

Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement

# ANNUAL REPORT

# 20 19

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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 my 2019 Annual Report to the Minister for Business, Enterprise & Innovation, Ms. Heather Humphreys, TD.

### Significant issues during 2019 and beyond

During 2019, statutory reports from liquidators and auditors were both up, as were complaints received from members of the public. The largest sector in respect of which liquidators’ initial reports were received was, again, retail & wholesale, while there was a significant increase in auditors’ reports relating to companies’ financial statements.

Arising from the ODCE’s insolvency remit, 632 definitive decisions were made in respect of liquidators’ reports on insolvent companies’ directors. During 2019:

- a total of 83 directors were restricted and a further 8 were disqualified on foot of statutory Undertakings issued by the ODCE in respect of insolvent companies;
- a further 22 directors were disqualified on foot of statutory Undertakings issued by the ODCE in respect of dissolved insolvent companies; and
- an additional 11 company directors were restricted and a further 4 were disqualified by the High Court on foot of liquidators’ applications arising from ODCE determinations.

In parallel, investigations were progressed during the year through a range of measures including the use of statutory demands, production orders, search warrants, arrests for questioning and through High Court proceedings.

### Independent News & Media (“INM”)

Having been appointed on 6 September 2018, Mr. Seán Gillane SC and Mr. Richard Fleck CBE furnished their first Interim Report to the President of the High Court on 11 April 2019. In accordance with the provisions of section 759(1) of the Companies Act 2014, the Court ordered that a copy of that Interim Report be provided to my Office. The Court also heard applications for copies of the Interim Report from a number of other parties. Having heard those applications, the Court ordered that copies of the Interim Report, with appropriate redactions, be furnished to those parties.

On 27 April 2020, the Inspectors furnished their second Interim Report to Mr. Justice Simons of the High Court. Again, in accordance with the provisions of section 759(1) of the Act, the Court ordered that a copy of that Interim Report be provided to my Office. Whilst likely in due course, at the time of writing, no other applications have been made to the Court for copies of the second Interim Report.

On the same date, the Court dealt, on a preliminary basis, with a motion issued by Mr. Leslie Buckley, former Chairman of INM, seeking, *inter alia*, an Order, pursuant to section 749 of the Act or pursuant to the inherent jurisdiction of the High Court, that the Inspectors be recused from the investigation on the grounds of objective bias (“the Bias Motion”). Having considered the matter, and other associated issues raised by the parties, Mr. Justice Simons ordered, *inter alia*, that the Director of Corporate Enforcement and INM be joined as Notice Parties to the Bias Motion, directed that certain of the motion papers be served on certain other interested parties with a stipulation that the papers cannot be used for any purpose other than purposes of the application without the permission of the Court, directed case management timelines as to the exchange of pleading between the parties, and adjourned the Bias Motion for further directions to 10 June 2020.

At the time of writing, the Inspectors’ examination of the issues set out in their terms of reference by the High Court is continuing.



Ian Drennan, Director

## Console Suicide Bereavement Counselling Limited (in liquidation)

Having undertaken a complex and large-scale investigation into issues relating to the former charity Console, during 2019, the ODCE submitted a file on the matter to the Director of Public Prosecutions for consideration. Following the subsequent receipt of directions from the DPP, on 6 March 2020 ODCE officers charged Ms. Patricia Kelly, a former Console director, with serious offences, i.e., fraudulent trading and money laundering. While directions were also received in relation to a second individual, that individual passed away before charges were preferred. The matter is now before the Courts.

## Corporate Enforcement Authority

During 2019, ODCE management continued to work with officials of the Department of Business, Enterprise & Innovation in preparing for the establishment of the Corporate Enforcement Authority. With the dissolution of Dáil Éireann in the run up to the general election, the Companies (Corporate Enforcement Authority) Bill fell and it will be a matter for the incoming Government to determine whether it wishes to continue along that trajectory. In the meantime, the ODCE is continuing its preparations for the transition.

## Joint Oireachtas Committee on Business, Enterprise & Innovation

In December 2019, the Committee wrote to me, advising that both Houses of the Oireachtas had passed motions the effects of which were to confer powers upon the Committee to send for persons, papers and records. The Committee further advised that, further to the foregoing, it was proceeding to seek the consent of both Houses' Committees on Procedure<sup>1</sup> for the requisite consent to issue directions for the furnishing of this Office's proposed Submission (as referenced in previous Annual Reports).

While, with the dissolution of Dáil Éireann, the Committee was also dissolved, should the incoming Committee (or its successor) wish to pursue these matters, the ODCE will, as it has done at all times in the past, provide the Committee with every assistance in that regard.

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

In early 2020, Mr. Conor O'Mahony's second term of office as a director of IAASA came to an end. In total, Mr. O'Mahony served 8 years on the Board (as well as having acted as the Chairman of the Board's Risk & Audit Committee for 6 years). I have nominated Mr. David Hegarty of this Office to be his replacement. I would like to record my appreciation for Mr. O'Mahony's service and to wish Mr. Hegarty well for his period of appointment.

## Covid-19

Like every other entity in the country, the ODCE has been severely affected by the current public health emergency. To the maximum extent practicable, and in accordance with Government guidelines, staff are working from home with attendance in the Office being kept to a minimum in the interests of both staff members' safety and of limiting the scope for transmission of the infection within the community.

Full service is being maintained throughout this period, with telephone lines and email being monitored on an ongoing basis. To the extent practicable, business is being conducted electronically. For example, with a view to accommodating stakeholders to the maximum extent practicable whilst working within the parameters of statutory deadlines etc., the Office has advised liquidators that their statutory reports can, in the first instance, be submitted electronically, with signed originals to follow as circumstances permit. Similarly, auditors' indictable offence reports are being accepted in electronic format. There are, of course, certain activities that cannot be conducted electronically (such as statement taking, arrests etc.) and those activities are continuing to the maximum extent practicable having regard to prevailing circumstances.

The current public health emergency will inevitably present company directors with challenges in complying with certain of their statutory duties and responsibilities, such as, for example, convening

<sup>1</sup> *Dáil Committee on Procedure / Seanad Committee on Procedures & Privileges*

companies' annual general meetings etc. The ODCE is cognisant of these difficulties and is engaging with the Department and other stakeholders on how certain of those difficulties might be addressed.

Having regard to the impact of the pandemic on the economy, it is, unfortunately, likely that the number of companies becoming insolvent over the coming months is set to increase substantially. In reviewing the associated liquidators' reports, the ODCE will, as is always the case, have regard to all relevant facts and circumstances in assessing company directors' behaviour in the run up to insolvency.

### **Concluding remarks**

In conclusion, I would like to thank the Minister and her officials for their continued support during the year. On a personal note, I would like to record my thanks to Ms. Breda Power, who recently retired from her position as Assistant Secretary with the Department. Breda and I have worked closely for many years and I always found her to be fully supportive of the ODCE, particularly in difficult and challenging times. I would like to take this opportunity to express my sincere gratitude to her and to wish her a long and happy retirement.

As ever, I would like to record my sincere appreciation for the dedication and commitment shown throughout the year by my colleagues. The current crisis has, as with every other organisation, brought its challenges and the ODCE's staff have, as ever, risen to those challenges.

**Ian Drennan**  
**Director**  
**30 April 2020**



# AT A GLANCE

## — Enforcement

### Sources of our work

- 1,005 (2018: 981) statutory reports and referrals received from liquidators, auditors, examiners, professional bodies and other regulatory and enforcement authorities;
- Reviewed 254 (2018: 247) complaints received from members of the public;
- Generated 43 (2018: 79) internal inputs.

### Outputs from our work

- As a proportionate and cost-effective alternative to formal enforcement actions, cautions issued to a total of 28 (2018: 63) companies;
- Directors' loan infringements in 23 (2018: 18) cases, and to an approximate aggregate value of €27.2m (2018: €6.1m), were rectified on foot of ODCE actions;
- Following an examination of reports submitted by liquidators of insolvent companies:
  - » 83 directors restricted under the Restriction Undertakings regime;
  - » 11 directors restricted by order of the High Court on foot of liquidator applications;
  - » 8 directors disqualified under the Disqualification Undertakings regime;
  - » 4 directors disqualified by the High Court on foot of liquidator applications;
- An additional 22 directors of dissolved insolvent companies consented to Disqualification Undertakings;
- 16 (2018: 50) directions issued to companies to produce minutes of various meetings and, separately, entitlement to avail of audit exemption;
- 48 (2018: 47) requirements to auditors to provide specified documents arising from submission of indictable reports;
- Exercise of the power of arrest on 5 occasions;
- Various applications to the High Court with a view to progressing investigations and other enforcement-related activities;
- In keeping with the ongoing strategic shift towards the investigation of more serious indications of wrongdoing, the progression of an ongoing caseload of largescale investigations which, if considered appropriate by reference to the available evidence, may upon completion be referred to the DPP for consideration as to whether charges should be directed on indictment.

## — Advocacy

- 30 information presentations delivered (to a combined audience of approximately 2,330);
- 18 public events attended by ODCE staff;
- 1 Information Book and 2 Quick Guides updated to reflect changes brought about by new legislation.

## — Financial

- The cost of running the ODCE during 2019 was €4.3m, some 71% of its allocation for the year and an increase of 16% on the previous year.

CHAPTER 1  
**OVERVIEW  
OF THE ODCE**

## — Statutory mandate

### Companies Act 2014 (as amended)

The Companies Act 2014 (“the Act”) came into effect in June 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>2</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 Business, Enterprise and 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 pursuant to Government Decision.

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>3</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>4</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>5</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>6</sup> provides that the Director shall be independent in the performance of his functions.

<sup>2</sup> <http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/pdf>

<sup>3</sup> Section 949 Companies Act, 2014

<sup>4</sup> i.e. before the District Court

<sup>5</sup> An indictable offence is an offence capable of being tried on indictment, i.e., before a jury in the Circuit Court

<sup>6</sup> Section 949(3) Companies Act, 2014

## — 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

## — Resources, organisational structure, governance arrangements & principal workstreams

### Human resources

The ODCE's actual (i.e., as opposed to approved) staff complement at the beginning and end of the year respectively are detailed in Table 1 below.

**Table 1**

ODCE staff complement – 2018/2019

Staff Numbers (WTE <sup>7</sup> )	31 December 2018	31 December 2019
Actual complement in place	46	42

The composition of the Office's staff complement as at 31 December 2019, together with comparative data, is set out in Table 2 on page 12.

<sup>7</sup> *Whole Time Equivalent*

**Table 2**

Analysis of actual staff complement (WTEs)

Grade	31 December 2018	31 December 2019
Director	1	1
Heads of Function (excluding Garda)	3 <sup>8</sup>	3 <sup>8</sup>
Enforcement Lawyers	2	2
Digital Forensic Specialist	1	1
Forensic Accountants	7	4
Solicitors	1	1
Assistant Principal Officers	4	3
Higher Executive Officers	6.8	7.9
Executive Officers	5.5	5
Clerical Officers	7.8	6.6
<b>Detective Gardaí (on secondment pursuant to Government Decision)</b>		
Detective Inspector (Head of Function)	1	1
Detective Sergeants/Sergeants	2	2 <sup>9</sup>
Detective Gardaí	4	4
<b>Total</b>	<b>46.1</b>	<b>41.5</b>

### Digital Forensics

Sanction was granted in 2018 for the procurement of both software and hardware to enable the Office to put in place its own e-discovery capability. Procurement of software was finalised in late 2019 and procurement of the associated hardware is underway at the time of writing.

### Financial resources

The Office is funded via the Department of Business, Enterprise & Innovation's ("the Department") Vote (Vote 32). Table 3 on page 13 sets out details of the Office's 2019 allocation and expenditure respectively.

<sup>8</sup> 2 Enforcement Portfolio Managers and 1 Principal Officer

<sup>9</sup> Both currently in temporary assignment pending the allocation of permanent replacements for previously arising vacancies.

