

Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement

# Annual Report 2017

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DIRECTOR'S  
INTRODUCTION

## INTRODUCTION

In accordance with the provisions of section 954(1) of the Companies Act 2014 ("the Act"), I am pleased to submit the 2017 Annual Report of the Office of the Director of Corporate Enforcement to the Minister for Business, Enterprise & Innovation, Ms. Heather Humphreys TD. Set out hereunder are details of some of the more significant matters relating to the year under review.

## OVERVIEW OF PRINCIPAL ENFORCEMENT ACTIVITIES

Reflective of both the ODCE's:

- graduated approach towards enforcement; and
- strategic shift towards seeking to confront indications of wrongdoing at the more serious end of the spectrum,

enforcement activities during the year under review included:

### Administrative measures

- the issuing of 58 cautions and warnings on a variety of issues;
- the rectification of directors' loans of an aggregate monetary value of approximately €15m;

### Insolvency-related enforcement measures

- the making of definitive decisions on 600 liquidators' reports, including the granting of no relief or partial relief only in respect of 51 such reports. Liquidator applications to the High Court during the year under review following the previous issuing of no relief and partial relief only decisions by the ODCE resulted in 31 company directors being restricted with a further 9 company directors being disqualified;
- entering into Restriction Undertakings with 91 company directors and 1 Disqualification Undertaking with a company director on foot of liquidators' reports;
- entering into 4 Disqualification Undertakings with directors of insolvent companies that had been struck off the Register of Companies for having failed to file annual returns with the Registrar;

### Exercise of statutory investigative/enforcement powers and related measures

- over 100 instances of the exercising of statutory powers in the furtherance of investigative activities and as enforcement measures, such as:
  - the execution of search warrants;
  - the use of powers of arrest;
  - the issuing of Requirements for the production of books and documents to companies;
  - the issuing of Requirements for the production of books and documents to third parties;
  - the issuing of Requirements for the provision of explanations and assistance to relevant persons; and
  - the issuing to relevant persons of directions to comply with statutory obligations;
- applications to the High Court on a variety of matters with a view to progressing investigations and other enforcement-related activities (including on matters such as legal professional privilege and issues associated with interrogating electronic evidence in the possession the ODCE);

### Referrals to the Director of Public Prosecutions ("DPP") and associated prosecutions

- on foot of a previously referred investigation file in respect of which the DPP had directed charges, a guilty plea was entered to 1 charge of fraudulent trading contrary to section 297 of the Companies Act 1990 (the individual concerned was subsequently sentenced to 18 months' imprisonment with the final 6 months suspended and was also disqualified for a period of 5 years from the date of sentencing);

- on foot of previously referred investigation files in respect of which the DPP had directed charges, and following the entering of guilty pleas by two individuals (one in respect of an alleged breach of section 297 of the Companies Act 1990 (i.e., fraudulent trading) and the other in respect of an alleged breach of section 44 of the Companies Act 1990 (i.e., licensed bank's register of lending to directors and connected persons) (which was in lieu of an alleged offence under section 297 of the Companies Act 1990), the first individual was sentenced to two and a half years' imprisonment and the second individual was fined €3,000;
- the referral of 1 investigation file to the DPP for consideration as to whether charges should be directed on indictment. Based on the underlying investigation, that file included recommendations for a total of 81 charges (in respect of alleged breaches of the Companies Acts, the Criminal Justice (Theft & Fraud Offences) Act 2001, the Taxes Consolidation Act 1997 and common law respectively) against a total of 3 suspects. At year end, that file was under consideration by the DPP;
- the referral of a further 3 investigation files to the DPP. The DPP issued a direction to prosecute on 1 of those files but that was subsequently amended to no prosecution following the death of a witness. In the other two cases, having considered the available evidence, the Office of the DPP directed that no prosecution should follow.

## OTHER ISSUES OF NOTE ARISING DURING THE YEAR UNDER REVIEW

### Correspondence with the Joint Oireachtas Committee on Transport, Tourism & Sport

By letter dated 1 September 2017, the Joint Oireachtas Committee on Transport, Tourism & Sport ("the Committee") referred the report prepared by Mr. Justice Carroll Moran into "*the receipt, distribution and sale of tickets to Olympic Games and ancillary matters*" ("the Moran Report") to the ODCE for consideration. The Committee indicated that its decision to refer the Moran Report to the ODCE was based on concerns "*...surrounding issues of governance, possible fiduciary negligence of directors, and accounts and audit issues pertaining to the Olympic Council of Ireland*".

By letter dated 18 September 2017, the ODCE furnished its observations on the Moran Report to the Committee. In so doing, the ODCE, *inter alia*, noted the limitations that had applied to the Inquiry that preceded completion of the Moran Report, which included the:

- non-statutory nature of the Inquiry and the associated absence of powers of compulsion and adversarial proceedings;
- invocation by a number of the parties of the right against self-incrimination;
- non-co-operation on the part of a number of parties with the work of the Inquiry; and
- Inquiry's resultant assessment that it was constrained initially to focus its attention on the Olympic Games of 2016 and to defer consideration of the two earlier Games.

Whereas a number of the issues detailed in the Report were suggestive of governance weaknesses, shortcomings and departures from conventional governance practices, the Committee was advised that, based on the Report's contents, there did not appear to be evidence suggestive of non-compliance with company law. It was suggested to the Committee, however, that in the context of its further deliberations on the Report, it might wish to have regard to the provisions of the Criminal Justice (Theft & Fraud Offences) Act 2001.

### Winding up in the public interest

Section 569<sup>1</sup> of the Act includes a provision not previously contained in the Companies Acts whereby a company may be wound up by the Court "*...if the Court is satisfied, on a petition of the Director [of Corporate Enforcement], that it is in the public interest that the company should be wound up...*".

During the year under the review, an issue came to the ODCE's attention that warranted consideration of this new legislative provision and as to whether a petition to wind up the company concerned might be an appropriate and proportionate remedy. That consideration was precipitated by concerns expressed by another State body regarding the relevant company's activities.

However, having taken legal advice on the matter and having considered all of the relevant facts and circumstances prevailing, it was concluded that, in light of other enforcement options available to the other State body concerned, it was unlikely that the Court would make such an order.

<sup>1</sup> Subsection 1(g)

## CAPABILITY ENHANCEMENT

During the year under review, and with the ongoing support of successive Ministers and their Department, the ODCE continued the process of enhancing its human resource and operational capabilities through:

- the recruitment of two Enforcement Portfolio Managers (one an accountant and the other a barrister-at-law);
- the recruitment of a Digital Forensics Specialist (with both relevant qualifications and a background in law enforcement);
- the recruitment of a further Investigative Accountant. At year end, a recruitment exercise for the purpose of appointing a further two Investigative Accountants was at an advanced stage; and
- at year end, a further recruitment exercise for the purpose of appointing two Enforcement Lawyers had also commenced.

In addition, and with the assistance of the Garda authorities, the Detective Inspector position, which had been vacant for some time, was filled during the year. A vacant Garda position was also filled during the year, thereby bringing the ODCE's Garda complement back to its approved number of 7 members.

The appointment of a Digital Forensics Specialist during the year was followed shortly thereafter by the establishment and fitting out of a state of the art digital forensics laboratory. In addition to significantly enhancing the ODCE's in-house digital forensics capabilities, these developments have:

- equipped ODCE investigators to conduct on-site digital forensics investigative work, thereby enhancing the ODCE's overall investigative wherewithal; and
- substantially reduced the ODCE's previous heavy reliance on third parties (including An Garda Síochána) to assist it with digital forensics work.

In addition to the foregoing, the ODCE continued to invest in specialist training, education and development during the year under review.

## TRANSITION TO AGENCY STATUS

As the Government prepares to publish its proposals for the transitioning of the ODCE from an Office to a stand-alone Agency, the ODCE stands ready to provide the Minister and her Department with whatever assistance is required in that regard and looks forward to the enhancements in operational effectiveness that are expected to flow from that initiative.

## REPORT TO THE MINISTER UNDER SECTION 955(1)(A) OF THE ACT

### Request for a report

Following the decision by Judge John Alymer on 23 May 2017 to direct the jury to acquit Mr. Seán FitzPatrick on all counts on the indictment, by letter dated 24 May 2017, I was requested by the then Minister, Ms. Mary Mitchell O'Connor, TD, to furnish her with a report into the matter under section 955(1)(a) of the Act. Specifically, in her letter, the then Minister stated as follows:

*"I would be grateful if you would prepare a report, on the issues arising from the investigations by the ODCE into Anglo Irish Bank since 2008. These include:*

- *the coaching of witness statements;*
- *late disclosure of documents;*
- *a perceived bias by ODCE investigators;*
- *the shredding of documents; and*
- *any other relevant matters.*

*I expect receipt of your report as a matter of priority, but no later than 23rd of June 2017".*

### Section 955(1)(a) of the Act

The relevant provisions of section 955 are:

*"955 (1) Subject to subsection (2), the Director shall:*

- (a) *provide the Minister with such information as the Minister may from time to time require about the performance of the Director's functions..."*



## Submission of a report to the Minister

On 23 June 2017, I submitted my report ("the Report") to the then Tánaiste and Minister, Ms. Frances Fitzgerald, TD. In so doing, I drew attention to the following relevant matters:

- the Report is not, and does not purport to be, the result of an investigation or enquiry. Neither is it, nor does it purport to be, a detailed analysis of every aspect of the investigation referred to therein. Rather, to the extent practicable within the timeframe laid down for delivery (i.e., one month), the Report is a summary of the principal facts, the purpose of which was (and remains) to assist the Minister in her broader consideration of the relevant issues;
- that being the case, the Report is, to the maximum extent practicable, grounded in relevant documents within the ODCE's possession and in transcripts of Court proceedings; and
- not being an investigation or enquiry but, rather, a presentation of the principal facts through a statutory accountability mechanism, those identified in the Report (several of whom are no longer employed within the ODCE and many of whom are, or were, employed by third parties), have not had an opportunity to comment, or furnish observations, on its content as such an exercise would not have been feasible within the timeframe set for the preparation and delivery of the Report and, in any event, such an exercise is not contemplated by section 955.

