

# OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT

## ANNUAL REPORT 2021

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Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement

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# DIRECTOR'S STATEMENT

# Introduction

I am pleased to submit the ODCE's 2021 Annual Report to An Tánaiste and Minister for Enterprise, Trade & Employment, Dr. Leo Varadkar, TD, in accordance with the provisions of section 954(1) of the Companies Act 2014.



## Overview of 2021

### Corporate insolvency

During 2021, the downward trend of companies entering insolvent liquidation continued. Creditors' voluntary liquidations were down substantially on the 2020 figure (253 from 443), while, at 49, Court liquidations were at the same level as in 2020. The result was an overall reduction of 39% in insolvent liquidations. To put that in context, insolvent liquidations represent only 17% of total company liquidations.

Over and above the general downward trend in recent years, factors contributing to the fall off in insolvent liquidations during 2021 will have included creditor forbearance, the various State supports provided in recognition of the Covid-19 public health emergency and the temporary amendment to the definition of what constitutes a company being unable to pay its debts, as provided for by the Companies (Miscellaneous Provisions) (Covid-19) Act 2020.

However, at just under 670, the number of liquidator reports during the year was consistent with 2020 levels. In keeping with the fact that the majority of corporate insolvencies are legitimate business failures deserving of no sanction or enforcement response, "Full relief" was granted to liquidators in 57% of cases, with "No relief" or "Partial relief" decisions issuing in only 7% of cases. The balance was principally made up of "Relief at this time" decisions issuing, thereby allowing liquidators to undertake further investigations. These numbers were all consistent with the preceding year.

Where relief is not granted, the directors concerned will, generally (although not always), be offered the opportunity by the ODCE to enter into a Restriction or Disqualification Undertaking, thereby avoiding the expense associated with High Court proceedings. During 2021, 59 offers to enter a Restriction Undertaking issued and a further 5 in respect of disqualification. 40 (68%) Restriction Undertakings were accepted, with the corresponding number for disqualifications being 4 (80%). Those that elect not to enter into an undertaking have the opportunity, as is their right, to advance their cases before the High Court in response to liquidators' applications. As can be seen from Table 17 in this report, the High Court restricted a further 11 directors, while the corresponding figure for disqualifications was 12. Of note in that regard are both Gaboto Limited and Pembroke Dynamic Internet Services Limited, where the High Court handed down disqualifications from acting as a company director for periods of 15 and 16 years respectively – the latter being the longest disqualification period ever handed down by the High Court.

In addition, a further 23 directors of dissolved insolvent companies were disqualified by way of undertaking as a consequence of having allowed companies with outstanding debts to be struck off the register.

To put the foregoing in context, the aggregate of public protection restrictions and disqualifications imposed on company directors by the ODCE through undertakings and by the High Court during the year was 255 years and 213 years respectively.

## **Investigations and enforcement**

Both auditors' indictable offence reports (2021: 131, 2020: 75) and complaints (2021:201, 2020: 149) received from members of the public were up substantially on 2020 levels (i.e., by 75% and 35% respectively). Naturally, these increases had a bearing on the nature of investigative and enforcement work undertaken during the year. Full details are available at Chapter 3 of this report.

During 2021, 39 Orders were obtained pursuant to section 52 of the Criminal Justice (Theft & Fraud Offences) Act 2001 and section 63 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in relation to ongoing ODCE investigations. These information gathering activities were in addition to 6 suspect interviews under caution, 8 searches under warrant and 8 arrests. This, in turn, was in addition to a range of other investigative measures, including the taking of 56 witness statements, the issuing of 6 applications to other jurisdictions' authorities for mutual legal assistance and a range of other statutory directions and orders having issued.

Arising from investigative work undertaken by the ODCE during 2021, a total of 62 criminal charges were preferred against named individuals. Criminal charges directed, related amongst others, to alleged company law offences of fraudulent trading and the furnishing of false information as well as to theft and money laundering. During the year, 3 individuals were convicted, or facts were found to have been proven in respect of 12 offences (100% of convictions secured on pleas of guilty). At year end, 4 cases, involving some 60 charges remained before the District or Circuit Courts and 1 file was with the Director of Public Prosecutions ("DPP") for consideration as to whether charges should be directed on indictment. Full details are available at Chapter 3 of this report.

All of the foregoing was in addition to progression of a number of large-scale investigations, and an ongoing High Court Inspectorship.

This office directed the rectification of directors' loans infringements to the value of almost €10m. In line with the ODCE's enforcement principles, rectification of a range of other company law matters, including indications of non-compliance with accounting standards, indications of persons acting as company directors while not permitted to do so and issues associated with company meetings, were progressed without the necessity for recourse to formal enforcement measures.

## **Advocacy and advisory**

In addition to ongoing advocacy and outreach activities during the year under review the ODCE:

- contributed, through its membership of the Company Law Review Group, to the preparation of reports for An Tánaiste, Minister Troy and their officials on company law issues relating to the provision of information to creditors and employers, liquidations and restructuring practices and issues arising under the Second Shareholders Rights Directive (Directive (EU)2017/828);
- participated fully in the Economic Crime & Corruption Forum established pursuant to recommendations of the Hamilton Review Group; and
- in conjunction with CEPOL (the European Union Agency for Law Enforcement Training), delivered a presentation to almost 400 attendees on "Economic Crime – An Irish Perspective".

## **The year ahead**

### **Corporate insolvency**

While it remains to be seen, the prevailing view seems to be that corporate insolvencies have been artificially low in recent years and that, as State supports are withdrawn and temporary legislative provisions unwind, the number of companies entering insolvent liquidation will increase – potentially significantly. Should that come to fruition, that will likely see a material increase in the volume of liquidators' reports being submitted in the coming

years. Naturally, the unique circumstances of the Covid-19 pandemic will feature large in the considerations that will have to be had regard to in determining whether relief should, or should not, be granted in respect of the company directors concerned.

### **Investigations and enforcement**

The ODCE will continue to progress its ongoing investigations and associated litigation with a view to submitting files to the Director of Public Prosecutions. In addition, we may see the INM Inspectors report their findings to the High Court – in which case the Inspectors’ report will be provided to the ODCE for examination. All of that is in addition to our ongoing examination of issues arising with a view to determining whether the opening of new investigations is warranted.

Insofar as powers of investigation are concerned, we will continue to advocate for those additional legislative measures as were recommended by the Hamilton Group and to participate fully in both the Forum and, when it is convened, the Advisory Council against Economic Crime & Corruption. With reference to the latter, we look forward to participating in the development of a national economic crime and corruption strategy, which will be an important element of enhancing Ireland’s overall response to these threats.

### **Corporate Enforcement Authority (“CEA”)**

The Companies (Corporate Enforcement Authority) Act 2021 was signed into law by the President on 22 December 2021. Our focus is, and has for some time been, on finalising preparations for the establishment of the CEA and for ensuring that the necessary arrangements are in place to enable An Tánaiste to sign the necessary commencement orders.

### **Concluding remarks**

In conclusion, I would like to thank An Tánaiste, Dr. Leo Varadkar, TD; Minister of State for Trade Promotion, Digital and Company Regulation, Robert Troy, TD, and their officials for their continued support during the year. As ever, I would like to record my sincere appreciation for the professionalism, dedication and commitment shown throughout the year by my ODCE colleagues.

**Ian Drennan**

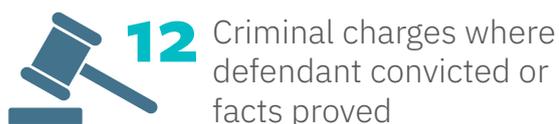
**Director**

**29 April 2022**

## 2021 in numbers



The cost of running the ODCE during **2021** was **€5m** some **82%** of its allocation for the year and an increase of **16%** over **2020** (€4.3m - cost of 2020 operations)



# CHAPTER 1

## OVERVIEW OF THE ODCE

# Statutory Mandate

## Companies Act 2014

All references to statute in this Report are to the Companies Act 2014 (“the Act”) unless otherwise indicated. The Act has been amended by subsequent legislation and an unofficial consolidated version of the Act is available on the Law Reform Commission’s website<sup>1</sup>.

## Office of the Director of Corporate Enforcement

The position of Director of Corporate Enforcement (“Director”) is provided for in Part 15, Chapter 3 of the Act. The Director, who is appointed by the Minister for Enterprise, Trade & Employment (“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 section 949 of the Act. They include:

- i. encouraging compliance with the Act;
- ii. investigating instances of suspected offences under the Act;
- iii. enforcing the Act, including by the prosecution of offences by way of summary proceedings<sup>2</sup>;
- iv. referring cases, at his discretion, to the Director of Public Prosecutions (“DPP”) where the Director has reasonable grounds for believing that an indictable offence<sup>3</sup> under the Act has been committed; and
- v. exercising, 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.

## Independence of the Director

The Act<sup>4</sup> provides that the Director shall be independent in the performance of his functions.

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1 <https://revisedacts.lawreform.ie/eli/2014/act/38/revised/en/pdf?annotations=true>

2 i.e., before the District Court

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

4 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 - Compliance and enforcement activities
- 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 – 2020/2021**

Staff Numbers (WTE <sup>5</sup> )	31 December 2021	31 December 2020
Actual complement in place	44.6	43

The composition of the Office's staff complement as at 31 December 2021, together with comparative data, is set out in Table 2 below.

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5 Whole Time Equivalent

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

Grade	31 December 2021	31 December 2020
Director	1	1
Heads of Function	3	3 <sup>6</sup>
Enforcement Lawyers	1	2
Digital Forensic Specialist	1	1
Forensic Accountants	7	4
Solicitors	0	1
Assistant Principal Officers	1	3
Higher Executive Officers	6.9	7
Executive Officers	5.4	5
Clerical Officers	8.3	7
Detective Gardaí (on secondment)		
Detective Inspector	0	2 <sup>7</sup>
Detective Sergeants/Sergeants	2	3
Detective Gardaí	8	4
<b>Total</b>	<b>44.6</b>	<b>43</b>

### Financial resources

The Office is funded via the Department of Enterprise, Trade & Employment's ("the Department") Vote (Vote 32). Table 3 below sets out details of the Office's 2021 allocation and expenditure respectively.