**Table 3****Financial allocation and expenditure - 2019**

	Allocation €000s	Expenditure €000s	%
Pay	3,740	2,503	67
Non-pay	2,317	1,797	78
Exceptional legal costs	50	0	0
<b>Total</b>	<b>6,107</b>	<b>4,300</b>	<b>71</b>

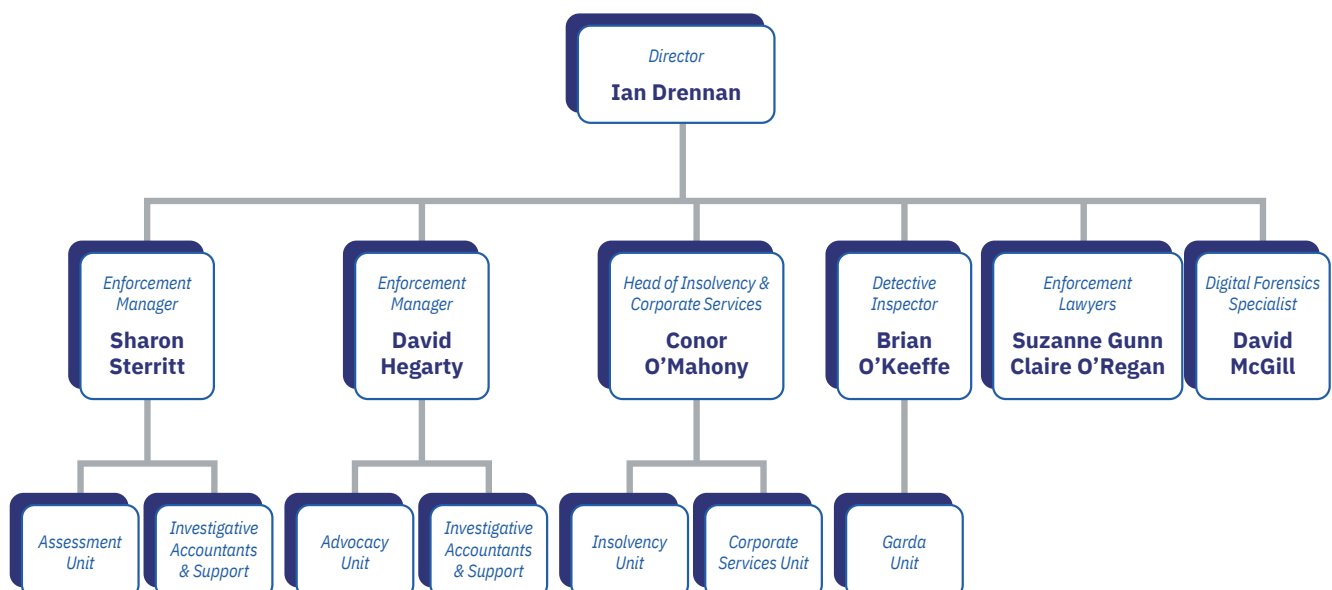
The principal reasons as to why actual expenditure differed from the allocation were as follows:

- savings on Pay resulting from vacancies arising during the year (principally retirements and leavers) that remained unfilled for a period; and
- the Non-pay allocation for the year included provision for potential legal costs associated with casework. The costs arising during the year in this respect were less than anticipated, although some will fall to be paid in 2020. In addition, a procurement exercise that was expected to generate significant expenditure had not reached a conclusion at year-end.

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 several Units. The Office's organisational structure is set out in the organogram below.



## 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 company law	Responsibility for encouraging compliance with company law 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 is co-ordinated through the Advocacy Unit.	2
Reviewing and adjudicating upon liquidators' reports	Liquidators' reports are reviewed, examined and adjudicated upon by the Insolvency Unit. Decisions on whether to grant relief in respect of directors of companies on foot of liquidator recommendations are made by experienced insolvency case officers in conjunction with ODCE's forensic accountants and legal advisors, where appropriate.	3
Examination of dissolved insolvent companies	The Insolvency Unit also implements a policy to examine dissolved insolvent companies having significant liabilities and makes decisions as regards the disqualification or otherwise of directors.	3
Implementation of the Undertakings Framework	Since June 2015 this workstream forms an integral and vital element of the Insolvency Unit's functions and encompasses additional administrative procedures relating to the Undertakings Regime for the restriction and disqualification of company directors. This results in very significant cost savings and a more efficient and effective implementation of the Act, as it applies to insolvency.	3



Workstream	Unit(s) principally involved	Chapter
Examination of complaints and statutory reports	<p>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:</p> <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 warranting further investigation;</li> <li>• refer the matter to the Insolvency Unit, e.g., where the issues in question relate to an insolvent company;</li> <li>• refer the matter to a third party, for example, another regulatory or enforcement body.</li> </ul>	3
Civil enforcement litigation	<p>For the most part, civil enforcement litigation is managed by the Enforcement function in conjunction with Enforcement Lawyers.</p> <p>Civil litigation, such as seeking the disqualification of directors of companies that have been struck off the Register of Companies<sup>10</sup> whilst having undischarged debts, is managed jointly by the Insolvency and Enforcement functions, again in conjunction with Enforcement Lawyers.</p>	3
Criminal investigation and prosecution	<p>The investigation of possible criminal breaches of company law is undertaken by the Enforcement function 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 function and Garda Unit. Investigations in which a prosecution on indictment is envisaged involve collaboration on the part of the Enforcement function and Garda 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 function and Garda Unit.</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 functions.</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. 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 interaction 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

<sup>10</sup> See [www.cro.ie](http://www.cro.ie) for further information regarding the Register.

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

## — Publications and outreach activities

### Publications

Following the signing into law of the Companies (Statutory Audits) Act 2018, the Office, during 2019, reviewed and updated one Information Book and two Quick Guides to reflect changes to the law. The corresponding Irish versions were also revised.

During the year under review, approximately 6,400 physical copies of the various ODCE publications, principally Information Books and Quick Guides, were issued to interested parties. These publications were 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.

### 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;
- public bodies, offices and agencies, including Local Enterprise Offices (LEOs);
- 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 under review, Office staff delivered 30 presentations (2018: 22) to a combined audience of over 2,300. Many of these presentations dealt specifically with topics such as: the role and duties of company directors, ODCE's enhanced remit and enforcement policies and the ODCE's compliance and enforcement roles under the Companies Act.

The Office was also represented at a total of 18 exhibitions during the year (2018: 17). Details of the presentations delivered and the exhibitions attended respectively during the year under review are set out at Appendix 2.

## Visit to ODCE by a delegation of Judges of the Anti-corruption High Court of the Ukraine

In December 2019, the ODCE hosted a visit by the President and other judges of the recently established High Anti-Corruption Court of the Ukraine. Their visit was part of a recent series of initiatives organised by the European Union Advisory Mission Ukraine, the Department of Foreign Affairs and the Irish judiciary. The delegation received presentations from ODCE staff on the work of the Office and emerging trends in the enforcement of company law.

## — 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>11</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 and representations from members of the Oireachtas and/or from Committees established by the Oireachtas. Typically, these communications constitute expressions of concern as to whether company law is being breached, relate to cases under review, and/or comprise of requests for certain actions to be taken vis-à-vis certain persons/entities. Whilst all such communications and representations are carefully considered – and to the extent practicable, every assistance is provided to Deputies<sup>12</sup> and Senators<sup>13</sup> - the ODCE is entirely independent of the political system. As such, any actions taken by the ODCE are by reference to the underlying facts and circumstances as opposed to by reference to the source of the complaint.

### Department of Business, Enterprise & Innovation

Office staff continued to liaise with colleagues in the Department throughout the year on matters of mutual interest.

### Companies Registration Office (“CRO”)

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

### Garda National Economic Crime Bureau (GNECB)

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

<sup>11</sup> Collective term for the Upper and Lower Houses of Parliament

<sup>12</sup> Members of the Lower House of Parliament

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

## 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. During the year under review, Mr. Conor O’Mahony, the Office’s Head of Insolvency & Corporate Services, was a member of IAASA’s Board of Directors and chaired the Board’s Risk & Audit Committee. IAASA’s 2019 Annual Report will be available on its website<sup>14</sup> once it has been laid before the Oireachtas by the Minister.

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

## Company Law Review Group (“CLRG”)

The CLRG<sup>15</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.

### Corporate Insolvency

The Office’s Head of Insolvency & Corporate Services, Mr. Conor O’Mahony, is a member of the Corporate Insolvency sub-committee, which has been tasked with reviewing the legislation on the winding up of companies.

### Compliance & Enforcement

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

## Review Group on Anti-Fraud and Anti-Corruption Structures

The Review Group, which is chaired by former Director of Public Prosecutions, Mr. James Hamilton, was established as part of the Government’s October 2017 package of measures aimed at enhancing Ireland’s capacity to address corporate, economic and regulatory crime. The Director and Mr. David Hegarty are both members of the Group. During the year under review, the Group met on a number of occasions and the ODCE continued to participate fully in its work.

## 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, particularly in respect of insolvency related matters. The ODCE and the Revenue Commissioners have in place a Memorandum of Understanding which, based on their respective grounding legislation, allows each body to refer information to the other where they are satisfied that such information is relevant to the other’s remit. In that context, the two bodies met on a number of occasions during the year.

<sup>14</sup> [www.iaasa.ie](http://www.iaasa.ie)

<sup>15</sup> [www.clrg.org](http://www.clrg.org)

## 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.

## 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.

## Legal profession

The lawyers in the Office regularly engage with their peers through the Regulatory Enforcement Network.

## Digital forensics community in law enforcement

The Office's Digital Forensics Specialist regularly engages with his peers through membership of a network of digital forensics professionals working in the regulatory/law enforcement field.

## 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  
**COMPLIANCE AND  
ENFORCEMENT  
ACTIVITIES**

## — 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

	2019	%	2018	%
<b>Statutory reports</b>				
Liquidators' reports (initial) (s682)	558		606	
Liquidators' reports (subsequent) (s682)	314		260	
<b>Total liquidators' reports (s682)</b>	<b>872</b>	<b>67</b>	<b>866</b>	<b>67</b>
Liquidators' reports regarding possible criminality (s723)	1	1	1	1
Auditors' indictable offence reports (s393)	105	8	73	6
Examiners' reports (s534)	27	2	41	3
Professional Bodies' indictable offence reports (s931)	0	0	0	0
Professional Bodies non-indictable offence reports	0	0	0	0
<b>Referrals</b>				
Referrals from external parties	12	1	19	1
<b>Complaints</b>				
Complaints from members of the public	254	19	247	18



Table 5 (continued)	2019	%	2018	%
<b>Other</b>				
Disclosures under the Protected Disclosures Act 2014 <sup>16</sup>	8	1	5	1
Applications seeking change to accounting year end <sup>17</sup>	20	1	40	3
<b>Total inputs from external sources</b>	<b>1,299</b>	<b>100%</b>	<b>1,292</b>	<b>100%</b>

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

## Liquidators' section 682 reports

### Introduction – overview of the liquidator reporting regime

In summary, liquidators of companies that are in insolvent<sup>18</sup> liquidation are required by law<sup>19</sup> to report to the Office on the circumstances giving rise to the company's failure and on the conduct of any person who was a director of the company during the twelve months preceding the entry of the company into liquidation. The liquidator must also proceed to apply to the High Court for the restriction<sup>20</sup> of each of the directors, unless relieved of that obligation by the Office<sup>21</sup>.

The essential aims of this statutory reporting regime are to:

- afford the public a degree of protection by ensuring that persons who have been determined by the High Court as not having acted honestly and/or responsibly in the period prior 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 period prior 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, this Office expects liquidators to provide it with all of the information which is relevant to the making of an appropriate decision. The Office continuously seeks to ensure that liquidators 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

<sup>16</sup> The information that requires to be published by the Office pursuant to section 22 of the Protected Disclosures Act 2014 is set out later in this Chapter under the heading of Outputs.

<sup>17</sup> Section 288(10)(c)

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

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

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

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

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

Since 2015, there has been in place a statutory framework under which individuals who might otherwise face the prospect of Court proceedings can avoid having to attend Court by voluntarily agreeing to a restriction or disqualification as applicable (i.e., by providing a legally binding Undertaking to that effect).

The Act provides the ODCE with discretion as to whether to offer an Undertaking. The offer of an Undertaking must be made on the prescribed form, the layout and content of which is stipulated by Statutory Instrument and is 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 concerned.

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. 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, 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 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.

The undertakings framework ensures that company directors, who are found to be in breach of the Act and facing restriction or disqualification proceedings, are dealt with in an efficient and effective administrative manner without the need for the involvement of the Courts. Following the implementation of the undertakings process by the ODCE, 495<sup>22</sup> undertakings for restrictions and disqualifications were accepted by the ODCE. While there is a significant additional administrative burden on the ODCE arising from this

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<sup>22</sup> Comprises of: 425 Restriction Undertakings, 23 Disqualification Undertakings and 47 Undertakings entered into by directors of dissolved insolvent companies.

process, it has resulted in substantial cost and time savings for the liquidators and company directors concerned, as well as for the Courts system. The savings in monetary terms are estimated at something of the order of €1m per annum.

## Companies entering liquidation

As can be seen from the Table below:

- the total number of insolvent liquidations (i.e. creditors' and Court liquidations combined) remained static during the year; and
- solvent liquidations, which accounted for 73% of all liquidations, increased by 16% over the 2018 levels.