Notwithstanding that section 955(2) provides that the Director is not required to provide the Minister with any information under section 955(1) if the provision of such information would, in the Director's opinion, be likely to prejudice the performance of any of his functions, nothing was omitted from the Report on that basis. Rather, having regard to the purpose of the Report, the approach adopted towards its preparation was to include as much relevant information therein as possible.

## Submission of relevant extracts of the Report to the Comptroller & Auditor General ("C&AG")

Given that certain issues had been raised in that regard by the defence during the trial, amongst the matters dealt with in the Report was the subject of professional fees paid to experts engaged by the ODCE and the associated tender process. That being the case, on the same date that I submitted the Report to the Minister, given their relevance to his remit, I submitted relevant extracts from the Report (i.e., the relevant Chapter and Appendices) to the C&AG for information purposes. The ODCE has received no enquiries or queries from the Office of the C&AG since the date of submission of those extracts, i.e., 23 June 2017.

## Ministerial consideration of the Report

Following receipt of the Report, the then Tánaiste and Minister advised Dáil Éireann that, originally, it was the intention that the Report would be published<sup>2</sup>. However, based on legal advice received from the Attorney General, the then Tánaiste subsequently advised Dáil Éireann that she did not have the statutory power to publish the Report and that, instead, she intended to publish "*...an account of the investigative failures identified by Judge Aylmer and the steps being taken to address them*"<sup>3</sup>.

# ENGAGEMENT WITH THE JOINT OIREACHTAS COMMITTEE ON BUSINESS, ENTERPRISE & INNOVATION

## Initial invitation to appear

On 25 May 2017, the Joint Oireachtas Committee on Enterprise, Trade & Innovation (as it then was and as has subsequently been renamed as the Joint Oireachtas Committee on Business, Enterprise & Innovation) ("the Committee") wrote to me and requested that I attend before it on 31 May 2017. In that letter, the Committee indicated that it wished to discuss:

*"...the very serious failures of the ODCE investigative processes highlighted by Judge John Aylmer; the processes, or lack thereof, which led to those failures and the steps, if any, that have been taken to correct those failures and errors to ensure they do not occur again".*

By letter of the same date, I responded to the Committee advising that I was available to assist it in any way possible. I drew attention to the fact that, on the previous day, I had been requested by the then Minister to prepare a report for delivery by 23 June 2017 and, in the context of that timeframe, requested the Committee to consider deferring the meeting until I had prepared and submitted the Report to the Minister, at which time I expected to be in a better position to assist the Committee.

<sup>2</sup> Response to a parliamentary Question in Dáil Éireann, 29 June 2017 (PQ reference: 30223/17)

<sup>3</sup> Response to a parliamentary Question in Dáil Éireann, 21 November 2017 (PQ reference: 49407/17)

By letter dated 26 May 2017, the Committee responded, advising that it was willing to defer the proposed meeting until after the completion and submission of the Report. In that letter, I was requested to advise the Committee when my Report had been submitted to the Minister. I duly advised the Committee of that fact by letter dated 23 June 2017, i.e., on the date that the Report was submitted to the then Tánaiste and Minister.

By letter dated 5 July 2017, the Committee noted that the Report had been submitted and advised that it had requested the Office of the then Tánaiste and Minister to notify it when the Report became available.

### Subsequent invitation to appear before the Committee

The next correspondence received from the Committee was a letter dated 14 December 2017, in which the Committee renewed its invitation to appear before it. On this occasion the Committee invited me to appear before it on 16 January 2018 and indicated that it was:

*“particularly interested in discussing what measures have been taken to address the concerns with the investigative process undertaken by the ODCE cited by Judge John Aylmer in the recent case concerning alleged breaches of the Companies Acts”;*  
and

*“also concerned about the number of prosecutions which have been brought by the ODCE in the past decade and notes that €6m in funding allocated to the ODCE has been returned to the state in the last three years”.*

By letter dated 16 December 2017, I responded to the Committee confirming that I would attend the meeting and indicating that I would revert in advance of the meeting with any submissions that I considered necessary or relevant to furthering the Committee’s understanding of the issues of interest to it.

I wrote again to the Committee on 22 December 2017. The purpose of this letter was to:

- record the fact that the then Tánaiste had, by that time, advised Dáil Éireann that, based on the advice received by her from the Attorney General, she did not have the legal power to publish the Report;
- record that, in consequence of the foregoing, the then Tánaiste had further advised Dáil Éireann of her intention to publish “...an account of the investigative failures identified by Judge Aylmer and the steps that are being taken to address them”;
- indicate that, whereas the then Tánaiste clearly had to have regard to the legal advice received by her, any “account of...investigative failures” could not, by definition, address the much broader range of issues that had been dealt with in the Report.

In that context, I advised the Committee that:

- I was at an advanced stage of preparing a document that I wished to submit to the Committee in advance of the meeting (“the Submission”); and
- the purpose of the Submission was to provide the Committee with information necessary to enable it to discharge its functions, including holding the ODCE to account, on a properly informed basis.

Specifically, I advised the Committee that the Submission addresses:

- the nature of the issues that contributed to the trial judge’s decision to direct the jury to acquit the accused on all counts on the indictment;
- the extent to which those issues arose as a result of the discharge by the ODCE of its functions and the extent to which those issues arose for other reasons;
- the factors that contributed to those issues arising; and
- the context within which those issues arose.

I further advised that a secondary purpose of the Submission is to ensure that, in circumstances where the Committee will have a role in scrutinising legislation giving effect to the transitioning of the ODCE to a standalone Agency (i.e., a new Companies Act), the Committee has the information necessary to enable it to discharge that function on a properly informed basis.

In the context of the foregoing and, specifically, having regard to the nature of the contents of the Submission, I sought certain clarifications from the Committee, particularly concerning issues relating to privilege and the management of litigation risk. However, I made it clear that, notwithstanding that certain clarifications were being sought, it remained the case that I would be attending the meeting scheduled for 16 January 2018.

An exchange of correspondence then ensued, with the Committee seeking certain additional information and clarifications, all of which were provided. That correspondence resulted in the Committee issuing a letter to me on 31 January 2018. In that letter the Committee advised that:

- i. the matters to be discussed at the forthcoming meeting would be:
  - the role and functioning of the ODCE as set out in section 949 of the Act;
  - governance issues in the ODCE;
  - the number of prosecutions which have been brought by the ODCE in the past decade (without addressing the substantive issues arising);
  - the return to the State of €6m in funding allocated to the ODCE in the last 3 years;
- ii. the meeting would be scheduled for after the conclusion of the ongoing trial of *DPP v Drumm*<sup>4</sup>; and
- iii. the invitation was being extended on the clear understanding that, unless and until requested by the Committee:
  - the trial of Mr. Seán FitzPatrick or related matters would not be discussed at the meeting; and
  - no submission or report in relation to the investigation that led to Mr. Seán FitzPatrick being charged with, tried for and acquitted in respect of suspected offences would be received by the Committee.

By letter dated 7 February 2018, I responded to the Committee expressing the view that, having regard, *inter alia*, to the fact that, during the period 2009 to 2012, virtually the entirety of the ODCE's investigative capacity had been consumed by its involvement in Anglo-related matters, any assessment of its performance over the past decade cannot meaningfully be performed without considering the totality of its activities over that period.

At the time of writing, that is where the matter rests as the aforementioned trial of *DPP v Drumm* is ongoing. In the interim, the Committee has been advised that the Submission remains available to it.

## CONCLUDING REMARKS

The first half of 2017 was both difficult and challenging for the ODCE and for its staff. There are lessons to be learned by all those who played a part in the underlying events. For its part, and notwithstanding that, for the most part, the issues that gave rise to judicial criticism of the ODCE date back the best part of a decade, the ODCE has sought to learn from those experiences. In addition to lessons learned regarding investigative practice and procedure, valuable lessons have also been learned regarding the very real risks associated with seeking to do too much with too little. If and when the time comes for those events to be subjected to Parliamentary scrutiny, the ODCE will provide a full and forthright account of the events, and of the full range of contributory factors, that led to the trial judge's decision to direct the jury to acquit the accused on all counts on the indictment.

In the context of the foregoing, I would like to express my gratitude to current and former Ministers Ms. Heather Humphreys, TD, Ms. Mary Mitchell O'Connor, TD and Ms. Frances Fitzgerald, TD for their support, particularly during what was a difficult time for the Office and its staff. I would also like to record my appreciation for the support received from the Department of Business, Enterprise & Innovation during that period. In particular, I would like to thank Ms. Breda Power and Dr Orlaigh Quinn.

Finally, I would like to express my sincere gratitude to my colleagues, including those who departed from the ODCE during the year under review and subsequently, whose fortitude, resilience and willingness to go above and beyond has, in my experience, been unflinching.

**Ian Drennan**  
Director

**30 April 2018**

<sup>4</sup> DPP Case No.: 2018/2880/DIR01



AT A GLANCE

## ENFORCEMENT

### Sources of our work

- In excess of 1,100 statutory reports and referrals received from liquidators, auditors, examiners, professional bodies and other regulatory and enforcement authorities
- Reviewed 234 (2016: 248) complaints received from members of the public
- Generated 97 (2016: 128) internal inputs

### Outputs from our work

- As a proportionate and cost-effective alternative to formal enforcement actions, cautions issued to a total of 58 (2016: 59) companies
- Directors' loan infringements in 39 (2016:60) cases, and to an approximate aggregate value of €15.5m (2016: €17m), were rectified on foot of ODCE actions
- Following the examination of reports submitted by liquidators of insolvent companies:
  - 91 company directors restricted under the Restriction Undertakings regime;
  - 31 company directors restricted by the High Court on foot of liquidator applications;
  - 1 company director disqualified under the Disqualification Undertakings regime; and
  - 9 company directors disqualified by the High Court on foot of liquidator applications;
- A further 4 Disqualification Undertakings entered into by company directors who had allowed companies of which they were directors to be struck off the Companies Register while having significant outstanding liabilities;
- 47 (2016: 108) directions issued to relevant parties requiring them to comply with their statutory obligations under company law
- 58 (2016: 7) Requirements issued for the production of companies' books and documents, third parties' books and documents and for the provision of explanations and assistance;
- The execution of 4 search warrants and the exercise of power of arrest on 3 occasions;
- Various applications to the High Court with a view to progressing investigations and other enforcement-related activities;
- In keeping with the ongoing strategic shift towards the investigation of more serious indications of wrongdoing:
  - the submission of 4 (2016:5) investigation files to the DPP for consideration, with recommendations including charges under company law, the Criminal Justice (Theft & Fraud Offences) Act 2001, the Taxes Consolidation Act 1997 and common law;
  - guilty pleas from 3 separate individuals on foot of directions issued by the DPP following consideration of ODCE investigation files, which in turn gave rise to the imposition of 2 custodial sentences and a monetary fine; and
  - an ongoing caseload of large scale investigations which, if considered appropriate by reference to the available evidence, may upon completion be referred to the DPP for consideration as to whether to charges should be directed on indictment.

