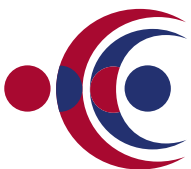


# Annual Report 2015



Oifig an Stiúrthóra um  
Fhorfheidhmiú Corparáideach

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# DIRECTOR'S INTRODUCTION



## INTRODUCTION

In accordance with the provisions of section 954(1) of the Companies Act 2014 ("the Act"), I am pleased to submit the 2015 Annual Report of the Office of the Director of Corporate Enforcement 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 continued to deliver a wide range 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:

- providing stakeholders with a comprehensive set of revised guidance and information materials to enable them to navigate the Act which, at 1,448 sections, is the largest piece of legislation ever to have been enacted in the State's history;
- successfully implementing the new statutory regime of Restriction and Disqualification Undertakings;
- obtaining, by way of a successful appeal to the Court of Appeal, clarification on the responsibilities of directors of insolvent companies who allow those companies to be struck off the Register;
- continuing the Office's strategic shift towards focussing its resources on indications of wrongdoing on the more serious end of the spectrum.

## THE YEAR UNDER REVIEW – SIGNIFICANT EVENTS AND DEVELOPMENTS

### Restriction and Disqualification Undertakings

The enactment of the Act on 1 June, 2015 saw the bringing into force of a new regime of Restriction and Disqualification Undertakings. In essence, the Undertakings regime provides a statutory mechanism whereby, in appropriate circumstances, the Office can offer company directors the option of providing - on an entirely voluntary basis - a Restriction or Disqualification Undertaking rather than face the prospect of having to engage in legal proceedings before the High Court.

The enactment of this new statutory mechanism is an important development in that it affords the individuals concerned the opportunity to avoid the financial and other costs associated with litigation. Where Undertakings are provided by directors of insolvent companies, liquidators are, similarly, spared the expense, in terms of both time and legal fees, associated with taking proceedings before the High Court, thereby creating significant potential for reduced liquidation costs and resultant benefits for creditors. Furthermore, whilst the regime is still in its infancy, in the event that the provision of Undertakings becomes the norm, the result will be to significantly free up Court time to deal with other matters.

### Appeal to the Court of Appeal

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 ensures that the behaviour of the company's directors in the run up to the insolvency is subject to the appointed liquidator's scrutiny – which in turn is subject to oversight by this Office. For the foregoing reason, company law provides 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., to in effect abandon the company, it is open to this Office to apply to the Courts to have the company's directors disqualified.

For the foregoing reasons, it has, since the Office's establishment, been a strategic objective to seek to dissuade this form of behaviour. In furtherance of that objective, the Office has taken many such applications over the past decade and, on foot of those applications, 114 company directors have been disqualified and a further 9 have been restricted as an alternative to disqualification. As such, it has been an effective strategy in confronting such behaviour and providing a credible deterrent to others contemplating such behaviour.

The leading authority in this area of jurisprudence has long been the High Court case of "*Re Clawhammer*". Accordingly, when the High Court, in declining to make Disqualification Orders in two cases during 2014, departed from the principles laid down in the Clawhammer Judgement, this Office felt it necessary to have the matter adjudicated upon by an appellate Court and, for that reason, appealed the matter to the Court of Appeal. Of particular concern to the Office in this context was that, in declining to make Disqualification Orders, the High Court had taken into consideration factors such as the scale of the enterprise, the qualifications of the directors, the context within which transgressions had taken place (including the economic downturn) and the directors' past behaviour.

The Office's appeal was heard in October 2015 and, when the Court delivered its Judgement, it unanimously rejected the approach taken by the High Court and reaffirmed the approach adopted in the Clawhammer Judgement.

The Court of Appeal's Judgement is, therefore, of considerable significance to the work of this Office in that it has brought clarity to this aspect of directors' duties. It is also an important judgement in that, in addition to being of direct application to the Office's programme of Disqualification applications, it is of relevance to the Office's examination of, and adjudication upon, liquidators' reports more generally and to liquidators' Restriction applications before the High Court.

### Criminal enforcement

As has been detailed in previous Reports, the Office has, over recent years, gradually been shifting its focus away from District Court prosecutions in favour of seeking to confront more serious indications of wrongdoing that, if supported by sufficient evidence, would be more likely to be tried on indictment. This shift continued during 2015 and, in addition to referring one file to the DPP during the year, at year end, one case was before the Courts and the Office had 18 individuals and companies under investigation with a view to the possible referral of matters to the DPP for consideration.

## THE YEAR AHEAD

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

### Strategic shift towards confronting more serious wrongdoing

The rationale underpinning the strategic shift in emphasis alluded to above is a desire on our part to focus our available resources on those activities that are most likely to maximise our effectiveness as an enforcement body. Specifically, we believe that our resources, which are provided by the taxpayer, are better used in confronting serious indications of criminality rather than on lower level transgressions that, in many instances, can be dealt with more effectively by other, less formal, means. Similarly, when one has regard to the level of penalties that are available to the District Court, and to the level at which District Court sanctions have historically been pitched, we believe that, where secured, convictions on indictment have the potential – when taken together with the Office's work in the insolvency area – to offer a significantly enhanced deterrent against future such wrongdoing. In any event, based on the profiles of the cases that we are currently investigating (for example, having regard to the nature of the alleged behaviour, the potential criminality involved and the monetary values concerned), these cases will, if sufficient evidence can be gathered to support the mounting of prosecutions, be likely to be more appropriate to trial before the Circuit Court.

Our ambition to tackle more serious criminality is not, however, without its consequences and risks.

Investigations into more serious matters tend to be on a larger scale and to involve matters of greater complexity. This gives rise to an opportunity cost in that, by definition, a smaller portfolio of cases can be run at any given time. Similarly, cases of this nature regularly overlap with other, non-company law, legislation – such as, for example, Theft & Fraud Offences legislation – and frequently involve a multi-jurisdiction dimension. This, in turn, presents challenges such as interacting with other jurisdictions' law enforcement authorities and Court systems. The foregoing factors, together with the fact that, in our experience, prosecutions on indictment tend to be much more robustly defended than at District Court level, all add to the challenges and risks associated with this type of work.

That said, this type of work is hugely varied, carries with it many novel aspects and is challenging, both intellectually and professionally, and, as such, is immensely rewarding. For those reasons, we are fully committed to meeting the challenges that this work presents.

## Staffing

Reflective of the aforementioned shift in the nature of Office's enforcement work, the Office's staffing profile has been evolving over recent years. The most recent, and most significant, development in that regard is the imminent appointment of a cohort of forensic accountants who will augment and complement our existing team of experienced investigative and support staff. As referenced earlier, we currently have a substantial number of investigations in being and the appointment of these additional professional resources will greatly enhance our capacity to advance these matters and, more generally, to significantly enhance our investigative capabilities.

Due to a combination of retirement and transfer, we currently have a further two vacancies for senior investigative staff and, having completed the aforementioned recruitment of forensic accountancy expertise, our next priority is to move to fill those posts.

## 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, which has been challenging for the Office's staff to an unprecedented degree, both personally and professionally, has, again, seen colleagues' willingness to promote and embrace change and to take on additional responsibility. The degree to which colleagues have been on hand to support each other in times of personal and professional adversity has been truly remarkable.

I would also like to express my sincere 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*

**29 April, 2016**



# AT A GLANCE



## ENFORCEMENT

### Sources of our work

- In excess of 1,400 statutory reports and referrals received from liquidators, auditors, examiners, professional bodies and other regulatory and enforcement authorities
- Implementation of a new Restriction and Disqualification Undertakings regime, as provided for by the Act
- 290 complaints received from members of the public
- Almost 70 internally generated inputs, ranging across bankruptcy, audit, fraud, disqualification and filing issues

### Outputs from our work

- Following the scrutinising of reports submitted to the Office by liquidators of insolvent companies, 171 company directors restricted and a further 14 disqualified by the High Court
- Restriction Undertakings obtained from directors of insolvent companies
- Directors' loan infringements, in 89 cases and to an approximate aggregate value of €21m, rectified on foot of Office actions
- As a proportionate and cost effective alternative to formal enforcement actions, cautions issued to a total of 73 companies
- 18 statutory demands for relevant information issued to persons suspected of acting as company directors whilst being undischarged bankrupts
- 132 directions issued to relevant parties requiring them to comply with their statutory obligations under company law
- 4 demands issued for the production of companies' accounting records and other relevant documents
- 7 referrals made to professional bodies
- successful appeal to the Court of Appeal of a High Court decision not to disqualify the directors of a company struck off the Register whilst insolvent (with the High Court decision being overturned and Restriction Declarations being made in respect of the directors)
- disposal of the last remaining NIB legacy issue, by way of the Supreme Court, with the consent of the parties, vacating the original High Court Order (which had imposed a disqualification for a period of nine years) and, in lieu thereof, making an Order disqualifying the Respondent for a period of four years and six months together with an Order directing the Respondent to pay a contribution towards the ODCE's costs
- in keeping with the ongoing strategic shift towards the investigation of more serious indications of wrongdoing:
  - a reduced level of prosecutions in the District Court;
  - an increased caseload of investigations where the intention is, depending upon the sufficiency of available evidence, to refer the underlying matters to the DPP for consideration as to whether to direct charges on indictment; and
  - as alluded to above, concrete steps taken towards significantly augmenting the Office's investigative capabilities through the recruitment of a number of forensic accountants/investigators

## ADVOCACY

- 21 new/revised information and guidance publications issued
- 70 information presentations (to a combined audience of in excess of 3,000) delivered and 15 exhibitions attended

## FINANCIAL

- The cost of running the Office during 2015 was €3m, some 60% of its allocation for the year and an increase of 2% on the previous year

## INVESTIGATIVE CAPABILITIES

- Following receipt of all necessary approvals, newspaper advertisements placed for seven new forensic accountant/investigator positions in November 2015

# CHAPTER 1

## OVERVIEW OF THE ODCE



## STATUTORY MANDATE

### Companies Act 2014

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

### Office of the Director of Corporate Enforcement

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

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

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

### Principal functions of the Director

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

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

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

### Independence of the Director

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

## HIGH LEVEL GOALS

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

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

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

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

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

2 Section 949

3 i.e. before the District Court

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

5 Section 949(3)

## RESOURCES, ORGANISATIONAL STRUCTURE, GOVERNANCE ARRANGEMENTS & PRINCIPAL WORKSTREAMS

### Human resources

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

**Table 1 ODCE staff complement - 2015**

Staff Numbers (WTE <sup>6</sup> )	31 December, 2015	31 December, 2014
Actual complement in place	37.5	40.0

The decrease in actual numbers during the year is attributable to a combination of retirements and transfers outward. During 2014, the ODCE secured Department of Public Expenditure & Reform sanction to recruit a number of accountants to address the historical in-house deficiency in this important area. Securing the associated necessary approvals regarding prospective recruits' terms and conditions of employment and recruitment etc., proved to be a lengthy process and, consequently, it was not possible to finally advertise publicly for these positions until November, 2015.

The composition of the Office's staff complement as at 31 December, 2015, together with comparative data, is set out in the Table below.

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

Grade	31 December, 2015	31 December, 2014
Director	1	1
Heads of Function <sup>7</sup> (excluding Garda)	4	4
Legal Advisors	2	2
Accountants	0	1
Solicitors	1	2
Assistant Principals	3	3
Higher Executive Officers	7	7
Executive Officers	5.8	6
Clerical Officers	7.7 <sup>8</sup>	7.5 <sup>8</sup>
<i>Detective Gardaí (on secondment from the Garda Bureau of Fraud Investigation)</i>		
Detective Inspector (Head of Function)	1	1
Detective Sergeants	2	2
Detective Gardaí	2	2.5
Garda	1	1
<b>Total</b>	<b>37.5</b>	<b>40.0</b>

6 Whole Time Equivalent

7 Includes 1 Legal Advisor, 1 Solicitor and 1 Principal Officer

8 Includes 1 temporary Legal Secretary

## Financial resources

The Office is funded via the Department of Jobs, Enterprise & Innovation's ("the Department") Vote (Vote 32). The Table below sets out details of the Office's 2015 allocation and expenditure respectively.