### Table 6

Companies entering liquidation: 2013 - 2019

	2013	2014	2015	2016	2017	2018	2019
Creditors' liquidations	1,043	929	746	581	613	475	474
Court liquidations	76	78	70	61	63	59	62
<i>Total insolvent liquidations</i>	<i>1,119</i>	<i>1,007</i>	<i>816</i>	<i>642</i>	<i>676</i>	<i>534</i>	<i>536</i>
Members' liquidations	848	1,001	1,034	1,112	1,040	1,269	1,474
<i>Total solvent liquidations<sup>23</sup></i>	<i>848</i>	<i>1,001</i>	<i>1,034</i>	<i>1,112</i>	<i>1,040</i>	<i>1,269</i>	<i>1,474</i>
<b>Total liquidations</b>	<b>1,967</b>	<b>2,008</b>	<b>1,850</b>	<b>1,754</b>	<b>1,716</b>	<b>1,803</b>	<b>2,010</b>

## Liquidators' s682 reports received – 2019

As can be seen from Table 5, a total of 872 liquidators' section 682 reports was received during the year (2018: 866), of which:

- 558 were initial reports<sup>24</sup> (2018: 606); and
- 314 were subsequent reports<sup>25</sup> (2018: 260).

The Table on page 26 provides details of the sectoral distribution of companies in respect of which liquidators' initial reports were received during the year.

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

<sup>24</sup> An initial report is the first report received from a liquidator and is required to be submitted within 6 months of his/her appointment. In the majority of cases, the decision as to whether or not to grant relief is made based on this report.

<sup>25</sup> In some cases a subsequent report is required from the liquidator when his/her investigations have progressed further. In circumstances where a subsequent report is considered to be necessary, 'relief at this time' is usually granted in respect of the initial report.

**Table 7**

Sectoral analysis of liquidators' initial section 682 reports received - 2019

Sector	2019		2018	
	Number	%	Number	%
Wholesale & retail	192	34	202	33
Construction	69	12	73	12
Community, social & other	44	8	47	8
Manufacturing & printing	27	5	33	6
Hotels, bars & catering	72	13	75	12
Marketing & promotion	7	1	10	2
Real estate & renting	34	6	49	8
Technology & telecommunications	38	7	37	6
Financial & leasing	39	7	40	7
Transport & distribution	14	3	18	3
Agriculture, mining & marine	9	2	7	1
Recruitment & security services	13	2	15	2
<b>Total</b>	<b>558</b>	<b>100%</b>	<b>606</b>	<b>100%</b>

### Timeliness of liquidators' reporting

At year end, 96% of first reports due during the year had been received, with only 25 reports outstanding. The level of liquidators' failure to comply with their reporting obligations is low and, where appropriate, enforcement action, up to and including criminal prosecution, may result from such persistent breaches of statutory obligations.

### Standard of liquidators' reporting

As reported in previous years, the standard of liquidators' reports received during the year was considered to be broadly satisfactory. However, in a small number of cases, the quality of reporting was not of the required standard. Where this arises, it is dealt with through engagement with the relevant practitioners. The vast majority of persons acting as liquidators are members of Prescribed Accountancy Bodies and, as such, are subject to supervision by their professional bodies.

### 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 rules for qualification to act as a liquidator. The Act defines five categories of individuals who are entitled to act as liquidators. These are:

- i. members of a Prescribed Accountancy Body holding a practising certificate;
- ii. solicitors holding a practising 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>26</sup> state; and
- v. persons with practical experience of windings-up and knowledge of relevant law prior to the commencement of the Act.

<sup>26</sup> European Economic Area (EU States plus Liechtenstein, Iceland and Norway)

Applications for authorisation under (v) above were required to have been submitted to IAASA by 1 December 2017. IAASA has authorised a total of 22 individuals under this category.

In addition to the qualification requirements prescribed in section 633, section 634 provides that all liquidators must have in place adequate professional indemnity insurance (“PII”). IAASA has issued Regulations prescribing the required level of PII required. These Regulations are available on IAASA’s website<sup>27</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.

## 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 33% (2018: 33%) of total external inputs received during the year. The Table below provides an analysis of the sectoral distribution of those other external inputs.

**Table 8**

Sectoral distribution of external inputs other than liquidators’ section 682 reports

Sector	2019		2018	
	Number	%	Number	%
Real estate & renting	57	14	70	17
Not a company	81	19	50	12
Finance & leasing	43	10	47	11
Wholesale & retail	32	8	30	7
Construction	23	5	27	6
Marketing & promotion	13	3	5	1
Technology & telecommunications	30	7	38	9
Manufacturing & printing	24	6	28	7
Community, social & personal	49	12	40	9
Insurance, health & social work	18	4	39	9
Hotels, bars & catering	10	2	21	5
Transport & distribution	25	6	14	3
Agriculture, mining & marine	6	1	9	2
Recruitment & security services	6	1	2	1
Other business sectors	10	2	5	1
<b>Total</b>	<b>427</b>	<b>100%</b>	<b>425</b>	<b>100%</b>

<sup>27</sup> <http://iaasa.ie/getmedia/1a9c9ab1-994e-4491-8f6c-6d8a40d27f64/S-I-No-127-of-2016.pdf>

## Complaints

The Office receives substantial numbers of complaints annually from members of the public. During the year under review a total of 254 complaints were received (2018: 247), which accounted for 19% (2018: 19%) of all external inputs received. The Table below provides an analysis of the subject matter of complaints received.

**Table 9**

Complaints received (analysed by character of primary reported default)

	2019	%	2018	%
Annual/Extraordinary General Meeting related	25	10	21	9
Directors' conduct (responsibilities & filing)	44	17	29	12
Allegations of reckless/fraudulent/insolvent trading	39	15	34	14
Allegations of forgery/furnishing of false information/falsified documents	27	11	17	7
Relating to the issue of unpaid debts	6	2	10	4
Access to accounting records/minutes of meetings	7	3	9	4
Register of members related	16	6	19	7
Audit/auditor related	12	5	12	5
Receivership related	2	1	5	2
Issues relating to addresses	24	9	23	9
General shareholder rights issues	5	2	8	3
Acting as a director while a bankrupt/restricted/disqualified	0	0	5	2
Companies trading whilst struck off the Register/dissolved	9	4	10	4
Relating to improper use of the word "Limited"	1	1	2	1
Liquidation/phoenix activity	10	4	10	4
Other	27	10	33	13
<b>Total</b>	<b>254</b>	<b>100%</b>	<b>247</b>	<b>100%</b>

## Auditors' indictable offence reports

### Introduction – overview of the auditor reporting regime

Section 393(1) of the Act provides that, where, in the course of and by virtue of their carrying out of an audit, information comes into the possession of a company's auditors which leads them to form the opinion that there are reasonable grounds for believing that an indictable offence under the Act has been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the ODCE.

## Nature of suspected offences reported

During the year under review, a total of 105 (2018: 73) indictable offence reports were received from auditors. 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 received included reference to more than one suspected offence.

**Table 10**

Analysis of suspected indictable offences reported by auditors

	2019	%	2018	%
Directors' loan infringements	25	24	21	29
Failure to maintain proper accounting records	5	5	13	18
Provision of false statements to auditors	0	0	1	1
Issues relating to access to accounting records	0	0	1	1
Issues relating to the directors' approval of Financial Statements	0	0	2	3
Obligation to prepare Group Financial Statements	2	2	1	1
Entity Financial Statements	72	68	34	47
Falsification of books or documents	1	1	0	0
<b>Total</b>	<b>105</b>	<b>100%</b>	<b>73</b>	<b>100%</b>

## Examiners' Reports

Pursuant to section 534(6) of the Act, where an examiner is appointed to a company, s/he shall, as soon as may be after it is prepared, supply a copy of the report to the ODCE. During the year under review, 27 such reports were received (2018: 41).

## 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 12 (2018: 19) such referrals from a variety of sources.

## Professional bodies' indictable offence reports

### Recognised Accountancy Bodies ("RABs")<sup>28</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>29</sup>.

### Prescribed Professional Bodies ("PPBs")

Where the Disciplinary Committee or Tribunal of a PPB finds that a member conducting an examinership or receivership 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 an examinership or receivership, the PPB concerned is required to report the matter to the Office.

Prescribed accountancy bodies are so deemed by virtue of IAASA's recognition of them as such as per Part 15 of the Act.

'Prescribed professional body' in relation to sections 488, 558, and 688 refers to a Disciplinary Committee or a Tribunal of a Prescribed Professional Body associated with section 633 (setting qualifications for appointment of examiners and receivers).

The bodies are:

- ACCA - Association of Chartered Certified Accountants
- AIA - Association of International Accountants
- CIMA - Chartered Institute of Management Accountants
- CIPFA - Chartered Institute of Public Finance and Accountancy
- ICAEW - Institute of Chartered Accountants in England & Wales
- ICAI - Institute of Chartered Accountants in Ireland
- ICAS - Institute of Chartered Accountants of Scotland
- ICPAI - Institute of Certified Public Accountants in Ireland
- Law Society of Ireland

On 19 December 2018, S.I. No. 570 of the 2018 Companies Act 2014 (Prescribed Professional Bodies) Regulations 2018 prescribing professional bodies pursuant to Sections 448 and 558 of the Companies Act 2014 came into effect. The regulations cover the reporting obligations of professional bodies where they detect misconduct by their members while acting as Receivers or Examiners. No reports of this nature were received from PPBs during the year (2018: 0).

<sup>28</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>29</sup> Section 931(4) of the Act



## 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. One such report was received by the Office during the year (2018: 1).

## Disclosures under the Protected Disclosures Act 2014<sup>30</sup>

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

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

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

## INTERNAL INPUTS

### Introduction

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

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

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

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

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

<sup>30</sup> The Protected Disclosures Act 2014 is available at <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/pdf>

## Actions focussing on particular cohorts of persons

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

## Investigations commenced on own initiative

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

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

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

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

## Dissolved insolvent companies

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

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

It is open to the Office to apply to the High Court for the disqualification of the directors of such struck off companies<sup>31</sup>. However, company law also provides<sup>32</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<sup>33</sup> the director(s) where it adjudges that disqualification is not warranted under the particular circumstances<sup>34</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.

<sup>31</sup> Section 842(h) of the Companies Act 2014

<sup>32</sup> Section 843(3) of the Companies Act 2014

<sup>33</sup> Section 819 of the Companies Act 2014

<sup>34</sup> Section 845(3) of the Companies Act 2014

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

During 2019 the Office examined the actions of the directors of 19 companies which were struck off the Register whilst having significant outstanding liabilities. As a result of the examination of the aforementioned 19 companies (together with the examination of a further 59 related companies):

- 22 directors of 11 companies submitted to Disqualification Undertakings under section 851 of the Act; and
- 2 companies were restored to the Register.

It is anticipated that, during 2020, a similar number of directors will be disqualified in these types of cases, either by way of High Court applications under section 842(h) or by voluntarily consenting to Disqualification Undertakings under section 852 of the Act.

## Actions relating to liquidator performance/behaviour

One of the statutory functions of the Director is to:

*“...exercise, insofar as the Director considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under this Act”<sup>35</sup>.*

Whilst the section 682 Liquidators report 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>36</sup>.

Section 653 of the Act provides that the Director may:

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

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

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

## Quantum of internal inputs - 2019

During the course of 2019, a total of 43<sup>37</sup> (2018: 79) internal inputs were generated.

<sup>35</sup> Section 949(1)(e) of the Companies Act 2014

<sup>36</sup> Section 446 of the Act includes a similar provision relating to receivers

<sup>37</sup> Relating to the broad categories of bankruptcy, disqualification, restriction and examinership.

## — PART B: THROUGHPUTS

Generally speaking, inputs, irrespective of whether from internal or external sources, result in the opening of a case file. In the case of liquidators' section 682 reports, cases generally conclude 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/disqualification 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 enter into 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 require to be made by the liquidator. The Office monitors the progress through the Courts of the relevant restriction or disqualification proceedings and the outcome is recorded once the proceedings have been determined. However, the Office also reviews cases from time to time where concerns come to its attention regarding, for example:

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

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

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

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

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

- referral to other statutory authorities or professional bodies of matters relevant to their respective remits;
- the issuing of civil directions, e.g., directions to companies and/or their directors requiring the remedying of stated defaults within prescribed timeframes;
- the initiation of civil proceedings, i.e., Court applications for the purpose of seeking specified remedies;
- the initiation of summary criminal proceedings or referral of the matter to the DPP for consideration as to whether charges should be directed on indictment.

Set out in the following Tables are details of the various caseloads progressed by the Office during the year under review. Details of the outputs that flow from the processing of the Office's various caseloads are detailed in the next section of this Chapter.

### Table 11

#### Throughput of liquidators' section 682 reports - 2019

Section 682 reports on hand at 1 January, 2019		306
All reports received during 2019	872	
Less: Reports the subject of determinations during 2019	963	
<b>Section 682 reports on hand at 31 December, 2019</b>		<b>215</b>

### Table 12

#### Throughput of other cases - 2019

Other cases on hand at 1 January, 2019		154
New cases opened during 2019	470	
Less: Cases concluded during 2019	430	
<b>Other cases on hand at 31 December, 2019</b>		<b>194</b>

## — PART C: OUTPUTS

Insolvency-Related Enforcement Measures & Outputs 2019 Arising From Section 682 Liquidator Reports and Examination of Dissolved Insolvent Companies.