**Table 3 Financial allocation and expenditure - 2021**

	Allocation €000s	Expenditure €000s	%
Pay	3,740	2,462	66
Non-pay	2,317	2,541	110
Exceptional legal costs (contingency provision)	50	0	0
<b>Total</b>	<b>6,107</b>	<b>5,003</b>	<b>82</b>

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

- savings on pay resulting from vacancies that remained unfilled or arising during the year (principally retirements and leavers); and
- legal costs (included in non-pay above) associated with the High Court Inspection into the then Independent News & Media plc (now Mediahuis Ireland Group Limited) arising during the year, which are by their nature difficult to predict, exceeded anticipated levels.

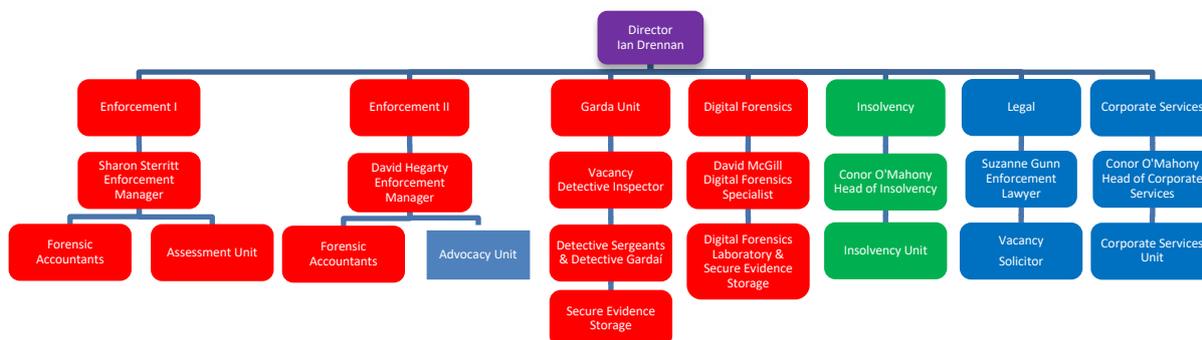
A more detailed analysis of expenditure incurred during the year is set out at Appendix 1 to this Report.

6 2 Enforcement Portfolio Managers and the Head of Insolvency & Corporate Services

7 Both Inspectors were in situ for a brief period to allow for handover before the outgoing post holder was redeployed following promotion.

## Organisational structure

Having regard to the Director's principal statutory functions and the associated workstreams, the Office is structured into a number of functions. The 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 functions and/or the active collaboration of functions with a view to achieving corporate objectives.

Accordingly, effective communication between functions, and that each function take an organisation-wide perspective when performing its role, 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	Function(s) principally involved	Chapter
Encouraging compliance with company law	Responsibility for encouraging compliance with the Act resides in the first instance with the Advocacy function. However, it liaises with other relevant functions 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 functions. Ordinarily, the development of submissions is co-ordinated through the Advocacy function.	2
Reviewing and adjudicating upon liquidators' reports	Liquidators' reports are reviewed, examined and adjudicated upon by the Insolvency function. Decisions as to whether to grant relief in respect of directors of companies on foot of liquidator recommendations are made by experienced insolvency case officers, with input as necessary from forensic accountants and legal advisors, where appropriate.	3
Examination of dissolved insolvent companies	The Insolvency function also implements a policy of examining insolvent companies that have been struck off the register while having significant liabilities and makes decisions as to whether the disqualification of the relevant directors should be pursued.	3
Implementation of the Undertakings Framework	This workstream forms an integral and vital element of the Insolvency function 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 insolvent companies.	3
Examination of complaints and statutory reports	The examination of complaints and statutory reports (such as, for example, auditors' indictable offence reports) is the responsibility of the Enforcement function. Dependent upon the nature of the issues arising, the Enforcement function may: <ul style="list-style-type: none"> <li>• address the issues itself, e.g., by way of voluntary rectification/remediation or through the use of certain of the Director's statutory powers;</li> <li>• designate the matter as being one warranting further investigation;</li> <li>• refer the matter to the Insolvency function, 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	For the most part, civil enforcement litigation is managed by the Enforcement function in conjunction with the Legal function.  Civil litigation, such as seeking the disqualification of directors of companies that have been struck off the Register of Companies <sup>8</sup> whilst having undischarged debts, is managed jointly by the Insolvency and Enforcement functions, again in conjunction with the Legal function.	3
Criminal investigation and prosecution	The investigation of possible criminal breaches of company law is undertaken by the Garda Unit in conjunction with the Enforcement and Digital Forensics functions.  Once a decision has been taken to initiate summary criminal proceedings, the prosecution becomes a collaborative exercise between the Enforcement and Legal functions, and the Garda Unit. Investigations in which a prosecution on indictment is envisaged, involve collaboration on the part of the Enforcement, Garda, and Legal functions.  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 the Garda Unit.	3
Supervision of liquidators' behaviour	Actions taken to supervise liquidators' behaviour (such as, for example, reviewing liquidators' books and records) is collaborative, involving both the Insolvency and the Enforcement functions.	3
Provision of support services	The provision of support services to other areas of the Office is the primary responsibility of the Corporate Services function.  All functions have a responsibility to assist the Corporate Services function 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.	4
Relationship management and development	Whilst certain functions, 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 functions have a role in ongoing relationship management and development.	2

8 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 (where Covid-19 restrictions did not preclude this), 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

During the year under review, 1,029 physical copies (2020: 1,534) of the various ODCE publications, principally Information Books and Quick Guides, were issued to interested parties. The figure for 2020 was higher by virtue of attendance in person at three events early in 2020 and prior to the commencement of COVID-19 restrictions in March 2020.

#### 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;
- 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 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 20 presentations (2020: 12) to a combined audience of over 1,000. Many of these presentations dealt specifically with topics such as the role and duties of company directors and the advocacy, insolvency and enforcement functions of the ODCE.

Notably, the ODCE, in conjunction with CEPOL (the European Union Agency for Law Enforcement Training), delivered a presentation remotely to 400 attendees on *Economic Crime – An Irish Perspective*.

Details of the presentations delivered during the year under review are set out at Appendix 2.

The ODCE 2021 programme of events continued to be significantly impacted by the restrictions introduced in

March 2020 as part of the public health response to Covid-19 and consequently the ODCE participated in remote events in the furtherance of its advocacy mandate.

## 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 public, the Office's key stakeholders include the Oireachtas, the Minister for Enterprise, Trade and Employment, the Department of Enterprise, Trade and Employment, other statutory/regulatory bodies and those providing professional services (e.g., accounting, audit, legal) 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 and Senators - the ODCE is 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 Enterprise, Trade & Employment

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 on matters of mutual interest, CRO staff regularly supply evidence in ODCE proceedings and, where identified, of *prima facie* breaches of company law.

### 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 (‘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.

### European Commission

The ODCE again participated in the European Commission's preparation of its Annual Rule of Law Report by attending a bi-lateral meeting discussing the role of the ODCE.

### Irish Auditing and Accounting Supervisory Authority (“IAASA”)

In accordance with the provisions of the Act, the Director is a member of IAASA and has the consequential right to nominate a member to its Board of Directors. Mr. David Hegarty is a member of IAASA's Board of Directors as well as a member of the Board's Audit & Risk Committee. In addition to this statutory relationship as outlined above, the Office engages regularly with IAASA on matters of mutual interest.

### **Company Law Review Group (“CLRG”)**

The CLRG<sup>9</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. For the year in review:

- **Corporate Insolvency**

Mr. Conor O’Mahony and Mr. Hegarty were both members of the CLRG’s Corporate Insolvency Committee, which has been tasked with reviewing legislation relating to the winding up of companies.

- **Corporate Governance**

Mr. O’Mahony was also a member of the Corporate Governance Committee, which has been tasked with reviewing legislation relating to corporate governance issues.

- **Compliance & Enforcement**

The Director is Chairman of the Compliance & Enforcement Committee, which has been charged with examining compliance and enforcement aspects of company law.

The CLRG was particularly active during the year under review and published three reports in 2021, on the following topics:

- Report on review of existing legislative provisions regarding the provision of information relating to creditors generally and in particular to employees;
- Report on company law issues arising under Directive (EU) 2017/828 of May 2017 (SRD II), Central Securities Depositories Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014; and
- Report on the consequences of certain corporate liquidations and restructuring practices, including splitting of corporate operations from asset holding entities in group structures.

The Group previously published a Report on a legal structure for the rescue of small companies which resulted in the enactment of the Companies (Rescue Process for Small and Micro Companies) Act 2021 and its commencement in December 2021.

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

The Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption (“the Hamilton Report”) was published in December 2020.

It contained a number of recommendations focusing primarily on legislative, structural, and resourcing measures to enhance the capacity of agency and multi-agency enforcement and the prevention of corruption and white-collar crime offences. One such measure was the establishment of a permanent forum of senior representatives from relevant regulatory and enforcement bodies to facilitate greater inter-agency co-ordination, collaboration, and information-sharing among operational agencies.

The Economic Crime and Corruption Forum (“the Forum”) was established in July of 2021 and has met frequently thereafter with an initial mandate of progressing some of the Hamilton Group’s recommendation for enhancing the capacities of the agencies, including:

- the development of joint training initiatives for investigators of economic crime and corruption;
- scoping and conducting analysis on the legislation necessary to facilitate the optimal exchange of information and intelligence between investigative agencies; and

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

- the development of the extension of certain powers currently conferred to An Garda Síochána and the Revenue Commissioners to other agencies with a remit to investigate economic crime and corruption.

The Forum is chaired in 2022 by Ms. Suzanne Gunn.

### **Central Bank of Ireland**

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.

### **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. In this context the Director delivered a presentation to ICAI during the year and the Heads of the Enforcement function also presented to the ICAI on “*The ODCE and its Enforcement role under the Companies Act 2014*”.

### **International Association of Insolvency Regulators (“IAIR”)**

The IAIR is an international body that brings together the collective experiences and expertise of national insolvency regulators from 26 jurisdictions around the world. The IAIR 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.