**Table 3 Financial allocation and expenditure - 2015**

	Allocation €000s	Expenditure €000s	%
Pay	2,884	2,156	75
Non-pay	2,207	916	41.5
Exceptional legal costs	50	0	0
<b>Total</b>	<b>5,141</b>	<b>3,072</b>	<b>60</b>

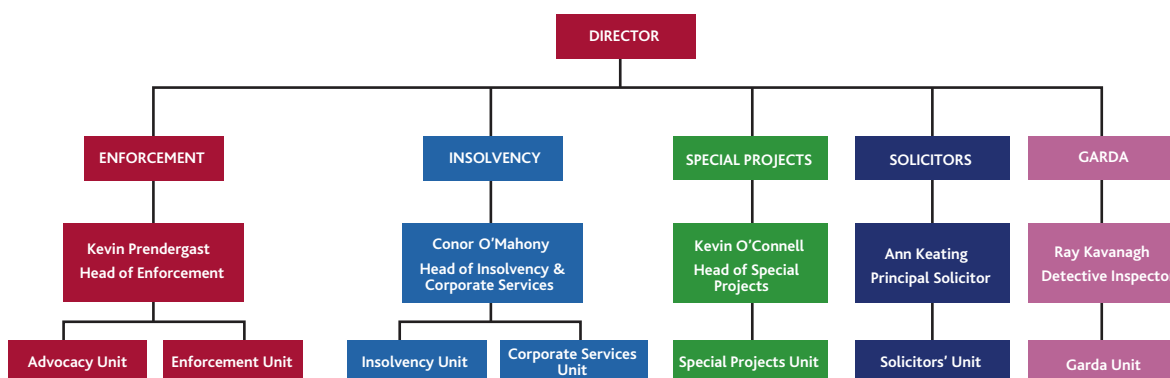
The principal reasons as to why actual expenditure differed from the allocation were as follows:

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

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

## Organisational structure

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 4 Principal workstreams**

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

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

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



# CHAPTER 2

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



## INTRODUCTION

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

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

## PUBLICATIONS AND OUTREACH ACTIVITIES

### Publications

The Act, the largest single piece of legislation to be enacted in the history of the State, was passed into law on 23 December, 2014, and came into effect almost in its entirety on 1 June, 2015. In response to the enactment and commencement of the Act, the Office updated its entire suite of Information Books and Quick Guides<sup>10</sup>. In total, 19 Information Books and Quick Guides were updated and published for stakeholders' benefit. This work also included redesigning the publications to clearly differentiate them from the pre-Companies Act editions. Also, all publications have been made available in the Irish language in accordance with the requirements of the Official Languages Act. A list of these publications, all of which are available in hard copy format from the ODCE and for download from the ODCE's website<sup>11</sup>, is set out at Appendix 2.

The Office also updated two Information Notices, again to reflect the impact of the Act in certain areas. These are (i) Information Notice I/2015/1<sup>12</sup>, dealing with required disclosures on company websites and in emails; and (ii) Information Notice I/2015/2<sup>13</sup>, dealing with company letterhead requirements.

During the year under review, in excess of 18,000 copies of the various ODCE publications, principally revised Information Books and Quick Guides, were issued to interested parties. In agreement with the ODCE, the Companies Registration Office ("CRO") issued approximately half of these documents to persons registering new companies<sup>14</sup>. The remainder were, in the main, issued in response to public demand, either at, or as a consequence of attendance at, events, exhibitions and presentations or as a result of persons contacting the Office directly.

In January 2015, the Office published a list of insolvent companies and the associated liquidators in respect of whom the ODCE had identified the requirement for the submission to the ODCE of a liquidator's report in 2014. The purpose of publishing this list was to enable interested parties to bring any matters of concern in relation to an insolvent company in liquidation to the attention of the liquidator and/or the ODCE, in order that any such concerns could be taken into account in determining whether or not an application for restriction of the company's directors should be made to the High Court. Further detail regarding this aspect of liquidators' reporting obligations to the ODCE is set out in Chapter 3 of this Report.

During the year, the ODCE also published six bi-monthly lists setting out details of (i) insolvent companies in liquidation; and (ii) the associated liquidators for whom a section 682 reporting obligation would arise during 2015. The purpose of publishing these lists is to enable interested parties to bring any matters of concern in relation to the companies listed to the attention of the liquidator and/or the ODCE, in order that any such concerns can be taken into account when determining whether or not an application for restriction of one or more of the company's directors should be made to the High Court or whether a Restriction Undertaking should be sought by the ODCE from one or more of the company's directors as an alternative to Court proceedings. Further detail regarding both the section 682 and Undertakings processes is set out in Chapter 3 of this Report.

10 Information Books are comprehensive guidance on the powers and responsibilities of various parties under company law. Quick Guides are shorter guides on these, and other, topics, which are prepared in accordance with the Plain English guidelines as advocated by the National Adult Literacy Agency.

11 <http://www.odce.ie/en-gb/publications.aspx>

12 Replaced Information Notice I/2007/2

13 Replaced Information Notice I/2010/2

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

## Seminars and exhibitions

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

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

During the year, Office staff delivered 70 presentations (2014: 38) to a combined audience of in excess of 3,300 people. Many of these presentations dealt specifically with the new Act and the ODCE's enhanced remit and enforcement policies in that context. During the year, the Office was also represented at a total of 15 exhibitions (2014: 15), which included continued involvement in the highly successful "Taking Care of Business" series of events promoted by the Department. 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 – although, clearly, the Office must limit the number of issues to which it can devote detailed consideration having regard to competing priorities in the enforcement and insolvency realms respectively. In that context, the Office made submissions in response to a number of policy proposals during the year, further details of which are set out below.

### Companies Legislation

During the year the Office continued to work with the Department on issues relating to the commencement of the Act. Subsequent to its commencement on 1 June, the Office has engaged with the Department on further upcoming companies' legislation, notably the implementation of the EU Audit Directive and Regulation, which is scheduled for 2016<sup>15</sup>.

### 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 with the Department and the Department of Finance respectively on the proposed legislation introducing ICAVs 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. The ICAV Act was passed into law on 4 March, 2015<sup>16</sup>.

### Other advocacy activities

In addition to the foregoing, the Office responded to the request for input to the Corporate Strategy Document of An Garda Síochána for the period 2016-2018, as well as commenting on the Communications (Retention of Data) Bill 2015.

<sup>15</sup> The Audit Directive 2014/56/EC and Audit Regulation (EU) No 537/2014 were adopted on 16 April, 2014. The measures set out therein are due to be transposed by Member States by 17 June, 2016.

<sup>16</sup> Number 2 of 2015

## MANAGING AND DEVELOPING RELATIONSHIPS WITH EXTERNAL STAKEHOLDERS

In furtherance of its statutory objectives and associated goals, the Office seeks to develop and maintain strong and effective relationships with a range of key stakeholders. In addition to the general public, the Office's key stakeholders include the Oireachtas<sup>17</sup>, the Minister, the Department, other statutory/regulatory bodies and those providing professional services to companies and company directors and officers. The Office's interactions during the year with certain of its key stakeholders are summarised below.

### Members of the Oireachtas

The Office, from time to time, receives communications from members of the Oireachtas. Typically, these communications constitute expressions of concern as to whether company law is being breached by particular parties or relate to cases under review. Whilst the Office is constrained in the extent to which it can respond to such communications by virtue of its statutory confidentiality obligations, it endeavours to provide whatever assistance it can to Deputies<sup>18</sup> and Senators<sup>19</sup>.

### Department of Jobs, Enterprise & Innovation

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

### CRO

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

### Garda 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 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.

During the year, the IAASA Board met on 10 occasions. The ODCE nominee attended 9 of those meetings. IAASA's 2015 Annual Report will be available on its website<sup>20</sup> once it has been laid before the Oireachtas by the Minister.

In addition to this statutory relationship as outlined above, the Office engaged regularly with IAASA during the year on matters of mutual interest.

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

The CLRG<sup>21</sup> is a statutorily established advisory body to the Minister on matters relating to company law. The Director is a member of the CLRG and the ODCE is represented at both plenary meetings and at meetings of Committees whose work is pertinent to its remit. During the year, the Office contributed to, amongst others, the following issues as considered by the CLRG:

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17 Collective term for the Upper and Lower Houses of Parliament

18 Members of the Lower House of Parliament

19 Members of the Upper House of Parliament

20 [www.iaasa.ie](http://www.iaasa.ie)

21 [www.clrg.org](http://www.clrg.org)

**Representation of a company before the Courts**

The CLRG continued its review of this topic during the year under review and, at year end, retention of the current position under company law was approved at plenary.

**Review of the enforcement of company law**

The CLRG continued its 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 ("MoU") which, based on their respective grounding legislation, allows each body to refer information to the other where they are satisfied that such information is relevant to the other's remit.

**Office of the Revenue Commissioners**

The Revenue Commissioners are an important partner of the Office in the furtherance of its work, in particular in respect of insolvency related matters. In that context, the two bodies met on a number of occasions during the year. Moreover, the two bodies shared information in respect of four separate matters (2014: 29). This reduced level of exchange is explained by the decision to defer taking any new disqualification applications against the directors of struck-off companies pending the conclusion of an appeal taken by the Office to the Court of Appeal. This matter is elaborated upon further in Chapter 3 of this Report.

**Accountancy profession**

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

**Irish Stock Exchange**

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

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

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

**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 2015, including the Law Reform Commission, the Irish Business & Employers' Confederation and the Insolvency Service of Ireland.

**Media**

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

# CHAPTER 3

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



## STRUCTURE OF THIS CHAPTER

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

## PART A: INPUTS

### EXTERNAL INPUTS

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

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

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

**Table 5 Inputs from external sources**

		2015	%		2014	%
<i>Statutory reports</i>						
Liquidators' reports (initial) (s682)	875			973		
Liquidators' reports (subsequent) (s682)	394			539		
Total liquidators' reports (s682)		1,269	74.2		1,512	79.0
Liquidators' reports regarding possible criminality (s723)		2	0.1		0	0
Auditors' indictable offence reports (s393)		100	5.9		121	6.3
Examiners' reports (s534)		3	0.2		n/a <sup>22</sup>	n/a
Professional Bodies' indictable offence reports (s931)		4	0.3		2	0.1
<i>Referrals</i>						
Referrals from external parties		40	2.3		43	2.2
<i>Complaints</i>						
Complaints from members of the public		290	17.0		236	12.4
<b>Total inputs from external sources</b>		<b>1,708</b>	<b>100</b>		<b>1,914</b>	<b>100</b>

<sup>22</sup> Statutory provision only came into effect during 2015 upon the commencement of the Companies Act 2014

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

## LIQUIDATORS' SECTION 682 REPORTS

### Introduction – overview of the liquidator reporting regime

As can be seen from Table 5 above, liquidators' section 682 reports accounted for just over 74% of all external inputs received by the Office during 2015 (2014: 79%). In summary, liquidators of companies that are in insolvent<sup>23</sup> liquidation are required by law<sup>24</sup> to report to the Office on the circumstances giving rise to the company's demise and on the conduct of any person who was a director of the company during the twelve months preceding the entry of the company into liquidation. The liquidator must also proceed to apply to the High Court for the restriction<sup>25</sup> of each of the directors, unless relieved of that obligation by the Office<sup>26</sup>.

The essential aims of this statutory reporting regime are to:

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

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

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

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

### Restriction and Disqualification Undertakings

The Act<sup>27</sup> introduced, for the first time, a statutory framework under which individuals who might otherwise face the prospect of Court proceedings can avoid having to go to Court by voluntarily agreeing to a restriction or disqualification as applicable (i.e., by providing a legal Undertaking to that effect). In March, 2015, the ODCE published a Consultation Paper setting out its proposed policy and procedures in this regard. Having considered the responses received, the ODCE provided advice to the Minister on the appropriate format and content of Undertakings. On 29 May, 2015, the Minister signed a Statutory Instrument<sup>28</sup> prescribing the form of Undertakings.

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

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

24 Section 682 Companies Act 2014

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

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](http://www.odce.ie)

27 Sections 849 to 854 of the Companies Act, 2014

28 Companies Act 2014 (Disqualification and Restriction Undertakings) Regulations 2015 (S.I. No. 222 of 2015)



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

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

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

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

### Companies entering liquidation

Albeit at a reduced level, company failures continued at a relatively high level during 2015. As can be seen from the Table below:

- during the year, insolvent liquidations (i.e. creditors' and Court liquidations combined) accounted for 44% of all liquidations (2014: 50%);
- following the two year period 2011-12, during which insolvent liquidations exceeded 1,300 annually, 2015 saw a third consecutive year in which the number has reduced - from over 1,100 in 2013 to just over 800 in 2015; and
- solvent (i.e., members') liquidations increased by 3% during 2015 (2014: increase of 18%), from 1,001 to 1,034.