## ADVOCACY

- 26 information presentations delivered (to a combined audience of approximately 1,350)
- 16 events attended by staff with exhibition information stands

## FINANCIAL

- The cost of running the Office during 2017 was €3m, some 61% of its allocation for the year and an increase of 10% on the previous year.

## CAPABILITY ENHANCEMENT

- Recruitment of a Digital Forensic Specialist
- Establishment of a state of the art Digital Forensics Laboratory
- Recruitment of a further Investigative Accountant
- Recruitment of 2 Enforcement Portfolio Managers
- Detective Inspector and Detective Garda posts filled, thereby bringing Garda complement to approved level
- At year end, recruitment processes underway for the appointment of 2 further Investigative Accountants and 2 Enforcement Lawyers



# CHAPTER 1

OVERVIEW OF THE ODCE

## STATUTORY MANDATE

### Companies Act 2014 (as amended)

The Companies Act 2014 ("the Act") came into effect in 2015. Except where the circumstances otherwise require therefore, all statutory references in this Report are to the Act as opposed to the various Companies Acts that it replaced. The full text of the Act can be accessed on the Irish Statute Book website<sup>5</sup>.

### Office of the Director of Corporate Enforcement

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

- staff assigned by the Minister; and
- members of An Garda Síochána seconded from the Garda National Economic Crime Bureau for that purpose.

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

### Principal functions of the Director

The Director's principal functions are set out in the Act<sup>6</sup>. They include to:

- i. encourage compliance with the Act;
- ii. investigate instances of suspected offences under the Act;
- iii. enforce the Act, including by the prosecution of offences by way of summary proceedings<sup>7</sup>;
- iv. refer cases, at his discretion, to the Director of Public Prosecutions ("DPP") where the Director has reasonable grounds for believing that an indictable offence<sup>8</sup> under the Act has been committed; and
- v. exercise, insofar as he feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Act.

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

### Independence of the Director

The Act<sup>9</sup> provides that the Director shall be independent in the performance of his or her functions.

## HIGH LEVEL GOALS

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

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

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

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

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

6 Section 949 Companies Act, 2014

7 i.e. before the District Court

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

9 Section 949(3) Companies Act, 2014

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

### Human resources

The ODCE's actual staff complements at the beginning and end of the year respectively are detailed in Table 1 below.

**Table 1 ODCE staff complement**

Staff Numbers (WTE <sup>10</sup> )	31 December, 2017	31 December, 2016
Actual complement in place	39	37.5

Following the recruitment process, both positions of Enforcement Portfolio Manager were filled in 2017, along with one further Investigative Accountant post and the post of Digital Forensics Specialist. Vacancies at Inspector and Detective Garda level were also filled. However, further vacancies arose during the year for various reasons.

The composition of the Office's staff complement as at 31 December, 2017, together with comparative data, is set out in Table 2 below.

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

Grade	31 December, 2017	31 December, 2016
Director	1	1
Heads of Function (excluding Garda)	3 <sup>11</sup>	3 <sup>12</sup>
Legal Advisors	1	1
Digital Forensic Specialist	1	0
Forensic Accountants	5	5
Solicitors	1	1
Assistant Principals	3	3
Higher Executive Officers	5.8	7
Executive Officers	5.5	4.8
Clerical Officers	5.7	6.7
<i>Detective Gardaí</i> <i>(on secondment from the Garda National Economic Crime Bureau)</i>		
Inspector	1	0
Detective Sergeants	2	2
Detective Gardaí	4	3
<b>Total</b>	<b>39</b>	<b>37.5</b>

<sup>10</sup> Whole Time Equivalent

<sup>11</sup> 2 Enforcement Portfolio Managers and 1 Principal Officer

<sup>12</sup> 1 Legal Advisor, 1 Solicitor and 1 Principal Officer



## Digital Forensics

The office now has a dedicated digital forensics laboratory, which is equipped to carry out digital forensics examinations. The facility includes its own separate communications room for facilitating dedicated networking and on-site file storage solutions and also includes secure evidence storage solutions to ensure chain of evidence procedures. Previously the Office relied largely on third-party contractors and An Garda Síochána to perform this function.

The Portable digital forensics capability has assisted in operations with the interrogation of devices and corporate networks in-situ when executing search warrants. This has allowed investigators to identify relevant information and remove same while not having to dismantle corporate networks and disrupt a company's operations. These additional resources provided the ability to setup a digital forensics solution at Garda stations to provide investigative support while suspects in custody are being questioned by ODCE staff.

## Financial resources

The Office is funded via the Department of Business, Enterprise & Innovation's ("the Department") Vote (Vote 32). Table 3 below sets out details of the Office's 2017 allocation and expenditure respectively.

**Table 3 Financial allocation and expenditure – 2017**

	Allocation €000s	Expenditure €000s	%
Pay	2,838	1,976	70
Non-pay	2,057	1,038	50
Exceptional legal costs	50	0	0
<b>Total</b>	<b>4,945</b>	<b>3,014</b>	<b>61</b>

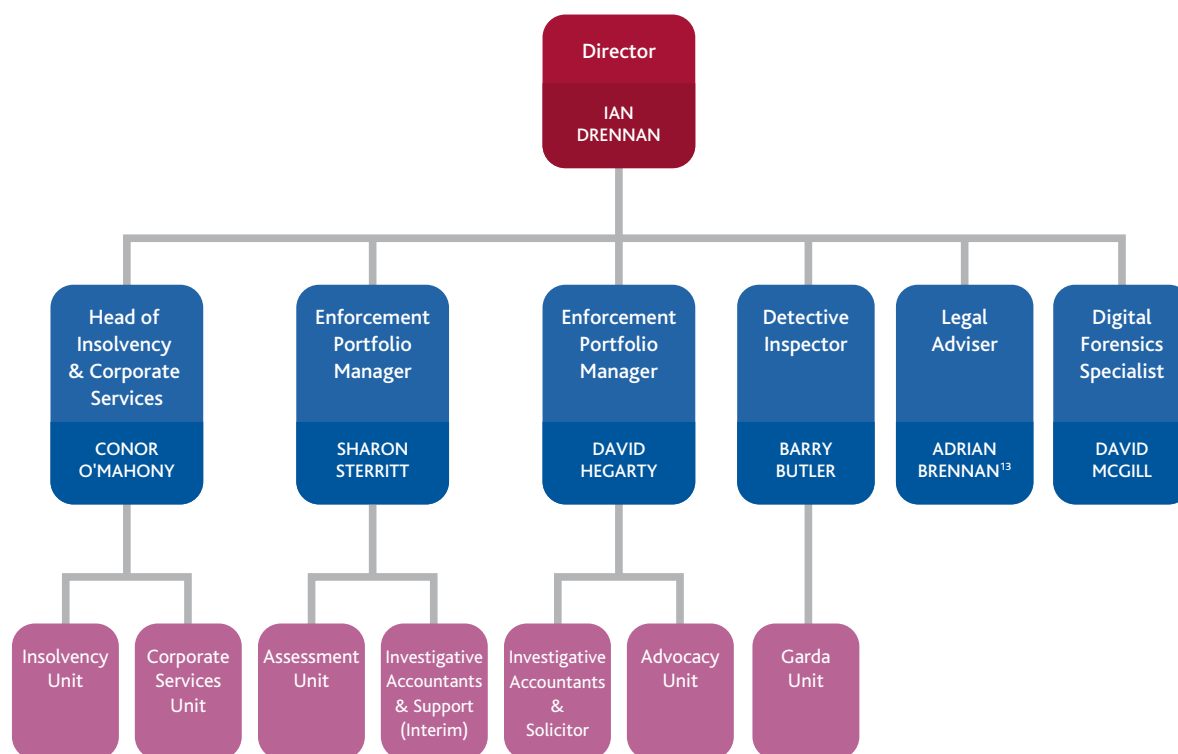
The principal reasons as to why actual expenditure differed from the allocation were as follows:

- savings on pay resulting from vacancies arising during the year (principally retirements and transfers out) that remained unfilled at year-end and the delay in recruitment of new staff for which sanction was granted; and
- the non-pay allocation for the year included provision for potential costs associated with litigation to which the Office was a party. The costs incurred during the year on these cases were less than might have been anticipated.

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

## Organisational structure

Having regard to the Director's principal statutory functions and the associated workstreams, the Office is structured into seven Units, with each Unit coming under the responsibility of one of four Heads of Function. The Office's organisational structure at 31 December 2017 is set out in the organogram on page 16.