### **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, given its statutory duty of confidentiality. 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

In the following three Parts of this Chapter, 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**

	2021	%	2020	%
<b>Statutory reports</b>				
Liquidators' reports (initial) (s682)	399		426	
Liquidators' reports (subsequent) (s682)	269		243	
<b>Total liquidators' reports (s682)</b>	<b>668</b>	<b>64</b>	<b>669</b>	<b>72</b>
Liquidators' reports regarding possible criminality (s723)	1	0	0	0
Auditors' indictable offence reports (s393)	131	13	75	8
Examiners' reports (s534)	10	1	15	2
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	17	2	10	1
<b>Complaints</b>				
Complaints from members of the public	201	19	149	16
<b>Other</b>				
Disclosures under the Protected Disclosures Act 2014 <sup>10</sup>	2	0	1	0
Applications seeking change to accounting year end <sup>11</sup>	9	1	5	1
<b>Total inputs from external sources</b>	<b>1,039</b>	<b>100%</b>	<b>924</b>	<b>100%</b>

<sup>10</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>11</sup> Section 288(10)(c)

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>12</sup> liquidation are required by law<sup>13</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>14</sup> of each of the directors, unless relieved of that obligation by the Office<sup>15</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 affairs of the failed enterprise. In practice, the Office removes 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

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 "Undertaking").

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

13 Section 682 Companies Act 2014

14 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.

15 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)

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<sup>16</sup> 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, as a general policy position, 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, previous comparable cases, and any relevant case law), 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, a total of 636<sup>17</sup> undertakings for restrictions and disqualifications had been accepted up to 31 December 2021. While there is a significant additional administrative burden on the ODCE arising from this process, it has resulted in substantial cost and time savings for the liquidators and company directors concerned, as well as for the Courts system.

### **Companies entering liquidation**

As can be seen from the Table below:

- the total number of insolvent liquidations (i.e. creditors’ and Court liquidations combined) notified by year end, at 302, represented a reduction of 39% on 2020, and
- solvent liquidations, which accounted for 83% of all liquidations, increased by 4% on 2020 levels.

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16 Sections 855 and 859 of the Companies Act 2014

17 Comprises of 518 Restriction Undertakings, 30 Disqualification Undertakings and 88 Disqualification Undertakings entered into by directors of dissolved insolvent companies.

**Table 6 Companies entering liquidation: 2015 - 2021**

	2015	2016	2017	2018	2019	2020	2021
Creditors' liquidations	746	581	613	475	474	443	253
Court liquidations	70	61	63	59	62	49	49
Total insolvent liquidations	816	642	676	534	536	492	302
Members' liquidations	1,034	1,112	1,040	1,269	1,474	1,397	1,455
Total solvent liquidations <sup>18</sup>	1,034	1,112	1,040	1,269	1,474	1,397	1,455
<b>Total liquidations</b>	<b>1,850</b>	<b>1,754</b>	<b>1,716</b>	<b>1,803</b>	<b>2,010</b>	<b>1,889</b>	<b>1,757</b>

**Liquidators' s682 reports received – 2021**

As can be seen from Table 5, a total of 668 liquidators' section 682 reports was received during the year (2020: 669), of which:

- 399 were initial reports<sup>19</sup> (2020: 426); and
- 269 were subsequent reports<sup>20</sup> (2020: 243).

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

**Table 7 Sectoral analysis of liquidators' initial section 682 reports received – 2021**

Sector	2021		2020	
	Number	%	Number	%
Wholesale & Retail	140	35	168	39
Construction	40	10	56	13
Community, Social & Other	37	9	32	8
Manufacturing & Printing	28	7	22	5
Hotels, Bars & Catering	56	14	66	15
Marketing & Promotion	2	1	2	1
Real Estate & Renting	36	9	13	3
Technology & Telecommunications	8	2	20	5
Financial & Leasing	33	8	26	6
Transport & Distribution	8	2	11	3
Agriculture, Mining & Marine	3	1	4	1
Recruitment & Security Services	8	2	6	1
<b>Total</b>	<b>399</b>	<b>100</b>	<b>426</b>	<b>100</b>

18 Whilst the Office has no role in solvent (i.e. members') liquidations, data in respect of same has been included in the interest of completeness.

19 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.

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

### Timeliness of liquidators' reporting

At year end, 92% of first reports due during the year had been received, with only 33 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

Section 633 of the Act 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 practicing certificate;
- ii. solicitors holding a practicing certificate;
- iii. members of any other professional bodies recognised for this purpose by IAASA (none currently);
- iv. persons qualified to act as a liquidator in another EEA<sup>21</sup> state; and
- v. persons with practical experience of windings-up and knowledge of relevant law prior to the commencement of the Act<sup>22</sup>.

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. These Regulations are available on IAASA's website<sup>23</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. Similarly, under the Companies (Rescue Process for Small and Micro Companies) Act 2021, commenced in December 2021, a person may not act as a process adviser in respect of an eligible company unless the person is qualified under section 633 for appointment as a liquidator of the eligible company<sup>24</sup>.

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21 European Economic Area (EU States plus Liechtenstein, Iceland and Norway)

22 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.

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

24 Section 558ZP of the Act.

## 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 36% (2020: 28%) 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	2021	%	2020	%
Real estate & renting	65	18	41	16
Not a company	112	30	36	14
Finance & leasing	33	9	40	16
Wholesale & retail	7	2	7	3
Construction	8	2	10	4
Marketing & promotion	0	0	2	1
Technology & telecommunications	10	3	18	7
Manufacturing & printing	37	10	14	5
Community, social & personal	21	6	29	11
Insurance, health & social work	7	2	7	3
Hotels, bars & catering	6	1	16	6
Transport & distribution	14	4	7	3
Agriculture, mining & marine	2	1	8	3
Recruitment & security services	1	0	4	2
Management activities	27	7	0	0
Section 723 report	1	0	0	0
Other business sectors	20	5	16	6
<b>Total</b>	<b>371</b>	<b>100%</b>	<b>255</b>	<b>100%</b>

## Complaints

The Office receives substantial numbers of complaints annually from members of the public. During the year under review a total of 201 complaints were received (2020: 149), which accounted for 19% (2020: 16%) 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)**

	2021	%	2020	%
Annual/Extraordinary General Meeting related	30	15	22	15
Directors' conduct (responsibilities & filing)	25	12	20	13
Allegations of reckless/fraudulent/insolvent trading	21	10	24	16
Allegations of forgery/furnishing of false information/falsified documents	15	7	15	10
Relating to the issue of unpaid debts	7	3	9	6
Access to accounting records/minutes of meetings	9	4	2	1
Register of members related	11	5	11	8
Audit/auditor related	13	7	9	6
Receivership related	3	2	2	1
Issues relating to addresses	17	9	13	9
General shareholder rights issues	12	6	3	2
Acting as a director while a bankrupt/restricted/disqualified	0	0	0	0
Companies trading whilst struck off the Register/dissolved	3	2	3	2
Relating to improper use of the word "Limited"	0	0	1	1
Liquidation/phoenix activity	13	7	12	8
Other	22	11	3	2
<b>Total</b>	<b>201</b>	<b>100</b>	<b>149</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 may have 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 131 (2020: 75) 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 strictly 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**

	2021	%	2020	%
Directors' loans infringements	15	12	17	23
Failure to maintain proper accounting records	12	9	4	5
Provision of false statements to auditors	1	1	1	1
Unavailability of audit exemption	0	0	3	4
Signing of financial statements	1	1	0	0
Obligation to prepare group financial statements	4	3	2	3
Entity financial statements	91	69	45	60
Falsification of books or documents	7	5	3	4
<b>Total</b>	<b>131</b>	<b>100%</b>	<b>75</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, 10 such reports were received (2020:15).

## 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 17 (2020: 10) such referrals from a variety of sources.

## Professional bodies' indictable offence reports

### Recognised Accountancy Bodies ("RABs")<sup>25</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>26</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 within 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
- ICAI - Institute of Chartered Accountants in Ireland
- ICPAI - Institute of Certified Public Accountants in Ireland
- Law Society of Ireland

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25 A RAB is an accountancy body that is permitted to authorise its members and member firms, subject to those members having satisfied certain criteria, to act as statutory auditors and audit firms respectively. There are three RABs, i.e., the:

- Association of Chartered Certified Accountants (ACCA)
- Institute of Certified Public Accountants in Ireland (ICPAI)
- Institute of Chartered Accountants in Ireland (ICAI)

26 Section 931(4) of the Act

S.I. No. 570 of the 2018 Companies Act 2014 (Prescribed Professional Bodies) Regulations 2018 prescribes professional bodies pursuant to sections 448 and 558 of the Companies Act 2014. 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 (2020:0).

### Liquidators' reports regarding possible criminality

In addition to their reporting obligations under section 682 as detailed above, in accordance with section 723(5) of the Act, liquidators are required, in circumstances where it appears that any past or present officer of the company concerned has been guilty of any offence in relation to the company, to make a report to the DPP and also to refer the matter to the ODCE. This reporting obligation extends to all liquidations, solvent and insolvent (i.e., both Members' and Creditors' Voluntary liquidations and Court liquidations) alike. One such report was received by the Office during the year (2020:0).

### Disclosures under the Protected Disclosures Act 2014<sup>27</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

Most case files opened within the Office are opened in response to what are termed "*external inputs*", e.g., auditors' reports, liquidators' reports, complaints from members of the public, etc. 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; 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.

## 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 (i.e., between Units);
- issues identified on foot of a review of material filed with the CRO or other relevant documentation;
- issues identified through monitoring of litigation; and
- 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>28</sup>. However, company law also provides<sup>29</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>30</sup> the director(s) where it adjudges that disqualification is not warranted under the particular circumstances<sup>31</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.

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28 Section 842(h) of the Companies Act 2014

29 Section 843(3) of the Companies Act 2014

30 Section 819 of the Companies Act 2014

31 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 2021, the Office identified and examined 22 companies involving directors of companies which were struck-off the Register whilst having significant outstanding liabilities. As a result of the examination of these companies, together with the examination of a further 30 related companies, 23 directors were disqualified. All of these disqualifications arose on foot of Disqualification Undertakings given pursuant to section 851 of the Act. See Appendix 5 for details of directors disqualified during 2021. Additionally, three companies were restored to the Register with a view to discharging any relevant outstanding debts.

### 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>32</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>33</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 - 2021

During the course of 2021, a total of 55<sup>34</sup> (2020:23) internal inputs were generated.

