

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	%
Statutory reports				
Liquidators' reports (initial) (s682)	399		426	
Liquidators' reports (subsequent) (s682)	269		243	
Total liquidators' reports (s682)	668	64	669	72
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
Referrals				
Referrals from external parties	17	2	10	1
Complaints				
Complaints from members of the public	201	19	149	16
Other				
Disclosures under the Protected Disclosures Act 2014 ¹⁰	2	0	1	0
Applications seeking change to accounting year end ¹¹	9	1	5	1
Total inputs from external sources	1,039	100%	924	100%

10 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.

11 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 insolvent¹² liquidation are required by law¹³ 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 restriction¹⁴ of each of the directors, unless relieved of that obligation by the Office¹⁵.

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").

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

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 offence¹⁶ 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 636¹⁷ 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.

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 ¹⁸	1,034	1,112	1,040	1,269	1,474	1,397	1,455
Total liquidations	1,850	1,754	1,716	1,803	2,010	1,889	1,757

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 reports¹⁹ (2020: 426); and
- 269 were subsequent reports²⁰ (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
Total	399	100	426	100

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 EEA²¹ state; and
- v.** persons with practical experience of windings-up and knowledge of relevant law prior to the commencement of the Act²².

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 website²³. 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 company²⁴.

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
Total	371	100%	255	100%

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
Total	201	100	149	100

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
Total	131	100%	75	100%

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")²⁵

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 Office²⁶.

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

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 2014²⁷

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 companies²⁸. However, company law also provides²⁹ 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 restrict³⁰ the director(s) where it adjudges that disqualification is not warranted under the particular circumstances³¹.

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.

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”³².

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 Act³³.

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 55³⁴ (2020:23) internal inputs were generated.

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	
Section 682 reports on hand at 31 December, 2021		185

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	
Other cases on hand at 31 December, 2021		229

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 ³⁵	366	57	466	58
No relief ³⁶	32	5	46	6
Partial relief ³⁷	15	2	19	2
Relief at this time ³⁸	228	36	279	34
Total	641	100	810	100

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

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

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

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

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
Restrictions:		
Number of offers issued	59	70
Number of offers accepted	40	53
Number of offers not accepted	19	17
Disqualifications:		
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
Disqualifications:		
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 2³⁹ offence on the part of the company and any officer in default⁴⁰. 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.

³⁹ 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.

⁴⁰ 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)⁴¹ 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 Assistance⁴²;
- 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.

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 & 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 offences⁴³;
- 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.

⁴³ 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.