**Table 6 Companies entering liquidation: 2011 - 2015**

	2011	2012	2013	2014	2015
Creditors' liquidations	1,311	1,210	1,043	929	746
Court liquidations	99	107	76	78	70
<i>Total insolvent liquidations</i>	<i>1,410</i>	<i>1,317</i>	<i>1,119</i>	<i>1,007</i>	<i>816</i>
Members' liquidations	1,054	919	848	1,001	1,034
<i>Total solvent liquidations<sup>23</sup></i>	<i>1,054</i>	<i>919</i>	<i>848</i>	<i>1,001</i>	<i>1,034</i>
<b>Total liquidations</b>	<b>2,464</b>	<b>2,236</b>	<b>1,967</b>	<b>2,008</b>	<b>1,850</b>

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

## Liquidators' s682 reports received – 2015

As can be seen from Table 5 above, a total of 1,269 liquidators' s682 reports were received during the year (2014: 1,512), of which:

- 875 were initial<sup>30</sup> reports (2014: 973); and
- 394 were subsequent<sup>30</sup> reports (2014: 539).

The 19% reduction in the number of insolvent liquidations compared to 2014 is welcome. Based on current indications, a further reduction, in the order of approximately 17%, is anticipated over the course of 2016.

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

**Table 7 Sectoral analysis of liquidators' initial section 682 reports received - 2015**

Sector	2015		2014	
		%		%
Construction <sup>31</sup>	208	24	167	17
Wholesale & retail	181	20	222	23
Hotels, bars & catering	104	12	105	11
Community, social & other	103	12	93	10
Manufacturing & printing	93	11	121	12
Marketing & promotion	57	6	80	8
Technology & telecommunications	36	4	34	4
Transport & distribution	29	3	47	5
Financial & leasing	24	3	20	2
Real estate & renting	24	3	60	6
Agriculture, mining & marine	9	1	11	1
Recruitment & security services	7	1	13	1
<b>Total</b>	<b>875</b>	<b>100</b>	<b>973</b>	<b>100</b>

## Timeliness of liquidators' reporting

Over the course of the year, the Office issued 124 (2014: 277) notices to 64 (2014: 124) separate liquidators advising them that they were in default of their statutory reporting obligations. The reduction in the number of notices during 2015 reflects some issues that arose as a result of the transition to the new Act with effect from 1 June, 2015. In particular, there were some transitional issues in relation to the new liquidator report form that constrained the Office's ability to issue notices to liquidators who were late in submitting reports. These issues had been resolved by year end.

Most of these defaults were promptly rectified as a result of this action and, as a consequence, 96% of the first reports due during the year had been received by year end (2014: 96%). However, a small number of liquidators have been observed to repeatedly fail to comply with their reporting obligations. Such cases have been designated as a particular area of focus for

<sup>30</sup> An initial report is the first report received from a liquidator and is required to be submitted within 6 months of his/her appointment. In the majority of cases, the decision as to whether or not to grant relief is made based on this report. However, in some cases a subsequent report is required from the liquidator when his/her investigations have progressed further. In circumstances where a subsequent report is considered to be necessary, 'relief at this time' is usually granted in respect of the initial report.

<sup>31</sup> The figure for Construction includes a large number of companies that were connected to a small number of large groups.

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. Contributory factors in that regard may include the relative lack of experience 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 2015. As can be seen from the Table, 160 liquidators undertook less than three liquidations in 2015 while 42 liquidators undertook seven or more liquidations. The vast majority of those liquidators would be members of Prescribed Accountancy Bodies.

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 – 2015**

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
2015	160	63	19	23	265

### Qualification for appointment as a liquidator or examiner

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

- i. members of a Prescribed Accountancy Body holding a practicing certificate;
- ii. solicitors holding a practicing certificate;
- iii. members of any other professional bodies recognised for this purpose by IAASA (none currently);
- iv. persons qualified to act as a liquidator in another EEA<sup>32</sup> state; and
- v. persons with practical experience of windings-up and knowledge of relevant law prior to the commencement of the Act who are authorised by IAASA. Before granting an authorisation of this type, IAASA has to be satisfied, having consulted the ODCE, that the person is a fit and proper person to act as a liquidator.

An individual who has applied to IAASA for authorisation under (v) above may continue to act pending the determination of their application. As of the end of 2015, IAASA had advised the ODCE of the names of 19 individuals who have applied for authorisation under this provision. It is understood that these applications are currently under consideration by IAASA.

In addition to the qualification requirements prescribed in section 633, section 634 provides that all liquidators must have in place adequate professional indemnity insurance ("PII"). IAASA has recently issued Regulations prescribing the required level of PII required and these Regulations are available on IAASA's website<sup>33</sup>.

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

<sup>32</sup> European Economic Area

<sup>33</sup> <http://iaasa.ie/getmedia/1a9c9ab1-994e-4491-8f6c-6d8a40d27f64/S-I-No-127-of-2016.pdf>

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

As can be seen from Table 5, in aggregate those external inputs other than liquidators' section 682 reports accounted for over 25% (2014: 21%) of total external inputs received during the year. The Table below provides an analysis of the sectoral distribution of those other external inputs.

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

Sector	2015		2014	
		%		%
Real estate & renting	71	16	112	28
Construction	39	9	37	9
Wholesale & retail	39	9	35	9
Health & social work	33	7	12	3
Finance & leasing	30	7	17	4
Manufacturing & printing	21	4	32	8
Transport & distribution	18	4	11	3
Hotels, bars & catering	17	4	19	5
Technology & telecommunications	17	4	3	1
Marketing & promotion	14	3	5	1
Community, social & personal	12	3	32	8
Agriculture, mining & marine	11	3	11	3
Other business sectors	5	1	3	1
Recruitment & security services	4	1	2	0
Not a company	108	25	71	17
<b>Total</b>	<b>439</b>	<b>100</b>	<b>402</b>	<b>100</b>

## COMPLAINTS

The Office receives substantial numbers of complaints annually from members of the public. During the year a total of 290 complaints were received (2014: 236), which accounted for 17% (2014: 12%) of all external inputs received. The Table below provides an analysis of the subject matter of complaints received.

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

	2015	%	2014	%
Directors' conduct	75	26	22	9
Audit/auditor related	38	13	28	12
Annual/Extraordinary General Meeting related	34	12	24	10
Allegations of forgery/furnishing of false information	24	8	7	3
Improper accounting records	20	7	8	3
Allegations of reckless/fraudulent/insolvent trading	20	7	65	28
Relating to the issue of unpaid debts	18	6	27	12
Register of members	13	4	4	2
Registered address	11	4	0	0
Access to accounting records/minutes of meetings	9	3	3	1
Relating to companies trading whilst struck off the Register	8	3	10	4
General shareholder rights issues	8	3	19	8
Other	12	4	19	8
<b>Total</b>	<b>290</b>	<b>100</b>	<b>236</b>	<b>100</b>

## AUDITORS' INDICTABLE OFFENCE REPORTS

### Introduction – overview of the auditor reporting regime

Section 393(1) of that Act provides that, where, in the course of and by virtue of their carrying out of an audit, information comes into the possession of a company's auditors which leads them to form the opinion that there are reasonable grounds for believing that an indictable offence under the Act has been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the Office. The Office has developed and published guidance to assist auditors in complying with their obligations in this regard<sup>34</sup>.

### Nature of suspected offences reported

During the year, a total of 100 indictable offence reports were received from auditors (2014: 121). 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.

<sup>34</sup> Decision Notice D/2006/2 – Revised Guidance on the Duty of Auditors to Report Suspected Indictable Offences to the Director of Corporate Enforcement. This was more recently supplemented by Information Notice I/2009/4 – Reporting Company Law Offences: Information for Auditors

## EXAMINERS' REPORTS

Pursuant to section 534(6) of the Act, where an examiner is appointed to a company, s/he shall, as soon as may be after it is prepared, supply a copy of his or her report to the ODCE. Subsequent to the commencement of the Act on 1 June, 2015, the Office received 3 reports from examiners.

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

	2015	%	2014	%
Directors' loan infringements	81	75	101	74
Failure to maintain proper accounting records	25	23	24	18
Provision of false statements to auditors	2	2	2	1
Persons not qualified to act as auditor to a company acting as such	0	0	3	2
Falsification of documents	0	0	1	1
Other miscellaneous offences	0	0	6	4
<b>Total</b>	<b>108</b>	<b>100</b>	<b>137</b>	<b>100</b>

## 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 40 (2014: 43) such referrals from a variety of sources.

## PROFESSIONAL BODIES' INDICTABLE OFFENCE REPORTS

### Recognised Accountancy Bodies ("RABs")<sup>35</sup>

Where a RAB's Disciplinary Committee or Tribunal has reasonable grounds for believing that an indictable offence under the Act may have been committed by a person while that person was a member of the RAB, the RAB is required to report the matter to the Office<sup>36</sup>. Four such reports were received during the year under review (2014: 2).

### Prescribed Professional Bodies ("PPB")

Similarly, where the Disciplinary Committee or Tribunal of a PPB finds that a member conducting a liquidation<sup>37</sup>, examinership<sup>38</sup> or receivership<sup>39</sup> has not maintained appropriate records, or has reasonable grounds for believing that the member has committed an indictable offence under the Act during the course of a liquidation, examinership or receivership, the PPB concerned is required to report the matter to the Office.

<sup>35</sup> A RAB is an accountancy body that is permitted to authorise its members and member firms, subject to those members having satisfied certain criteria, to act as statutory auditors and audit firms respectively. There are six RABs, i.e., the:  
Association of Chartered Certified Accountants (ACCA)  
Institute of Certified Public Accountants (ICPAI)  
Institute of Chartered Accountants in England & Wales (ICAEW)  
Institute of Chartered Accountants in Ireland (ICAI)  
Institute of Chartered Accountants of Scotland (ICAS)  
Institute of Incorporated Public Accountants (IIPA)

<sup>36</sup> Section 931(4) of the Act

<sup>37</sup> Section 688 of the Act

<sup>38</sup> Section 558 of the Act

<sup>39</sup> Section 448 of the Act

Pursuant to the Company Law Enforcement Act (Section 58) Regulations 2002<sup>40</sup>, the following were designated as PPBs (equivalent designations under sections 448, 558 and 688 of the Companies Act 2014 have yet to be given effect to):

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

No reports of this nature were received from PPBs during the year (2014: 0).

## LIQUIDATORS' REPORTS REGARDING POSSIBLE CRIMINALITY

In addition to their reporting obligations under section 682 as detailed above, in accordance with section 723(5) of the Act, liquidators are required, in circumstances where it appears that any past or present officer of the company concerned has been guilty of any offence in relation to the company, to make a report to the DPP and also to refer the matter to the ODCE. This reporting obligation extends to all liquidations, solvent and insolvent (i.e. both Members' and Creditors' Voluntary liquidations and Court liquidations) alike. During the year, two such reports were received by the Office (2014: nil).

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

It is open to the Office to apply to the High Court for the disqualification of the directors of such struck off companies<sup>41</sup>. However, the law also provides<sup>42</sup> that the Court cannot disqualify a person who demonstrates to the Court that the company had no liabilities at the time of strike off or that those liabilities had been discharged before the initiation of the disqualification application. In considering the sanction to be imposed, the Court may instead restrict the director(s) where it adjudges that disqualification is not warranted under the particular circumstances<sup>43</sup>.

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

Where it appears to the Office that a director is liable to be disqualified in these circumstances, it may offer the individual concerned the opportunity to voluntarily submit to a Disqualification Undertaking.

40 S.I. 544 of 2002

41 Section 842(h) of the Companies Act 2014

42 Section 843(3) of the Companies Act 2014

43 Section 845(3) of the Companies Act 2014

In the context of the foregoing, also worthy of note is the fact that, where a company is struck off the Register, its remaining assets are vested in the Minister for Public Expenditure & Reform in accordance with the provisions of the State Property Act 1954.

## SUPERVISION OF LIQUIDATORS

One of the statutory functions of the Director is to:

"...exercise, insofar as the Director considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under this Act"<sup>44</sup>.

Whilst the section 682 process, as outlined earlier in this Chapter, provides the Office with a means of indirectly supervising certain aspects of liquidators' work, from time to time the Office considers it appropriate or otherwise necessary to engage in more direct supervision of liquidators' work. This, more direct, supervision is effected through the exercise of the powers conferred by section 653 of the Act<sup>45</sup>.