### KEY OUTPUTS AND STATISTICS

#### Outputs from the section 682 process (i.e., liquidator reporting)

The Office made definitive decisions (i.e. decisions other than to grant 'Relief at this time') on 632 liquidators' reports during 2019 (2018: 701), with a further 331 decisions made to grant 'Relief at this time' (2018: 270).

Of the 632 definitive decisions taken during 2019, a total of 498 were made in respect of initial reports (2018: 545), with a further 134 being made in respect of subsequent reports (2018: 156).

The decisions taken in respect of initial and subsequent reports respectively are analysed in Tables 13, 14 & 15 below.

**Table 13**

Analysis of decisions taken in respect of all liquidators' section 682 reports

Decision type	2019	%	2018	%
Full relief <sup>38</sup>	525	55	602	62
No relief <sup>39</sup>	75	8	70	7
Partial relief <sup>40</sup>	21	2	25	3
Relief at this time <sup>41</sup>	331	35	270	28
<b>Total</b>	<b>952</b>	<b>100%</b>	<b>967</b>	<b>100%</b>

**Table 14**

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

Decision type	2019	%	2018	%
Full relief <sup>38</sup>	448	73	497	74
No relief <sup>39</sup>	34	5	39	6
Partial relief <sup>40</sup>	10	2	8	1
Relief at this time <sup>41</sup>	124	20	129	19
<b>Total</b>	<b>616</b>	<b>100%</b>	<b>673</b>	<b>100%</b>

*38 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.*

*39 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.*

*40 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.*

*41 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.*

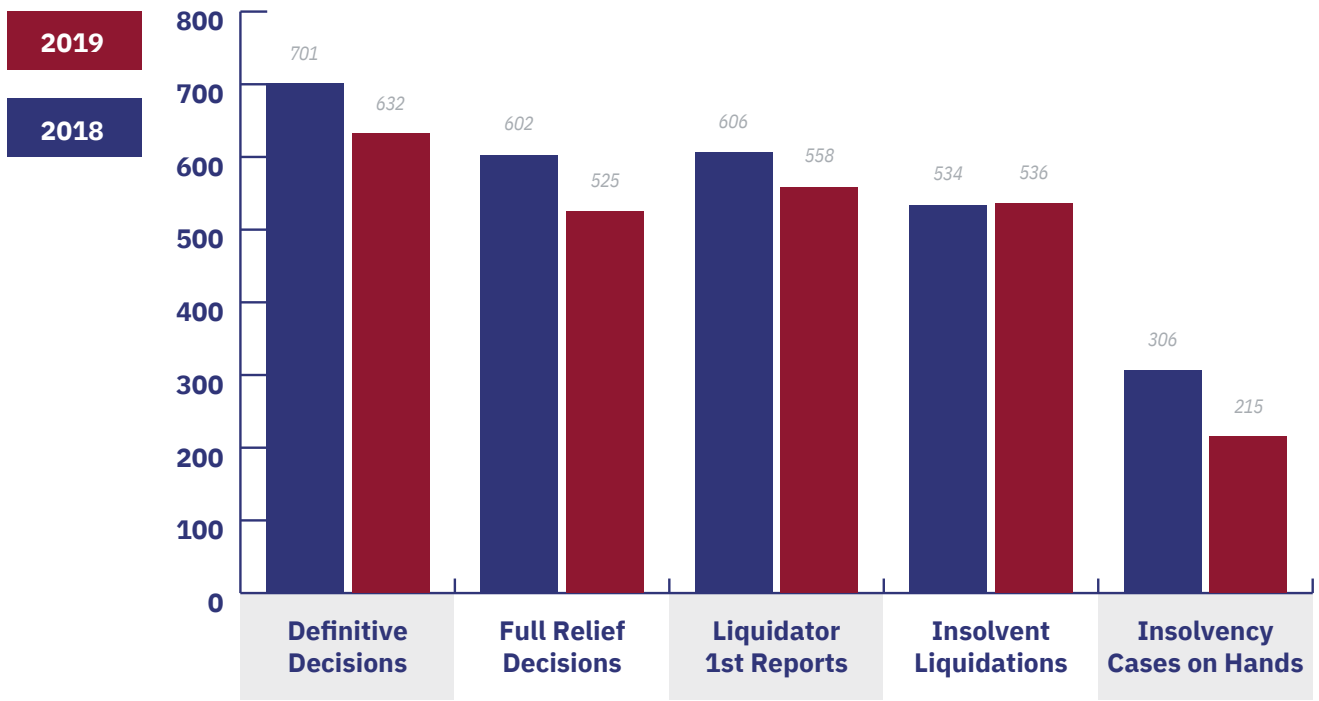
**Table 15**

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

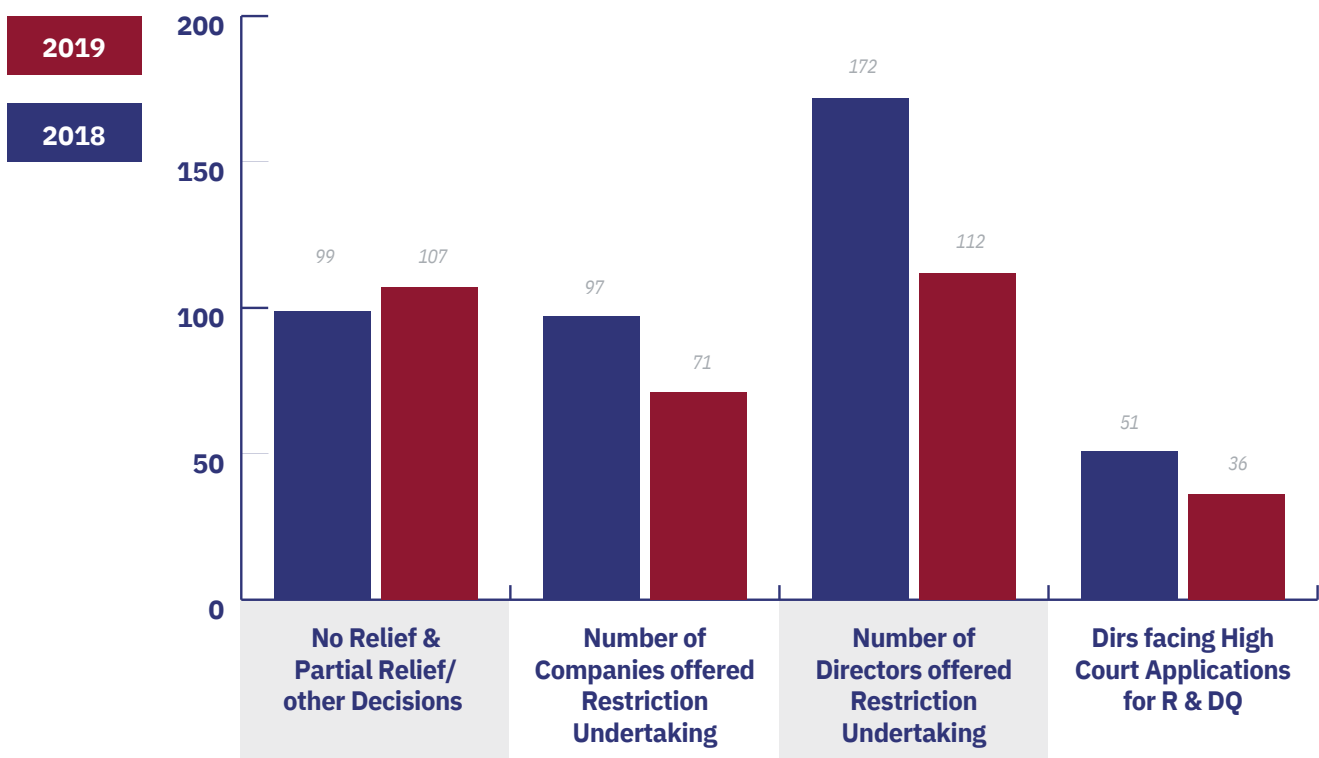
Decision type	2019	%	2018	%
Full relief <sup>38</sup>	77	23	105	35
No relief <sup>39</sup>	41	12	31	11
Partial relief <sup>40</sup>	11	4	17	6
Relief at this time <sup>41</sup>	207	62	141	48
<b>Total</b>	<b>336</b>	<b>100%</b>	<b>294</b>	<b>100%</b>

**Chart 1: Restrictions & Disqualifications 2018/2019**

**Chart 2: Profile of ODCE adjudications and related statistical data 2018/2019 - Insolvency Related Statistics**



**Chart 3: Profile of ODCE adjudications and related statistical data 2018/2019 - Decisions & RU Offers**





## Restriction and Disqualification Undertakings

As detailed earlier in this Chapter, following the commencement of the Act on 1 June 2015, the ODCE introduced a procedure whereby those directors, in respect of whom it is determined that the liquidator should not be relieved of the obligation to apply to the High Court for their Restriction, may be invited to voluntarily submit to a Restriction (or Disqualification, if applicable) Undertaking.

During 2019, 112 directors of 71 insolvent companies were offered Restriction Undertakings and 11 directors of 8 insolvent companies were offered Disqualification Undertakings.

The Table below sets out the number of Undertaking offers issued during the year under review, together with details of the number of offers accepted and not accepted at the year end. Of the offers of a Restriction Undertaking made to 112 directors during 2019, 79 were accepted. In addition, 4 further offers of Restriction Undertakings made in 2018 were also accepted in 2019, bringing the total number of directors Restricted by Undertakings in 2019 to 83.

**Table 16**

Undertaking offers issued to directors in 2019 and accepted/not accepted in 2019

	2019 Directors	2018 Directors
<b>Restrictions:</b>		
Number of offers issued	112	172
Number of offers accepted	83	127
Number of offers not accepted	29	45
<b>Disqualifications:</b>		
Number of offers issued	11	8
Number of offers accepted	8	3
Number of offers not accepted	3	5

## 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 offered or not accepted, liquidators are required to apply to the High Court seeking the restriction or disqualification of relevant company directors. At 31 December 2019 a total of 36 directors who had declined to enter into Undertakings in respect of decisions made during the year faced such proceedings.

It is important to note that, at any given time, a considerable number of company directors face restriction or disqualification proceedings before the High Court. A further cohort of directors who, prior to 2019, were either not offered Undertakings or who did not accept Undertakings continue to face restriction or disqualification proceedings.

The Table on page 40 sets out details of the results of liquidators' applications to the High Court during the year.

**Table 17****Results of liquidators' Court applications - 2019**

	2019		2018	
	Cases	Directors	Cases	Directors
Restriction Declarations granted	6	11	14	23
Disqualification Orders granted	3	4	5	7
Declarations or Orders not granted	2	4	0	0

On foot of Undertakings or Court Orders, a total of 94<sup>42</sup> (2018: 150) directors were restricted and 12<sup>43</sup> (2018: 10) directors disqualified. In addition, 22 directors of dissolved insolvent companies consented to Disqualification Undertakings. Further details of the Orders made by the Court on foot of liquidators' applications and on foot of Undertakings is provided in Appendices 4 and 5.