### Principal workstreams

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

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

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

**Table 4 Principal workstreams**

Workstream	Unit(s) principally involved	Chapter
Encouraging compliance with the Companies Act	Responsibility for encouraging compliance with the Act resides in the first instance with the Advocacy Unit. However, the Advocacy Unit liaises with other relevant Units with a view to monitoring trends and identifying areas meriting focussed advocacy initiatives.	2
Advocating legislative and policy enhancements	Depending upon the nature of the subject matter, the development of ODCE submissions is assigned to one or more Units. Generally speaking, however, the development of submissions will be co-ordinated through the Advocacy Unit.	2
Reviewing, and adjudicating upon, liquidators' reports	Liquidators' reports are processed by the Insolvency Unit. Decisions on individual reports are made by Case Officers. This workstream also encompasses the recently implemented Undertakings regime, which is further elaborated upon later in this Report.	3

<sup>13</sup> Post year-end, Mr. Brennan transferred out of the Office. An Enforcement Lawyer, Ms. Suzanne Gunn, BL, has subsequently been recruited

Workstream	Unit(s) principally involved	Chapter
Examination of complaints and statutory reports	<p>The examination of complaints and statutory reports (such as, for example, auditors' indictable offence reports) is the responsibility of the Enforcement function.</p> <p>Dependent upon the nature of the issues arising, the Enforcement function may:</p> <ul style="list-style-type: none"> <li>• address the issues itself, e.g., by way of voluntary rectification/remediation or through the use of certain of the Director's statutory powers;</li> <li>• designate the matter as being one for further investigation;</li> <li>• refer the matter to the Insolvency Unit, e.g., where the issues in question relate to an insolvent company in liquidation;</li> <li>• refer the matter to a third party, for example, another regulatory or enforcement body.</li> </ul>	3
Civil enforcement litigation	<p>For the most part, civil enforcement litigation is managed by the Enforcement function.</p> <p>Civil litigation, such as seeking the disqualification of directors of companies that have been struck off the Register of Companies<sup>14</sup> whilst having undischarged debts, is managed jointly by the Insolvency and Enforcement functions.</p>	3
Criminal investigation and prosecution	<p>The investigation of possible criminal breaches of the Act is undertaken by the Enforcement function in conjunction with the Garda Unit.</p> <p>Once a decision has been taken to initiate summary criminal proceedings, the prosecution becomes a collaborative exercise between the Enforcement function and Garda Unit. Investigations in which a prosecution on indictment is envisaged involve collaboration on the part of the Enforcement function and Garda Unit.</p> <p>In circumstances where, having reviewed an investigation file as submitted by the Office, a decision is taken by the DPP to initiate a prosecution on indictment, the provision of subsequent support to the Office of the DPP (for example, regarding disclosure to the defence), is primarily the responsibility of the Enforcement function and Garda Unit.</p>	3
Supervision of liquidators' behaviour	<p>Actions taken to supervise liquidators' behaviour (such as, for example, reviewing liquidators' books and records) is a collaborative effort between the Insolvency and Enforcement function.</p>	3
Provision of support services	<p>The provision of support services to other areas of the Office is the primary responsibility of the Corporate Services Unit.</p> <p>All Units have a responsibility to assist the Corporate Services Unit in ensuring that the ODCE's obligations as a publicly funded Office (e.g. in the areas of procurement, tax clearance procedures etc.) are fully complied with.</p>	4
Relationship management and development	<p>Whilst certain Units, by virtue of the nature of their principal operations, have a greater degree of interface with certain external stakeholders than others, the interlinked nature of the organisation is such that all Units have a role in ongoing relationship management and development.</p>	2

<sup>14</sup> See [www.cro.ie](http://www.cro.ie) for further information regarding the Register.



# CHAPTER 2

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

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

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

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

## PUBLICATIONS AND OUTREACH ACTIVITIES

### Publications

Following on from the signing into law in May 2017 of the Companies (Accounting) Act 2017 and the impending Companies (Statutory Audits) Act 2018 which is scheduled to commence in 2018, the Office is currently updating its suite of information guidance to reflect changes to the law. The revised documents are expected to be published in the second half of 2018.

During the year under review, approximately 9,500 physical copies of the various ODCE publications, principally, Information Books and Quick Guides, were issued to interested parties. These publications were issued in response to public demand, either at, or as a consequence of attendance at, events, exhibitions and presentations or as a result of persons contacting the Office directly. In addition, and in agreement with ODCE, the Companies Registration Office ("CRO") issue a Quick Guide on the roles and duties of directors to persons registering new companies. In the past, a physical guide issued, however, reflecting the CRO's move to electronic means the guide is now issued electronically, consequentially reducing the number of physical copies issued by the Office by about 6,000.

### Seminars and exhibitions

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

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

During the year, Office staff delivered 26 presentations (2016: 43) to a combined audience of approximately 1,350 people. Many of these presentations dealt specifically with the Companies Act 2014 and the ODCE's enhanced remit and enforcement policies in that context. During the year, the Office was also represented at a total of 16 exhibitions (2016: 14). Details of the presentations delivered and exhibitions attended respectively during the year are set out at Appendix 2 to this Report.

## MANAGING AND DEVELOPING RELATIONSHIPS WITH EXTERNAL STAKEHOLDERS

In furtherance of its statutory objectives and associated goals, the Office seeks to develop and maintain strong and effective relationships with a range of key stakeholders. In addition to the general public, the Office's key stakeholders include the Oireachtas<sup>15</sup>, the Minister, the Department, other statutory/regulatory bodies and those providing professional services to companies and company directors and officers. The Office's interactions during the year with certain of its key stakeholders are summarised below.

<sup>15</sup> Collective term for the Upper and Lower Houses of Parliament

## Members of the Oireachtas

The Office, from time to time, receives communications from members of the Oireachtas. Typically, these communications constitute expressions of concern as to whether company law is being breached by particular parties or relate to cases under review. Whilst the Office is constrained in the extent to which it can respond to such communications by virtue of its statutory confidentiality obligations, it endeavours to provide whatever assistance it can to Deputies<sup>16</sup> and Senators<sup>17</sup>.

## Department of Business, Enterprise & Innovation

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

## CRO

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

## Garda National Economic Crime Bureau ("GNECB")

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

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

In accordance with the provisions of the Act, the Director is a member of IAASA and has the consequential right to nominate a member to its Board of Directors. Mr. Conor O'Mahony, the Office's Head of Insolvency & Corporate Services, is, in that context, a member of IAASA's Board of Directors. Mr. O'Mahony attended all relevant meetings of IAASA's Board held during 2017. IAASA's 2017 Annual Report will be available on its website<sup>18</sup> once it has been laid before the Oireachtas by the Minister.

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

## Company Law Review Group ("CLRG")

The CLRG<sup>19</sup> is a statutorily established advisory body to the Minister on matters relating to company law. The Director is a member of the CLRG and the ODCE is represented at both plenary meetings and at meetings of Committees whose work is pertinent to its remit.

### CORPORATE INSOLVENCY

The Office's Head of Insolvency & Corporate Services, Mr. Conor O'Mahony, is a member of the Corporate Insolvency sub-committee which has been examining, *inter alia*, the UNCITRAL Model Law on Cross-Border Insolvency, the European Proposal for a Directive on Insolvency, Restructuring and Second Chance, and has been tasked with reviewing the legislation on the winding up of companies.

### COMPLIANCE & ENFORCEMENT

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

<sup>16</sup> Members of the Lower House of Parliament

<sup>17</sup> Members of the Upper House of Parliament

<sup>18</sup> [www.iaasa.ie](http://www.iaasa.ie)

<sup>19</sup> [www.clrg.org](http://www.clrg.org)

## CORPORATE GOVERNANCE

The Office's Head of Insolvency & Corporate Services, Mr. Conor O'Mahony, is a member of the Corporate Governance sub-committee, which has been charged with examining certain submissions referred to the CLRG by the Department of Business, Enterprise and Innovation relating to measures (dealing with the governance of companies) contained in Part 4 of the Act and the appropriate chapters of Parts 16, 17, 18 and 19. The subcommittee will also consider other codes of best practice in corporate governance, as recommended and/or required by relevant regulators.

### Central Bank

The ODCE and the Central Bank have in place a Memorandum of Understanding ("MoU") which, based on their respective grounding legislation, allows each body to refer information to the other where they are satisfied that such information is relevant to the other's remit.

### Office of the Revenue Commissioners

The Revenue Commissioners are an important partner of the Office in the furtherance of its work, particularly in respect of insolvency related matters. The ODCE and the Revenue Commissioners have in place an 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.

In that context, the two bodies met on a number of occasions during the year. Moreover, the two bodies shared information in respect of five separate matters (2016: 5). This represents a reduced level of exchange compared with previous years and is explained by the decision to defer taking any new disqualification applications against the directors of struck-off companies pending the conclusion of an appeal taken by the Office to the Court of Appeal. This matter is elaborated upon further in Chapter 3 of this Report.

### Accountancy profession

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

### Irish Stock Exchange

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

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

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

### Media

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



# CHAPTER 3

COMPLIANCE AND ENFORCEMENT  
ACTIVITIES



## STRUCTURE OF THIS CHAPTER

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

## PART A: INPUTS

### EXTERNAL INPUTS

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

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

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

**Table 5 Inputs from external sources**

	2017	%	2016	%
<i>Statutory reports</i>				
Liquidators' reports (initial) (s682)	652		683	
Liquidators' reports (subsequent) (s682)	240		261	
Total liquidators' reports (s682)	892	71	944	73
Liquidators' reports regarding possible criminality (s723)	0		0	0
Auditors' indictable offence reports (s393)	82	6	69	5
Examiners' reports (s534)	28	2	5	0.4
Professional Bodies' indictable offence reports (s931)	0	0	5	0.4
Professional Bodies non-indictable offence reports	4	1	–	–
<i>Referrals</i>				
Referrals from external parties	21	1	28	2
<i>Complaints</i>				
Complaints from members of the public	234	18	248	19
<i>Other</i>				
Disclosures under the Protected Disclosures Act 2014 <sup>20</sup>	1	1	4	0.3
<b>Total inputs from external sources</b>	<b>1,262</b>	<b>100%</b>	<b>1,303</b>	<b>100%</b>

<sup>20</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.

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>21</sup> liquidation are required by law<sup>22</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>23</sup> of each of the directors, unless relieved of that obligation by the Office<sup>24</sup>.

The essential aims of this statutory reporting regime are to:

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

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

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

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

### Restriction and Disqualification Undertakings

The Act<sup>25</sup> introduced, for the first time, a statutory framework under which individuals who might otherwise face the prospect of Court proceedings can avoid having to go to Court by voluntarily agreeing to a restriction or disqualification as applicable (i.e., by providing a legally binding Undertaking to that effect).

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

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

22 Section 682 Companies Act 2014

23 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.

24 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)

25 Sections 849 to 854 of the Companies Act, 2014

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

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

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

### Companies entering liquidation

As can be seen from the Table below:

- the total number of insolvent liquidations (i.e. creditors' and Court liquidations combined) increased by approximately 5% in 2017 but only represents 51% of the levels in 2012; and
- during 2017, the level of solvent liquidations decreased compared to 2016, accounting for 61% of all liquidations.