Section 653 of the Act provides that the Director may:

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

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

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

## 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 or other relevant documentation;
- issues identified through monitoring of litigation;
- issues identified through a review of press reportage, the internet, social media etc.

By way of illustrative example, enquiries were initiated during the year where there were indications to suggest that:

- undischarged bankrupts may have been acting as company directors; and
- persons may have been acting as auditors whilst not authorised to do so.

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 - 2015

During the course of 2015, a total of 69<sup>46</sup> (2014: 48) internal inputs were generated.

<sup>44</sup> Section 949(1)(e) of the Companies Act 2014

<sup>45</sup> Section 446 of the Act includes a similar provision relating to receivers

<sup>46</sup> Relating to the broad categories of bankruptcy, audit, fraud, disqualification and filing issues



## PART B: THROUGHPUTS

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

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

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

In the case of other inputs, such as, for example, auditors' reports, 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:
  - companies for the production of the company's 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;
  - bankrupts, seeking sworn statements relating to the insolvency status of directors and secretaries of companies who were, at the time, undischarged bankrupts;
  - liquidators requiring that they file outstanding section 682 reports;
- exercising criminal powers, such as, for example, executing search warrants, exercising the powers of arrest and detention etc.;
- liaising with other statutory authorities potentially being in a position to assist the Office's enquiries, for example through the sharing of relevant information.

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

- the decision to take no further action (for example, where enquiries suggest that there has been no breach of company law or where the breach is minor in nature and enforcement action would, as a consequence, be disproportionate);
- a decision not to take enforcement action on this occasion but, rather, to issue a warning that any recurrence will precipitate enforcement action (for example, where the breach has been rectified and/or remediated to the ODCE's satisfaction);
- 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 682 reports - 2015**

Section 682 reports on hand at 1 January, 2015		576
New reports received during 2015	1,269	
Less: Reports in respect of which determinations made during 2015	1,367	
<b>Section 682 reports on hand at 31 December, 2015</b>		<b>478</b>

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

**Table 13 Throughput of other cases - 2015**

Other cases on hand at 1 January, 2015		90
New cases opened during 2015	506	
Less: Cases concluded during 2015	526	
<b>Other cases on hand at 31 December, 2015</b>		<b>70</b>

## PART C: OUTPUTS

### OUTPUTS FROM THE SECTION 682 PROCESS

#### Decisions made on liquidators' reports

The Office made definitive decisions (i.e. decisions other than to grant 'Relief at this time') on 1,005 liquidators' reports during 2015 (2014: 1,174), with a further 362 decisions made to grant 'Relief at this time' (2014: 527).

Of the definitive decisions taken during 2015, a total of 784 were made in respect of initial reports (2014: 805), with a further 221 being made in respect of subsequent reports (2014: 369).

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

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

Decision type	2015	%	2014	%
Full relief <sup>47</sup>	744	79	753	68
No relief <sup>48</sup>	28	3	44	4
Partial relief <sup>49</sup>	12	1	8	1
Relief at this time <sup>50</sup>	156	17	293	27
<b>Total</b>	<b>940</b>	<b>100</b>	<b>1,098</b>	<b>100</b>

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

Decision type	2015	%	2014	%
Full relief <sup>47</sup>	174	41	250	41
No relief <sup>48</sup>	33	8	90	15
Partial relief <sup>49</sup>	14	3	29	5
Relief at this time <sup>50</sup>	206	48	234	39
<b>Total</b>	<b>427</b>	<b>100</b>	<b>603</b>	<b>100</b>

Complete lists of the directors, and associated companies, in respect of which full relief and relief at this time respectively were granted during 2015 are available at [www.odce.ie](http://www.odce.ie).

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

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

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

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

## Restriction and Disqualification Undertakings

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

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

	Restriction		Disqualification	
	Cases	Directors	Cases	Directors
Number of cases eligible for the issue of Undertaking offers	26	49	0	0
Number of cases in which offers actually issued	22	39	0	0
Number of cases in which offers were accepted, i.e., one or more Undertakings provided	13	22	n/a	n/a
Number of cases in which offers were not accepted	4	7	n/a	n/a
Number of cases in which offers were still under consideration at year end	5	10	n/a	n/a
<b>Total</b>	<b>22</b>	<b>39</b>	<b>0</b>	<b>0</b>

## Outcome of liquidators' Court applications

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

**Table 17 Results of liquidators' Court applications – 2015**

	Cases	Directors
Restriction Declarations granted	83	150
Disqualification Orders granted	10	14
Declarations or Orders not granted	14	34
<b>Total</b>	<b>107<sup>51</sup></b>	<b>198</b>

<sup>51</sup> Total does not equate to the sum of the above due to the fact that, in five cases, some directors were restricted while others were disqualified.

On foot of Undertakings or Court Orders, a total of 172 directors were restricted and 14 directors disqualified. Further analysis of the Orders made by the Court on foot of liquidators' applications and Undertakings 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 682 reports to the ODCE:

- the directors of a freight company under-declared its tax liabilities for a period of five years, resulting in unpaid debts to the Revenue Commissioners of in excess of €341,000. The liquidator had concerns over the keeping of proper accounting records, incorrect information having been provided to the company's auditors, the failure to prepare a proper Statement of Affairs, the transfer of assets and evidence of phoenix activity;
- the directors of an investment company were operating a Ponzi scheme through the company, which is being investigated by GBFI, the Criminal Assets Bureau ("CAB") and the UK's Financial Services Authority. One of the directors was sentenced to 18 months jail in Northern Ireland for failure to comply with Court Orders directing him to disclose details of the assets of the company but had, by that point in time, left the jurisdiction. Significant balances in bank accounts had come under the control of the appointed liquidator or had been frozen by the Courts upon application by CAB. The liquidator is continuing his investigations and is seeking to ensure that all assets of the company are identified and secured;
- the Revenue Commissioners petitioned the High Court for the winding up of a company that had been operating a number of gyms under franchise. The petition was a response to estimated accumulated tax liabilities of in excess of €56,000. There was no engagement or co-operation by either director with the liquidator, who was not provided with any books and records of the company. The directors also failed to comply with Orders of the High Court to provide financial information;
- the Revenue Commissioners petitioned the High Court for the winding up of a company on foot of demands for unpaid taxes and interest of approximately €140,000. The company, which had failed to pay any taxes in its final two years of trading, had traded in high value motor vehicles as well as operating a parking and valeting service. The company failed to maintain proper accounting records, had a poor record of filing returns with the CRO, failed to co-operate with the liquidator and failed to comply with Orders of the High Court to provide financial information. Substantial company receipts (approximately €375,000) were not lodged to the company's bank account after a Revenue Attachment Order had been made against the account but were, instead, diverted to other bank accounts under the control of the disqualified director;
- the directors of a company involved in freight transport engaged in a systematic and deliberate under-declaration and under-payment of VAT<sup>52</sup> for a period of at least six years, resulting in undeclared debts to the Revenue Commissioners of in excess of €277,000. The directors continued to trade whilst insolvent during these six years and operated for a period of 12 months without a road haulage licence;
- the directors of a company involved in operating a public house engaged in systematic and deliberate under-declaration and under-payment of VAT for a period of at least five years, resulting in undeclared debts to the Revenue Commissioners of in excess of €248,000. The directors continued to trade while insolvent during these five years. The liquidator had concerns over the maintenance of proper accounting records and evidence of phoenix activity (by transferring employee records to a new company);
- a company involved in the sale of advertising space in school journals and calendars engaged in a substantial under-declaration of VAT. The under-declaration was determined to be in the range of €165,000 to €270,000, depending upon the figures provided by the directors and sales invoices respectively. Moreover, no financial statements were prepared from the date of incorporation to the date on which the company entered liquidation;
- two companies that formed part of the corporate structure that operated an online gaming website were investigated by the U.S. Department of Justice in relation to money laundering charges. This resulted in a U.S. based director (also the CEO) signing a settlement agreement under the terms of which the companies in question were divested of all of their assets – amounting to in excess of €4m. The companies' third party creditors, who were owed in the region of €2m to €3m were left without any prospect of recovering any of the sums owed to them;
- a company involved in the publication of free regional newspapers failed to maintain proper accounting records. Cash withdrawals of the order of €538,000 were made from the company's bank account over a period of two and a half years and there was no record of what these withdrawals were for. In addition, incorrect VAT returns resulted

52 Value Added Tax

in an under-declaration of VAT of approximately €50,000. At the time of the company's entering into liquidation, the Revenue Commissioners were owed €254,000 in VAT and a further €32,000 in PAYE/PRSI. The directors had previously been involved in a company that had operated in the same sector and from the same address and transfers of the order of €31,000 were made from the company's bank account to one of the directors in the three months prior to liquidation.

### Civil outputs from the section 682 process

For a variety of reasons, including an insufficiency of in-house accountancy expertise, the Office's civil power to examine liquidators' books and records was not exercised during the year under review.

### Criminal outputs from the section 682 process

From time to time the Office's review of liquidators' section 682 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 their reporting obligations on a timely basis. At the beginning of the year, two prosecutions were in progress in that regard the outcome of which was:

- one liquidator, on a plea of guilty, had the Probation of Offenders Act 1907 applied to his offences and was fined €1,000 (in respect of his failure to deliver on time three separate section 682 reports). He was also ordered to pay the costs of the prosecution, which were measured by the Court in the sum of €1,250;
- in the second case, on a plea of guilty, a liquidator agreed to pay a sum of €1,000, as measured by the Court, to a nominated charity (in respect of the liquidator's failure to deliver two separate section 682 Reports). The liquidator was also ordered to pay the costs of the prosecution, which were measured by the Court in the sum of €1,250. On being satisfied that both amounts had been discharged, the proceedings were struck out.

## 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 89 cases (2014: 115) 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 €21m (2014: €66m). 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 seven (2014: 8) separate companies.

In all, cautions issued to a total of 73 companies. Cautions issued included those to the directors of 13 companies in relation to matters associated with the keeping of proper accounting records.

## SECURING COMPLIANCE THROUGH THE EXERCISE OF THE DIRECTOR'S CIVIL POWERS

A variety of legislative provisions were successfully used during the course of 2015 in order to secure compliance with company law. These included:

- 18 demands issued under section 133 of the Act requiring a sworn statement relating to the insolvency status of a company director or secretary of a company where there was evidence suggesting that the individual may be an undischarged bankrupt;
- 2 directions under section 175(5) of the Act requiring the convening of companies' Annual General Meetings ("AGM") (2014: 2). These directions were issued following the consideration of complaints received from members of the companies concerned;
- 2 directions (2014: 2) under section 166(5) of the 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;
- 128 directions (2014: 277), pursuant to section 797(1) of the Act, requiring liquidators to comply with their reporting obligations under section 682;
- 4 demands (2014: 4) under section 778 of the Act, requiring the production of companies' 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 provision<sup>53</sup> for the disclosure of information to certain third parties (including other regulatory bodies and certain professional bodies) provided that certain prescribed criteria are satisfied.

Pursuant to the foregoing provision, seven referrals (2014: 7) 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 (i.e., unable to discharge their debts as they fall due). 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 2014, the Court declined to make disqualification Orders in two cases brought by the Office. The High Court Judgements in the aforementioned cases were of concern to the Office in that the Court departed from the guidance previously set down by the High Court in "*Re Clawhammer Ltd*" [2005] 1 I.R.503 ("the Clawhammer Judgement") in relation to the factors that the Court should take into account when exercising its discretion whether to make an Order. In declining to make the Disqualification Orders sought in the two cases in question, the Court took into consideration factors such as the scale of the enterprise, the qualifications of the directors, the context in which the transgressions occurred (to include the economic downturn) and the past behaviour of the directors.

<sup>53</sup> Section 956 of the Companies Act 2014

Having considered the above Judgements, the Office took the decision to:

- appeal the High Court decisions; and
- defer the making of any applications to the High Court in most cases, pending the outcome of those appeals.

The latter aspect of the aforementioned strategy gave rise to a significant drop off in such applications during the year under review. Whilst one of the aforementioned appeals was withdrawn, the appeal in the other case was heard in October 2015. The Court of Appeal subsequently delivered its Judgement in January 2016 ("*Director of Corporate Enforcement V Walsh & Ors*" [2016] IECA 2).

In its Judgement, the Court of Appeal overturned the decision of the High Court declining to make the Disqualification Orders against the directors and proceeded to make Restriction Declarations given the particular circumstances of the case.