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32 Section 949(1)(e) of the Companies Act 2014

33 Section 446 of the Act includes a similar provision relating to receivers

34 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:

- exercising civil powers, such as, for example, issuing demands to:
  - » companies and their directors to produce the minutes of meetings and statutory registers;
  - » companies and their directors to produce the company's books and documents;
  - » liquidators to produce 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 to produce 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, consequently, 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 - 2021**

Section 682 reports on hand at 1 January, 2021		158
All reports received during 2021	668	
Less: Reports the subject of determinations during 2021	641	
<b>Section 682 reports on hand at 31 December, 2021</b>		<b>185</b>

**Table 12 Throughput of other cases - 2021**

Other cases on hand at 1 January, 2021		250
New cases opened during 2021	425	
Less: Cases concluded during 2021	446	
<b>Other cases on hand at 31 December, 2021</b>		<b>229</b>

## PART C: OUTPUTS

### INSOLVENCY-RELATED ENFORCEMENT MEASURES & OUTPUTS ARISING FROM SECTION 682 LIQUIDATOR REPORTS AND EXAMINATION OF DISSOLVED INSOLVENT COMPANIES

#### 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 413 liquidators' reports during 2021 (2020: 531), with a further 228 decisions made to grant "*Relief at this time*" (2020: 279).

Of the 413 definitive decisions taken during 2021, a total of 302 were made in respect of initial reports (2020: 421), with a further 111 being made in respect of subsequent reports (2020: 110).

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	2021	%	2020	%
Full relief <sup>35</sup>	366	57	466	58
No relief <sup>36</sup>	32	5	46	6
Partial relief <sup>37</sup>	15	2	19	2
Relief at this time <sup>38</sup>	228	36	279	34
<b>Total</b>	<b>641</b>	<b>100</b>	<b>810</b>	<b>100</b>

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

Decision type	2021	%	2020	%
Full relief <sup>35</sup>	295	80	384	74
No relief <sup>36</sup>	5	1	28	5
Partial relief <sup>37</sup>	2	1	9	2
Relief at this time <sup>38</sup>	67	18	97	19
<b>Total</b>	<b>369</b>	<b>100</b>	<b>518</b>	<b>100</b>

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

Decision type	2021	%	2020	%
Full relief <sup>35</sup>	71	26	82	28
No relief <sup>36</sup>	27	10	18	6
Partial relief <sup>37</sup>	13	5	10	3
Relief at this time <sup>38</sup>	161	59	182	63
<b>Total</b>	<b>272</b>	<b>100</b>	<b>292</b>	<b>100</b>

## Total number of company directors restricted and disqualified during 2021

A total of 51 (2020: 73) directors were restricted and 16 (2020: 14) directors were disqualified (on foot of Undertakings or Court Orders). In addition, 23 directors of dissolved insolvent companies were disqualified by means of Disqualification Undertakings (2020: 18). Further details of the Orders made by the High Court on foot of liquidators' applications and on foot of Undertakings are provided in Appendices 4 and 5.

The reduction in the numbers of directors being restricted in connection with insolvent companies is due to a combination of factors including the overall reduction in the number of companies going into insolvent liquidation in recent years and the associated fall off in liquidators' reports received as a consequence, and the impact of public health restrictions on both liquidators' and the High Court's activities.

- 35 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.
- 36 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.
- 37 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.
- 38 'Relief at this time' is granted in cases where the Office is satisfied that the liquidator needs more time in which to progress/complete his/her investigations into the circumstances giving rise to the company's demise. Similarly, on occasion, the Office considers it necessary to postpone making a definitive decision due to the complexity of certain companies' affairs and the associated necessity for supplemental engagement with the liquidators concerned. Where 'Relief at this time' is granted, the liquidator will be required to submit a subsequent report.

### Restriction and Disqualification Undertakings

The ODCE operates a statutory regime 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.

In 2021, following consideration of liquidators' reports on companies in insolvent liquidation, 59 directors were offered Restriction Undertakings and 5 directors were offered Disqualification Undertakings. Of the offers of a Restriction Undertaking made to the 59 directors during 2021, 40 were accepted and of the offers of Disqualification Undertaking made to the 5 directors during 2021, 4 were accepted.

The Table below sets out the number of Undertaking offers issued in relation to insolvent liquidations during 2021, together with details of the number of offers accepted and not accepted by the year end.

**Table 16 Undertaking offers issued to directors in 2021 and accepted/not accepted in 2021**

	2021	2020
	Directors	Directors
<b>Restrictions:</b>		
Number of offers issued	59	70
Number of offers accepted	40	53
Number of offers not accepted	19	17
<b>Disqualifications:</b>		
Number of offers issued	5	7
Number of offers accepted	4	3
Number of offers not accepted	1	4

### Liquidators' Court Applications

As indicated earlier in this Chapter, where liquidators are not granted relief by the Office and where invitations to submit to Undertakings are not offered or not accepted, the liquidators concerned are required to apply to the High Court seeking the restriction or disqualification of relevant company directors. At 31 December 2021, a total of 20 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 in the High Court. A further cohort of directors who, prior to 2021, were either not offered undertakings or who did not accept Undertakings continue to face restriction or disqualification proceedings.

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

**Table 17 Results of liquidators' Court applications - 2021**

	2021		2020	
	Cases	Directors	Cases	Directors
Restriction Declarations granted	8	11	12	20
Disqualification Orders granted	9	12	8	11
Declarations or Orders not granted	3	6	1	3

## Dissolved Insolvent Companies Disqualification Undertakings

The Table below sets out the number of Disqualification Undertaking offers issued under Section 842(h) of the Companies Act, 2014 during 2021 along with the 2020 comparable figures, together with details of the number of offers accepted and not accepted by the year end.

In 2021, two directors of two separate companies requested an extension of the specified notice period to give them additional time to present their cases as to why this Office should not seek their disqualification.

**Table 18 Section 842(h) Undertaking offers issued to directors in 2021 and accepted/not accepted in 2021**

	2021	2020
	Directors	Directors
<b>Disqualifications:</b>		
Number of offers issued	28	20
Number of offers accepted	23	18
Number of offers not accepted	3	2
Number of offers time extended	2	0

## 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 and in cases where Disqualification Undertakings were offered by the ODCE and subsequently accepted by the directors concerned.

These include the case of Gaboto Limited, in which the High Court handed down a 15-year disqualification sanction. In the case of Pembroke Dynamic Internet Services Limited the High Court handed down a 16-year sanction, the longest period of disqualification ever imposed under the Companies Acts. The full list is set out at Appendix 5.

### Pembroke Dynamic Internet Services Limited – Court Disqualification

An application by the liquidator seeking disqualification of the director, as well as orders seeking the imposition of personal liability, were settled between the parties. The parties indicated to the Court that they could not agree on the duration of the disqualification period to be imposed. The trial judge noted that the company provided a technology platform aimed at the charitable sector. The liquidator contended that over €4m was owed to charities around the world with a shortfall of available funds of c. €3.6m and that donations received by the company had not been passed on to the charities. He also found the pooling of funds and that company overheads were paid from charitable receipts. The terms of the settlement included a declaration that the director was liable for €2m of the debts of the company and consenting to judgment in favour of the liquidator for the same sum. The trial judge stated that there were few more egregious and reprehensible frauds than diversion of charitable donations from their intended purpose and that the conduct of the director was particularly grave, at the most serious end of the scale, and accordingly the director was disqualified for a period of 16 years and subject to the other orders he had agreed to being made against him.

### Gaboto Limited – Court Disqualification

A company traded in both wholesale and retail fuel from a property close to the border with Northern Ireland. The company also traded from a forecourt in Dublin. As part of a wider investigation into fuel laundering along the border, the Revenue Commissioners discovered evidence of fuel laundering at the Dublin premises. The company entered liquidation and the liquidator's investigations discovered serious issues regarding the participation of the company in fuel laundering fraud which caused significant loss to the Exchequer. The directors did not co-operate with the liquidator during his investigations, there had been a failure to keep adequate accounting records and in excess of €9m was owed to the Revenue Commissioners. The Court disqualified both directors for 15 years.

### Company 1 - Disqualification Undertaking

An examination of the activities of a director of an insolvent company found that there was evidence of preferential treatment in the form of salary payments to the director while simultaneously withholding taxes due to the Revenue Commissioners. The director's remuneration rose from €155,990 in 2017 to €198,219 in 2018. This figure was over €15,000 in excess of the total turnover of the company in 2018. The director was also being paid expenses and travel and subsistence during this period. The liquidator stated that there was a substantial and irresponsible disregard for the director's obligations to the Revenue Commissioners. The director de-prioritised the Revenue Commissioners as a creditor. All other company creditors, including the director's salary and expenses were paid ahead of the Revenue Commissioners. The Company's tax liability rose from €40,196 in 2017 to €81,811 in 2018. This coincided with a salary rise of €42,229 which the liquidator deemed to be a fraudulent preference. The director consented to a Disqualification Undertaking for a period of five years.

## Company 2 - Disqualification Undertaking

The Company was incorporated in 2002 and had two directors at the date of liquidation. The Company was involved in the supply of labour in the construction industry; previously it supplied labour and general contracting services. The company was loss-making for several years. The liquidator identified serious failings and issues during his investigation such as serious non-compliance with tax obligations, unfair preferences, and failure to co-operate with liquidator. The Company traded recklessly and formed a phoenix company. Disqualification undertakings were offered to both directors and both were accepted.

## Examples of Dissolved Insolvent Companies s842(H)

### Example 1

The actions of three 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. An examination of the last annual return filed in respect of the company identified that the Balance Sheet recorded a creditor balance totalling €431,720 falling due within one year. There were two unsatisfied Judgments registered against the company and one unsatisfied charge. The directors did not contest these findings and did not take remedial measures to correct them. All three directors consented to Disqualification Undertakings for a period of four years.

### Example 2

An examination of the activities of two directors of a dissolved insolvent company identified that there had been a failure to file annual returns in respect of the company. All other companies that the directors of this company were associated with were also examined and, of these, three other companies had also been involuntarily struck off the Register of Companies for failing to file annual returns. The last Annual Return filed in respect of the company recorded creditors of €570,339. The company also appeared on a Revenue Tax Defaulters List in 2016 pursuant to Section 1086 of the Taxes Consolidation Act 1997 with a tax settlement of €390,000. Both directors consented to Disqualification Undertakings for a period of four 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 in cases where Undertakings were offered by the ODCE and accepted by the individuals concerned. In all cases, the restriction applies for the standard period of five years.

The Orders/Undertakings arose following consideration by the ODCE of liquidators' section 682 reports and, where necessary, after the ODCE sought and obtained additional information and/or clarification. The full list is set out at Appendix 4.