**Table 6 Companies entering liquidation: 2012 – 2017**

	2012	2013	2014	2015	2016	2017
Creditors' liquidations	1,210	1,043	929	746	581	613
Court liquidations	107	76	78	70	61	63
<i>Total insolvent liquidations</i>	<i>1,317</i>	<i>1,119</i>	<i>1,007</i>	<i>816</i>	<i>642</i>	<i>676</i>
Members' liquidations	919	848	1,001	1,034	1,112	1,040
<i>Total solvent liquidations</i> <sup>26</sup>	<i>919</i>	<i>848</i>	<i>1,001</i>	<i>1,034</i>	<i>1,112</i>	<i>1,040</i>
<b>Total liquidations</b>	<b>2,236</b>	<b>1,967</b>	<b>2,008</b>	<b>1,850</b>	<b>1,754</b>	<b>1,716</b>

### Liquidators' s682 reports received – 2017

As can be seen from Table 5 on page 23, a total of 892 liquidators' s682 reports were received during the year (2016: 944), of which:

- 652 were initial reports<sup>27</sup> (2016: 683); and
- 240 were subsequent reports<sup>28</sup> (2016: 261).

<sup>26</sup> Whilst the Office has no role in solvent (i.e. members') liquidations, data in respect of same has been included in the interests of completeness.

<sup>27</sup> An initial report is the first report received from a liquidator and is required to be submitted within 6 months of his/her appointment. In the majority of cases, the decision as to whether or not to grant relief is made based on this report.

<sup>28</sup> In some cases a subsequent report is required from the liquidator when his/her investigations have progressed further. In circumstances where a subsequent report is considered to be necessary, 'relief at this time' is usually granted in respect of the initial report.

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 – 2017**

Sector	2017		2016	
	Number	%	Number	%
Wholesale & retail	200	31	174	25
Construction	73	11	92	13
Community, social & other	61	9	89	13
Manufacturing & printing	34	5	82	12
Hotels, bars & catering	100	15	75	11
Marketing & promotion	15	2	46	7
Real estate & renting	50	8	44	6
Technology & telecommunications	40	6	31	4
Financial & leasing	40	6	17	2
Transport & distribution	16	2	15	2
Agriculture, mining & marine	18	3	12	2
Recruitment & security services	5	1	6	1
<b>Total</b>	<b>652</b>	<b>100%</b>	<b>683</b>	<b>100%</b>

### Timeliness of liquidators' reporting

Over the course of the year, the Office issued 43 (2016:106) notices to liquidators advising them that they were in default of their statutory reporting obligations. Almost all of these defaults were promptly rectified as a result of this action and at the end of the year 97% of the first reports due during the year had been received with only 6 first 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 under IAASA's supervisory remit (see further elaboration below).

### Qualification for appointment as a liquidator or examiner

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

- i. members of a Prescribed Accountancy Body holding a practicing certificate;
- ii. solicitors holding a practicing certificate;
- iii. members of any other professional bodies recognised for this purpose by IAASA (none currently);
- iv. persons qualified to act as a liquidator in another EEA<sup>29</sup> state; and
- v. persons with practical experience of windings-up and knowledge of relevant law prior to the commencement of the Act who are authorised by IAASA. Before granting an authorisation of this type, IAASA has to be satisfied, having consulted the ODCE, that the person is a fit and proper person to act as a liquidator.

<sup>29</sup> European Economic Area (EU States plus Liechtenstein, Iceland and Norway)

An individual who has applied to IAASA for authorisation under (v) above may continue to act pending the determination of their application. At the end of 2017, IAASA had formally requested the views of the Director of Corporate Enforcement in respect of 10 individuals who have applied for authorisation under this provision. The views of the Director on these applications have been conveyed to IAASA.

In addition to the qualification requirements prescribed in section 633, section 634 provides that all liquidators must have in place adequate professional indemnity insurance ("PII"). IAASA has issued Regulations prescribing the required level of PII required and these Regulations are available on IAASA's website<sup>30</sup>.

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

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

As can be seen from Table 5, in aggregate those external inputs other than liquidators' section 682 reports accounted for 29% (2016: 27%) 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	2017		2016	
	Number	%	Number	%
Real estate & renting	91	25	80	23
Not a company	30	8	55	15
Community, social & personal	26	7	39	11
Insurance health & social work	25	6	33	10
Construction	19	5	24	7
Finance & leasing	31	9	23	6
Manufacturing & printing	20	5	19	5
Wholesale & retail	34	9	16	5
Technology & telecommunications	25	7	15	4
Transport & distribution	26	7	14	4
Hotels, bars & catering	13	4	14	4
Marketing & promotion	10	3	12	3
Agriculture, mining & marine	12	3	7	2
Recruitment & security services	8	2	4	1
Other business sectors	0	0	0	0
<b>Total</b>	<b>370</b>	<b>100%</b>	<b>355</b>	<b>100%</b>

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

## COMPLAINTS

The Office receives substantial numbers of complaints annually from members of the public. During the year a total of 234 complaints were received (2016: 248), which accounted for 18% (2016: 19%) of all external inputs received. The Table below provides an analysis of the subject matter of complaints received.

**Table 9 Complaints received (analysed by character of primary reported default)**

	2017		2016	
		%		%
Annual/Extraordinary General Meeting related	28	12	33	14
Directors' conduct (responsibilities & filing)	29	13	31	12
Allegations of reckless/fraudulent/insolvent trading	35	15	28	11
Allegations of forgery/furnishing of false information/ falsified documents	12	5	23	9
Relating to the issue of unpaid debts	13	5	19	7
Access to accounting records/minutes of meetings	13	5	14	6
Register of members related	10	4	12	5
Audit/auditor related	16	7	10	4
Receivership related	2	1	9	4
Registered address related	17	7	8	3
General shareholder rights issues	5	2	7	3
Acting as a director while a bankrupt/restricted/disqualified	0	0	7	3
Companies trading whilst struck off the Register/dissolved	9	4	5	2
Relating to improper use of the word "Limited"	3	1	5	2
Liquidation/phoenix activity	11	5	5	2
Display of business particulars	0	0	4	2
Issues relating to change of accounting year end	11	5	2	1
Other	20	9	26	10
<b>Total</b>	<b>234</b>	<b>100%</b>	<b>248</b>	<b>100%</b>

## AUDITORS' INDICTABLE OFFENCE REPORTS

### Introduction – overview of the auditor reporting regime

Section 393(1) of the Act provides that, where, in the course of and by virtue of their carrying out of an audit, information comes into the possession of a company's auditors which leads them to form the opinion that there are reasonable grounds for believing that an indictable offence under the Act has been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the Office. The Office has developed and published guidance to assist auditors in complying with their obligations in this regard<sup>31</sup>.

### Nature of suspected offences reported

During the year, a total of 82 (2016: 69) indictable offence reports were received from auditors. The Table below provides an analysis of the nature of suspected offences notified in those reports. It should be noted that the number of reports received does not accord with the number of suspected offences reported as, in a number of instances, reports included reference to more than one suspected offence.

**Table 10 Analysis of suspected indictable offences reported by auditors**

	2017		2016	
		%		%
Directors' loan infringements	37	44	58	79
Failure to maintain proper accounting records	15	18	10	14
Issues relating to access to accounting records	1	1	2	3
Failure to prepare consolidated financial statements	0	0	3	2
Issues relating to the directors' approval of financial statements	2	2	1	1
Provision of false statements to auditors	1	1	0	0
Obligation to prepare group accounts	2	2	0	0
Entity financial statements	25	32	0	0
<b>Total</b>	<b>83<sup>32</sup></b>	<b>100%</b>	<b>74<sup>32</sup></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 his or her report to the ODCE. 28 such reports were received from examiners having been contacted and advised of their obligation to do so (2016: 5).

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

32 Some auditors's reports included indications of more than one suspected offence.

## 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 21 (2016: 28) such referrals from a variety of sources.

## PROFESSIONAL BODIES' INDICTABLE OFFENCE REPORTS

### Recognised Accountancy Bodies ("RABs")<sup>33</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>34</sup>. While 4 reports were received during the year under review these were non-indictable reports (2016: 5).

### Prescribed Professional Bodies ("PPBs")

Similarly, where the Disciplinary Committee or Tribunal of a PPB finds that a member conducting a liquidation<sup>35</sup>, examinership<sup>36</sup> or receivership<sup>37</sup> has not maintained appropriate records, or has reasonable grounds for believing that the member has committed an indictable offence under the Act during the course of a liquidation, examinership or receivership, the PPB concerned is required to report the matter to the Office.

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

'Prescribed professional body' in relation to sections 488, 558 and 688 refers to a disciplinary committee or a tribunal of a prescribed professional body associated with section 633 (setting qualifications for appointment of liquidators, examiners and receivers).

The PPBs are:

- Law Society of Ireland
- ACCA – Association of Chartered Certified Accountants
- AIA – Association of International Accountants
- CIMA – Chartered Institute of Management Accountants
- CIPFA – Chartered Institute of Public Finance and Accountancy
- ICAEW – Institute of Chartered Accountants in England & Wales
- ICAI – Institute of Chartered Accountants in Ireland
- ICAS – Institute of Chartered Accountants of Scotland
- ICPAI – Institute of Certified Public Accountants in Ireland
- IIPA – Institute of Incorporated Public Accountants whose members transferred to ICPAI Ireland for regulatory and service support purposes with effect from 1 September 2017

No reports of this nature were received from PPBs during the year (2016: 0).

<sup>33</sup> A RAB is an accountancy body that is permitted to authorise its members and member firms, subject to those members having satisfied certain criteria, to act as statutory auditors and audit firms respectively. There are six RABs, i.e., the:

- Association of Chartered Certified Accountants (ACCA)
- Institute of Certified Public Accountants (ICPAI)
- Institute of Chartered Accountants in England & Wales (ICAEW)
- Institute of Chartered Accountants in Ireland (ICAI)
- Institute of Chartered Accountants of Scotland (ICAS)
- Institute of Incorporated Public Accountants (IIPA)

<sup>34</sup> Section 931(4) of the Act

<sup>35</sup> Section 688 of the Act

<sup>36</sup> Section 558 of the Act

<sup>37</sup> Section 448 of the Act



## LIQUIDATORS' REPORTS REGARDING POSSIBLE CRIMINALITY

In addition to their reporting obligations under section 682 as detailed above, in accordance with section 723(5) of the Act, liquidators are required, in circumstances where it appears that any past or present officer of the company concerned has been guilty of any offence in relation to the company, to make a report to the DPP and also to refer the matter to the ODCE. This reporting obligation extends to all liquidations, solvent and insolvent (i.e. both Members' and Creditors' Voluntary liquidations and Court liquidations) alike. No such reports were received by the Office during the year (2016: 0).