Now that the principles previously laid down in the Clawhammer Judgement have been confirmed by the Court of Appeal, it is the intention of the Office to recommence seeking to identify cases where company directors have allowed companies to be struck off the Register while having considerable liabilities and to consider Court applications for the disqualification of the directors concerned (or to offer Disqualification Undertakings, where appropriate). The principles reaffirmed by the Court of Appeal are also likely to be an important guide to the future consideration of restriction applications and, accordingly, this Judgement will also inform the Office's consideration of liquidators' s682 Reports.

Given the significance of the Court of Appeal's Judgement for the ODCE's work, a summary of the key aspects of that Judgement is set out below.

### Director of Corporate Enforcement V Walsh & Ors – summary of key aspects of the Court of Appeal's Judgement

The leading High Court Judgement on the meaning and application of section 160(2)(h) of the Companies Act 1990<sup>54</sup> is the Clawhammer Judgment, which has been followed in many cases and which has led over the years to the making of 114 Disqualification Orders and 9 Restriction Declarations respectively against company directors for failure to file Annual Returns leading to the striking off of insolvent companies.

The Clawhammer Judgement held, *inter alia*, that:

[absent] "*any exculpatory evidence to the Court either as to [the directors'] involvement in the company, the circumstances leading up to the striking off of the company or the outstanding liabilities of the company, an order of disqualification is probably, in general, justified. In any application where the respondent directors appear and offer evidence to the Court it will be appropriate to take that evidence into account in determining whether or not to make a disqualification order or a declaration of restriction.*"

*Where the respondent directors adduce evidence of the likely quantum of the undischarged liabilities of the company or their role in relation to the company or other circumstances leading to the striking off of the company, it will be appropriate for the Court to take such facts into account in determining any period of disqualification. Similarly, it will be appropriate for the Court to take into account any impact on the respondent directors of the making of a disqualification order in the context of any evidence offered of future proposals to earn a livelihood."*

Having considered the arguments advanced on appeal, the Court of Appeal unanimously rejected the approach taken by the High Court in the recent case and reaffirmed the approach taken in the Clawhammer Judgement. In allowing the ODCE's appeal and overturning the High Court Judgement, the Court of Appeal held that:

- a "*financial maelstrom*" did not change the purpose of section 160<sup>55</sup>, which is the promotion of proper corporate governance. Neither did it alter the obligations upon directors in circumstances where companies under their control become insolvent. In such a circumstance, they should take the necessary steps to bring about the company's winding up. They cannot, as an alternative, fail to carry out their obligations by not making annual returns and waiting for the company to be struck off the Register. Difficult trading conditions or financial pressures do not provide a form of absolution from the statutory duties undertaken by persons when they decide to become directors of a company;
- the "scale of enterprise and qualification of directors" and the "context in which director transgression" occurred are not factors that could be regarded as relevant to the exercise of the Court's discretion when considering whether to make a disqualification Order. The whole thrust of the legislative provision is to ensure that all directors of all companies comply with their obligations and it does not matter whether they are directors of family companies or of large publicly quoted companies;
- neither the qualifications of the directors nor the economic challenges that the companies may be facing affect the obligations of directors to act responsibly in respect of an insolvent company;

<sup>54</sup> Subsequently replaced by section 842(h) of the Companies Act 2014

<sup>55</sup> Subsequently replaced by section 842 of the Companies Act 2104



- the past behaviour of the directors is not something which ought to be borne in mind in applications of this nature (in arriving at this view, the Court noted that each of the wrongdoings identified in section 160<sup>56</sup> are instances of conduct which warrant disqualification and opined that the intent of the legislature runs the risk of being frustrated if an obligation were to be placed upon the ODCE to put before the Court evidence of the entire past behaviour of directors); and
- it would be contrary to the whole notion of proper corporate regulation if passive directors could be exonerated from liability or relieved from disqualification or restriction on the basis of the passive nature of their role, noting that there were a number of cases where that had previously been made clear. All directors, whether passive or otherwise, are required to undertake all reasonable steps to file Annual Returns and there is no warrant to limit the disqualification or restriction of passive directors to one where there is a "real moral blame" on their part.

## Other civil enforcement proceedings

### 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, what was then, section 8 of the Companies Act 1990) to investigate the Affairs of NIB and NIBFS<sup>57</sup>.

In July 2005, the Office commenced Disqualification proceedings against 9 persons who had formerly been directors and/or officers of NIB and/or NIBFS. At the beginning of 2015 the position was that eight of the cases had been fully concluded and a Supreme Court hearing date was awaited in respect of one appeal<sup>58</sup> from an earlier decision of the High Court.

During the year under review, the remaining appeal came before the Supreme Court. By consent, the Supreme Court made an Order vacating the High Court Order (which had imposed a disqualification for a period of nine years) and, in lieu thereof, made an Order disqualifying the Respondent for a period of four and a half years, commencing on 7 June, 2011, together with an Order directing the Respondent to pay a contribution to the ODCE's costs.

### Applications for relief under section 152 of the Companies Act 1990

Section 152 of the Companies Act 1990 provided<sup>59</sup>, 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.

In late 2014, the Office became aware of an intended application for relief under section 152. The Office engaged with the Applicants' solicitors and advised them of the information that should, in the Office's assessment, be brought to the Court's attention. In May 2015, the application was withdrawn.

## CRIMINAL ENFORCEMENT

### Overview

During the year under review the Office continued the implementation of its strategic decision (detailed in previous Reports) to allocate a greater proportion of its overall investigative resources towards cases exhibiting more serious indications of wrongdoing.

The consequences of this strategic shift are twofold, viz:

- a reduction in the number of cases taken before the District Court, i.e., summary prosecutions. In 2015 the total number of these cases was three (2014: 10); and

<sup>56</sup> Subsequently replaced by section 842 of the Companies Act 2014

<sup>57</sup> 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.

<sup>58</sup> 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.

<sup>59</sup> Subsequently replaced, with effect from 1 June, 2015, by section 852 of the Companies Act 2014

- a substantial increase in the number of cases being investigated with a view to the referral of same to the DPP for consideration as to whether charges should be directed on indictment. The Office has established management information systems that capture and monitor such cases separately and, at year end, the Office had 18 individuals and companies under investigation with a view to possible prosecution on indictment.

### 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.

During 2015, one file was submitted to the DPP. Following consideration of that file, the DPP indicated that, in principle, charges were to be directed against an individual concerned. Based on that decision, the Office was, at year end, in the process of drafting criminal charges for the DPP's consideration.

### Other criminal investigations

As alluded to above, the Office was engaged in a number of other criminal investigations during 2015 with a view to forwarding files to the DPP. At year end, a number of those cases were approaching a point of readiness for submission to the DPP for consideration.

### The former Anglo Irish Bank Corporation plc ("Anglo")

Previous Annual Reports have detailed the general nature of the issues that the Office has investigated over several years and the extent to which resultant files have been submitted to the DPP.

At the beginning of 2015 the position was that the DPP had directed that:

- Mr. Sean FitzPatrick, should be tried on indictment in respect of alleged breaches of the provisions of section 197 of the Companies Act 1990 ("the 1990 Act"); and
- Mr. William McAteer and Mr. Patrick Whelan should be tried on indictment in respect of alleged breaches of section 297 of the Companies Act 1963.

Regarding the first of these issues, the trial of Mr. Fitzpatrick commenced on 14 April, 2015. A jury was sworn in, before whom Mr FitzPatrick was arraigned on 21 alleged breaches of section 197 and 6 alleged breaches of section 242 of the 1990 Act. Following substantial legal argument, in the absence of the jury, the trial Judge delivered a ruling on a range of issues on 2 June, 2015, discharged the jury and set a new trial date in October, 2015. Subsequently, in August, 2015, the High Court ordered (in Judicial Review proceedings brought by Mr FitzPatrick) that the trial date should be deferred to 25 May, 2016.

Regarding the second of these issues, the trial of Mr. Patrick Whelan and Mr. William McAteer is scheduled to commence in the Dublin Circuit Criminal Court on 16 January, 2017.

During 2015, officers of the ODCE engaged closely with the Office of the DPP in respect of the charges on foot of which Mr. David Drumm was subsequently extradited from the United States of America to Ireland on 13 March, 2016. Of the 33 charges directed, 31 are based on matters which were the subject of investigations carried out by the ODCE. The aforementioned 31 charges in question can be summarised as follows:

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

No date has yet been fixed for the hearing of the trial of Mr. Drumm in respect of these charges.

### Summary prosecutions

In accordance with the provisions of the Act, the Director can bring summary prosecutions before the District Court. During the year under review the Office brought and prosecuted summary proceedings on three occasions (2014: 10), resulting in:

- 7 convictions (2014: 19), with the Probation of Offenders Act 1907 being applied in respect of a further three charges in an additional case;
- aggregate fines of €8,500 (2014: €27,500) being imposed; and
- the Office being awarded costs of €2,500 (2014: €4,750).

Details of those prosecutions are summarised in the Table below.

**Table 18 Summary prosecutions determined – 2015**

Case	District Court hearing, date & venue	Charges	District Court Outcome
ODCE v John O'Connell	23 February 2015 Dublin Metropolitan District Court	3 offences contrary to Section 56(1) and (3) of the Company Law Enforcement Act 2001	On a plea of guilty Section 1(1) of the Probation of Offenders Act 1907 was imposed on the Defendant in respect of each of the three charges with the defendant being ordered to pay a sum of €1,000 to the Simon community and agreeing to paying prosecution costs of €1,250
ODCE v Thomas Colton	22 April 2015 Dublin Metropolitan District Court	2 offences contrary to Section 187(6) and (9) of the Companies Act 1990  3 offences contrary to Section 242(1) of the Companies Act 1990  3 offences contrary to Regulation 21 and 23 of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulation 2010 Statutory Instrument No 220 of 2010	On a plea of guilty to three charges the Court convicted the defendant of two charges pursuant to Section 242(1) of the Companies Act 1990 and imposed a six month prison sentence on each suspended for twelve months. The charge of acting as a statutory auditor was taken into account.
ODCE v Brian Scannell of Brian Scannell & Co	20 May 2015 Cork District Court	4 offences contrary to Section 242(1) of the Companies Act 1990  1 offence contrary to Regulation 21 and 23 of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulation 2010 Statutory Instrument No 220 of 2010	On a plea of guilty to 5 charges the court convicted the accused of all 5 charges and imposed fines totalling €8,500. Prosecution costs of €1,250 to be paid by the defendant.
ODCE v Jerry Beades	8 October 2015 Dublin Circuit Court	Appeal to Circuit Court	The convictions imposed in the District Court on 10 November 2014 were upheld with the associated fines being reduced from €10,500 to €3,750 on appeal.

# CHAPTER 4

PROVIDING QUALITY CUSTOMER SERVICE TO  
INTERNAL AND EXTERNAL STAKEHOLDERS



## PROVISION OF A QUALITY CUSTOMER SERVICE TO EXTERNAL STAKEHOLDERS

### Customer service standards

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

In the course of 2015, one formal complaint was received regarding Customer Service. The complaint was investigated in accordance with the procedures as set out in the Office's, then-current, customer care documents. The outcome of that investigation was subsequently communicated to the complainant, who did not seek a review of the determination.

### Customer Charter

The Office published drafts of revised documents in 2015, for the purpose of a public consultation exercise. The resultant final documents have since been published on the ODCE's website. These documents provide detail of, amongst other things:

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

### Nature of principal engagements with external stakeholders

The Office's principal engagement<sup>60</sup> with external stakeholders includes:

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

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

### Public enquiries

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

In order to further assist querists, the Office has developed a series of Frequently Asked Questions ("FAQ") and responses thereto, which are available on the website<sup>61</sup>. The FAQ section of the website is regularly reviewed and supplemented as necessary. In particular, during the year under review, the FAQ section was comprehensively reviewed and updated to reflect the provisions of the Act. As well as consulting the website, queries may also be directed to the Office's information email address (info@odce.ie) as well as being submitted by telephone.

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

### Website

The Table below details those sections of the website that attracted the most traffic during the year under review. The number of visits to the website as a whole from mobile devices was over 2,700.

<sup>60</sup> i.e. excluding parties being engaged with in the context of the Office's enforcement remit

<sup>61</sup> [www.odce.ie/faq.aspx](http://www.odce.ie/faq.aspx)

**Table 19 Top 20 most visited sections of the website - www.odce.ie**

Page	Views
Publications	44,114
Company Law and You	40,154
Court Decisions	32,638
About the ODCE	13,873
FAQs	13,619

By way of further elaboration, the Table below details the 20 most frequently visited individual pages (i.e., as opposed to sections) on the website during the year (excluding the site's home page). As in previous years, the FAQ section featured heavily in the most viewed pages. Taking all the FAQ pages together, they attracted over 13,600 views during the year.