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

Set out below are examples of the types of issues that were considered by the High Court in making Disqualification Orders or to which regard was had by the ODCE in offering Disqualification Undertakings, and in response to which Undertakings were accepted. The full list is set out at Appendix 5. The Orders/ Undertakings were on foot of liquidators' section 682 reports or following an examination by ODCE of the actions of directors of dissolved insolvent companies and, where necessary, the provision of additional information and clarification as sought by the ODCE:

- the actions of two directors of a dissolved insolvent company (i.e. a company struck-off the Register of Companies in accordance with Section 733 of the Companies Act 2014) were examined. All other companies that the directors of this company were associated with were also examined and, of these, 2 companies had also been involuntarily struck off the Register of Companies for failure to file annual returns. An examination of the last annual returns filed in respect of these companies found that the balance sheets recorded aggregate creditors totalling over €1.7m. The directors did not contest these figures and did not take remedial measures to correct them. Both directors consented to Disqualification Undertakings for a period of 4 years;
- an examination of the activities of two directors of a dissolved insolvent company found that there had been a failure to file annual returns in respect of three companies of which they were directors. The Revenue Commissioners advised the ODCE of a default of €250,240 in tax and interest in respect of two of the companies. The last annual returns filed in respect of all companies recorded creditors totalling €286,081 in respect of two of the companies. A search indicated that there were four unsatisfied judgements registered against one of the companies. The directors did not contest the findings of the ODCE and did not take remedial measures to correct them. Both directors consented to Disqualification Undertakings for a period of 4 years;
- the directors of two separate and unconnected dissolved insolvent companies which were in default of €483,876 and €152,117 in tax and interest respectively did not contest the findings of the ODCE and took remedial measures to correct the defaults. Both companies have since been restored to the Companies Registration Office register, one by way of H1-Restoration of Company to the Register on application to the Registrar and the other on application to the High Court. The outstanding tax liabilities for both companies have been addressed with the Revenue Commissioners;

<sup>42</sup> Appendix 4

<sup>43</sup> Appendix 5

- a company operating as a distributor of online gift vouchers traded for three years and went into liquidation in 2014. The directors of the company were resident outside Ireland and lived on the European mainland. The directors had put in place a corporate structure that would ensure that the company paid no corporation tax. The directors claimed to rely on advice provided by a UK based tax adviser, however this advice related to the UK tax system only. The company transferred virtually all of its surplus funds to an offshore Remuneration Trust. Payments to the trust over the lifetime of the company amounted to approximately €18m. Following an audit by the Revenue Commissioners the total outstanding revenue liability stood at €8.4m. Neither director made an appearance in court and, based on the evidence of the liquidator, one of the directors was found to be unfit to be concerned with the management of a company by the High Court and was disqualified as a director for a period of 7 years. Proceedings against the second director are ongoing by the liquidator at this time;
- a company which traded as a furniture importer went into liquidation in 2017. The company was in default of its Revenue obligations from 2014 but continued to trade. The company was struck off the Register of Companies in April 2016 for failing to file Annual Returns. The company's financial statements showed a deficit of €170,518 at liquidation. The liquidator found that the directors' decision to continue trading was one of the key reasons for the liquidation and contributed to the extent of the deficit to the creditors. The company continued to trade whilst struck-off and was restored to the Register in August 2016. Both directors consented to Disqualification Undertakings for a period of 5 years;
- two directors of an installation and maintenance of heating and air conditioning systems company which traded for 23 years were offered Restriction Undertakings. However, both refused to accept the offer. The liquidator found that the company's directors failed to wind up the company in a timely manner, failed to maintain proper books and records and that a phoenix company was operated by the directors, which took over the trade, business and assets of the company, whilst the company was left insolvent with substantial debts. The High Court disqualified both directors for a period of 5 years.

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

Set out below are examples of the types of issues that were considered by the High Court in making Restriction Orders or to which regard was had by the ODCE in offering Restriction Undertakings and in response to which Undertakings were accepted. The full list is set out at Appendix 4 to this Report. The Orders/Undertakings were on foot of liquidators' section 682 reports and, where necessary, the provision of additional information and clarification as sought by the ODCE:

- the directors of a company which provided veterinary and hygiene supplies to farmers went into liquidation in 2018 following a finding of non-compliance with Department of Agriculture requirements for the sale of veterinary products. The company owed €548,000 to trade creditors and €18,000 to the Revenue Commissioners at liquidation. Based on evidence presented by the liquidator, the two company directors were found not to have acted responsibly in relation to the conduct of the company's affairs. The directors were not compliant with their reporting obligations to the Revenue Commissioners and did not maintain proper books and records. In addition, the directors failed to provide financial statements as required, provided a materially inaccurate Statement of Affairs, overstated the net financial position of the company thereby potentially misleading creditors and others to their disadvantage and made fraudulent preference payments to themselves. Both directors consented to Restriction Undertakings for a period of five years;
- a clothing company went into liquidation in July 2018. The company owed €96,000 to creditors and a further €56,000 to the Revenue Commissioners at liquidation. Based on evidence presented by the liquidator, it was determined that the two company directors had failed to demonstrate that they had acted honestly and responsibly in relation to the conduct of the company's affairs. The directors failed in their obligations to provide the liquidator with the books and records of the company and failed to co-operate with the liquidator. The directors were not compliant with their reporting obligations to the Revenue Commissioners and the Companies Registration Office. Both directors consented to Restriction Undertakings for a period of five years;

- the directors of a company engaged in the provision of IT consultancy services went into liquidation in 2016. The company owed €124,000 to creditors and €95,000 to the Revenue Commissioners at liquidation. Based on evidence presented by the liquidator, it was determined that the two company directors had failed to demonstrate that they had acted honestly and responsibly in relation to the conduct of the company's affairs. The directors allowed the company to trade for a protracted period while insolvent, to the detriment of creditors. The directors were not compliant with their reporting obligations to the Revenue Commissioners. In addition, the directors provided a materially inaccurate Statement of Affairs potentially misleading creditors and others to their disadvantage. A significant redundancy payment was made illegally to one of the directors. Monies were withdrawn from the company and paid to the directors contrary to section 240 of the Companies Act 2014 and in preference to the payment of Revenue liabilities and at a time when the company was insolvent. Both directors consented to Restriction Undertakings for a period of five years;
- a company operating as a stage and dance school traded for three years and went into liquidation in 2017. Based on the evidence provided by the liquidator, one company director failed to demonstrate that he had acted honestly and responsibly in relation to the conduct of the company's affairs while the other director was found to have had no involvement in the business. The liquidator was relieved of his obligation to make an application for the restriction of the second director. The remaining director allowed the company to continue to trade for a protracted period when he knew, or ought to have known, that the company was insolvent. The liquidator also found that he did not maintain proper books and records and that the company was not compliant with its obligations to the Revenue Commissioners and failed to discharge liabilities to Revenue as they fell due. In addition, employees of the company were treated as contractors and were not registered for PAYE/PRSI and no payslips were provided to these employees. The evidence suggested that the director used company monies for personal purposes. The director consented to a Restriction Undertaking for a period of five years;
- a company operating for the purpose of selling furniture and the sale and fit out of curtains, carpets, doors and blinds for a three-year period went into liquidation in 2018. Based on the evidence of the liquidator, it was determined that the director had failed to demonstrate that he had acted honestly and responsibly in relation to the conduct of the company's affairs. The director of the company was not compliant with his obligations to the Revenue Commissioners and failed to discharge liabilities to Revenue as they fell due, which led to the Revenue Commissioners petitioning the High Court to have the company wound up. At the date of liquidation, tax liabilities stood at approximately €117,000. The director did not fully co-operate with the liquidator in the performance of his duties. The company was allowed to continue to trade for a protracted period when the director knew, or ought to have known, that the company was insolvent. Proper books and records were not maintained and insufficient company records were provided to the liquidator to facilitate a full investigation into the affairs of the company. The director preferred certain unsecured creditors over the Revenue Commissioners and monies collected by the company for VAT and PAYE/PRSI were used to pay those creditors. The director consented to a Restriction Undertaking for a period of five years;
- a company operating a number of petrol stations for over 40 years went into liquidation on foot of a petition to the High Court by a creditor who was owed €118,000. Based on the evidence of the liquidator, it was determined that the directors had failed to demonstrate that they had acted honestly and responsibly in relation to the conduct of the company's affairs. The directors failed to provide the liquidator with a copy of the company's Statement of Affairs thereby breaching a High Court Order. The directors failed to co-operate with the liquidator with regard to details surrounding assets that were sold immediately prior to liquidation and also failed to provide him with title documents of property assets on the company's fixed assets register. Proper books and records were not maintained and the directors allowed the company to continue to trade when they knew or ought to have known that the company was insolvent and could not pay its debts. The directors consented to a Restriction Undertaking for a period of five years;
- a company trading as a café went into liquidation in 2018. The company which had a small turnover had a closing deficit of circa. €100,000 at liquidation. Based on the evidence of the liquidator, it was determined that the director had failed to demonstrate that he had acted honestly and responsibly in relation to the conduct of the company's affairs. The director did not co-operate with the liquidator and failed to produce cash sheets and bank statements. The liquidator found that the director of the company was not compliant

with his obligations to the Revenue Commissioners, was consistently late in making returns and failed to discharge liabilities to Revenue as they fell due. The Revenue Commissioners were due €79,000 at liquidation. The director consented to a Restriction Undertaking for a period of 5 years;

- a company operated in the industrial cleaning sector from 2008 until liquidation in 2018. It was determined that the directors had failed to demonstrate that they had acted honestly and responsibly in relation to their conduct of the affairs of the company. Based on the evidence provided by the liquidator, the directors had not filed accounts from 2015. The directors failed to provide the liquidator with management accounts, minutes of board meetings and bank, creditor and debtor reconciliations. Monies rightfully due to be paid into the company's accounts were lodged to an account in the name of one of the directors and no satisfactory explanation or reconciliation was provided by the directors to the liquidator. Directors' borrowings were in excess of 10% of the net assets of the company and, as such, breached section 239 of the Companies Act 2014. Both directors consented to Restriction Undertakings for a period of five years;
- a company incorporated in April 2006 commenced trading in the construction industry in 2007 and went into liquidation in December 2014 on foot of a Court Order obtained by the Revenue Commissioners. Based on the evidence of the liquidator, it was determined that the directors had failed to demonstrate that they had acted honestly and responsibly in relation to the conduct of the company's affairs. The company had several judgements against it made by the Collector General in 2013 and 2014. The directors were not compliant with their obligations to the Revenue Commissioners and failed to discharge significant Revenue liabilities of €478,545. Both directors consented to Restriction Undertakings for a period of five years.

## Outputs from enforcement work

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

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

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

## Securing voluntary rectification/remediation

### Directors' loans infringements

In 23 cases (2018: 18) where suspected directors' loan infringements had been reported by auditors, or had otherwise come to attention, the Office's actions resulted in rectifications (including the repayment/reduction of loans) totalling €27.2m (2018: €6.1m). Such rectifications are in the interests of affected companies' members and creditors.

## Failure to comply with accounting standards

Section 291(3) of the Act requires companies to prepare their financial statements, *inter alia*, in accordance with applicable accounting standards. Section 291(9) provides that failure to comply with that requirement is a Category 2 offence on the part of the company and any officer in default. In 2019, 72 (2018: 34) instances of companies' failure to comply with accounting standards were reported to the Office by way of indictable offence reports.

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

During the year, the Office undertook a review of the register of disqualified and restricted persons as maintained by the Registrar of Companies. Arising from the review, 31 persons (2018: 67) appeared to be in contravention of such orders and undertakings. Following ODCE intervention, the individuals' positions were regularised.

## Total cautions issued

In addition to the foregoing, cautions issued to a total of 28 companies (2018: 63) on a variety of matters.

## Securing compliance and progressing enquiries and investigations through the exercise of the Director's statutory powers

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

- serving 6 statutory directions to produce specified books or documents under section 778 of the Act (2018: 5);
- serving 2 statutory directions requiring third parties to produce books and documents under section 780 of the Act (2018: 1)
- serving 39 statutory requests on auditors for information under section 393 of the Act (2018: 39);
- serving 12 statutory requirements on companies to produce minutes of directors' meetings under section 166 of the Act (2018: 45);
- serving 2 statutory requirements to produce minutes of general meetings under section 199 of the Act (2018: 3);
- serving 28 orders under Section 52 Criminal Justice (Theft and Fraud Offences) Act 2001 (2018: 16)
- issuing 48 statutory directions (2018: 48), pursuant to section 797(1) of the Act, requiring liquidators to comply with their obligations (reporting and Court applications) under section 682;
- issuing 4 directions under section 797 of the Act in relation to Court Order Compliance (2018: 4);
- issuing 2 directions under Section 335(5) of the Act in relation to the availing of audit exemption (2018: 2);
- issuing 1 direction under Section 791 of the Act in relation to the disclosure of information for certain purposes (2018: 1);
- the execution of 4 search warrants pursuant to section 787 of the Act (2018: 0);
- the execution of 7 search warrants pursuant to section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997<sup>44</sup> (2018: 0);
- the execution of 2 search warrants pursuant to section 48 of the Criminal Justice (Theft & Fraud Offences) Act 2001 (2018: 0);

<sup>44</sup> As substituted by section 6 of the Criminal Justice Act 2006

- the arrest of 5 persons (2018: 4), with 4 of those persons (2018: 4) subsequently being detained under section 4 of the Criminal Justice Act 1984 for questioning; and
- meeting 11 (2018: 6) persons by arrangement having volunteered to provide statements after caution.

## Permitting/facilitating compliance through the exercise of the Director's statutory functions

During the year, 20 requests (2018: 40) were received from companies seeking a direction disapplying the limitation in section of 288(9) of the Act, under which, ordinarily, a company may not alter its current or previous year end date more than once in a five-year period.

