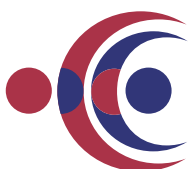


ANNUAL REPORT

Office of The Director of Corporate Enforcement

2012



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

For further information contact:

Office of the Director of Corporate Enforcement,

16 Parnell Square,
Dublin 1.

Tel: 01 858 5800
Lo-call: 1890 315 015
Fax: 01 858 5801
Email: info@odce.ie
Web: www.odce.ie

Copyright and Disclaimer Statement

The contents of this document are the copyright of the Director of Corporate Enforcement. All or part of this publication may be reproduced without further permission, provided the source is acknowledged.

Nothing herein should be construed as a representation by, or on behalf of, the Director of Corporate Enforcement as to his understanding or interpretation of any of the provisions of the Companies Acts 1963 to 2012 or as to the interpretation of any law. Independent legal advice should be sought in relation to the effects of any legal provision. The Director of Corporate Enforcement accepts no responsibility or liability howsoever arising from the contents of this publication or any errors, inaccuracies or omissions in the contents of this document. The Director reserves the right to take action, which may or may not be in accordance with the provisions of this document.

TABLE OF CONTENTS

Director's Introduction	5
2012 At A Glance	8
Chapter 1: Overview Of The ODCE	10
Statutory mandate	11
High level goals	11
Resources, organisational structure, governance arrangements & principal workstreams	12
Chapter 2: Promoting A Greater Understanding Of Affected Parties' Rights And Duties Under Company Law	17
Introduction	18
Publications and outreach activities	18
Advocating legislative and policy enhancements	20
Managing and developing relationships with external stakeholders	22
Chapter 3: Confronting Unlawful And Irresponsible Behaviour Insofar As It Relates To Company Law	26
Structure of this Chapter	27
EXTERNAL INPUTS	27
Liquidators' section 56 reports	28
Sectoral distribution of other external inputs (i.e. other than liquidators' section 56 reports)	31
Complaints	32
Auditors' indictable offence reports	32
Referrals	33
Professional bodies' indictable offence reports	33
Liquidators' reports regarding possible criminality	35
Reports under section 19 of the Criminal Justice Act 2011	35
INTERNAL INPUTS	36
Introduction	36
Dissolved insolvent companies	36
Supervision of liquidators	36
Investigations commenced on own initiative	37
Quantum of internal inputs - 2012	37
THROUGHPUTS	38

OUTPUTS	40
Outputs from the section 56 process	40
Outputs of enforcement work	43
Securing voluntary rectification/remediation	43
Securing compliance through the exercise of the Director's civil powers	43
Referrals to professional and other regulatory bodies	44
Civil enforcement	44
Criminal enforcement	46

Chapter 4: Providing Quality Customer Service To Internal And External Stakeholders

Provision of a quality customer service to external stakeholders	51
Provision of a quality customer service to internal stakeholders	54
Customer service standards	55
Compliance with obligations on foot of law, regulation and by virtue of the Office's status as a public sector entity established by statute	55

Appendices

Appendix 1: Allocated vs. actual expenditure – 2010 - 2012	58
Appendix 2: Presentations delivered and exhibitions attended - 2012	59
Appendix 3: Cases where restriction Orders were made by the High Court pursuant to section 56 of the CLEA	64
Appendix 4: Cases where disqualification Orders were made by the High Court pursuant to section 56 of the CLEA	73
Appendix 5: Cases where no restriction or disqualification Orders were made by the High Court pursuant to section 56 of the CLEA	74

Glossary

DIRECTOR'S INTRODUCTION



DIRECTOR'S INTRODUCTION

Introduction

In accordance with the provisions of section 16(1) of the Company Law Enforcement Act 2001, I am pleased to submit the Office's 2012 Annual Report to the Minister for Jobs, Enterprise & Innovation, Mr. Richard Bruton, TD.

Upon taking up appointment at the end of August 2012, I set about developing a deeper understanding of the Office's principal workstreams and the challenges and opportunities that flow therefrom. Through initial discussions with my new colleagues, it quickly became apparent to me that:

- the Office has a highly committed workforce, many of whom are highly experienced, and possess very high degrees of expertise, in company law and related disciplines;
- the Office's activities are driven, to a very substantial extent, by inputs from external sources - most notably in the form of liquidators' statutory reports, in respect of which the Office is required by law to make certain determinations. As such, the allocation of resources to this workstream is non-discretionary; and
- notwithstanding that, based on the investigation files referred to the Director of Public Prosecutions, charges have been preferred against a number of individuals in relation to certain events at the former Anglo Irish Bank Corporation plc, this case continues to be resource intensive from the Office's perspective for reasons that are further elaborated upon in the body of this Report.