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

Page	Views
Directors' & Secretaries' Responsibilities	12,698
Company Law Guidance - Information Books	10,645
Publications	7,838
Company Law Guidance - Quick Guides	6,987
Company Law & You	5,828
About the ODCE	5,133
Company Law Guidance Publications	4,510
FAQ - Directorship of a Company	4,251
ODCE's Functions	3,764
Court Decisions	2,853
Prosecution Cases 2014	2,836
Contact Us	2,751
Directors & Secretaries	2,662
FAQ - Membership of a Company	2,614
Liquidators', Receivers' & Examiners' Responsibilities	2,601
Company Law & You - Corporate Governance	2,573
Prosecution Cases 2015	2,553
FAQ - Winding Up & Liquidations	2,519
About the ODCE - Our Role	2,501
Publications Relating to Liquidations	2,427

In addition, the website's search facility was used over 9,600 times during the year. At year end, some 923 persons were registered to receive website notifications by email. The Office also provides an Irish language version of its website and just under 0.2% of website traffic was to the Irish version ([www.osfc.ie](http://www.osfc.ie)).

### Social media

The Office continues to utilise various social media platforms to communicate with its stakeholders. Specifically, the Office operates on four platforms, i.e., Facebook, Twitter, LinkedIn and Google+. These media are used to highlight and promote the Office's advocacy and enforcement activities respectively, as well as to inform followers of developments on the wider company law landscape. By year end, the Office had attracted 1,547 followers across these various fora (2014: 1,156).

### 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 on an objective basis 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 sector, it has not been possible to commission any such research for a number of years. 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 33 Office staff received a total of 102 days training during 2015 (2014: 116.5), including:

- training provided by in-house resources – 42 days, relating to 17 staff; and
- training provided by the Department – 60 days, relating to 27 staff.

During 2015, the Office assisted a number of staff members to undertake the following training and development:

- Effective Witness Training;
- Key Provisions of the Companies Act 2014;
- accountancy staff members' CPD<sup>62</sup> requirements; and
- solicitor staff members' CPD requirements.

### ICT Systems

The Office records its casework in a database that allows for tracking of cases and the extraction of statistics. This software was enhanced in 2015 to cater for the new provisions in company law which came into effect with the commencement of the Act on 1 June.

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

### Parliamentary Questions ("PQ")

The Office is regularly requested to provide information/material to the Department to assist it in preparing Ministers' responses to Deputies' PQs. In addition, the Office is sometimes itself the subject of Deputies' PQs. During the year, the Office provided material in response to 31 PQs (2014: 37).

62 Continuing Professional Development

### 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 all 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)

Most records of the Office (i.e., all records other than records concerning its general administration) are exempt from the Fol Acts. During 2015, two applications to other bodies (the Department and the Office of Government Procurement) involved records held by the ODCE and the requested information was furnished to the bodies in question. Two requests for records not covered by the Act were withdrawn and one further application for exempt records was refused. In addition, two queries regarding Office records were received, and were dealt with, by the Office's Fol Officer outside of the Fol Act.

In October 2015, the Department of Public Expenditure and Reform produced the Model Publication Scheme to be followed by all bodies that are subject to Fol. The Office's draft Fol Publication Scheme was at an advanced stage at year-end.

### Data Protection Acts

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

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

A third request, for the removal of personal details from the ODCE website, was considered by the Office. In the particular circumstances of the case, it was agreed to anonymise the details published on the website. In that context, it is important to note that details are published only when they have come into the public domain. To that extent, such details are already on public record and their removal from the ODCE website may only have a limited impact. For example, the details will remain in the text of previous Annual Reports, which cannot be amended following publication.

### Energy consumption

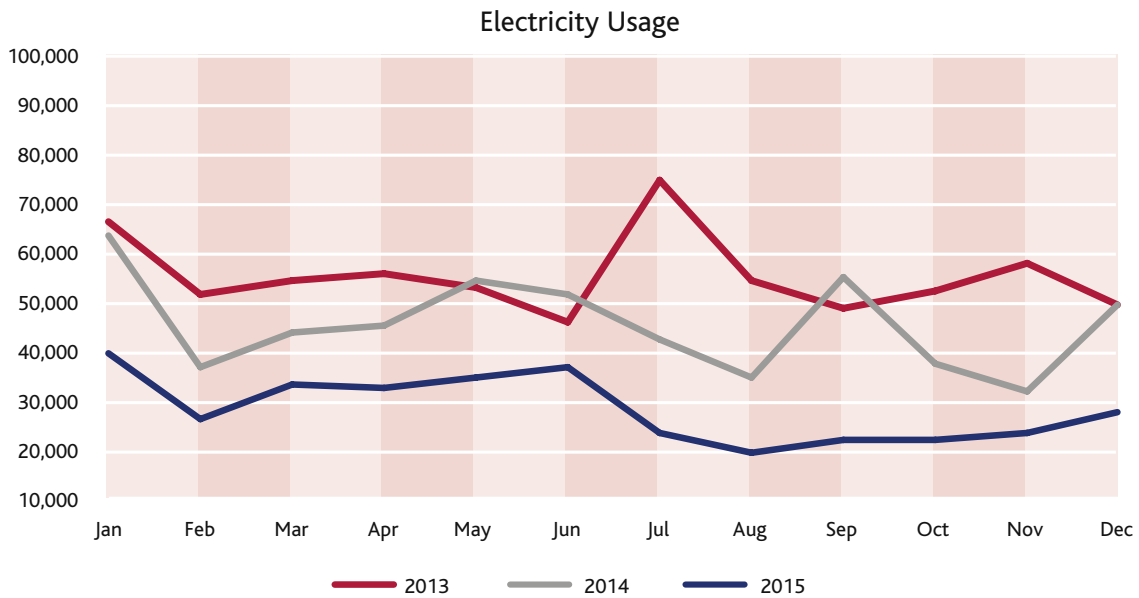
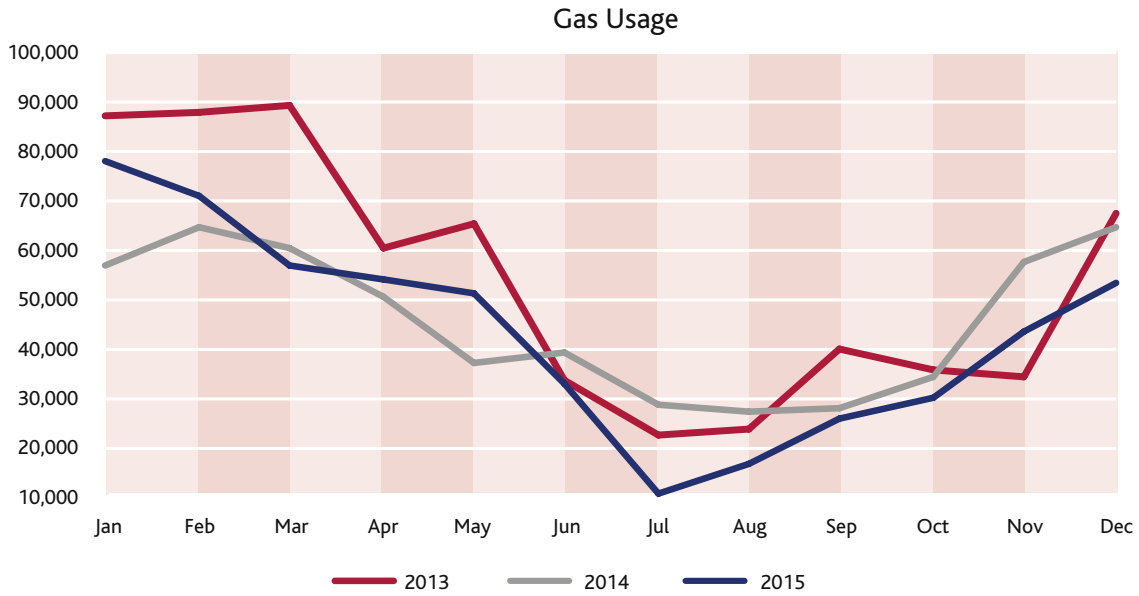
The Office shares its premises with several other occupants, and, at 45.62%, the proportion of space allocated to the Office is slightly less than half. Approximately half of all electricity used in the building is for lighting and the powering of office equipment, while heating and air conditioning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

Gas consumption for the year (which is primarily used for heating air and water) was 517,000 kilowatt hours (kwh) (2014: 543,000 kwh), of which the ODCE was responsible for approximately 236,000 kwh. Electricity consumption was 553,000 kwh (2014: 662,000 kwh), of which the ODCE was responsible for approximately 253,000 kwh.

During the year, the Office continued to monitor its energy usage. By way of participation in a "Green Team" comprising of representatives of the building's various occupants, the Office continues to seek to devise initiatives to further curtail energy consumption. Two information sessions for staff on ways to reduce energy and water consumption at home and in the office took place during the year. The Green Team reviewed the hours during which the heating system is used, balancing staff comfort and a reduction in energy usage. Usage charts for 2013 to 2015 are set out below.

The target for energy consumption reduction in 2015 was 5%. The energy performance outturn was a reduction of 11% in electricity usage and a reduction of 5% in gas usage, giving an overall saving of 8%.





#### Official Languages Act 2003

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

#### Protected Disclosures Act 2014

This legislation 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. During the course of 2015, three such disclosures were made to the Office as a prescribed person under section 7 of the Act. All of these cases have been dealt with in a manner consistent with the Office's approach to dealing with all allegations of wrongdoing, including by reference to the Office's obligations as to confidentiality. The Office received no reports as an employer under section 6 of the Act, or in any other case under section 10.

# APPENDICES



# APPENDIX 1

## ALLOCATED VS. ACTUAL EXPENDITURE: 2013 – 2015

	2013		2014		2015	
	€000s	€000s	€000s	€000s	€000s	€000s
<i>Allocation</i>						
Exchequer Grant	5,330		4,672		5,091	
Legal Exceptional Costs	50	5,380	50	4,722	50	5,141
<i>Expenditure</i>						
Salaries	2,394.4		2,215.8		2,156	
Advertising & Publicity	31.8		23.6		23.0	
Office Premises	299.0		308.0		346.8	
Legal Expenses	124.5		239.8		131.8	
Consultancy	120.6		85.8		245	
Computerisation	28.0		25.2		26.5	
Printing	29.0		13.9		64	
Incidental Expenses	6.3		7.9		8	
Travel & Subsistence	17.0		24.3		15.8	
Telecommunications	36.8		34.5		37	
Postal/Courier Services	12.4		13.1		4.9	
Office Machinery & Photocopying	9.5		5.5		3	
Human Resource Development	14.2	3,123.5	15.0	3,012.4	8.6	3,072
<b>Amount surrendered</b>		<b>2,256.5</b>		<b>1,709.6</b>		<b>2,068.5</b>

## APPENDIX 2

### PUBLICATIONS ISSUED – 2015

Date	Name of Publication
March 2015	Annual Report 2014
May 2015	The Principal Duties and Powers of Companies under the Companies Act
May 2015	The Principal Duties and Powers of Company Directors under the Companies Act
May 2015	The Principal Duties and Powers of Company Secretaries under the Companies Act
May 2015	The Principal Duties and Powers of Members & Shareholders under the Companies Act
May 2015	The Principal Duties and Powers of Auditors under the Companies Act
May 2015	The Principal Duties and Powers of Creditors under the Companies Act
May 2015	The Principal Duties and Powers of Liquidators, Receivers & Examiners under the Companies Act
June 2015	Companies – Their Duties and Powers – A quick guide
June 2015	Directors – Their Duties and Powers – A quick guide
June 2015	Company Secretaries – Their Duties and Powers – A quick guide
June 2015	Members and Shareholders – Their Duties and Powers – A quick guide
June 2015	Auditors – Their Duties and Powers – A quick guide
June 2015	Creditors – Their Duties and Powers – A quick guide
June 2015	Liquidators, Receivers and Examiners – Their Duties and Powers – A quick guide
June 2015	Audit Committees – A quick guide
June 2015	Annual General Meetings – A quick guide
June 2015	Keeping adequate accounting records – A quick guide
June 2015	Transactions Involving Directors – A quick guide
June 2015	Company Liquidation and the Committee of Inspection – A quick guide
June 2015	Information Notice I/2015/1 Company Websites and Emails
October 2015	Information Notice I/2015/2 Printing of Directors Names on Company Letterhead