## Civil remedies sought

### Dissolved insolvent companies

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

### Other civil litigation

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

### Table 18

#### Details of civil proceedings – 2019

<p><i>Cumann Peile na h-Éireann "Football Association of Ireland"</i></p> <p><i>The High Court – 2019 156 COS</i></p> <p><i>The High Court – 2019 391 COS</i></p>	<p>Following on from demands issued pursuant to section 778 of the Companies Act 2014, the ODCE was obliged to institute proceedings, pursuant to section 795 of the Act, for the purpose of obtaining the Court's determination on certain documents over which an assertion of legal professional privilege had been asserted.</p>
<p><i>Deloitte</i></p> <p><i>The High Court – 2019 282 COS</i></p>	<p>Following on from demands issued to Deloitte LLP pursuant to section 780 of the Companies Act 2014, the ODCE was obliged to institute proceedings, pursuant to section 795 of the Act, for the purpose of obtaining the Court's determination on certain documents over which an assertion of legal professional privilege had been asserted.</p>

<p><i>In the Matter of Independent News and Media plc –</i></p> <p><i>The High Court – 2018 No. 124 COS</i></p> <p><i>The Director of Corporate Enforcement -v- Independent News and Media Plc</i></p>	<p>The Court-appointed Inspectors delivered their First Interim Report to the Court on 10 April 2019.</p> <p>In accordance with the provisions of section 759 of the Act, the Court ordered that a copy of the Interim Report be furnished to the ODCE. Following applications by a number of parties, on 30 July 2019, the Court ordered that copies, subject to certain redactions, be furnished to the various Applicants.</p> <p>The Inspectors indicated in that Interim Report an intention to deliver a final report early in 2020. The updated position is detailed in the Director’s Introduction section herein.</p>
<p><i>Tailored Homes (Navan) Ltd (In Liquidation)</i></p> <p><i>The High Court - 2012 No. 586 COS</i></p> <p><i>The Director of Corporate Enforcement -v- Brendan O’Donoghue</i></p>	<p>The directors of the company had appealed against orders for Restriction made against them by the High Court. The ODCE applied to the High Court, pursuant to section 631 of the Act, for directions regarding the liquidator’s obligations in respect of that appeal. Following the disclosure to the ODCE of previously undisclosed material information by the liquidator, those proceedings were struck out on an agreed basis.</p>
<p><i>Pembroke Dynamic Internet Services Ltd (In Liquidation)</i></p> <p><i>The High Court – 2018 No. 45 COS</i></p> <p><i>Myles Kirby -v- Peter Conlon</i></p>	<p>The ODCE withdrew from the proceedings on 21 October 2019 and, on 14 November 2019, successfully made an application to the District Court pursuant to the Police (Property) Act 1897 for an Order directing the return of material to relevant parties.</p>

### Summary criminal proceedings

As has been set out in detail in previous Annual Reports, in recent years the Office has made a conscious policy decision to allocate less resources towards pursuing criminality on the less serious end of the spectrum in favour of concentrating its resources on investigating more serious indications of wrongdoing.

During the year under review, 1 summary prosecution was initiated, details of which are set out below.

<p>An individual was charged with one count of an alleged offence contrary to section 876 of the Companies Act 2014, i.e., the unauthorised use of an Auditor Registration Number on financial statements submitted to the Register of Companies.</p>	<p>On a plea of guilty, the Court directed that, on payment of €2,000 to Ronald McDonald House, the matter would be struck out.</p>
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## Indictable criminal proceedings – charges directed and subsequent prosecutions

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

- the DPP directed an additional 8 charges contrary to section 26 of the Criminal Justice (Theft and Fraud Offences) Act 2001 on foot of an investigation file submitted during 2017. At the date of writing, a trial date is awaited;
- the DPP directed charges on 23 counts of theft, contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001. In November 2019, the defendant pleaded guilty to theft and was sentenced to 24 months imprisonment of which the final 19 months were suspended on conditions;
- a file was submitted to the DPP on foot of the ODCE’s investigation into matters relating to the former charity Console; and
- a number of other large-scale investigations were progressed with a view to submitting files to the DPP for consideration as to whether charges should be directed on indictment.

## Referrals to professional and other regulatory bodies

Whilst there is an obligation upon the ODCE to keep confidential information that comes into its possession, there is statutory provision<sup>45</sup> for the disclosure of information to certain third parties (including other regulatory bodies and certain professional bodies) provided that certain prescribed criteria are satisfied.

Pursuant to the foregoing provision, 1 referral (2018: 1) was made to the 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.

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<sup>45</sup> Section 956 of the Companies Act 2014

CHAPTER 4

**PROVIDING  
QUALITY  
CUSTOMER  
SERVICE TO  
INTERNAL AND  
EXTERNAL  
STAKEHOLDERS**

## — Provision of a quality customer service to external stakeholders

### Customer service standards

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

### Customer Charter

The Office's Customer Care documents are published on the ODCE's website and provide detail of, amongst other things:

- the Office's service standards;
- the standards that customers can expect from the Office;
- principal contact points; and
- a Customer Feedback and Complaint Form.

During 2019, no formal complaints were received under the Office's Customer Complaints Procedure. It is important to point out that our Customer Complaints Procedure exists to deal with mistakes, delays, or poor customer service. It does not relate to dissatisfaction with policy, decisions made by Officers or other case-related matters. The procedure is initiated by completing and returning to the Office a Customer Complaint Form, available on the Office's website.

### Nature of principal engagements with external stakeholders

The Office's principal engagement<sup>46</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 Advocacy Unit, 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 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>47</sup>. The FAQ section of the website is regularly reviewed and supplemented as necessary. During the year under review, the FAQ section was again comprehensively reviewed and updated to reflect the queries most frequently received by the Office. As well as consulting the website, members of the public can also direct queries to the Office's information email address (info@odce.ie) as well as submitting their queries by telephone.

<sup>46</sup> i.e. excluding parties being engaged with in the context of the Office's enforcement remit

<sup>47</sup> [www.odce.ie/faq.aspx](http://www.odce.ie/faq.aspx)

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

Table 19 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 just under 5,000.

**Table 19**

Top 5 most visited sections of the website in 2019 - www.odce.ie

Section	Views
Publications	33,657
Court Decisions	26,326
Company Law & You	22,582
About the ODCE	13,593
FAQs	10,456

By way of further elaboration, Table 20 below details the 20 most frequently visited individual pages (i.e., as opposed to sections) on the website during the year (excluding the 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 10,000 views during the year.

**Table 20**

Top 20 most viewed pages in 2019 - www.odce.ie

Page	Views
About the ODCE	4,890
Publications section – main page	4,873
Responsibilities of Companies, Directors and Secretaries	4,009
Company Law & You – main page	3,708
ODCE Functions – main page	3,189
Company Law Guidance – main page	2,958
Company Law Guidance – Quick Guides page	2,745
Company Law & You – corporate governance page	2,565
Court Decisions – main page	2,454
Our Role page	2,363

Page (continued)	Views
Press Releases 2019	2,299
Directors & Secretaries	1,838
Media & Presentations page	1,650
Prosecution Cases page	1,554
Annual Reports & Reviews – main page	1,546
Contact Us page	1,544
Complaint Form	1,472
Information on Companies Legislation	1,471
Publication relating to liquidations	1,423

In keeping with the proliferation of smartphones, the website was accessed from mobile devices over 4,900 times during the year. At year end, 627 persons had registered to receive website notifications by email. The Office also provides an Irish language version of its website and, in 2019, 1% of website traffic was to the Irish version ([www.osfc.ie](http://www.osfc.ie)) with 1,491 views.

## Social media

The Office continues to utilise various social media platforms to communicate with its stakeholders. Specifically, the Office operates on three platforms, i.e., Facebook, Twitter and LinkedIn. These media are used to highlight and promote the Office's advocacy and enforcement activities respectively, as well as to inform followers of developments on the wider company law landscape.

## — 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.

ODCE staff received a total of 177 days' training during 2019 (2018: 97), including:

- training provided by in-house resources – 126 days, relating to 51 staff; and
- training provided by the Department – 51 days, relating to 29 staff.

During 2019, the Office assisted several staff members to undertake the following training and development:

- Doctor of Governance (Institute of Public Administration);
- LL.M in European Law and Public Affairs (University College Dublin);
- M.A. in Serious Crime Investigation (University of Limerick);
- Advanced Diploma in Corporate, White-Collar and Regulatory Crime (King's Inns);

- v. Post-graduate Diploma in Corporate Governance (Smurfit Business School);
- vi. B.Sc. in Police Leadership & Governance (University College Dublin);
- vii. Graduate Certificate in Forensic Computing & Cybercrime Investigation (University College Dublin);
- viii. Exhibits Officers' Training Course (Garda College);
- ix. Search & Seizure Training Course (Garda College);
- x. Diploma in Occupational Health & Safety (Irish Business & Employers' Federation);
- xi. Data Protection in Law Enforcement (Institute of Public Administration);
- xii. Accountancy staff members' CPD<sup>48</sup> requirements;
- xiii. Solicitor staff members' CPD requirements;
- xiv. Engineer staff member's CPD requirements.

## — 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 64 PQs (2018: 67).

### 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). Despite the Office's policy of settling all invoices within prescribed timeframes, there was one invoice paid outside of the time allowed and as a result Prompt Payment Interest of €1.12 was incurred, together with €40 in penalties (2018: €0.12 and €40 respectively).

### Risk Management Action Plan

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

### Freedom of Information (FOI)

Most records of the Office (i.e., all records other than records concerning its general administration) are exempt from the FOI Acts. During 2019, 12 requests were made under the Freedom of Information Act (2018: 9). One of these was withdrawn and one was referred on to the correct public body. Of the remaining 10 requests, 4 were granted in full, 2 were for records that did not exist or were not held by the ODCE and 4 were in respect of records not covered by the Act (by virtue of the fact that they were created and/or held under the Companies Acts) and, in accordance with the Office's statutory duty of confidentiality, were not released.

As required under the FOI Act, the Office's FOI Publication Scheme is published on its website, as well as a log of FOI Requests and the decisions on such requests.

### Data Protection and the General Data Protection Regulation

On 25 May 2018 the General Data Protection Regulation (GDPR) became enforceable. This legislation gives a broad level of protection to citizens regarding the privacy and use of their personal data, and grants rights of access to personal data held or processed by a data controller.

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*48 Continuing Professional Development*

The Office has put significant effort into ensuring compliance with the Regulation and the Data Protection Act 2018, as well as holding information sessions so that all staff are aware of the new obligations.

At the beginning of the year one request that had been received in late 2018 was on hand. During the year under review, a further 5 requests for information were made to the Office under the Data Protection Act 2018. Of the requests received, one was not processed as the requester did not provide proof of identity. The remaining requests were each considered and, where applicable, the relevant information was provided to data subjects. One investigation by the Office of the Data Protection Commission, relating to a pre-GDPR data access request, was initiated during the year.

### **Official Languages Act 2003**

The Office drafted a second Scheme under the Act in 2011 and awaits agreement with the 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.

### **Implementing the Public Sector Equality and Human Rights Duty**

During 2019 the Office published on its website its intention to comply with the Public Sector Duty under the Irish Human Rights and Equality Commission Act 2019. This duty places a statutory obligation on public bodies to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work.

In its day to day work and particularly in its dealings with stakeholders the Office ensures that no member of the public or other stakeholder suffers discrimination in interactions with the Office under any of the protected grounds of gender, civil status, family status, sexual orientation, disability, age, race, religion and membership of the Traveller community.

The Office extends the same equality of treatment to its staff.

### **Energy consumption**

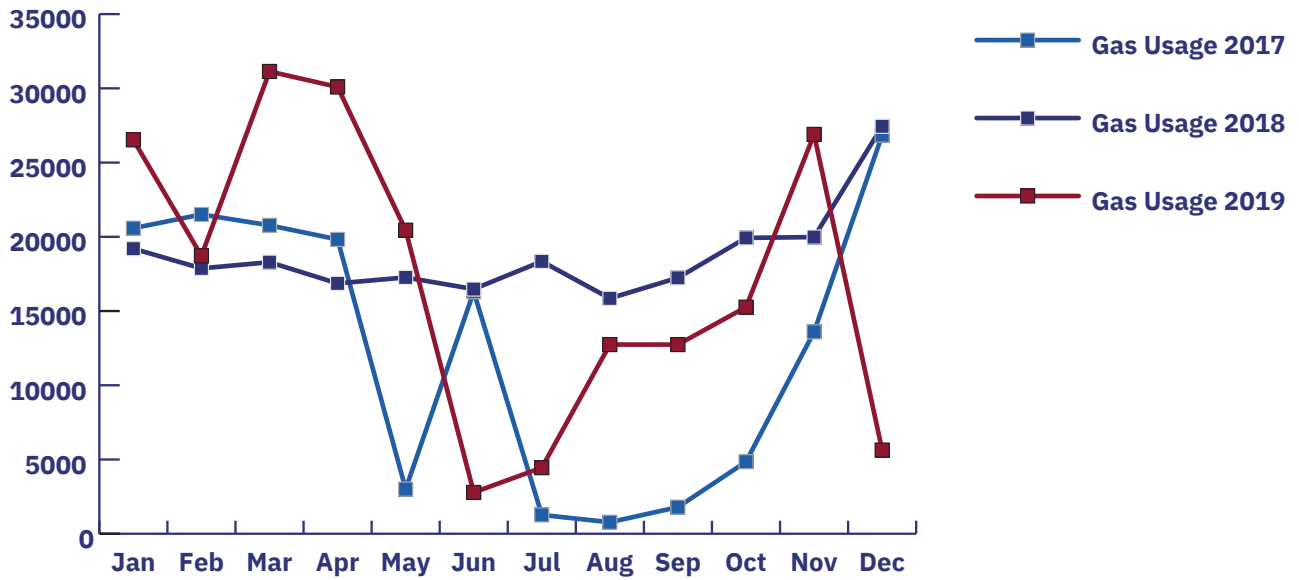
The Office shares its premises with several other occupants, and, at 45.62%, the proportion of space allocated to the Office is slightly less than half. Approximately half of all electricity used in the building is for lighting and the powering of office equipment, while the heating and air conditioning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

Gas consumption for the year was 470,000 kilowatt hours (kwh) (2018: 690,000 kwh), of which the ODCE was responsible for approximately 214,000 kwh. Electricity consumption was 500,000 kwh (2018: 377,000 kwh), of which the ODCE was responsible for approximately 228,000 kwh.