As a consequence of the foregoing, the Office has limited latitude within which to address other, more discretionary, workstreams – such as, for example, the examination of complaints received from members of the public, auditors' and professional bodies' statutory reports and to proactively seek to address other areas of potential risk. Against that backdrop, regard must also be had to the financial constraints within which the State is currently operating, and to the associated expectation that statutory entities such as the Office do more with less.

Accordingly, we, and our stakeholders, must recognise and acknowledge that we cannot do everything. Rather, having regard to our statutory mandate we must seek to apply our available resources in the most effective manner possible. In order to do this, we need to have regard to a number of important considerations, including:

- the types of unlawful and irresponsible behaviour in a company law context of which, based on statistical analysis and other available information, there is evidence of significant occurrence;
- the relative extent to which such behaviour has the potential to be injurious to the Office's stakeholders and to the wider public interest;
- the parameters of our statutory remit and the various tools at our disposal; and
- the likelihood of our being in a position to address such behaviour in an effective manner having regard to considerations such as:
 - the cost effectiveness, and associated opportunity cost, of certain courses of action relative to others;
 - the relative likely dissuasive effects of the various enforcement options at our disposal;
 - the extent to which, in appropriate circumstances, voluntary rectification can be achieved through positive engagement with/from stakeholders, thereby avoiding the need to seek recourse to more formal, and thereby generally less cost effective, measures;
 - relevant jurisprudence, particularly in the context of civil litigation;
 - the challenges associated with gathering evidence for criminal trials; and
 - relevant legislative issues.

Having regard to those various considerations, we must seek to concentrate our resources in those areas in which we are likely to have the most impact. Accordingly, these are amongst the principal considerations that are likely to inform the Office's enforcement strategy over the coming years.

Year under review

As can be seen from the body of this Report, the Office delivered a number of tangible outputs during 2012, the combined effect of which has been to contribute to:

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

Notable contributions in that regard included:

- the publication of 10 new guidance and information documents for stakeholders' benefit;
- the securing of the rectification, on a non-statutory basis, of directors' loans issues to an aggregate value of approximately €55m;
- successfully securing, in over 200 cases, compliance on the part of a range of parties with their obligations under the Companies Acts through more formal measures;
- the securing of the disqualification of 19 individuals, and the restriction of a further 2, on foot of Court applications made by the Office;
- the restriction of 227 company directors, and the disqualification of a further 15, on foot of liquidators' applications made to the High Court subsequent to the Office's having scrutinised the underlying liquidators' reports;
- the securing of 16 criminal convictions in the District Court for breaches of the Companies Acts; and
- the submission of:
 - further investigation files to the Director of Public Prosecutions concerning alleged offences related to certain events at the former Anglo Irish Bank Corporation plc, on the basis of which the Director of Public Prosecutions directed that a total of 60 charges be preferred against a number of individuals; and
 - 3 other, separate and unrelated, investigation files to the Director of Public Prosecutions on non-Anglo related matters.

Concluding remarks

In conclusion, I would like to thank my colleagues for the welcome that they extended to me upon my taking up this position and for the support that they have continued to afford to me since then. I would also like to pay tribute to my predecessor, Paul Appleby, for his dedication and commitment to the Office and its objectives throughout his tenure as Director and to wish him well in his retirement.

Ian Drennan
Director
27 March, 2013

2012 AT A GLANCE

2012 AT A GLANCE

Advocacy

- 10 new guidance and information publications issued
- 47 information presentations delivered and 16 exhibitions attended

Enforcement

Sources of our work

- Almost 2,000 statutory reports received from liquidators, auditors and professional bodies
- Over 300 complaints received from members of the public
- Over 170 internally generated inputs

Outputs from our work

- Following the scrutinising of reports submitted to the Office by liquidators of insolvent companies, 227 company directors restricted and 15 disqualified by the High Court
- Directors' loan infringements to the value of approximately €55m rectified on foot of Office actions
- Compliance with the Companies Acts secured in 210 separate instances through the exercise of the Director's civil powers
- Compliance with the Companies Acts secured in 3 other cases through successful Court applications made by the Office
- 19 individuals disqualified and a further 2 individuals restricted on foot of applications made by the Office to the High Court
- 16 criminal convictions secured in the District Court, together with an associated disqualification Order
- 3 separate, and unrelated, files¹ sent to the Director of Public Prosecutions for consideration as to whether charges should be preferred on indictment
- 18 separate matters referred to professional accountancy bodies regarding matters relevant to their members.