## PRESENTATIONS DELIVERED – 2015

Promoter	Subject	Venue	Speaker
IBEC	Enforcement & the Companies Act	Bewley's Hotel, Ballsbridge, Dublin	Kevin Prendergast
Marino College	The ODCE - Setting the Standard	Marino College, Dublin	Eileen McManus
Law Society of Ireland	The Role & Functions of the Director of Corporate Enforcement	Blackhall Place, Dublin	Adrian Brennan
Law Society of Ireland	The Role and Functions of the Director of Corporate Enforcement	Blackhall Place	Adrian Brennan
Institute of Technology	Roles & Responsibilities of Company Directors	Blanchardstown I.T.	Eileen McManus
Mazars	Enforcement under the companies Act – ODCE update	Meyrick Hotel, Galway	Kevin Prendergast
Dublin Solicitors Bar Association	Enforcement under the Companies Act – ODCE Update	Offices of Arthur Cox, Dublin	Kevin Prendergast
ODCE	Companies Act 2014	ODCE Offices, Dublin	Kevin Prendergast
ODCE	Companies Act 2014	ODCE Offices, Dublin	Kevin Prendergast
ACCA – Leinster Members	The New Enforcement Provisions under Company Law	Hilton Hotel, Charlemont Place, Dublin	Kevin Prendergast
Institute of Technology	The ODCE – Encouraging Compliance, Enforcing the Law	Letterkenny I.T.	Kevin Prendergast
The Honourable Society of King's Inns	Corporate White Collar Crime	King's Inns, Dublin	Kevin O'Connell & Det. Inspector Ray Kavanagh
ACCA	Enforcement under the Companies Acts – ODCE Update	An Grianan Hotel, Donegal	Kevin Prendergast
Midlands Society Bar Association	Enforcement under the Companies Acts – ODCE Update	Tullamore Court Hotel, Tullamore	Kevin Prendergast
University College Dublin	The ODCE – Encouraging Compliance, Enforcing the Law	UCD	Kevin Prendergast
IBEC	Corporate Healthcheck for Company Directors	IBEC Offices, Dublin	Kevin Prendergast
Chartered Institute of Management Accountants	Ten Deadly Sins	CIMA Offices, Dublin	Kevin Prendergast
Dublin City Council	Enforcement and the Companies Act	ODCE Offices, Dublin	Kevin Prendergast
Legal CPD	Enforcement under the Companies Act – ODCE Update	Radisson Hotel, Golden Lane, Dublin	Kevin Prendergast

Promoter	Subject	Venue	Speaker
Institute of Public Administration	The work of the ODCE	IPA Offices, Dublin	Kevin Prendergast
Institute of Public Administration	The work of the ODCE	IPA Offices, Dublin	Kevin Prendergast
IBEC	Enforcement & the Companies Act	IBEC Offices, Dublin	Kevin Prendergast
An Garda Síochána	Company Law	Westmanstown Conference Centre	Det. Sgt. Brian Mahon & Det. Sgt. Mick Prendergast
DIT School of Hospitality Management & Tourism	Why Corporate Governance?	DIT, Cathal Brugha Street	Kevin Prendergast
KPMG	ODCE Enforcement & Prosecution	Conrad Hotel, Dublin	Kevin Prendergast
Mater Dei Institute	Presentation to Masters in Ethics	Mater Dei Institute, Dublin	Kevin Prendergast
University College Cork	New Developments in Insolvency in the Companies Act	UCC	Kevin Prendergast & Ann Keating
Institute of Technology	Roles & Responsibilities of Company Directors	ArcLabs, West Campus, Carriganore, Waterford	Kevin Prendergast
An Garda Síochána	Anti-money Laundering Course	Garda Headquarters, Phoenix Park, Dublin	Det. Garda Gary Callinan
Sustainable Projects Ireland	Roles & Responsibilities of Company Directors	The Resilience Centre, Cloughjordan, Co. Tipperary	Kevin Prendergast
O'Neill Foley Chartered Accountants	New Developments in Insolvency in the Companies Act	Ormond Hotel, Kilkenny	Kevin Prendergast
Dublin Solicitors Bar Association	Enforcement under the Companies Act	Brooks Hotel, Dublin	Kevin Prendergast
Chartered Accountants Ireland	Companies Act Overview for Accountants	CAI Offices, Pearse Street, Dublin	Kevin Prendergast
Chartered Accountants Ireland	Companies Act Overview for Accountants	Clarion Hotel, Cork	Kevin Prendergast
Taking Care of Business	Helping Your Business	Tower Hotel, Waterford	Kevin Prendergast
Dublin Solicitors Bar Association	Enforcement under the Companies Act – ODCE Update	Radisson Hotel, Golden Lane, Dublin	Kevin Prendergast
Tipperary Tourism Company	Roles & Responsibilities of Company Directors	Ballingarrane House, Clonmel	Kevin Prendergast
Society of Chartered Surveyors Ireland	The Companies Act and Owners' Management Companies	Herbert Park Hotel, Dublin	Kevin Prendergast

Promoter	Subject	Venue	Speaker
Law Society of Ireland	The Role of the ODCE	Blackhall Place, Dublin	Aoife Raftery
The Arts Council	The New Companies Act and Arts Organisations	Merrion Square, Dublin	Kevin Prendergast
Omnipro	Enforcement under the Companies Act – ODCE Update	Citywest Hotel, Dublin	Kevin Prendergast
Office of the Director of Public Prosecutions	The Role & Functions of the Director of Corporate Enforcement	Office of the DPP, Dublin	Adrian Brennan
Elsa Ireland Summer Law School	Role of the ODCE in Financial Regulation	UCD	Ian Drennan
Institute of Technology	Roles & Responsibilities of Company Directors	Rubicon Centre, Cork	Kevin Prendergast
Irish Times (MSc in Executive Leadership)	The ODCE – Encouraging Compliance, Enforcing the Law	Irish Times Building, Dublin	Kevin Prendergast
Chartered Accountants North West Society	Directors' Duties, Enforcement & Insolvency under the Companies Act	Harlequin Hotel, Castlebar	Kevin Prendergast
National Sports Service	Financial Investigators Course	Harcourt Square, Dublin	Det. Garda Gary Callinan & Det. Garda Glenn Mackessy
Omnipro	Enforcement under the Companies Act – ODCE Update	Crowne Plaza Hotel, Blanchardstown	Kevin Prendergast
Chartered Accountants North West Society	Directors' Duties, Enforcement & Insolvency under the Companies Act	Station House Hotel, Letterkenny	Kevin Prendergast
Howth Sutton Baldoye Chamber of Commerce	Company Law	Sutton Golf Club, Dublin	Kevin Prendergast
Taking Care of Business	Helping Your Business	The Westcourt Hotel, Drogheda	Kevin Prendergast
Garda Bureau of Fraud Investigation	Fraud Investigation Course	Westmanstown Conference Centre	Det. Sgt. Brian Mahon & Det. Sgt. Michael Prendergast
University of Limerick	The ODCE – Encouraging Compliance, Enforcing the Law	University of Limerick	Kevin Prendergast
Chartered Accountants North West Society	Directors' Duties, Enforcement & Insolvency under the Companies Act	Glasshouse Hotel, Sligo	Kevin Prendergast
Eversheds	ODCE – Current Developments	Earlsfort Terrace, Dublin	Ian Drennan
Institute of Technology	Roles & Responsibilities of Company Directors	GMIT Innovation Hub, Galway	Kevin Prendergast

Promoter	Subject	Venue	Speaker
Revenue	Company Law Briefing for Revenue Staff	D'Olier House, Dublin	Kevin Prendergast
Law Society of Ireland (1)	The Role & Functions of the Director of Corporate Enforcement	Blackhall Place, Dublin	Adrian Brennan
Law Society of Ireland (2)	The Role & Functions of the Director of Corporate Enforcement	Blackhall Place, Dublin	Adrian Brennan
Dublin City University	Presentation to MBS in Accounting Students	DCU	Kevin Prendergast
Garda Unit, ODCE	Companies Act 2014	ODCE Offices, Dublin	Adrian Brennan
KPMG	Companies Act – an ODCE Perspective	G Hotel, Galway	Kevin Prendergast
Institute of Technology	Roles & Responsibilities of Company Directors	I.T. Carlow	Kevin Prendergast
National University of Ireland, Maynooth	Presentation to Maynooth University	NUI, Maynooth	Kevin Prendergast
Central Bank of Ireland	Summary Prosecution of Offences and High Court Civil Proceedings	Iveagh Court, Harcourt Road, Dublin	Dermot Morahan
ODCE	Companies Act 2014	ODCE Offices, Dublin	Kevin O'Connell
ACCA	Companies Act – an ODCE Perspective	Athlone	Kevin Prendergast
Law Society of Ireland	Presentation to students undertaking the Certificate in Company Secretarial Law & Practice	Blackhall Place, Dublin	Kevin Prendergast
Law Society of Ireland	The Role & Functions of the Director of Corporate Enforcement	Blackhall Place, Dublin	Adrian Brennan
JP McDowell	Lessons from Investigations	Merrion Hotel, Dublin	Kevin Prendergast



## APPENDIX 3

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

Note: In respect of those companies marked with an asterisk (\*), the Court, at the end of 2015, had either yet to complete its hearing of matters against certain directors or had restricted or disqualified one or more but not all of the directors against whom the liquidator had taken restriction or disqualification proceedings pursuant to sections 819 or 842 of the Companies Act 2014 (where the Office had not relieved the liquidator under section 683 of the Companies Act 2014).

Company Number	Company Name	Director Name		Date Restricted
266076	1-800-Flowers Limited	Foley	Sherlock	03-Nov-15
		Foley	Eleanor	03-Nov-15
391989	Abbeyleix (P M) Services Limited	Enright	Pat	16-Mar-15
		O'Shea	Tony	09-Mar-15
301127	Acewalk Limited	Maguire	Ronan	20-Apr-15
		Richardson	Patrick	20-Apr-15
		Richardson	Theresa	20-Apr-15
187260	Albion Enterprises Limited	Conroy	John	14-Dec-15
		Conroy	Pascal	14-Dec-15
240178	All- Purpose-Stone Limited	Neil	Loughrey	28-Jul-15
		Patrick	Loughrey	28-Jul-15
379831	Authentic Ireland Travel Limited	Lynch	Mark	22-Jun-15
		Lynch	Ivan	22-Jun-15
		Lynch	Allegra	22-Jun-15
490910	Bajaj Restaurants Limited	Bajaj	Akshay	06-Jul-15
		Bajaj	Kiran	06-Jul-15
121566	Bayfield Supplies Limited	Platt	Michael	22-Jun-15
		Platt	Nicholas Paul	22-Jun-15
485543	Billy O'Brien & Paul O'Sullivan Construction Limited	Kevin	MacCarthy	16-Dec-15
		Paul	O'Sullivan	16-Dec-15

Company Number	Company Name	Director Name		Date Restricted
479463	Boutique Restaurant Concepts Limited	Gallagher	Evelyn	11-May-15
		Gallagher	Candice	02-Mar-15
		Gallagher	Conrad	02-Mar-15
493716	Boyle Architects Limited	Boyle	Jean	09-Feb-15
		Boyle	Lisa	09-Feb-15
511227	Brinks Retailing Limited	Carolan	Lorraine	19-Jan-15
		Carolan	Edwin	19-Jan-15
		Conway	Tanya	19-Jan-15
222194	Car Park Security Limited	Bracken Jnr	Paul	08-Jun-15
		Bracken Snr	Paul	08-Jun-15
144949	Corduff Construction Limited	Marron	Vincent	16-Mar-15
		Marron	Philip	16-Mar-15
270516	Cork Tie & Badge Company Limited	Kelly	Peter	19-Jan-15
490841	Corporate Staffing Solutions Limited	Connolly	Alan	27-Jul-15
		Nolan	Conor	27-Jul-15
417379	Croatian Spectrum Limited	Boras	Bernard	13-Jul-15
		Jurilj	Zeljko	13-Jul-15
473350	Cross BS Management Limited	Hanly	Shane	16-Feb-15
		Hollywood	Darren	11-May-15
204261	Dalmelvin Limited	Lavery	Paul	30-Apr-15
		Lavery	Owen	30-Apr-15
186695	Danny Sheridan Services Limited	Roche	Marie	13-Jul-15
		Sheridan	Raymond	13-Jul-15
		Walsh	Elaine	13-Jul-15
221768	Declan Geary (Tractors) Limited	Geary	Declan	08-Jun-15
		Geary	Marie	08-Jun-15
464524	Dilettante Bathrooms Limited	Boucher	James	11-May-15
		Whelan	Conor	09-Mar-15