## DISCLOSURES UNDER THE PROTECTED DISCLOSURES ACT 2014<sup>38</sup>

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

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

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

## INTERNAL INPUTS

### INTRODUCTION

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

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

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

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

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

## ACTIONS FOCUSING ON PARTICULAR COHORTS OF PERSONS, E.G., PERSONS WHO ARE UNDISCHARGED BANKRUPTS, RESTRICTED OR DISQUALIFIED

During the course of the year 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.

<sup>38</sup> The Protected Disclosures Act 2014 is available at <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/pdf>

## INVESTIGATIONS COMMENCED ON OWN INITIATIVE

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

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

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

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

## DISSOLVED INSOLVENT COMPANIES

The Office characterises as "*dissolved insolvent companies*" those companies that:

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

It is open to the Office to apply to the High Court for the disqualification of the directors of such struck off companies<sup>39</sup>. However, company law also provides<sup>40</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>41</sup> the director(s) where it adjudges that disqualification is not warranted under the particular circumstances<sup>42</sup>.

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

Where it appears to the Office that a director is liable to be disqualified in these circumstances, it may offer the individual concerned the opportunity to voluntarily submit to a Disqualification Undertaking. 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 2017 the availability of additional resources allowed the Office to undertake further investigation of directors who allowed their companies to be struck off the Companies Register while having significant outstanding liabilities. Such individuals are liable to disqualification pursuant to section 842(h) of the Act. The Office investigated a number of companies within this category and commenced a disqualification process against a number of company directors. At the end of 2017, 4 directors associated with two unrelated companies were disqualified on foot of voluntary Disqualification Undertakings given under section 851 of the Act. Such undertakings may be given as an alternative to facing High Court proceedings on foot of section 842(h). It is expected that during 2018 there will be a significant increase in the number of directors who will be disqualified in these types of cases whether by way of High Court applications under section 842(h) or by voluntarily submitting to Disqualification Undertakings under Section 851.

<sup>39</sup> Section 842(h) of the Companies Act 2014

<sup>40</sup> Section 843(3) of the Companies Act 2014

<sup>41</sup> Section 819 of the Companies Act 2014

<sup>42</sup> Section 845(3) of the Companies Act 2014

## 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>43</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>44</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 – 2017

During the course of 2017, a total of 97<sup>45</sup> (2016: 128) internal inputs were generated.

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

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

45 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 reach a natural conclusion when a decision has been taken as to whether or not to relieve the liquidator of the obligation to seek the company's directors' restriction and, where relief is granted, the file is usually closed.

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

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

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

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

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

- the decision to take no further action (for example, where enquiries suggest that there has been no breach of company law or where the breach is minor in nature and enforcement action would, as a consequence, be disproportionate);
- a decision not to take enforcement action on this occasion but, rather, to issue a warning that any recurrence will precipitate enforcement action (for example, where the breach has been rectified and/or remediated and rectification/remediation has been evidenced to the ODCE's satisfaction);
- referral to other statutory authorities or professional bodies of matters relevant to their respective remits;
- the issuing of civil directions, e.g., directions to companies and/or their directors requiring the remedying of stated defaults within prescribed timeframes;
- the initiation of civil proceedings, i.e., Court applications for the purpose of seeking specified remedies;
- the initiation of summary criminal proceedings or referral of the matter to the DPP for consideration as to whether charges should be directed on indictment.

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

**Table 11 Throughput of liquidators' section 682 reports – 2017**

Section 682 reports on hand at 1 January, 2017		425
New reports received during 2017	652	
Less: Reports in respect of which determinations made during 2017	600	
<b>Section 682 reports on hand at 31 December, 2017</b>		<b>477</b>

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

**Table 12 Throughput of other cases – 2017**

Other cases on hand at 1 January, 2017		93
New cases opened during 2017	467	
Less: Cases concluded during 2017	471	
<b>Other cases on hand at 31 December, 2017</b>		<b>89</b>

## PART C: OUTPUTS

### 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 600 liquidators' reports during 2017 (2016: 736), with a further 265 decisions made to grant 'Relief at this time' (2016: 254).

Of the definitive decisions taken during 2017, a total of 501 were made in respect of initial reports (2016: 545), with a further 99 being made in respect of subsequent reports (2016: 191).

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

**Table 13 Analysis of decisions taken in respect of initial liquidators' section 682 reports**

Decision type	2017		2016	
		%		%
Full relief <sup>46</sup>	476	76	503	74
No relief <sup>47</sup>	19	3	27	4
Partial relief <sup>48</sup>	6	1	15	2
Relief at this time <sup>49</sup>	126	20	137	20
<b>Total</b>	<b>627</b>	<b>100%</b>	<b>682</b>	<b>100%</b>

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

Decision type	2017		2016	
		%		%
Full relief <sup>46</sup>	73	31	138	45
No relief <sup>47</sup>	20	9	43	14
Partial relief <sup>48</sup>	6	2	10	3
Relief at this time <sup>49</sup>	139	58	117	38
<b>Total</b>	<b>238</b>	<b>100%</b>	<b>308</b>	<b>100%</b>

<sup>46</sup> 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.

<sup>47</sup> 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.

<sup>48</sup> 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.

<sup>49</sup> 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.

## Relief decisions made on liquidators' reports

Complete lists of the directors, and associated companies, in respect of which full relief and relief at this time respectively were granted during 2017 are available at [www.odce.ie](http://www.odce.ie).

## Restriction and Disqualification Undertakings

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

**Table 15 Undertaking offers issued, accepted and declined**

	2017		2016	
	Cases	Directors	Cases	Directors
<i>Restrictions:</i> <sup>50</sup>				
Number eligible for Undertaking offers	50	103	84	143
Number of offers issued	43	90	80	138
Number of offers accepted	42	83	60	93
Number of offers not accepted	1	4	17	28
Number of offers outstanding at year end:	2	3	3	17
<i>Disqualifications:</i>				
Number eligible for Undertaking offers	3	4	5	8
Number of offers issued	3	4	5	8
Number of offers accepted	1	1	5	8
Number of offers not accepted	1	1	0	0
Number of offers outstanding at year end:	1	2	0	0

<sup>50</sup> A number of restrictions accepted in 2017 relate to undertakings offered in 2016.

## Outcome of liquidators' Court applications

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

**Table 16 Results of liquidators' Court applications – 2017**

	2017		2016	
	Cases	Directors	Cases	Directors
Restriction Declarations granted	17	31	48	90
Disqualification Orders granted	6	9	7	11
Declarations or Orders not granted	7	11	11	23
<b>Total</b>	<b>30</b>	<b>51</b>	<b>62<sup>51</sup></b>	<b>124</b>

On foot of Undertakings or Court Orders, a total of 118<sup>52</sup> (2016: 183) directors were restricted and 10<sup>53</sup> (2016: 19) directors disqualified. Further analysis of the Orders made by the Court on foot of liquidators' applications and Undertakings is provided in Appendices 4 to 6 of this Report.

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

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

- a company involved in the importation and reselling of high end cars went into liquidation on foot of a petition by the Revenue Commissioners for unpaid taxes approaching €2.5 million. The company had failed to maintain proper books and records and was not tax compliant for a number of years prior to liquidation. For a short period prior to liquidation the company had registered a fictitious person as a director of the company with the Companies Registration Office. The company failed to file audited accounts with the CRO for 5 years prior to liquidation and the director of the company did not adequately cooperate with the liquidator. The director accepted a Disqualification Undertaking offer for a period of 5 years.
- a company involved in general building, construction and property investment activities had substantial arrears to the Revenue Commissioners. The company engaged in the under declaration of VAT on property sales, property rentals and other works completed. Also, no VAT was declared to the Revenue Commissioners on cash receipts. The company failed to keep proper books and records for a protracted period of time. Although there were substantial transactions going through the Company's accounts little had been made available to the liquidator in terms of records. The directors failed to co-operate adequately with the Liquidator. The directors failed to collect sums due to the Company. They failed to deliver a Statement of Affairs within the appropriate deadline. They repeatedly failed to file Company Registration Office statutory annual returns by their due date.

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

<sup>52</sup> Appendix 4

<sup>53</sup> Appendix 5



- a company involved in the provision of mobile and on site security services traded while insolvent from the outset of its incorporation. The directors underpaid the Company's liability to the Revenue Commissioners in respect of PAYE/ PRSI and VAT. PAYE/PRSI deducted from staff was used to fund the Company's operations and consequently left the staff in a vulnerable position. It was the Liquidator's belief that if the Revenue Commissioners had not completed a tax audit on the company that the directors would have continue to trade, even though it was insolvent. Transactions that were put through the Company's bank accounts personally benefitted the directors and in so doing impeded payment to creditors. The directors did not engage with the Liquidator and failed to provide to him the books and records of the Company. The Directors provided an inaccurate Statement of Affairs at the creditors meeting which showed that the Company had assets that did not exist at the date of winding up.
- directors of a hair dressing salon failed to comply with Revenue obligations and duties resulting in tax liabilities of €153,770.72. The Company paid other creditors and advanced €53,875 to the company while incapable of discharging its liabilities to Revenue. The company continued to trade while insolvent, based in information from balance sheet the company was insolvent from when it began trading. The Company also breached the Companies Acts in failing to file Statutory Returns with the Companies Registration Office. When the company closed, the business was taken over by a Phoenix Company. The liquidator reported that queries to the Directors were responded to inadequately.
- the Revenue Commissioners petitioned the High Court for the winding up of this company which was engaged in manufacture of wood products. The petition was in response to tax liabilities of €2,447,616.76. The Directors allowed this company to continue to trade while insolvent and from the date of dissolution the company continued to trade without legal status. The company breached the Companies Acts in the requirement to file statutory annual returns to the Companies Registration Office and was struck off the register twice. An amount of €10,000 was taken from the Company's bank account and paid to one of the directors 3 days prior to the liquidation. The liquidator considered this to be a preferential payment and a substantial amount of the company's equipment and plant was removed in the period leading up the liquidation and despite requests from the liquidator for supporting documentation for this transaction none was provided. Also, the director failed to reply to queries raised by the liquidator during this investigation.