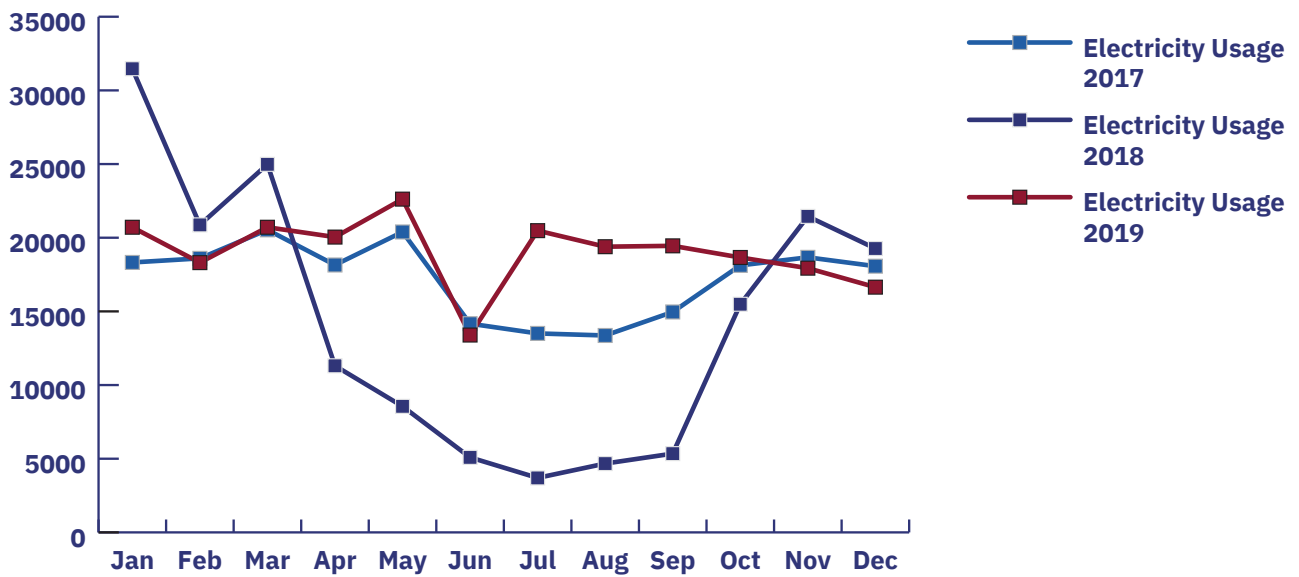
During the year, the Office continued to monitor its energy usage. By way of participation in a Green Team comprising of representatives of the building's various occupants, the Office continues to seek to devise initiatives to further curtail energy consumption. Two information sessions for staff on ways to reduce energy consumption and the effects of climate change took place during the year, with the aim of encouraging behavioural change in relation to the environment. Energy usage charts for 2017 to 2019 are set out below.

The target for energy consumption reduction in 2019 was a further 5%. The energy performance outturn was an increase of 33% in electricity usage and a reduction of 32% in gas usage, giving an overall reduction of 9% for 2019 over 2018, mainly in gas consumption.

### Gas Usage



### Electricity Usage





# APPENDICES

## — Appendix 1: Allocated vs. actual expenditure: 2017 – 2019

	2017		2018		2019	
	€000s	€000s	€000s	€000s	€000s	€000s
<b>Allocation</b>						
Exchequer Grant	4,895		5,057		6,057	
Exceptional Legal Costs	50	4,945	50	5,107	50	6,107
<b>Expenditure</b>						
Salaries	1976.1		2347.0		2,503.1	
Advertising & Publicity	31.6		34.8		32.2	
Office Premises	415.3		297.2		290.0	
Legal Expenses	172.8		741.8		1,075.2	
Consultancy	196.2		3.9		3.8	
Computerisation	120.0		116.0		204.3	
Printing	14.8		22.0		28.8	
Incidental Expenses	7.4		51.3		29.1	
Travel & Subsistence	19.3		14.3		25.2	
Telecommunications	29.8		30.1		45.3	
Postal/Courier Services	12.5		12.6		7.9	
Office Machinery & Photocopying	3.9		8.3		17.5	
Human Resource Development	14.5		22.2		37.4	
		3,014.2		3,701.5		4,299.8
<b>Amount surrendered</b>		<b>1,930.8</b>		<b>1,405.5</b>		<b>1,807.2</b>

## — Appendix 2: Publications issued, presentations delivered and exhibitions/events attended – 2019

A breakdown of the categories are as follows:

Category	Number of presentations delivered	Audience
Third Level Institutions	13	480
Professional Bodies (including Accountancy bodies, Law Society and An Garda Síochána)	8	1,250
Public Bodies (including Government Departments & Agencies)	4	350
Other Bodies/Organisations (including the community & voluntary sectors)	5	250

### Exhibitions/Events Attended by Staff Of ODCE – 2019

Name of Event	Promoter	Venue
National Manufacturing & Supply Chain Conference & Exhibition	Premier Publishing & Events	Citywest Convention Centre, Saggart
Business Connect Conference	Small Firms Association	Aviva Stadium, Dublin
Start-Up Showcase	Enterprise Ireland	Croke Park, Dublin
National Construction Summit	Premier Publishing & Events	Citywest Convention Centre, Saggart
South-East Business Expo	Premier Publishing & Events	Waterford Institute of Technology
Practice Matters Conference	Certified Public Accountants	Carlton Hotel, Blanchardstown, Dublin
Becoming a Successful Entrepreneur	Dublin City Council	Dublin Business Library, Ilac Centre, Dublin
All Ireland Business Summit	All Ireland Business Foundation	Croke Park, Dublin
SFA Annual Conference	Small Firms Association	Aviva Stadium, Dublin

Name of Event	Promoter	Venue
ICSA Annual Conference	Institute of Chartered Secretaries and Administrators (ICSA)	Printworks, Dublin Castle
CPA Annual Conference	Certified Public Accountants	Radisson Hotel, Little Island, Cork
Grow SME Expo	Premier Publishing & Events	RDS, Dublin
Biz Expo	Biz Expo	Citywest Conference Centre, Saggart
Food, Retail & Hospitality Expo 2019	Premier Publishing & Events	Citywest Conference Centre, Saggart
Taking Care of Business 2019	Department of Business, Enterprise & Innovation	Sheraton Hotel, Athlone
Industry Matters Conference	Certified Public Accountants	Carlton Hotel, Blanchardstown, Dublin
ISME Annual Conference	Irish Small & Medium Enterprises Association	Citywest Hotel, Saggart
Essential Supports and Services for Entrepreneurs	Dublin City Council	Dublin Business Library, Ilac Centre, Dublin

### Publications Issued and Published in 2019

Date	Name of Publication
March 2019	The Principal Duties and Powers of Directors under the Companies Act
March 2019	Companies – Their Duties and Powers – A Quick Guide
March 2019	Auditors – Their Duties and Powers – A Quick Guide
June 2019	Annual Report 2018

## — Appendix 3: Report under section 22 of the Protected Disclosures Act 2014

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

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

### **Reports received during 2019**

During the year ended 31 December 2019 the ODCE received 8 (2018: 5) protected disclosures.

### **Action (if any) taken in response to the protected disclosures received**

On examination it was determined that 6 of the protected disclosures received fell outside the remit of the Office. At year end, the other two were under consideration.

### **Such other information relating to those protected disclosures and the action taken as may be requested by the Minister for Public Expenditure & Reform from time to time**

Not applicable.

## — Appendix 4: Cases where Restriction Consent Undertakings were given by Company Directors pursuant to section 683 of the Companies Act 2014

Company Number	Company Name	Director Name		Date Restricted
464940	Active Learning & Leisure Limited	Noone	Frank	01-Mar-19
464940	Active Learning & Leisure Limited	Noone	Deirdre	01-Mar-19
334290	Acuman Facilities Management Limited	Quinn	Kevin	10-Dec-19
366562	Aeon Solutions Limited	Cunningham	John	15-Apr-19
508800	Allied Bathrooms & Tiles Limited	Gibney (Shadow Director)	Irene	09-Dec-19
508800	Allied Bathrooms & Tiles Limited	Gibney	Conor Keith	09-Dec-19
508800	Allied Bathrooms & Tiles Limited	Gibney	Rebecca Nicole	09-Dec-19
508800	Allied Bathrooms & Tiles Limited	Gibney (Shadow Director)	Damian	09-Dec-19
512084	Alyn Consulting Limited	Rose	Louise	30-Jan-19
358866	Angel Technologies Limited	Murphy	Laurence	03-Apr-19
358866	Angel Technologies Limited	Murphy	Margaret	03-Apr-19
429444	Ardalon Limited	Caulfield	Noel	15-Mar-19
541614	Arrow Vision Limited	Newman	Jacinta	29-Nov-19
541614	Arrow Vision Limited	Newman	Kate	29-Nov-19
544410	Bourneash Catering Limited	D'Alicandro	Antonio	17-Sep-19
544410	Bourneash Catering Limited	Mancini	Anna	17-Sep-19
146518	C S Distributors Limited	Compton	Alan	06-Mar-19
146518	C S Distributors Limited	Compton	Paul	06-Mar-19
480043	Castleguard Security Services Limited	Sheridan	Annette	21-Mar-19
480043	Castleguard Security Services Limited	Sheridan	John	21-Mar-19
375266	City Union Limited	O'Neill	Deirdre	14-Feb-19

Company Number	Company Name	Director Name		Date Restricted
375266	City Union Limited	O'Neill	Tadhg	14-Feb-19
316717	Clo Ceardlann Na gCnoc Teoranta	Joyce	Ian	01-Jun-19
473987	Clonliffe Healthcare Products Limited	Fanning	Louise	13-Dec-19
473987	Clonliffe Healthcare Products Limited	Fanning	Thomas Russell	13-Dec-19
300209	Cooney Manufacturing Limited	Cooney	Albert	31-Oct-19
470708	Crinnigan Haulage Limited	Crinnigan	Aidan	23-Nov-19
460301	CSS Faciliclean Limited	O'Leary	Louise	28-Nov-19
460301	CSS Faciliclean Limited	O'Leary	Neil	28-Nov-19
571150	Cup And Crust Limited	O'Malley	Michael	10-Oct-19
491946	Curteust Limited	Curtain	Geraldine	16-Nov-19
491941	DWC Recycling Limited	Mikalauskas	Audrius	17-Jul-19
491941	DWC Recycling Limited	Mikalauskas	Donatas	17-Jul-19
79897	Edward Paul Nugent Limited	Nugent	Arthur Connell	17-May-19
490831	Fenian St Pizza Company Limited	Foley	Garrett	26-Nov-19
426761	Food Fusion Limited	Caulfield	Noel	15-Mar-19
37541	Four Counties Oil Company Limited	Chawner	Marcus	21-Sep-19
37541	Four Counties Oil Company Limited	Quigley	Sean	21-Sep-19
418024	Gerry Quinn & Sons Limited	Quinn	Geraldine	16-Jul-19
418024	Gerry Quinn & Sons Limited	Quinn	Gerard	16-Jul-19
340361	Glencurran Construction Limited	Donohoe	Martin	09-Feb-19
546807	H.M.F. Construction Solutions Limited	Dempsey	Denis	07-Sep-19
386417	Haran Surveyors & Loss Adjusters Limited	Haran	Denis	04-Apr-19
416883	Harmon Windows Limited	Harmon	Stephen	26-Apr-19
416883	Harmon Windows Limited	Redmond	David	26-Apr-19
431274	Hutton International Transport Limited	Hutton	Trevor	09-Oct-19
470498	KK Vet And Hygiene Limited	Kennedy	Kieran	01-Jun-19