Company Number	Company Name	Director Name		Date Restricted
492575	DMG Hotels Limited	Geoghegan	Martin	10-Nov-15
		Geoghegan	Darren	10-Nov-15
390999	DMK Property Management Limited	King	Michelle	19-Oct-15
		King	Dermot	19-Oct-15
496716	Doherty Wholesale Roscommon Limited	David	Doherty	11-Sep-15
		Donohoe	Francis	15-Jun-15
440255	Donohoe Logistics Limited	Donohoe	Jeanne Marie	15-Jun-15
309673	E.I.K. Engineering Limited	McCormack	Bryan	11-Sep-15
401671	Eoinandy Limited	Sharkey	Eoin	20-Jul-15
		Sharkey	Brid	20-Jul-15
406791	Euro Frozen Foods Limited	Farrell	Paul	09-Feb-15
		Rizi	Dorota	09-Feb-15
247530	Euro-Plant Hire (Ireland) Limited	O'Neill	Deirdre	07-Oct-15
		O'Neill	Eugene	07-Oct-15
491603	Evan Doherty Limited	Evan	Doherty	03-Dec-15
		Miriam	McNabb	09-Dec-15
522188	F&R Hospitality Limited	John	Fahy	09-Dec-15
476113	Fabgem Limited	Karen	Garvey	23-Dec-15
		Karl	Garvey	23-Dec-15
254158	Fabra Catering Limited	Toland	Brendan	09-Mar-15
364656	Fernwave Ireland limited	Bradley	Conor	02-Mar-15
		Bradley	Gloria	02-Mar-15
444956	Flash Developments Limited	Maguire	Ciaran	09-Mar-15
		Maguire	Christopher	09-Mar-15
397583	Forbairt MBB Teoranta	Breathnach	Micheal	09-Mar-15
486818	Fortwilliam Catering Limited	Sharma	Geeta	13-Jan-15
		Sharma	Shiv Kumar	13-Jan-15
409782	Geoghegans Public House Limited	Geoghegan	Martin	10-Nov-15

Company Number	Company Name	Director Name		Date Restricted
422007	George & Susan Bourke Limited	Bourke	Susan	15-Jun-15
		Bourke	George	15-Jun-15
411451	Gilson Motor Co. Limited	Gilson	Glenda	13-Nov-15
431593	Glenquin Developments Limited	Shine	Ann	27-Apr-15
		Shine	Liam	27-Apr-15
520377	HNM Retail Limited	Paul Michael	Preston	11-Sep-15
		Theresa	Preston	11-Sep-15
206811	Howley Distribution Services Limited	Howley	Noel Edward	23-Nov-15
508032	Hushmo Limited	El Nasher	Mohamed	30-Nov-15
		Elouabhi	Hichom	30-Nov-15
		Mohamed	Saffa	30-Nov-15
467133	I.T.D. Irish Tile Distributors Limited	Delaney	David	10-Jul-15
		Kavanagh	Bernard	10-Jul-15
		Russell	Wayne	10-Jul-15
474307	Ideal Prospect Retail Limited	Carey	Enda	23-Mar-15
		Carey	Gerard	23-Mar-15
479595	Ipal Limited	Harrington	Siobhan	23-Feb-15
		Harrington	Donncha	23-Feb-15
515572	J & S Carpets & Flooring Limited	Bermingham	John	02-Oct-15
468613	Jiminez & Jiminez Limited	Jiminez	Alex	27-Jul-15
		Jiminez	Adam	27-Jul-15
		Jiminez	Manuel	27-Jul-15
272184	JJN Transport Limited	Mc Quaid	Michael John	29-Jun-15
		O'Flanagan	Geraldine	29-Jun-15
327438	JP Transpeed Express Portlaoise Limited	Thomas	Lawless	16-Dec-15
403192	Kate's Cottage Limited	Moore	Philomena	02-Feb-15
425085	Killerk Construction Limited	Woodlock	Michael	02-Mar-15
		Woodlock	Noreen	02-Mar-15

Company Number	Company Name	Director Name		Date Restricted
298967	Lance Homes Limited	Macanna	Peadar	13-Apr-15
		Walsh	Josephine	13-Apr-15
236016	Lance Investments Limited	Macanna	Peadar	13-Apr-15
		Walsh	Josephine	13-Apr-15
232329	Lance Properties Limited	Macanna	Peadar	13-Apr-15
		Walsh	Josephine	13-Apr-15
396762	M G Audion Limited	McGoldrick	Michael	22-Jun-15
		McGoldrick	Darran	22-Jun-15
432036	M.E. Dowling & Sons Limited	Dowling	Anthony	20-Jul-15
		Dowling	Angela	20-Jul-15
		Dowling Jnr	Michael	20-Jul-15
411907	Mama Bagena Joint Venture Limited	Ahamed	Iqbal	18-May-15
		Haque	Anowarul	18-May-15
		Muhit	Abdul	18-May-15
289566	Mayeform Limited	Maye	Liam	08-Jun-15
		Maye	Paul	08-Jun-15
420745	McGee Service Station & Oil Distribution Limited	McGee	John	16-Jul-15
485752	Meaghers Bakery (Finglas) Limited	Meagher	Laurence	12-Oct-15
314480	Melcarne Developments Limited	Walsh	Liam	09-Mar-15
		Walsh	Michael	09-Mar-15
457349	Mise Beauty Limited	McMahon	Pearse	11-May-15
		McMahon	Tracey	11-May-15
		Shaw	Patricia	11-May-15
		Shaw	Sean	11-May-15

Company Number	Company Name	Director Name		Date Restricted
353720	Mount Pleasant Stores (Youghal) Limited	Galvin	Barry	28-Aug-15
		Galvin	Frank	28-Aug-15
		Galvin	Gerard	28-Aug-15
254658	Mountview Foods Limited	Doherty	Brendan	09-Feb-15
		O'Brien	Declan	20-Apr-15
322934	Mourne Ceilings Limited	Colhoun	Trevor	27-Oct-15
350230	Nail and Beauty Bar Limited	Flanagan	Louisa	09-Feb-15
		Kassam	Zainil	09-Feb-15
466323	Noel Flanagan Refrigeration Limited	Brady	Deirdre	09-Nov-15
476429	Northwest Bars (Carrick on Shannon) Limited	Maye	Anne-Marie	08-Jun-15
		Maye	Liam	08-Jun-15
54184	Oriel Oil Company Limited	Bellew	William	13-Oct-15
112045	Peter O'Loughlin Limited	O'Loughlin	Peter	08-Dec-15
		Slevin	Christopher	08-Dec-15
479029	Phoenix Journals Limited	Hilhorst	Matthijs	29-Jun-15
415256	Pocket Kings Limited	Lindquist	Ephraim	27-Jul-15
499009	Pregos Restaurants Limited	Barone	Danilo	11-May-15
		Paduano	Lucio	11-May-15
486362	Pubs R Us Limited	Campbell	Shane	19-Oct-15
		Hoyne	Paul	19-Oct-15
		Murtagh	Alan	19-Oct-15
457156	Pyrascaf Safe Solutions Limited	Barry	Alan	19-Oct-15
		Deaton	Acquelino	19-Oct-15
483311	Rekop Limited	Lindquist	Ephraim	27-Jul-15
407595	Slattery Ventures Limited	Slattery	William	13-Apr-15
		Slattery	Niall	13-Apr-15
		Slattery	Jonathan	13-Apr-15

Company Number	Company Name	Director Name		Date Restricted
303070	Stephen Cummins Limited	Cummins	Stephen	12-Nov-15
		Travers	Jane	12-Nov-15
358382	Sugarbowl Holdings Limited	McFeely	Thomas	23-Mar-15
		Wilson	William	23-Mar-15
488829	Super Potato Limited	Gallagher	Evelyn	11-May-15
		Gallagher	Candice	02-Mar-15
		Gallagher	Conrad	02-Mar-15
367116	Swift Structures Limited	O'Neill	Deirdre	07-Oct-15
		O'Neill	Eugene	07-Oct-15
488075	T.M.H. Interiors Limited	Quinn	John Snr	27-Nov-15
		Seale	John	27-Nov-15
335212	T.O.C. Flooring Limited	O'Callaghan	Thomas	11-Dec-15
		O'Callaghan	Frances	11-Dec-15
471978	Thenet Ireland Limited	Lawless	David	12-Oct-15
51448	Thomas N.Forkan Limited	Forkan	Ellen Mary	16-Feb-15
		Forkan	Thomas	16-Feb-15
207950	Tom Dempsey Carpets & Bedding Limited	Dempsey	Thomas	19-Jan-15
181677	Traffic Control Services Limited	Davis	Ann	13-Apr-15
		Davis	David	13-Apr-15
350730	Travelhelpline Limited	Mazza	Amerigo	15-Jun-15
		Mazza	Donald	15-Jun-15
330544	Travelsavers Educational & Marketing Services Ltd	Mazza	Donald	15-Jun-15
		Mazza	Amerigo	15-Jun-15
		Russo	George	15-Jun-15
339095	Ukase Systems Limited	Gill	Shane	10-Mar-15
		Halitchi	Vasile	10-Mar-15

Company Number	Company Name	Director Name		Date Restricted
475307	Westguard Care & Facilities Limited	Cruise	Gerard	02-Mar-15
		Cruise	Rebecca	02-Mar-15
311528	Wheelmont Limited	O'Toole	Kevin	19-Jan-15
207227	Whelans Limestone Quarries (Contracts) Limited	McConway	Thomas	13-Apr-15



## APPENDIX 4

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

Company	Company Name	Director Name		Disqualified From	Disqualified To
459950	CCR Distribution Limited	Claire	Teggart	19-Jan-15	18-Jan-21
		John	Teggart	19-Jan-15	18-Jan-21
430830	ETIC Solutions Limited	Severine	De Dietrich	09-Feb-15	08-Feb-22
		Francois	De Dietrich	09-Feb-15	08-Feb-30
370709	Featherweight Limited	Yvonne	Uuldersma	23-Nov-15	22-Nov-21
		Christopher	Fleming	23-Nov-15	22-Nov-24
411451	Gilson Motor Co. Limited	Damien	Gilson	13-Nov-15	12-Nov-23
262440	JP Flynn Transport Limited	Margaret	Flynn	19-Oct-15	18-Oct-20
		Paul	Flynn	19-Oct-15	18-Oct-20
403192	Kate's Cottage Limited	Robert	Moore	02-Feb-15	01-Feb-20
479029	Phoenix Journals Limited	Jacqui	Moriarty	29-Jun-15	28-Jun-22
415256	Pocket Kings Limited	Raymond	Bitar	27-Jul-15	26-Jul-25
483311	Rekop Limited	Raymond	Bitar	27-Jul-15	26-Jul-25
495383	Worldwide Exchange Limited	Edel	Williams	07-Dec-15	06-Dec-18
		Dermot	Williams	07-Dec-15	06-Dec-19

## APPENDIX 5

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

Company Number	Company Name	Date of Court Order	No. of Directors
434200	5 Peas Restaurant Limited	23/11/2015	2
269059	AD Displays Limited	20/04/2015	2
459055	Be Good Limited	06/07/2015	2
322923	Eyecom Technologies Limited	29/10/2015	3
448821	Fusion Nutraceuticals Limited	19/10/2015	2
412071	GP Helicopter Pilot Services Limited	02/11/2015	2
341772	Lyons Plant & Gravel Limited	20/07/2015	2
135482	Mc Sweeney Civil Engineering Limited	03/11/2015	2
20628	Patrick Brock & Sons Limited	22/06/2015	6
356458	Pink Stone Limited	02/11/2015	2
22907	Salesprint & Display Ireland Limited	20/01/2015	2
280638	Sean & Francis Mullen Limited	17/06/2015	2
322222	Tadhg O Conaill Heating & Plumbing Limited	13/01/2015	2
85682	The Dublin Tourist Hostel Limited	11/05/2015	3

Notes:

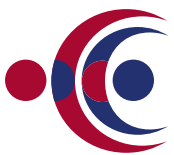
1. The "No. of Directors" column relates to those directors against whom proceedings were taken. This may differ from the actual total number of directors on record at liquidation, as some directors may have been exempted from proceedings by the Office and others may not have been recorded with the Registrar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

## GLOSSARY

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







Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
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