Investigation Relating To The Former Anglo Irish Bank Corporation PLC

Section 60, Companies Act 1963

- Further file submitted to the DPP in February 2012
- In July 2012, and having considered the files previously submitted by the Office, the DPP directed that a total of 48 charges be preferred against 3 individuals
- Assistance provided to the DPP in the preparation of the section 60 Books of Evidence
- Substantial resources devoted to assisting the DPP with meeting the prosecution's disclosure obligations to the defence

Section 197, Companies Act 1990

- Further files submitted to the DPP in March and June 2012 respectively
- In December 2012, and having considered the files previously submitted by the Office, the DPP directed that a total of 12 charges be preferred against 1 individual
- Assistance provided to the DPP in the preparation of the section 197 Book of Evidence

Transparency (Directive 2004/109/EC) Regulations 2007 / European Communities (Admission to Listing and Miscellaneous Provisions) Regulations 2007

- File submitted to the DPP in March 2012

Financial

- The cost of running the Office during 2012 was €3.43m, some 57% of its allocation for the year.

¹ Relating to non-Anglo matters



OVERVIEW OF THE ODCE

CHAPTER 1

OVERVIEW OF THE ODCE

Statutory mandate

Office of the Director of Corporate Enforcement

The Company Law Enforcement Act 2001 ("CLEA")² provided for the creation of the position of Director of Corporate Enforcement ("the Director"). The Director, who is appointed by the Minister for Jobs, Enterprise & Innovation ("the Minister"), is assisted in the furtherance of his statutory mandate by:

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

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

Principal functions of the Director

The Director's principal functions are set out in the CLEA³. They include to:

- i. encourage compliance with the Companies Acts;
- ii. investigate instances of suspected offences under the Companies Acts;
- iii. enforce the Companies Acts, including by the prosecution of offences by way of summary proceedings⁴;
- iv. refer cases, at his discretion, to the Director of Public Prosecutions ("DPP") where the Director has reasonable grounds for believing that an indictable offence⁵ under the Companies Acts has been committed; and
- v. exercise, insofar as he feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Companies Acts.

Independence of the Director

The CLEA⁶ provides that the Director shall be independent in the performance of his functions.

High level goals

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

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

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

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

² Section 7

³ Section 12(1)

⁴ i.e. before the District Court

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

⁶ Section 12(2)

Resources, organisational structure, governance arrangements & principal workstreams

Human resources

As at 1 January 2012, the Office had an approved staff complement of 52.1 whole time equivalents ("WTE") and an actual complement of 49.8 WTE. At year end, the Office's approved staff complement had been reduced by 2.1 as a result of the Incentivised Scheme of Early Retirement and the actual staff complement stood at 44.4 WTE. The composition of the Office's staff complement as at 31 December, 2012 is set out in the Table below.

Table 1
Analysis of actual staff complement (WTEs) - as at 31 December, 2012

Grade	Number
Director	1
Heads of Function ⁷ (excluding Garda)	4
Legal Advisors	2
Accountants	2
Solicitors	2
Assistant Principals	4
Higher Executive Officers	7.6
Executive Officers	6.8
Clerical Officers	7.5 ⁸
Detective Gardaí (on secondment from the Garda Bureau of Fraud Investigation)	
Detective Inspector (Head of Function)	1
Detective Sergeants	2
Detective Gardaí	4.5
Garda	1
Superintendent	0.1
TOTAL	45.5

⁷ Includes 1 Legal Advisor and 1 Solicitor

⁸ Includes 1 temporary Legal Secretary

Financial resources

The Office is funded via the Department of Jobs, Enterprise & Innovation's ("the Department") Vote (Vote 34). The Table below sets out details of the Office's 2012 allocation and expenditure respectively.

Table 2
Financial allocation and expenditure - 2012

	Allocation €000s	Expenditure €000s	%
Pay	2,620	2,463	94
Non-pay	3,077	973	31.6
Exceptional legal costs	300	0	0
Total	5,997	3,436	57.3