## OUTPUTS FROM ENFORCEMENT WORK

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

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

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

## SECURING VOLUNTARY RECTIFICATION/REMEDIATION

### Directors' loans infringements

In 37 cases (2016: 58) 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 €15.5m (2016: €17m). Such rectifications are in the interests of affected companies' members and creditors.

### Failure to comply with accounting standards

Section 291(3) of the Act requires companies to prepare their financial statements, *inter alia*, in accordance with applicable accounting standards. Section 291(9) provides that failure to comply with that requirement is a Category 2 offence on the part of the company and any officer in default. In 25 (2016: 2) instances where companies' failure to comply with accounting standards had been reported to the Office by way of indictable offence reports, warnings issued to the companies in question. Specifically, the directors of the companies in question were afforded the opportunity to address the underlying non-compliance and warned that, in the event of reoccurrence, enforcement action was the likely response.

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

During the year, the Office undertook a review of the register of disqualified and restricted persons as maintained by the Registrar of Companies. Arising from the review, 53 names (2016: 83) appeared to be in contravention of such orders. Following ODCE intervention, the individuals' positions were regularised.

### Total cautions issued

In addition to the foregoing, cautions issued to a total of 58 companies (2016: 59) on a variety of matters.

## SECURING COMPLIANCE AND PROGRESSING ENQUIRIES AND INVESTIGATIONS THROUGH THE EXERCISE OF THE DIRECTOR'S STATUTORY POWERS

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

- serving 12 statutory directions to produce specified books or documents under section 778 of the Act (2016: 3);
- serving 17 statutory directions for assistance and explanations under section 784 of the Act (2016: 0), relating to books and documents required under production orders served under section 778 or 780;
- serving 7 statutory directions requiring third parties to produce books and documents under section 780 of the Act (2016: 2), relating to books and documents required under production orders served under section 778;
- serving 10 statutory requests on auditors for information under section 393 of the Act (2016:1);
- serving 5 statutory notices under section 782 of the Act – Proposed Requirement Pursuant to Section 780(1)(c) of the Companies Act 2014 concerning Books or Documents;
- serving 5 statutory requests on Companies to produce minutes of directors' meetings under section 166 of the Act (2016: 0);
- serving 2 statutory requests to produce minutes of general meetings under section 199 of the Act (2016: 0);
- serving 5 orders under Section 52 of the Criminal Justice (Theft and Fraud Offences) Act 2001 (2016: 0);
- 45 statutory directions (2016: 106), pursuant to section 797(1) of the Act, requiring liquidators to comply with their reporting obligations under section 682;
- 2 directions under section 797 of the Act in relation to Court Order Compliance (2016: 0).

## PERMITTING/FACILITATING COMPLIANCE THROUGH THE EXERCISE OF THE DIRECTOR'S STATUTORY FUNCTIONS

During the year, 11 requests (2016: 2) were received from companies seeking a direction disapplying the limitation in section 288(9) of the Act, under which, ordinarily, a company may not alter its current or previous year end date more than once in a five-year period.

## CIVIL REMEDIES SOUGHT

### High Court application

During the year an application was made to the High Court in the context of proceedings that had been initiated by a company seeking that it be wound up. The company in question was one in respect of which a criminal investigation by the Office had already been commenced. On the consent of all relevant parties, the High Court made an order directing the provisional liquidator (who the Court had, on that same day, appointed to the company) to allow the Office to forthwith take possession of certain original and copy documentation of, or relating to, the company's affairs, subject to certain specified safeguards which were put in place to vindicate the privacy entitlements of certain third parties.

### Dissolved insolvent companies

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

### Other civil litigation

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

**Table 17 Details of civil proceedings – 2017**

*The Director of Corporate Enforcement -v- Irish Bank Resolution Corporation Limited (In Special Liquidation) – 2010 No. 323 COS*

The Director was successful in making his application to the High Court in January 2017 for an Order pursuant to Section 788(7)(a) of the Companies Act 2014, to extend 'the prescribed period' under Sections 788(6)(a) and (b) of the Companies Act 2014 by a further period of three years from the 30th January 2017 and a similar Order was granted in respect of the identified Legal Professional Privilege material – the Court also made an Order amending the title to the proceedings to reflect the change of status in the name of the company since the last application made to Court in 2015.

*DMG Hotels Ltd (In Liq) – Applicant – Darren Geoghegan*

One Relief Application (Section 822 of the Companies Act 2014) was received in 2017 namely:

Section 822 of the Companies Act 2014 provides, *inter alia*, that:

- a person who is subject to a restriction declaration, may, on giving no less than 14 days' notice in writing of his or her intention to both the Director and the Liquidator, may apply to the Court by way of Notice of Motion and Grounding Affidavit, for relief, on such terms and conditions as the Court sees fit
- once so notified by the intended applicant, the Liquidator, upon criminal penalty, is obliged, as soon as practicable after receiving such notification, to notify such Creditors and Contributories of the company as have been notified to the Liquidator or become known to the Liquidator

In May 2017, the Office was notified of an intended application for relief pursuant to Section 822 of the Companies Act 2014. The Office engaged with the Applicant's Solicitors to advise them of the information that should, in the Office's assessment, be brought to the Court's attention in the event that the application proceeded to the Court hearing. In June 2017 the application for relief was withdrawn.

*Newbridge Credit Union Ltd (In Liq) – The High Court – 2016 No. 362 COS – Jim Luby -v- Ben Donnelly + Others*

Application by the Director to be joined as a Notice Party to existing High Court proceedings initiated by the Liquidator of a Credit Union

"New" proceedings were served on the Office in September 2016. The issue concerned the winding up of a Credit Union that was taking place pursuant to Part 7 of the Central Bank and Credit Institutions (Resolutions) Act, 2011 and specifically whether the restriction provisions of the Companies Act 2014 should / would apply to that winding up. The ODCE was successful in its application (21.11.2016) to be joined to the liquidation proceedings as a Third Party, on the same day that the Credit Union Development Association (CUDA) also successfully applied to be joined to the proceedings as an *Amicus Curiae*. In the usual way, prior to the hearing, the various parties exchanged Outline Written Legal Submissions. The scheduled hearing date in March 2017 was vacated with the hearing taking place before Mr. Justice Haughton over three days from the 25th to the 27th July 2017. Judgment was reserved. A written Judgment was delivered on the 26th September 2017. A Costs' Order was made on the 11th October 2017 directing that the Costs of one of the named Respondent directors who participated in the proceedings be discharged by the Liquidator and the Director of Corporate Enforcement on a joint and several basis. No further Costs' Order was made in favour of or against any other of the participating parties.

*Console Suicide Bereavement Counselling Ltd (In Liq) – The High Court – 2016 No. 273 COS*

Returnable for the 14th December 2017, the Director issued a Notice of Motion seeking an Order of the High Court for liberty to interrogate electronic material obtained during an investigation that had been on-going since May 2016. Initially Orders of the Court were obtained in summer 2016. Some twelve separate parties were served with the Director's Motion with this now listed to be heard in April 2018.

*Window and Roofing Concepts Ltd (In Liq) – The High Court – 2017 No. 3493P – Gerard May -v- Declan Lally, Francis Traenor, Richard Joyce, Peter Coyne, Dermot Kilfeather, Ian Drennan and AIB Plc*

The Plaintiff issued a High Court Plenary Summons on the 19th April 2017. No Statement of Claim has yet been served. The Seventh-Named Defendant issued a Notice of Motion, returnable to Monday the 13th November 2017, to have the Plaintiff's proceedings Struck Out. This was adjourned on a number of occasions and is now listed before the Court on a date in April 2018. The Plaintiff's Solicitor issued a Notice of Motion to come off record with this being returnable to Monday the 18th December 2017. That Motion was adjourned to a date in 2018.

*In the Matter of Independent News and Media plc – The High Court – 2017 No. 404 COS – The Director of Corporate Enforcement -v- Leslie Buckley*

The Director issued proceedings in November 2017 seeking an Order pursuant to Section 795(4) of the Companies Act 2014 for a determination as to whether information produced by the Respondent in response to a request issued by the Director pursuant to Section 780 of the Companies Act 2014 contained privileged legal material. Affidavits were exchanged between the Parties before the year end with a further Affidavit to be filed by the Respondent in January 2018 prior to the hearing date fixed for the 22nd January 2018.

## SUMMARY CRIMINAL PROCEEDINGS

As has been set out in detail in previous Annual Reports, in recent years the Office has made a conscious policy decision to devote less resources towards pursuing criminality on the less serious end of the spectrum in favour of concentrating its resources on investigating more serious indications of wrongdoing. Consistent with that repositioning, the Office did not initiate any summary prosecutions during the year.

## INDICTABLE CRIMINAL PROCEEDINGS – CHARGES DIRECTED AND SUBSEQUENT PROSECUTIONS

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

### Files referred to the DPP

During 2017, the ODCE submitted 4 files to the DPP (2016: 5), details of which are set out in the Table below.

**Table 18 Files submitted to the DPP in 2017**

1	A total of 81 charges recommended against 3 suspects. Charges were recommended in respect of suspected offences under: <ul style="list-style-type: none"> <li>• the Companies Acts;</li> <li>• the Criminal Justice (Theft &amp; Fraud Offences) Act 2001;</li> <li>• the Taxes Consolidation Act 1997; and</li> <li>• common law.</li> </ul>	File was under review by the DPP at year end
2	Charges recommended were one count of section 242 of the Companies Act 1990 and one count of Section 6 (Deception) of the Criminal Justice Theft and Fraud Offences Act 2001 against a single suspect.	Direction to prosecute issued by the DPP. That decision reversed following the death of a witness without whom it was adjudged that a prosecution could not proceed.
3	Charges recommended were one count of section 297 (Fraudulent Trading) of the Companies Act 1963 and one count of Deception contrary to Section 6 of the Criminal Justice Theft and Fraud Offences Act 2001 against a single suspect.	Based on the available evidence, DPP directed no prosecution.
4	Charges recommended were 13 counts of section 4 (Theft) of the Criminal Justice Theft and Fraud Offences Act 2001 and/or Section 6 (Deception) of the Criminal Justice Theft and Fraud Offences Act 2001 against a single suspect.	Based on the available evidence, DPP directed no prosecution.