### Haz.com Fuels Limited – Court Restriction

The company was incorporated in 2003 and had two directors. The company operated in the fuel industry. The liquidator was appointed on foot of a petition to the Court by a creditor of the company. The liquidator identified serious failings and issues that arose from the liquidation investigation, including failure to co-operate and to make available the company's books and records; failure to deliver up the company's assets; failure to comply with a court order requiring the submission of a statement of affairs; failure to maintain adequate financial records as evidenced by the lack of preparation and non-submission of accounts; failure to act in the best interests of the company; the use of company funds for personal purposes and potential breaches of section 602 of the Companies Act 2014. The liquidator also reported on the apparent facilitation of breach of planning laws by allowing the company to be involved in the unauthorised construction of a building and potentially allowing the company to be in breach of relevant environmental legislation. Undertakings were offered to both directors, however they did not accept the offer and the liquidator was instructed to make an application to the Courts for their restriction. One director was restricted for 5 years as a result of this application and no order was made against the other director.

### Jemvale Limited – Court Restriction

A company that provided automobile repairs was wound up by the High Court on foot of a petition by the Revenue Commissioners. The directors had not filed tax returns since 2016 and were deliberately withholding tax plus interest amounting to circa. €97,808, citing an alleged assault by the Sheriff as the reason. The company had also traded while insolvent for a period of 18 months. The directors were offered the opportunity to submit their consent to a Restriction Undertaking. Neither did so and the liquidator, at the ODCE's instruction, initiated restriction proceedings. Both directors were restricted by the High Court for five years.

### Company 1 – Restriction Undertaking

A single director company sold bedding and furniture online. The Revenue Commissioners issued a demand letter for unpaid taxes and, following the failure to pay these debts, the Revenue Commissioners engaged the Sheriff to recover monies owed. The liquidator advised the ODCE that he was unable to substantiate the director's Statement of Affairs due to a lack of books and records provided to him. The director failed to co-operate with the liquidator. The director of the company failed to file annual returns for the year ending 31st December 2018, there was a consistent failure to discharge the company's taxes as they fell due, proper books and records were not maintained and the director was never in a position to determine the financial position of the company. An asset of the company was sold and the

transaction was not recorded in the company's books. The director allowed the company to continue to trade even though the company was insolvent. The director accepted a Restriction Undertaking for a period of five years.

### Company 2 – Restriction Undertaking

A company trading for approximately 20 years in the sale of household furniture, lighting, and household articles. The company incurred losses over the last two-year period of approx. €981,000. Monies owed to Social Protection and trade creditors increased significantly in the last 2 years of trading. The company continued to trade when the directors knew or ought to have known that it was insolvent. The company held a fire sale to sell off some of its stock and continue in business. Deposits were paid by customers for furniture amounting to approx. €11,554 and the liquidator found no furniture at the company's premises. The directors allowed the company to continue to trade without a reasonable prospect of paying its creditors. The company purchased stock from another company and following delivery of this order, the supplier was issued with seven post-dated cheques. The first cheque cleared but subsequent cheques were returned unpaid. The company had no funds available to honour these cheques and was always in an overdrawn situation. The director accepted a Restriction Undertaking for a period of 5 years.

### Company 3 – Restriction Undertaking

A company providing discounted telecommunications services to landline customers was investigated and prosecuted by the Commission for Communications Regulation ('ComReg'). In December 2017, the company was convicted of 89 breaches of section 45 of the Communication Regulations Act 2002 for which it was fined €66,000 and of 3 counts of failure to comply with ComReg's request for information, for which it received a fine of €5,500. The company remained in default and ComReg applied for an Order of Sequestration against the assets of the company, out of which refunds would be given to customers. The company agreed to leave the Irish market completely and it went into liquidation on the 30th of March 2020. The liquidator estimated that the total overcharging of customers amounted to the order of €197,000. Both directors accepted Restriction Undertakings for a period of 5 years.

### Company 4 – Restriction Undertaking

The Company operated as an English language college. The company failed to adhere to regulations laid down by the Department of Justice in respect of the arrangements applying to English language programmes, whereby it was obliged to operate a separate client visa account for advance payments which were to remain in this account until the student's visa application was determined and, if the visa application was refused, the funds were to be returned to the student within 20 working days. The liquidator confirmed that while the company operated a designated bank account for student deposits, the funds received from the international students had not been retained in the designated account. Instead, the funds had been used for other purposes including the payment of teachers' salaries. The liquidator reported that staff and students effectively became aware of the insolvency of the company through the non-payment of wages and the college closing without notice. The director accepted a Restriction Undertaking for a period of 5 years.

### Company 5 – Restriction Undertaking

The company traded as a haulage and civil engineering service provider. The company had its haulage permit withdrawn and entered into liquidation. The deficit at the time of liquidation was €988,910. The Liquidator reported that the director continued trading beyond a point where it was evident the company was insolvent. Despite debts accruing to existing fuel suppliers, the director proceeded to purchase fuel from another supplier. The company subsequently incurred debts with five different fuel suppliers over a 33-month period with an average balance outstanding during the period of €104,000. The liquidator also reported that the director continued trading in the same line of business in a “phoenix” company set up prior to liquidation. The director accepted a Restriction Undertaking for a period of 5 years.

### Company 6 – Restriction Undertaking

The company traded in the provision of Chinese medicine and acupuncture in centres throughout the country. The liquidator reported that there had been a failure on the part of the directors to discharge tax liabilities. The company failed to correctly account for VAT on the services it provided resulting in a VAT liability of €100,044 in respect of the years 2016, 2017, 2018 and 2019. Despite being advised to register for VAT in mid-2018, the company continued to accumulate VAT liabilities until it ceased to trade in December 2019. The liquidator also reported that there had been an unfair preference made in breach of Section 604 of the Companies Act 2014. Despite recognising that the company was insolvent, payments were made to a related person, without consideration of the position of the other creditor, which amounted to an unfair preference. The directors were also found to be in breach of section 291 (2) of the Companies Act 2014 – failure to prepare financial statements that provide a true and fair view - by knowingly filing inaccurate financial statements showing a nil creditors' value and omitting the confirmed €89,000 due in VAT to the Revenue Commissioners. The director accepted a Restriction Undertaking for a period of 5 years.

## Other (Non-Insolvency Related) Enforcement Measures & Outputs - 2021

### 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 prosecution 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 regulatory or enforcement Agencies (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 18 cases (2020: 13) 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 €9.7m (2020: €5.7m). 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<sup>39</sup> offence on the part of the company and any officer in default<sup>40</sup>. In 2021, 91 (2020: 40) instances of companies' failure to comply with accounting standards were reported to the Office by way of auditors' indictable offence reports. The underlying nature of the issues involved (for example, differing interpretations of an accounting standard) are such that, following examination by the ODCE, many such matters are capable of being resolved with limited recourse to the ODCE's suite of enforcement powers.

#### 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, and Iris Oifigiúil to identify undischarged bankrupts. Arising from the review, 53 persons (2020:6) appeared to be in contravention of such orders and undertakings. Following ODCE intervention in appropriate cases, the individuals' positions were regularised.

<sup>39</sup> Section 871 of the Act describes the penalties attaching to offences under the Act, a category 2 offence carries a penalty on summary conviction of a Class A fine and imprisonment for a term not exceeding 12 months or to both or, on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

<sup>40</sup> By failing to comply with section 291 subsections (2) to (7) of the Act.

### Warnings as to future conduct issued

In addition to the foregoing, where companies have come to the attention of the ODCE and matters regarding their conduct have been resolved, warnings regarding their future conduct, in the event of a recurrence of similar conduct, issued to a total of 26 companies (2020:19) on a variety of matters pertaining to future compliance with the obligations on companies under the Act.

### 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. Statutory powers exercised, and other investigative measures, included:

- serving 3 statutory requirements on companies to produce minutes of directors' meetings under section 166 of the Act (2020:0);
- serving 1 statutory requirement to produce minutes of general meetings under section 199 of the Act (2020:0);
- 39 court orders or requirements were obtained, pursuant to both section 52 Criminal Justice (Theft & Fraud Offences) Act 2001 and section 63 Criminal Justice (Money Laundering and Terrorist Financing) Act 2010;
- the execution of 8 (2020: 7)<sup>41</sup> search warrants;
- the arrest of 8 persons (2020: 9)
- meeting 6 (2020: 14) persons by arrangement having volunteered to provide statements under caution;
- meeting 56 persons for the purposes of witness statements;
- issuance of 6 applications for Mutual Legal Assistance<sup>42</sup>;
- serving 2 statutory requests on a liquidator to examine books and records under section 653 of the Act (2020:0); and
- serving 6 statutory requests on auditors for information under section 393 of the Act (2020: 3).

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

During the year, 9 requests (2020: 5) were received from companies seeking a direction disapplying the limitation provided for by section 288(9) of the Act, under which, ordinarily, a company may not alter its current or previous financial year end date more than once in a five-year period.

### Principal civil litigation

During the year under review, the Office was also involved, *inter alia*, in the following civil proceedings, outlined in Table 19 below.

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41 Five pursuant to section 787 of the Act, 1 pursuant to section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 (as substituted by section 6 of the Criminal Justice Act 2006) and 1 pursuant to section 48 of the Criminal Justice (Theft & Fraud Offences) Act 2001.

42 Mutual assistance consists of a variety of mechanisms whereby assistance in relation to criminal investigations or proceedings may be sought by one state from another. In Ireland, the main legislative basis for the provision and receipt of such assistance is the [Criminal Justice \(Mutual Assistance\) Act 2008](#), as amended. The Minister for Justice acts as the Irish Central Authority for Mutual Assistance.