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

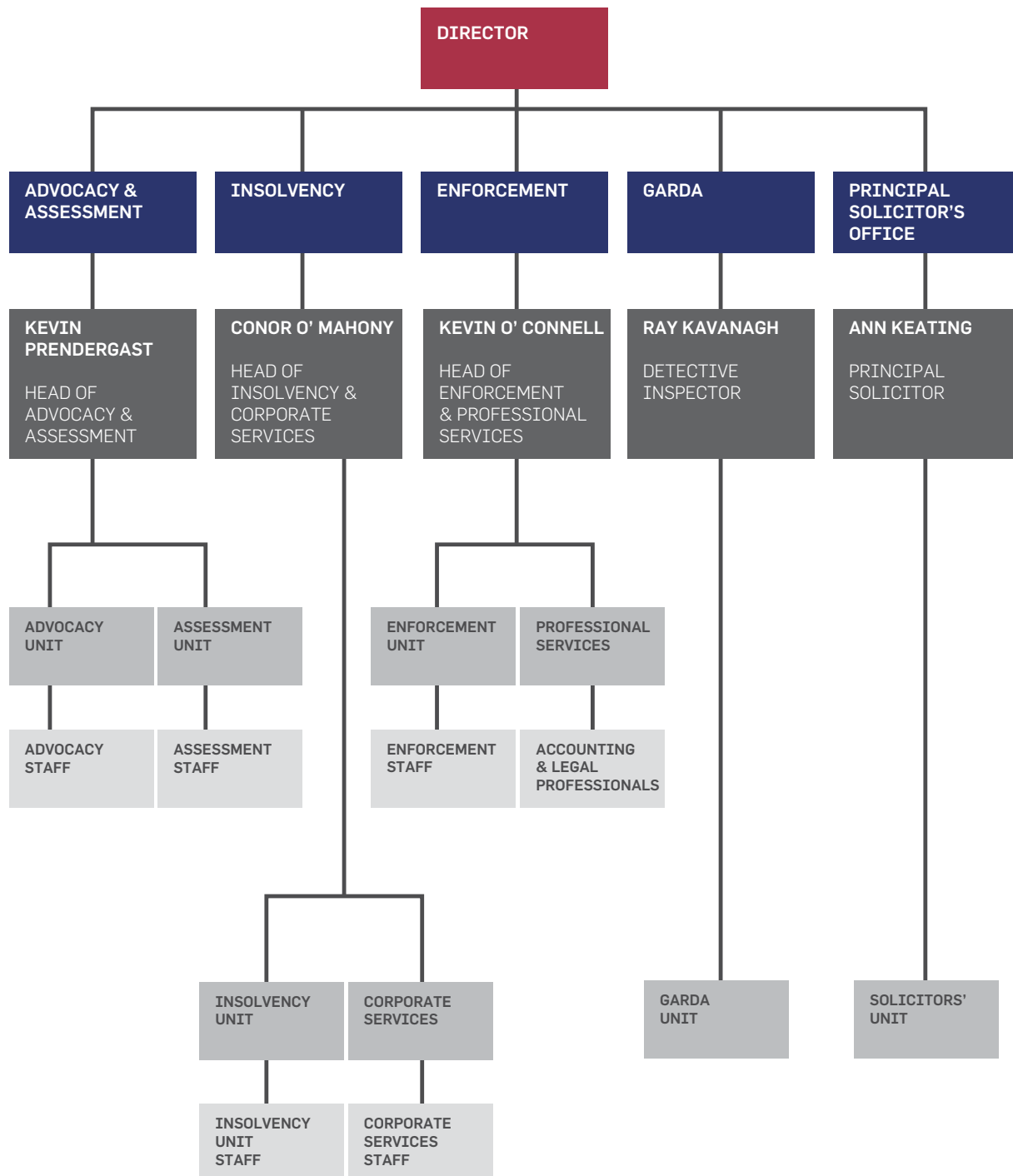
- savings on pay, resulting from staff reductions arising from the Incentivised Scheme of Early Retirement; and
- certain legal costs which had been anticipated might arise during the year did not do so. On determination of one case, costs were successfully avoided. In other cases, the issue of costs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

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

Organisational structure

Following his appointment, the new Director effected certain amendments to the Office's organisational structure, with those amendments centring largely on the area of Enforcement & Professional Services.

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



Governance arrangements

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

Principal workstreams

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

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

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

Table 3
Principal workstreams

Workstream	Unit(s) principally involved	Chapter
Encouraging compliance with the Companies Acts	Responsibility for encouraging compliance with the Companies Acts resides in the first instance with the Advocacy Unit. However, the Advocacy Unit liaises with other relevant Units with a view to monitoring trends and identifying areas meriting focussed advocacy initiatives.	2
Advocating legislative and policy enhancements	Depending upon the nature of the subject matter, the development of ODCE submissions is assigned to one or more Units. Generally speaking, however, the development of submissions will be co-ordinated through the Advocacy Unit.	2
Reviewing, and adjudicating upon, liquidators' reports	Liquidators' reports are processed by the Insolvency Unit. Decisions on individual reports are made by Case Officers, who principally reside in the Insolvency and Professional Services Units respectively.	3
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 Assessment Unit. Dependent upon the nature of the issues arising, the Assessment Unit may:</p> <ul style="list-style-type: none"> • address the issues itself, e.g., by way of voluntary rectification/remediation or through the use of certain of the Director's statutory powers; • refer the matter to the Enforcement & Professional Services Unit for further investigation; • refer the matter to the Insolvency Unit, e.g., where the issues in question relate to an insolvent company in liquidation; • refer the matter to a third party. 	3

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