	Pat	13-Oct-14
		Murphy Walsh	Karen	13-Oct-14
470124	Southern Cross Security Limited	Duggan	Michael	01-Dec-14
		Flanagan	Frank	01-Dec-14
399450	Squire Creations 1 Limited	Swaine	Mark	20-Jan-14
113812	Stanlane Enterprises Limited	Ward	George (Jnr)	19-May-14
		Ward	Glen	19-May-14
27415	T. O'Reilly (Electrical Supplies) Limited	Gore	Damien	13-Jan-14
		McCann	David	13-Jan-14
		Tierney	Terence	13-Jan-14
		O'Reilly	Declan	17-Oct-14
488177	Tavtom Limited	Mulvey	Deirdre	14-Jul-14
		Murphy	Brian	14-Jul-14
358461	TDS Taverns Limited	West	Leo	27-Jan-14
232741	Terence O'Neill (Clonberne) Limited	O'Neill	Sheila	28-Apr-14
443830	The Frogdog Pub Company Limited	Cunningham	Sean	17-Feb-14
		Cunningham	Patricia	17-Feb-14
475268	The Residents Hotel Limited	McDermott	Patrick	03-Nov-14

Company Number	Company Name	Director Name		Date Restricted
431463	Ticket Scan Limited	Brett	Conor	27-Jan-14
		Minihane	Douglas	27-Jan-14
305400	Topmark Foods Limited	Siddiqi	Abdul	23-Jun-14
463271	Tresmal Limited*	Brennan	Paul	24-Nov-14
396368	Twin Oaks Bakery Limited	Leonard	Mark	24-Nov-14
		Leonard	Moira	01-Dec-14
339095	Ukase Systems Limited	Gill	Shane	17-Dec-14
		Halitchi	Vasile	17-Dec-14
407614	Vincent Doran Refrigeration Limited	Doran	Vincent	24-Mar-14
		Doran	Margaret	24-Mar-14
300742	Whitepark Developments Limited	Kenny	Denis	14-Jul-14
370621	Workspirit Interiors Limited	O'Hagan	Garrett	12-Mar-14
		Shaw	Emer	12-Mar-14
312280	Zuccini Café and Restaurant Limited*	Courtney	Patricia	25-Jul-14

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
342399	Blackwater Taverns Limited	Healy	Michael	10-Feb-14	09-Feb-20
		Healy	Pat	10-Feb-14	09-Feb-20
		Twohig	Edward	27-Jan-14	26-Jan-18
363920	Carrignagour Limited	Stack	Patrick	13-Jan-14	12-Jan-20
327688	European Design & Construction Limited	Flood	Joseph	08-Apr-14	07-Apr-19
		Flood	Thomas	08-Apr-14	07-Apr-19
327476	Eurowaste & Recycling Limited	Woods	Harry	19-May-14	18-May-21
396049	HSE Salon Limited	Dempsey	Shay	28-Apr-14	27-Apr-21
481315	Meisterhaus Limited	Kramp	Christian	04-Jul-14	03-Jul-18
		Kuechenmeister	Jens	04-Jul-14	03-Nov-25
		Rissman	Ivonne	04-Jul-14	03-Jul-16
232938	Meisterwerk Limited	Kuechenmeister	Anett	04-Jul-14	03-Jul-21
		Kuechenmeister	Jens	04-Jul-14	03-Nov-25
290232	Michael Brogan Tractor Sales Limited	Brogan	Michael	10-Nov-14	09-Nov-19
153745	Newpark Holdings Limited	Flood	Thomas	08-Apr-14	07-Apr-19
		Flood	Joseph	08-Apr-14	07-Apr-19
328611	Richard Mockler Limited	Mockler	Janette	05-Jun-14	04-Jun-15
		Mockler (Junior)	Richard	05-Jun-14	04-Jun-19
232741	Terence O'Neill (Clonberne) Limited	O' Neill	Terence	28-Apr-14	27-Apr-20

APPENDIX 5

CASES WHERE NO RESTRICTION OR DISQUALIFICATION ORDERS WERE MADE BY THE HIGH COURT PURSUANT TO SECTION 56 OF THE CEA

Company Number	Company Name	Date of Court Order	No. of Directors
314966	Abington Garage Doors Limited	06-May-14	2
455303	Access Cleaning Services Limited	30-May-14	2
330267	Dlok Electrical Services Limited	24-Oct-14	2
413024	Exhibit Shops Limited	11-Apr-14	3
183968	Formview Limited	14-Jan-14	2
240254	Gerdando Limited	01-Apr-14	3
162027	Gleneagle Woodcrafts Limited	22-Jul-14	2
339470	M.K.Fuels Limited	30-May-14	3
135724	North Monastery Language Institute Trust	12-May-14	1
434336	Shannon Key West Limited	26-May-14	2
308651	Shellware Limited	01-Apr-14	1
178345	Tallaght Publishing Limited	03-Feb-14	2

Notes:

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

GLOSSARY



GLOSSARY

AGM	Annual General Meeting
Anglo	The former Anglo Irish Bank Corporation plc
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
ICAV Act	Irish Collective Asset-management Vehicles Act 2015
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
PAYE	Pay As You Earn
PPB	Prescribed Professional Body
PQ	Parliamentary Question
PRSI	Pay Related Social Insurance
RAB	Recognised Accountancy Body
RCT	Relevant Contracts Tax
SI	Statutory Instrument
VAT	Value Added Tax
WTE	Whole Time Equivalent
1963 Act	Companies Act 1963 (as amended)
1990 Act	Companies Act 1990
2003 Act	Companies (Auditing and Accounting) Act 2003 (as amended)
2014 Act	Companies Act 2014



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

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