**Table 19 Details of principal civil proceedings – 2021**

<p>Cumann Peile na h-Éireann “Football Association of Ireland”</p> <p>The High Court – 2019 391 COS The High Court – 2020 66 COS</p>	<p>Following the issuance of statutory demands pursuant to section 778 of the Companies Act 2014, and the execution of search warrants pursuant to section 787 of the Act, the ODCE instituted proceedings, pursuant to sections 788 and 795 of the Act, for the purpose of obtaining the Court’s determination on certain documents over which an assertion of legal professional privilege and/or privacy had been asserted.</p> <p>In November 2020, the High Court appointed an independent person pursuant to section 795(6) of the Companies Act 2014 for, <i>inter alia</i>, the preparation of a report to assist the Court in making its determination as to whether material the subject of the proceedings is privileged.</p> <p>In March 2021, the High Court appointed a further independent person for similar purposes as referenced above. Those persons reported to the Court in May 2021 and further reductions of the volume of material to be considered by the Court were made thereafter.</p> <p>As of 31 December 2021, this litigation remained extant.</p> <p>The hearing of the application by the Court is listed for May 2022.</p>
<p>Re Independent News and Media Plc [2018] 124 COS (Unreported, High Court, Kelly P., 4 September 2018)</p> <p>Buckley v. Fleck (and Others) [2021] IEHC 101 (Unreported, High Court, Simons J., 15 February 2021)</p>	<p>By way of High Court proceedings commenced in April 2020, Mr. Leslie Buckley, former Chairman of Independent News &amp; Media plc (“INM”), sought Orders pursuant to section 749 of the Companies Act 2014 for the recusal of the High Court-appointed Inspectors, on stated grounds, from the investigation ordered by the High Court pursuant to section 748 of the 2014 Act.</p> <p>This matter was heard by the High Court over a period of 8 days in October 2020. Judgment was delivered on 15 February 2021 and Mr. Buckley’s application for the recusal of the Court appointed Inspectors was refused by Mr. Justice Simons.</p>
<p>The Director of Corporate Enforcement -and - the Data Protection Commission</p> <p>Circuit Court 2021/00340</p>	<p>The Director appealed against a decision of Data Protection Commission where the Commission had upheld a complaint regarding the withholding of personal data sought by an applicant and contained in liquidator’s reports, complaints, internal correspondence, and pleadings.</p> <p>The case was ultimately heard in February 2022 with judgment delivered on 01 April 2022 substantially allowing the Director’s appeal.</p>

## Criminal proceedings

Following from its strategic objective of confronting indications of wrongdoing at the more serious end of the spectrum, the Office's criminal investigative resources tend to be concentrated on larger, more complex investigations that, typically, result in files being submitted to the DPP for consideration as to whether charges should be directed on indictment. However, the Director does also, depending upon the underlying facts and circumstances, direct the summary prosecution of alleged offences as and when considered appropriate. Set out hereunder is a summary of criminal enforcement activity over the year under review.

During 2021:

- i.** 3 persons convicted or facts found proved of 12 offences<sup>43</sup>;
- ii.** 100% of convictions secured on guilty pleas;
- iii.** 8 arrests were made, 6 voluntary cautioned interviews were conducted, and 56 witness statements were taken in furtherance of criminal investigations;
- iv.** 39 Court Orders or Requirements and six Mutual Legal Assistance Treaty requests were obtained/ issued in furtherance of criminal investigations;
- v.** files were submitted to the DPP in respect of 3 separate investigations;
- vi.** the Director of Corporate Enforcement issued directions to charge, or otherwise, in respect of 4 separate investigations;
- vii.** directions were received from the DPP to charge, or otherwise, in respect of 3 separate investigations;
- viii.** in aggregate, arising from (vi) and (vii) above, a total of 62 criminal charges were preferred against 6 separate individuals, i.e., in respect of alleged offences in the nature of:
  - providing false information contrary to section 876 of the Companies Act 2014
  - providing false information contrary to section 242 of the Companies Act 1990
  - money laundering contrary to sections 7(1)(a)(ii), 7(1)(b) & 7(3) of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010; and
  - theft contrary to section 4 of the Criminal Justice (Theft & Fraud Offences Act) 2001.
- ix.** two individuals prosecuted in the District Court for alleged breaches of company law;
- x.** four individuals prosecuted in the Circuit Court (i.e., on indictment) for alleged breaches of company and criminal justice legislation.

As at 31 December:

- xi.** 4 matters remained before the District and Circuit Courts; and
- xii.** 1 file was with the DPP awaiting decisions as to whether to direct charges or otherwise.

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<sup>43</sup> Including instances where section 1(1) of the Probation of Offenders Act 1907 was applied. In these instances, the facts are found to have been proved by the court of trial but it does not proceed to conviction taking into account certain circumstances outlined in the section.

## Criminal Proceedings - Case Studies

### **Mr Pearse O'Connor**

Arising from an ODCE investigation into the affairs of Pearse Roofing and Cladding Limited, and following receipt of directions from the DPP, in August 2018 Mr. Pearse O'Connor was charged with alleged offences contrary to ss. 7(1)(a)(ii), 7(1)(b) and 7(3) Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 (Money Laundering), s. 297 of the Companies Act 1963 (Fraudulent Trading), and s. 26 of the Criminal Justice (Theft & Fraud Offences) Act 2001 (Using a False Instrument). The charges related to the alleged dishonest solicitation of payments from Keys Commercial Finance Limited.

In April 2021, Mr. O'Connor entered pleas of guilty to one count of Fraudulent Trading and five counts of the Use of a False Instrument. After a sentencing hearing before Dundalk Circuit Criminal Court in January 2022, Mr O'Connor was sentenced to five years imprisonment in respect of one count of Fraudulent Trading, five years imprisonment in respect of one count of the Use of a False Instrument, and four years imprisonment in relation to four separate counts of Use of a False Instrument. All sentences were to run concurrently and were suspended in full for a period of five years from the date of sentence on stated conditions. Mr O'Connor was also disqualified from acting as a director or officer of a company for life. In February 2022, the Director of Public Prosecutions applied to the Court of Appeal for a review of sentence on the grounds of undue leniency. A date for the hearing of the appeal of sentence is awaited.

### **Ms Patricia Kelly**

Arising from an ODCE investigation into the affairs of Console Suicide Bereavement Counselling Limited (in Liquidation), and following receipt of directions from the DPP, Ms. Patricia Kelly, was charged with alleged offences contrary to s. 297 of the Companies Act 1963 (Fraudulent Trading), s. 722 of the Companies Act 2014 (Fraudulent Trading) and ss. 7(1)(a)(ii) and 7(3) of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 (Money Laundering).

The trial has been scheduled for 2023.

### **Mr Kooi Hin (Keith) Yeap**

Arising from an ODCE investigation, and following receipt of directions from the DPP, Mr Kooi Hin (Keith) Yeap, was charged with Providing False Information contrary to s. 876 of the Companies Act 2014. All charges arose following a multi-jurisdictional investigation into the fraudulent use of auditor registration number details relating to six companies.

Mr Yeap pleaded guilty to four charges of Providing False Information before Dublin Circuit Criminal Court in July 2021. In March 2022 Judge Grealley convicted Mr Yeap and sentenced him to 120 hours community service in lieu of a 9-month custodial sentence.

### **Mr Zaheer Hassan**

Following directions to charge issued by the Director of Corporate Enforcement, Mr. Zaheer Hassan, was charged with seven counts of Furnishing False Information contrary to s. 242 of the Companies Act 1990. The charges related to the unauthorised use of an auditor registration number relating to three companies. Mr Hassan pleaded guilty to all seven charges in March 2021 before Dublin District Court and the provisions of the Probation of Offenders Act 1907 was applied.

**Mr Sanu Philip Mathew**

Arising from an ODCE investigation into the affairs of a South Dublin based Pentecostal Church, Mr. Sanu Philip Mathew, was charged with one count of Providing False Information contrary to s. 876 of the Companies Act 2014. The charge related to the submission of false information in annual financial returns to the Companies Registration Office. Mr Mathew pleaded guilty before Dublin District Court in October 2021 and the provisions of the Probation of Offenders Act 1907 was applied.

# 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 2021, 1 formal complaint was 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 a Customer Complaint Form, available on the Office's website.

### Nature of principal engagements with external stakeholders

The Office's principal engagement<sup>44</sup> with external stakeholders includes:

- i. the provision of information on the Act 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>45</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,

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

45 [www.odce.ie/faq.aspx](http://www.odce.ie/faq.aspx)

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.

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

During the year under review the ODCE website was re-built on an updated platform to provide enhanced security. While the upgrade was being carried out the pages available to the public were much reduced, with only Covid-19 updates visible. The reduction is reflected in the reduced statistics for pageviews during the year. Following the redevelopment of the website, the Office implemented a Cookie Banner in compliance with the requirements of GDPR and e-Privacy.

Table 20 below details those sections of the website that attracted the most traffic during the year under review.

**Table 20 Top 5 most visited sections of the website in 2021 - www.odce.ie**

Section	Views
1. Court Decisions	6,033
2. Media	3,517
3. Publications	3,205
4. Company Law & You	3,112
5. FAQs	2,080

By way of further elaboration, Table 21 below details the twenty 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 2,000 views during the year.

**Table 21 Top 20 most viewed pages in 2021 - www.odce.ie**

Page	Views
1. Prosecution Cases	3,051
2. Press Releases	1,832
3. Court Disqualifications	1,689
4. Company Law and You/Shareholders	947
5. Company Law and You/Company Directors & Secretaries	826
6. FAQ Management Companies	689
7. Company Law and You/Other Guidance	611
8. Winding Up & Insolvencies	590
9. Presentations	509
10. Publications Relating to Liquidations	506
11. Company Law Legislation	819
12. Annual Reports and Reviews	429
13. Liquidators, Receivers & Examiners	387
14. Other Corporate Publications	358
15. Media/Articles	353
16. Functions/Customer Services	344
17. Finance & Procurement	343
18. Company Law and You/Accountants and Auditors	323
19. Our Role	294
20. Consultation Papers	285

The website was accessed from mobile devices 4,274 times during the year. At year end, 528 persons had registered to receive website notifications by email. The Office also provides an Irish language version of its website and, in 2021, 1% of all website traffic was to the Irish version (www.osfc.ie) with 1,014 views.

### Social media

The Office continues to utilise various social media platforms to communicate with its stakeholders. Specifically, the Office operates on two platforms, i.e., Twitter and LinkedIn. These media are used to highlight and promote the Office's outreach activities.

### 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 **200.3** days' training during 2021 (2020: 138), including:

- training provided from in-house resources – 162.3 days, relating to 36 staff; and
- training provided by the Department – 38 days, relating to 19 staff.

During 2021, the Office assisted staff members to undertake the following programmes of education, training, and development:

- i. MA (Law);
- ii. Professional Diploma in Leadership and Management;
- iii. Professional Certificate in Anti-corruption;
- iv. Professional Certificate in Governance;
- v. Whistleblowing and Protected Disclosures - Preparing for the EU Whistleblowing Directive;
- vi. accountancy staff members' CPD<sup>46</sup> requirements;
- vii. solicitor staff members' CPD requirements;
- viii. 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 26 PQs (2020: 31).