Company Number	Company Name	Director Name		Date Restricted
470498	KK Vet And Hygiene Limited	Kennedy	Adrian	01-Jun-19
518980	Little Gifts Limited	Martin	John	27-Mar-19
540948	LMC Clothing Limited	Linehan	Ann	29-Jun-19
540948	LMC Clothing Limited	Linehan	Paul	29-Jun-19
480810	Lyvegame Limited	Doherty	Peter	06-Jul-19
480810	Lyvegame Limited	Martin	Anthony	06-Jul-19
497895	Marinuda Limited	Caulfield	Noel	15-Mar-19
526343	Markatect Limited	Hedderman	Jennifer	28-Feb-19
526343	Markatect Limited	O'Donoghue	Mark	28-Feb-19
579664	Mastglen Limited	Howard	Celina	25-Feb-19
278092	McKenna Refrigeration Limited	McKenna	Michael	07-Aug-19
541544	MF Partitions & Ceilings Limited	Flynn	Seamus	22-Feb-19
571395	Old Bawn Blinds, Carpets & Flooring Limited	McGrachan	Ian	06-Nov-19
553904	Orchard Hospitality Limited	Buckley	Paul	27-Mar-19
460046	P & J Gillane Transport Limited	Forde	Elizabeth	21-Mar-19
460046	P & J Gillane Transport Limited	Gillane	John	21-Mar-19
366336	Pinnacle Homes Limited	Henry	Paul	01-Nov-19
531256	PKE Engineering Limited	Kelly	Patrick	01-Feb-19
531256	PKE Engineering Limited	Kelly	Martha	01-Feb-19
101786	R.J. Behan Limited	Behan	Richard	04-May-19
493029	RTS Travel Limited	Shortt	Robin	10-Dec-19
493029	RTS Travel Limited	Shortt	Russell	10-Dec-19
471171	Sprinreal Limited	Carroll	Darragh	02-Nov-19
535651	Streamhall Limited	Mulvee	Anna	09-Feb-19
535651	Streamhall Limited	Mulvee	Karl	16-Apr-19
541545	Sykes Hotel Group Limited	Sykes	David	14-Feb-19
541545	Sykes Hotel Group Limited	Sykes	Trevor	14-Feb-19
603269	Tasteify Limited	Murphy	Peter	09-Nov-19



Company Number	Company Name	Director Name		Date Restricted
457870	The Powder Room Girls Limited	Cullinan	Rhona	20-Apr-19
457870	The Powder Room Girls Limited	Peggs	Susan	20-Apr-19
541478	Theatrebox Stage School & Productions Limited	Nagle	Jamie	30-Apr-19
411054	Thorpe Machinery Sales Limited	Thorpe	Adrian	19-Feb-19
469050	Trackside Tyres Limited	Parker	Michael	18-Sep-19
409618	Tuckmill Transport Limited	Morgan	Brendan	30-Apr-19
411339	WCEX Limited	O'Malley	Brian	02-Feb-19
411339	WCEX Limited	O'Malley	Patrick	02-Feb-19

### Cases where Restriction Declarations were made by the High Court Pursuant to Section 683 of the Companies Act 2014

Company Number	Company Name	Director Name		Date Restricted
321708	A Quick Sharp Limited	Kearney	Joseph	11-Feb-19
321708	A Quick Sharp Limited	Kearney	Liam	11-Feb-19
321708	A Quick Sharp Limited	O'Reilly	Stanley	11-Feb-19
215356	Aermak Limited	McManus	Simon	11-Nov-19
215356	Aermak Limited	McManus	Frank	11-Nov-19
520312	Altissimus Ltd	Harsveld	Elizabeth	14-Oct-19
567391	Countbox Limited	Dubin	Konstantin	11-Mar-19
567391	Countbox Limited	Mherian	Armen	11-Mar-19
417070	Gillstone Limited	Gill	Sharon	22-Jul-19
417070	Gillstone Limited	Gill	John	22-Jul-19
403019	Glendalough Stores Limited	Kirk	Bernard	09-Dec-19

## — Appendix 5: Cases where Disqualification Consent Undertakings were given by Company Directors pursuant to section 683 of the Companies Act 2014

Company Number	Company Name	Director Name		Disqualified From	Disqualified To
393319	ADMV Ltd	Walsh	Alan	23-Apr-19	22-Apr-24
520312	Altissimus Ltd	Harsveld	Marius	09-Feb-19	08-Feb-24
126801	Ballinalard Transport Limited	English	Alex	17-Apr-19	17-Apr-24
126801	Ballinalard Transport Limited	English	Richard	17-Apr-19	17-Apr-24
496788	Moybrone Holdings Limited	Cooke	Joan	11-Apr-19	10-Apr-24
496788	Moybrone Holdings Limited	Cooke	Paul	11-Apr-19	10-Apr-24
520260	Suntano Living Limited	Lim	Seng Hoon	05-Aug-19	04-Aug-24
520260	Suntano Living Limited	Tan	Chin Tiong	05-Aug-19	04-Aug-24

## Cases where Disqualification Consent Undertakings were given by the directors of dissolved insolvent companies pursuant to section 842 of the Companies Act 2014

Company Number	Company Name	Director Name		Disqualified From	Disqualified To
477652	Alexandra Legal Services Ltd	Lyons	Maurice	12-Jan-19	12-Jan-23
		Lyons	Elizabeth	12-Jan-19	12-Jan-22
385569	Digital Cinema Ltd	Hevey	Tony	30-Nov-18	30-Nov-22
		Cummins	Kevin	07-Mar-19	07-Mar-23
493832	National Publishing Institute Ltd	Whelan	Michael	22-Mar-19	22-Mar-23
510371	Mayday Express Ltd	Kelly	Paul	26-Mar-19	26-Mar-22
408413	Summerhill Distribution Ltd	Hyland	Pat	26-Mar-19	26-Mar-22
		Hyland	Angela	26-Mar-19	26-Mar-22
510371	Mayday Express Ltd	Gibbons	Bernard	19-Apr-19	19-Apr-22

Company Number	Company Name	Director Name		Disqualified From	Disqualified To
239276	Best Personnel Ltd	O'Malley	Donal	01-Jun-19	01-Jun-22
		O'Malley	Eileen	01-Jun-19	01-Jun-22
379540	Ballykisteen Developments Ltd	Murphy	George	02-Jul-19	02-Jul-22
510668	Mala HR Ltd	O'Connell	Niall	20-Jul-19	20-Jul-23
		Thomas-O'Connell	Gail	20-Jul-19	20-Jul-23
491038	Atlantic Hospitality Services Ltd	Harte	Barry	28-Aug-19	28-Aug-22
398963	Barry Harte Holdings Ltd	Ormond	Liam	11-Sep-19	11-Sep-22
416910	Casalani Ltd	Reidy	Ray	18-Sep-19	18-Sep-22
477927	Diadan Trading Ltd	Jeffers	Diane	01-Oct-19	01-Oct-23
481426	Noirbridge Ltd	Condron	Seamus	09-Oct-19	09-Oct-22
432065	Police History Publishing Ltd	Breathnach	Máirtín	25-Oct-19	25-Oct-22
410137	Felix McHugh Builders Ltd	McHugh	Frances	14-Dec-19	14-Dec-23
		McHugh	Felix	14-Dec-19	14-Dec-23

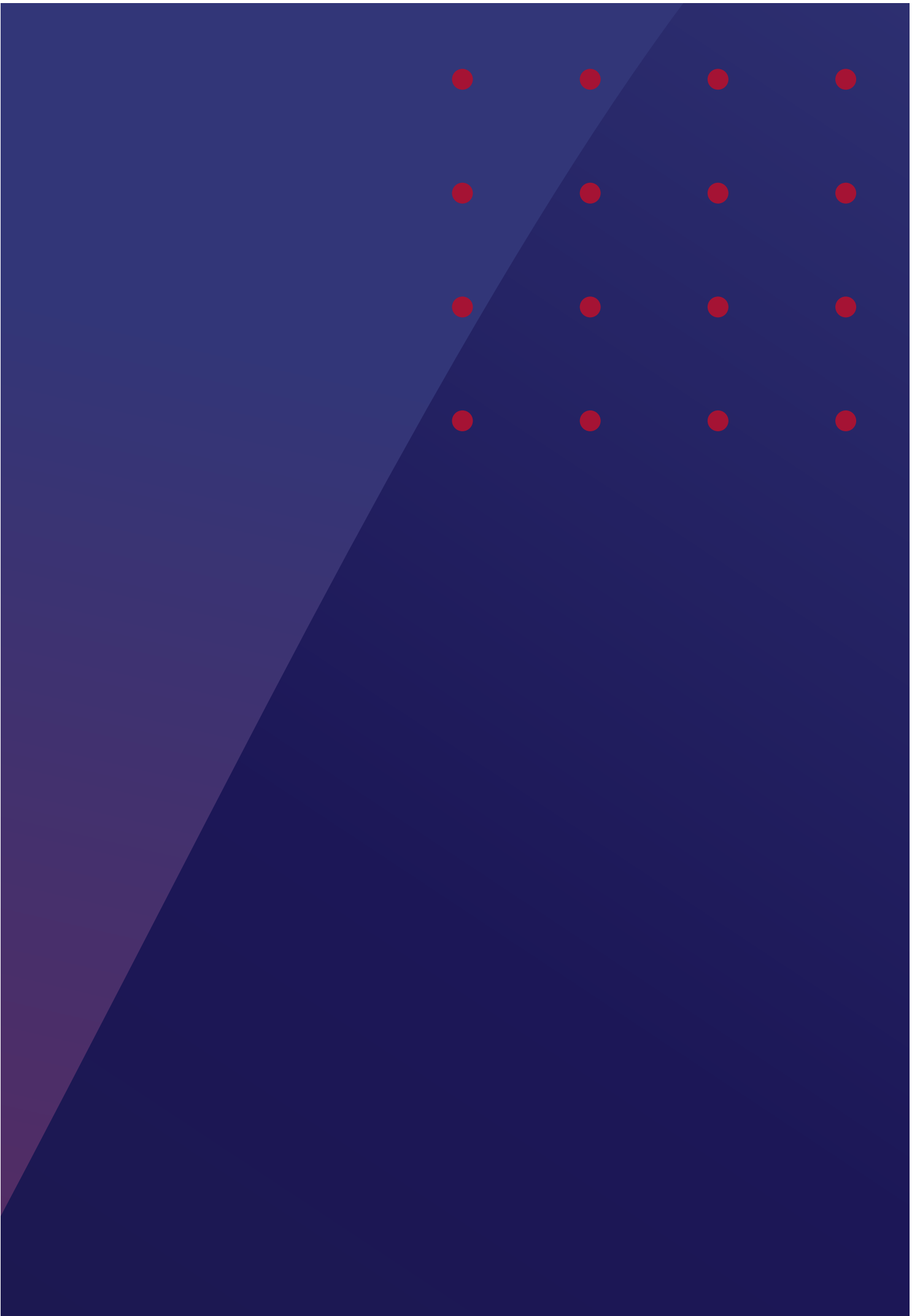
### Cases where Disqualification Orders were made by the High Court Pursuant to section 683 of the Companies Act 2014

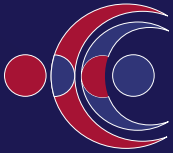
Company Number	Company Name	Director Name		Disqualified From	Disqualified To
144018	Kelly Trucks Limited	Kelly	James	04-Mar-19	04-Sep-26
144018	Kelly Trucks Limited	Kelly	Anne	04-Mar-19	04-Sep-26
494167	Perpetual Commerce Limited	Stoneham	Daniel	09-Dec-19	08-Dec-26
574335	TBS Delivery Limited	Rogers	David	09-Dec-19	08-Dec-26

# GLOSSARY

<b>Act</b>	Companies Act 2014
<b>AGM</b>	Annual General Meeting
<b>ALEFA</b>	Association of Law Enforcement Forensic Accountants
<b>CLRG</b>	Company Law Review Group
<b>CPD</b>	Continuing Professional Development
<b>CRO</b>	Companies Registration Office
<b>Department</b>	Department of Business, Enterprise & Innovation
<b>Director</b>	Director of Corporate Enforcement
<b>DPP</b>	Director of Public Prosecutions
<b>FAQs</b>	Frequently Asked Questions
<b>FOI</b>	Freedom of Information
<b>GNECB</b>	Garda National Economic Crime Bureau
<b>IAASA</b>	Irish Auditing & Accounting Supervisory Authority
<b>IAIR</b>	International Association of Insolvency Regulators
<b>ICAV</b>	Irish Collective Asset-management Vehicle
<b>ICAV Act</b>	Irish Collective Asset-management Vehicles Act 2015
<b>Minister</b>	Minister for Business, Enterprise & Innovation
<b>MoU</b>	Memorandum of Understanding
<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>SI</b>	Statutory Instrument
<b>VAT</b>	Value Added Tax
<b>WTE</b>	Whole Time Equivalent







Oifig an Stiúrthóra um  
Fhorfheidhmiú Corparáideach

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