### 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 were 16 invoices paid outside of the time allowed and as a result Prompt Payment Interest of €210.67 was incurred, together with €790.01 in penalties (2020: seven invoices, €2.37 and €370 respectively). The delays in payment were, in the main, due to the issues associated with remote working.

### 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 Act. During 2021, 7 requests were made under the Freedom of Information Act (2020: 5).

Of the requests received, two were either partially granted or granted in full while the remainder were for records that did not exist, were not held by the ODCE (and therefore had to be refused) or did not fall within the scope of the Act.

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<sup>47</sup>.

### 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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46 Continuing Professional Development

47 [https://www.odce.ie/Portals/0/Documents/Functions/ODCE\\_FOI\\_Log\\_Dec2021.pdf](https://www.odce.ie/Portals/0/Documents/Functions/ODCE_FOI_Log_Dec2021.pdf)

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

During 2021, three requests for information were made to the Office under the Data Protection Act 2018 (2020: 4). The requests were each considered and, where applicable, the relevant information was provided to data subjects insofar as the rights to such information was not restricted to the extent necessary to protect the functions of the Director and where such restriction was proportionate.

### **Official Languages Act 2003**

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

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

During 2021, the Office updated the statement of its intention to comply with the Public Sector Duty under the Irish Human Rights and Equality Commission Act 2019 published on its website. 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 and carbon emission reduction**

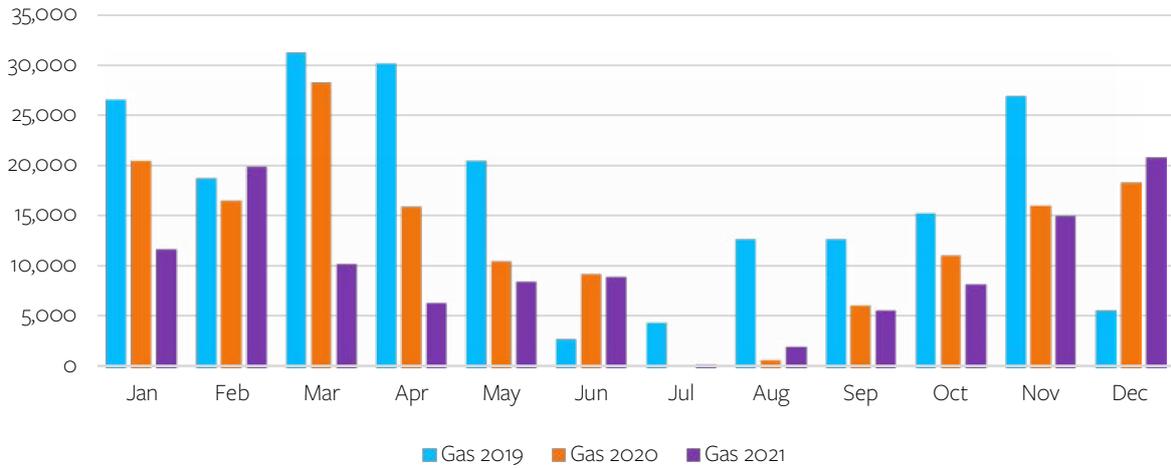
The Office shares its premises with several other occupants, and, at 45.62%, the proportion of space allocated to the Office is slightly less than half. Approximately half of all electricity used in the building is for lighting and the powering of office equipment, while the heating and air conditioning 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 237,000 kilowatt hours (kwh) (2020: 336,000 kwh), of which the ODCE was responsible for approximately 108,100 kwh. Electricity consumption was 525,500 kwh (2020: 460,000 kwh), of which the ODCE was responsible for approximately 240,000 kwh.

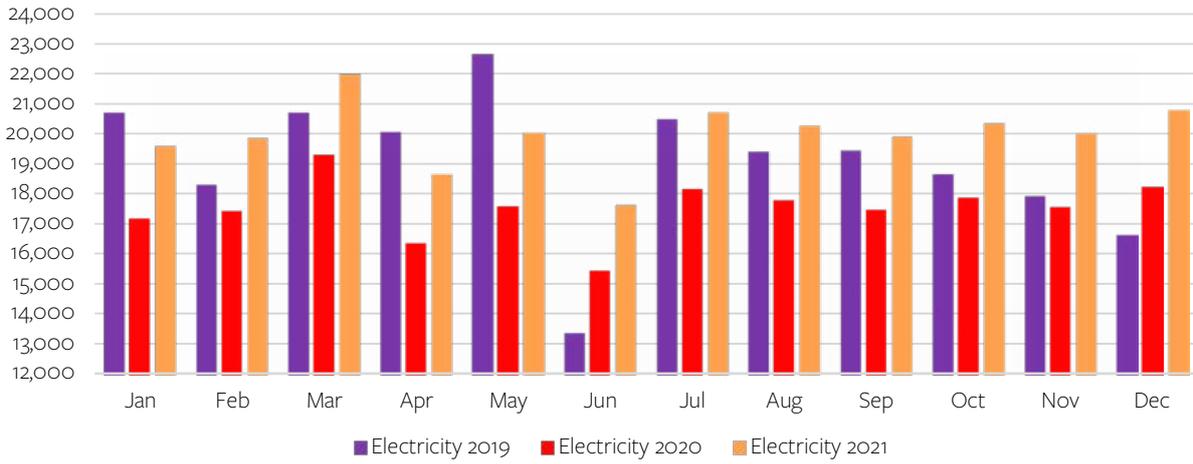
During the year under review, the Office premises remained under-occupied as a large proportion of staff members were working remotely in adherence to the Public Health guidelines for safeguarding against Covid-19. While this resulted in less energy usage for equipment, lighting, heating, and cooling was still required for the staff who were on-site. The Office continues to seek to devise initiatives to further curtail energy consumption, and representatives attended virtual presentations on the topic that were made available through the OP@W (Optimising Power @ Work) campaign. In addition, further sensors were installed to ensure lights were off when not required. Energy usage charts for 2019 to 2021 are set out below.

The target for overall energy consumption reduction in 2021 was a further 5%. The energy performance outturn for 2021 was a saving of 8% in electricity usage and 28% in gas usage, giving an overall 18% saving for 2021 over 2020, mainly in gas consumption.

### Gas usage 2019 - 2021

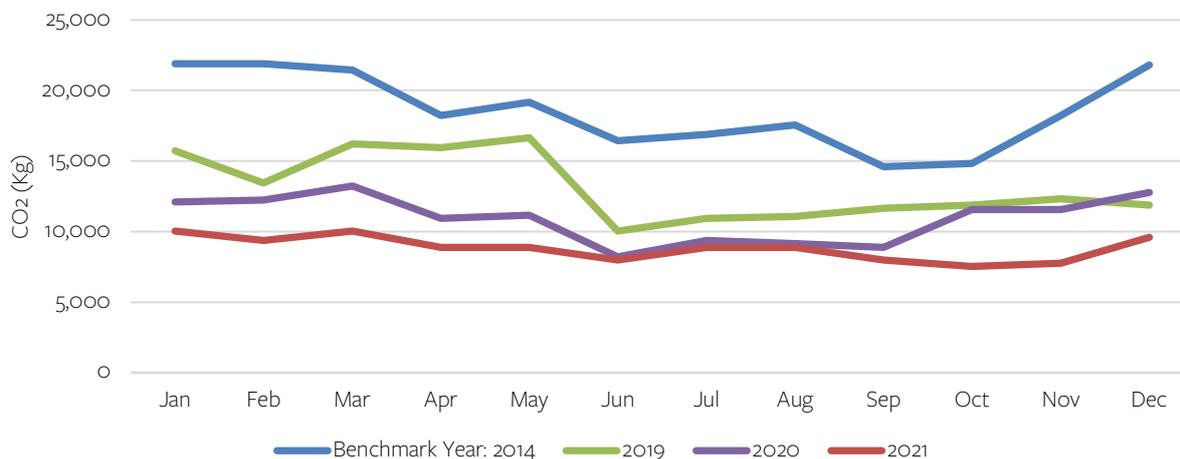


### Electricity usage 2019 - 2021



The carbon footprint of the entire building is measured and monitored on behalf of the building's Green Team by OPW, and the data is regularly provided to all occupants of the building. The chart reproduced below shows the reduction in carbon emissions resulting from energy used in the premises across the last three years as measured against emissions in 2014, when the premises joined the campaign. The reduction in 2021 over 2014 was 35%, on target for the 50% target in reduction by 2030.

### Total annual emissions profile



# APPENDICES

## APPENDIX 1

### ALLOCATED VS. ACTUAL EXPENDITURE 2019 - 2021

	2019		2020		2021	
	€000s	€000s	€000s	€000s	€000s	€000s
<b>Allocation</b>						
Exchequer Grant	6,057		6,057		6,057	
Contingency - Legal Costs	50	6,107	50	6,107	50	6,107
<b>Expenditure</b>						
Salaries	2,503.1		2,295.8		2,461.9	
Advertising & Publicity	32.2		19.7		27.3	
Office Premises	290.0		357.6		302.0	
Legal Expenses	1,075.2		995.9		1,642.9	
Consultancy	3.8		29.6		17.9	
Computerisation	204.3		441.7		267.2	
Printing	28.8		22.8		29.4	
Incidental Expenses	29.1		32.7		55.9	
Travel & Subsistence	25.2		8.9		21.4	
Telecommunications	45.3		54.3		88.5	
Postal/Courier Services	7.9		8.1		13.2	
Office Machinery & Photocopying	17.5		7.9		3.0	
Human Resource Development	37.4		35.7		72.9	
		4,299.8		4,310.7		5,003.5
<b>Amount surrendered</b>		<b>1,807.2</b>		<b>1,796.3</b>		<b>1,103.5</b>

## APPENDIX 2

### PRESENTATIONS DELIVERED BY ODCE STAFF DURING 2021

A breakdown of the categories are as follows:

Date	Organisation
<b>Third Level Institutions</b>	
26/01/21	Galway Mayo Institute of Technology New Frontiers
12/02/21	Limerick IT New Frontiers
16/02/21	Galway Mayo Institute of Technology
17/02/21	Galway Mayo Institute of Technology
30/03/21	Blanchardstown New Frontiers
15/04/21	Trinity College, Dublin
11/05/21	Waterford IT New Frontiers
08/09/21	Carlow IT New Frontiers
<b>Professional Bodies</b>	
13/10/21	Corporate Crime & Regulation Summit (A&L Goodbody)
14/10/21	Chartered Accountants Ireland
18/11/21	Association of Compliance Officers in Ireland
15/12/21	Certified Public Accountants Ireland
<b>Public Bodies</b>	
29/03/21	European Commission
22/04/21	CEPOL (EU Agency for Law Enforcement Training)
07/07/21	DETE (Internal Audit)
10/09/21	Kildare County Council
22/09/21	Tipperary Local Enterprise Office
14/10/21	GNECB/AGS/UCD
<b>Other Bodies/Organisations</b>	
20/04/21	Apartment Owners' Network
12/08/21	Omnipro Bootcamp

### PUBLICATIONS ISSUED AND PUBLISHED IN 2021

Date	Name of Publication
June 2021	Annual Report 2020

## 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 above-mentioned 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 2021**

During the year ended 31 December 2021, the ODCE received 2 (2020: 1) protected disclosures.

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

On examination it was determined that one of the protected disclosures received fell outside the remit of the Office and the other remains under examination.

#### **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

### LIQUIDATION CASES WHERE RESTRICTION CONSENT UNDERTAKINGS WERE GIVEN BY COMPANY DIRECTORS PURSUANT TO SECTION 852 OF THE COMPANIES ACT 2014

Company	Company Name	Director Name		Date Restricted
530460	Anthony Kiernan Limited	Anthony	Kiernan	03/08/2021
405852	Bedzilla Limited	Adrian	McCaffery	23/03/2021
70018	Broderick Furniture & Wholesale Company Limited	Sean	Broderick	30/11/2021
70018	Broderick Furniture & Wholesale Company Limited	Caroline	Mahony	30/11/2021
374565	C.C.C. Builders Limited	Anthony	Coleman (Snr)	22/12/2021
423254	Care & Cure Trading Limited	Ling Yun	Zhang	16/12/2021
592629	Choice Media Limited	Paul	Earls	13/09/2021
592629	Choice Media Limited	Edward	Earls	13/09/2021
469575	Church Road Initiative Limited	Robert	Masterson	13/08/2021
356204	Corbett & O'Dea Limited	Thomas	Corbett (Jnr)	22/12/2021
521905	Cowleys Haulage & Civil Limited	Mark	Cowley	22/12/2021
447885	Crokers Bar & Restaurant Limited	Brian	Smith	12/11/2021
508993	D&J Premier Car Limited	Daragh	Murphy	27/08/2021
508993	D&J Premier Car Limited	Sharon	Murphy	27/08/2021
640938	Danorlagh Energy Systems Limited	Dan	Andrews	26/10/2021
640938	Danorlagh Energy Systems Limited	Orla	Carey	26/10/2021
532526	Gardening Impulse Limited	Brian	Hennessy	13/09/2021
242956	Grade Developments Limited	Patrick	Norris	23/03/2021
242956	Grade Developments Limited	Sean	Norris	23/03/2021
378522	Grafton College of Management Sciences Limited	Saeed	Rehman	24/02/2021
335689	Greeneform Limited Company	John	Greene	30/11/2021
501508	Ivors Engines Limited	Ivor	Robinson	09/11/2021
544026	Jax Miller Unlimited Company	Ann	O'Donnell	22/12/2021
544026	Jax Miller Unlimited Company	John	O'Donnell	22/12/2021
574879	JC and Deb Limited	John	Cooke	08/12/2021
548960	Lubdub Foods Limited	Thippeswamy	Sannaveerappa	01/12/2021
515055	Mark Walsh Motors Limited	Mark	Walsh	01/10/2021
481256	P & M Painting & Decorating Services Limited	Martin	Quinn	06/05/2021

481256	P & M Painting & Decorating Services Limited	Philip	Quinn	06/05/2021
469653	Pat White Cars Limited	Pat	White	11/02/2021
469653	Pat White Cars Limited	Rita	White	11/02/2021
382548	R.K. Cleaners Limited	Noel	Kearney	05/08/2021
486382	Rathmond Ireland Limited	Barry	Sheehan	06/04/2021
400044	Studioline Limited	Kevin	Stanley	14/09/2021
519710	Super Miss Sue Limited	John	Farrell	12/06/2021
490336	Taculla Limited	Christopher	Leonard	22/12/2021
419563	Whisper Diva Limited	David	Duggan	27/08/2021
419563	Whisper Diva Limited	Gillian	Duggan	27/08/2021
528267	Yourtel Limited	Mario	Kovac	17/08/2021
528267	Yourtel Limited	Marijan	Vukusic	17/08/2021

#### LIQUIDATION CASES WHERE RESTRICTION DECLARATIONS WERE MADE BY THE HIGH COURT PURSUANT TO SECTION 819 OF THE COMPANIES ACT 2014

Company Number	Company Name	Director Name		Date Restricted
500368	Autosports Motors Limited	Sarah	Walker	13-Dec-21
594132	Copperpot Limited	Barry	Dunning	06-Dec-21
594132	Copperpot Limited	Tommy	Lyons	06-Dec-21
139898	Enfield Coaches Limited	John Paul	Healy	06-Dec-21
378731	Haz.com Fuels Limited	Michael	Murphy	18-Oct-21
555179	Jemvale Limited	Marie	McNamee	28-Jun-21
555179	Jemvale Limited	Michael	McNamee	28-Jun-21
478258	Sapol Electrical Limited	Thomas	Bolger	18-Oct-21
478258	Sapol Electrical Limited	Sinead	O'Leary	18-Oct-21
479598	Thumple Limited	Paul	McMahon	18-Oct-21
365797	Unitec Investigations Limited	Bernice	Sands	05-Jul-21

## APPENDIX 5

### LIQUIDATION CASES WHERE DISQUALIFICATION CONSENT UNDERTAKINGS WERE GIVEN BY COMPANY DIRECTORS PURSUANT TO SECTION 850 OF THE COMPANIES ACT 2014

Company Number	Company Name	Director Name		Disqualified From	Disqualified To
583785	Athrú IT Advisory Limited	Gabhan	O'Connor	04/05/2021	03/05/2026
532526	Gardening Impulse Limited	Michael	Hennessy	13/09/2021	12/09/2026
354044	SK Electrical Services Limited	Mark	Kelly	22/12/2021	21/12/2026
354044	SK Electrical Services Limited	Tara	Kelly	22/12/2021	21/12/2026

### DISSOLVED INSOLVENT COMPANIES - CASES WHERE DISQUALIFICATION CONSENT UNDERTAKINGS WERE GIVEN BY THE DIRECTORS PURSUANT TO SECTION 850 OF THE COMPANIES ACT 2014

Company Number	Company Name	Director Name	Disqualified From	Disqualified To
374793	Asgard Interiors Limited	Martin Landy	03/06/2021	02/06/2025
456493	Brian Dunphy Vehicles Limited	Martin Kelly	07/05/2021	06/05/2025
476364	Christopher Kavanagh Security Limited	Sean McCormack	02/07/2021	01/07/2025
		Derek Kavanagh	02/07/2021	01/07/2025
124841	Courtline Services Limited	Taragh Faulkner	03/06/2021	02/06/2025
		Sabena Faulkner	18/05/2021	17/05/2025
		Wayne Faulkner	03/06/2021	02/06/2025
147994	Fitzgerald, Callinan & Co Limited	Peadar Fitzgerald	19/12/2020	18/12/2024
		Marion Fitzgerald	19/12/2020	18/12/2023
541701	Funshinagh Limited	Deirdre Ryan	20/05/2021	19/05/2025
		Nicholas Ryan	20/05/2021	19/05/2025
555541	General Steel Fixing Limited	Constantin Gheorghe Cirdei	04/11/2021	03/11/2025
		Nicoleta Ambul	04/11/2021	03/11/2025
533752	Henry Haulage & Logistics Limited	Helen Henry	11/05/2021	10/05/2025
		Brendan Henry	11/05/2021	10/05/2025
488759	JP Reilly Limited	JP Reilly	17/09/2021	16/09/2025
		Sinead Reilly	02/10/2021	01/10/2025
474050	Kyle Cleaning Services Limited	David Finn	01/07/2021	30/06/2025
288205	Martin Murray Developments Limited	Martin Murray	06/03/2021	05/03/2024
		Catherine Murray	06/03/2021	05/03/2024
520873	MJR Electrical Limited	Michael Ryan	07/05/2021	06/05/2025
549860	Plumage Transport Limited	Jennifer Johnson	09/04/2021	08/04/2024
485700	Powersafe Technologies Limited	Richard Murphy	10/08/2021	09/08/2025

LIQUIDATION CASES WHERE DISQUALIFICATION ORDERS WERE MADE BY THE HIGH COURT PURSUANT TO SECTION 842 OF THE COMPANIES ACT 2014

CRO	Company Name	Director Name		Disqualified from	Disqualified to
500368	Autosports Motors Limited	Glenn	Walker	13-Dec-21	12-Dec-31
327571	Carrigaline Carpentry Services Limited	John	O'Neill	15-Nov-21	14-Nov-28
327571	Carrigaline Carpentry Services Limited	Brian	O'Neill	15-Nov-21	14-Nov-28
494630	Gaboto Limited	Paul	Devlin	08-Nov-21	07-Nov-36
494630	Gaboto Limited	Fiona	McNally	08-Nov-21	07-Nov-36
555589	Green Electro Commodities Limited	Wayne	O'Sullivan	20-Dec-21	19-Dec-26
437882	MC Developments (Ballingarry) Limited	Michael	Kealy	29-Nov-21	28-Nov-26
437882	MC Developments (Ballingarry) Limited	Caroline	Kealy	29-Nov-21	28-Nov-26
515093	Kraft Commerce Limited	Wayne	O'Sullivan	20-Dec-21	19-Dec-28
567153	Lindos Weddings Limited	Laurence	Traynor	28-Jun-21	27-Jun-26
408975	Pembroke Dynamic Internet Services Limited	Peter J.	Conlon	09-Jul-21	08-Jul-37
365797	Unitec Investigations Limited	Kieran	Sands	05-Jul-21	04-Jul-29

# GLOSSARY

## GLOSSARY

<b>Act</b>	Companies Act 2014
<b>AGM</b>	Annual General Meeting
<b>CLRG</b>	Company Law Review Group
<b>CPD</b>	Continuing Professional Development
<b>CRO</b>	Companies Registration Office
<b>Department</b>	Department of Enterprise, Trade and Employment
<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>HRG</b>	Hamilton Review Group
<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 Enterprise, Trade and Employment
<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

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Fhorfheidhmiú Corparáideach

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