### Prosecutions

The 2016 Annual Report made reference to an investigation file in respect of which the DPP had directed that the suspect be charged with fraudulent trading (based on an alleged invoice discounting fraud). On 24 April 2017 the person charged with that offence entered a plea of guilty to that charge. Subsequently, on 20 March 2018 the individual concerned was sentenced to 18 months' imprisonment, with the final 6 months suspended in respect of a single count of Fraudulent Trading contrary to section 297 of the Companies Act 1963 (as amended). The individual concerned was also disqualified from being a company director for a period of 5 years. This conviction and sentence followed an investigation by the ODCE into the generation of false invoices totalling over €600,000.

Previous Annual Reports have included details of proceedings initiated by the DPP in which Mr. Seán FitzPatrick, the former Chairman and Chief Executive of Anglo Irish Bank Corporation plc, was charged with 21 alleged breaches of section 197 (i.e., false statements to auditors) and 6 alleged breaches of section 242 (i.e., furnishing false information) of the Companies Act 1990. Mr. FitzPatrick's retrial in connection with those charges began before His Honour Judge John Aylmer and a jury in the Dublin Circuit Criminal Court on 21 September 2016. On 23 May 2017, Judge John Aylmer delivered a ruling advising of his intention to direct the jury to acquit Mr. FitzPatrick on all counts on the indictment. That case is also referred to elsewhere herein.

A separate trial of Mr. William McAteer and Mr. Patrick Whelan, also former directors of Anglo Irish Bank Corporation plc, was scheduled to commence in the Dublin Circuit Criminal Court on 16 January 2017. The DPP had directed that both accused should be tried on indictment in respect of alleged breaches of section 297 of the Companies Act 1990 (i.e., fraudulent trading). On 19 December 2016, in advance of the trial date, Mr. McAteer entered a plea of guilty. On 21 December 2016, Mr Whelan entered a plea of guilty to a charge of a breach of Section 44(1) of the Companies Act 1990 (i.e., licensed bank's register of lending to directors and connected persons) in lieu of the alleged offence under section 297. In early 2017 His Honour Judge Martin Nolan sentenced Mr McAteer to imprisonment for a term of two and a half years, and fined Mr Whelan €3,000, in respect of the offences to which they had pleaded.

During the year His Honour Judge Terence O'Sullivan directed that the trial of Mr David Drumm, a former director and Chief Executive of Anglo Irish Bank Corporation plc, should commence in October 2018 for the following alleged offences with which he has been charged:

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

## REFERRALS TO PROFESSIONAL AND OTHER REGULATORY BODIES

Whilst there is an obligation upon the Office to keep confidential information that comes into its possession, there is statutory provision<sup>54</sup> for the disclosure of information to certain third parties (including other regulatory bodies and certain professional bodies) provided that certain prescribed criteria are satisfied.

Pursuant to the foregoing provision, 4 referrals (2016: 1) were made to the RABs during the year. Having regard to its statutory remit *vis-à-vis* the RABs, such referrals are always copied to IAASA.

Issues typically referred to RABs include:

- suspected instances of members purporting to conduct audits whilst not authorised by their professional bodies to do so or where otherwise precluded from doing so by virtue of law or professional obligations;
- non-reporting, or delayed reporting, of suspected indictable offences;
- matters relating to the nature of audit opinions provided in respect of companies limited by guarantee;
- failure to respond to queries raised by the Office subsequent to receipt of indictable offence reports.

In addition to the foregoing, the Office makes referrals to other regulatory bodies as considered necessary or otherwise appropriate.

<sup>54</sup> Section 956 of the Companies Act 2014



# CHAPTER 4

PROVIDING QUALITY CUSTOMER SERVICE TO  
INTERNAL AND EXTERNAL STAKEHOLDERS

## PROVISION OF A QUALITY CUSTOMER SERVICE TO EXTERNAL STAKEHOLDERS

### Customer service standards

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

### Customer Charter

Following a public consultation process, the Office published new Customer Care documents in 2016. The documents are published on the ODCE's website and provide detail of, amongst other things:

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

During 2017, no formal complaints were received under the Office's Customer Complaints Procedure. It is important to point out that our Customer Complaints Procedure exists to deal with mistakes, delays, or poor customer service. It does not relate to dissatisfaction with policy, decisions made by Officers or other case-related matters. The procedure is initiated by completing and returning to the Office a Customer Complaint Form, available on the ODCE website.

### Nature of principal engagements with external stakeholders

The Office's principal engagement<sup>55</sup> with external stakeholders includes:

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

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

### Public enquiries

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

In order to further assist querists, the Office has developed a series of Frequently Asked Questions ("FAQ") and responses thereto, which are available on the website<sup>56</sup>. The FAQ section of the website is regularly reviewed and supplemented as necessary. In particular, during the year under review, the FAQ section was again comprehensively reviewed and updated to reflect the queries most frequently received in the Office. As well as consulting the website, queries may also be directed to the Office's information email address ([info@odce.ie](mailto:info@odce.ie)) as well as being submitted by telephone.

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

### Website

Table 19 below details those sections of the website that attracted the most traffic during the year under review. The number of visits to the website as a whole from mobile devices was 5,460, up from 2,880 in 2016.

<sup>55</sup> i.e. excluding parties being engaged with in the context of the Office's enforcement remit

<sup>56</sup> [www.odce.ie/faq.aspx](http://www.odce.ie/faq.aspx)



**Table 19 Top 5 most visited sections of the website in 2017 – www.odce.ie**

Section	Views
Publications	31,273
Company Law & You	25,900
Court Decisions	22,529
About the ODCE	15,404
FAQs	14,521

By way of further elaboration, Table 20 below details the 20 most frequently visited individual pages (i.e., as opposed to sections) on the website during the year (excluding the site's home page). As in previous years, the FAQ section featured heavily in the most viewed pages. Taking all the FAQ pages together, they attracted over 14,500 views during the year.

**Table 20 Top 20 most viewed pages in 2017 – www.odce.ie**

Page	Views
Company Law & You – Companies / Directors / Secretaries	7,736
Information Books Page	6,206
About the ODCE	5,932
Quick Guides Page	4,254
Company Law & You Page	4,176
Prosecution Cases 2017	3,564
Functions of the ODCE	3,298
Contact Us	2,956
Company Law Guidance Publications	2,954
FAQ Menu Page	2,913
Role of the ODCE	2,847
Corporate Governance Page	2,771
Court Decisions Page	2,662
Annual Reports & Reviews Page	2,594
Company Law Guidance (Other Guidance) Page	2,584
FAQ – Directorship of a Company	2,364
Media & Presentations	2,032
Functions of the Director	1,924
Publications Relating to Liquidations	1,792
Prosecution Cases 2016	1,786

In addition, the website's search facility was used almost 7,500 times during the year, up from 4,500 in 2016. At year end, some 737 persons were registered to receive website notifications by email. The Office also provides an Irish language version of its website and in 2017 just 6% of website traffic was to the Irish version (www.osfc.ie) (up from 1.7% in 2016).

## Social media

The Office continues to utilise various social media platforms to communicate with its stakeholders. Specifically, the Office operates on three platforms, i.e., Facebook, Twitter and LinkedIn. These media platforms are used to highlight and promote the Office's advocacy and enforcement activities respectively, as well as to inform followers of developments on the wider company law landscape. By year end, the Office had attracted 1,833 followers across these various fora (2016: 1,675).

## PROVISION OF A QUALITY CUSTOMER SERVICE TO INTERNAL STAKEHOLDERS

### Staff training & development

Performance management applies across all Government Departments and Offices and is implemented each year by the Office. It seeks to ensure that the roles of individual staff are clear and that they are aligned with overall corporate objectives, while facilitating performance review and management. It also directly links Office training programmes and expenditure to the role of each staff member. To the extent practicable, the Office supports staff members in their training and development needs.

A total of 36 Office staff received a total of 156 days training during 2017 (2016: 30), including:

- training provided by in-house resources – 103 days, relating to 33 staff; and
- training provided by the Department – 53 days, relating to 20 staff.

During 2017, the Office assisted several staff members to undertake the following training and development:

- Diploma in Forensic Accounting – Chartered Accountants Ireland;
- Diploma in Risk, Internal Audit and Compliance – Chartered Accountants Ireland;
- accountancy staff members' CPD<sup>57</sup> requirements; and
- solicitor staff members' 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 54 PQs (2016: 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). In the current economic climate where cash flow is vital to business, Government policy is to pay suppliers within 15 days of receipt of an invoice. Despite the Office's policy of settling all invoices within prescribed timeframes, there were three instances of invoices being paid outside of the time allowed and as a result Prompt Payment Interest of €205.03 was incurred, together with €40.00 in penalties (2016: €10.94 and €360 respectively).

### Risk Management Action Plan

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

<sup>57</sup> Continuing Professional Development

## Freedom of Information (Fol)

Most records of the Office (i.e., all records other than records concerning its general administration) are exempt from the Fol Act. During 2017, 14 requests were made under the Freedom of Information Act (2016: 3). Of these, 3 were granted in full and 2 in part. The remaining 9 requests were in respect of records not covered by the Act (by virtue of the fact that they were created and/or held under the Companies Acts) and as a result access to the records was refused. Of these, four Internal Reviews were requested and the decision not to grant access was upheld by the Reviewer in each case. Three of these decisions were later appealed to the Information Commissioner; two were affirmed in 2017 and the third was later affirmed in early 2018.

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

## Data Protection Acts

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

During the year under review, four requests for information were made to the Office under the Data Protection Acts. These requests had to be refused due to the nature of the records held by the Office, in accordance with the legislation under which the Office operates. A further query was made as to the operation of the Data Protection Acts in ODCE and a response was given to the querist.

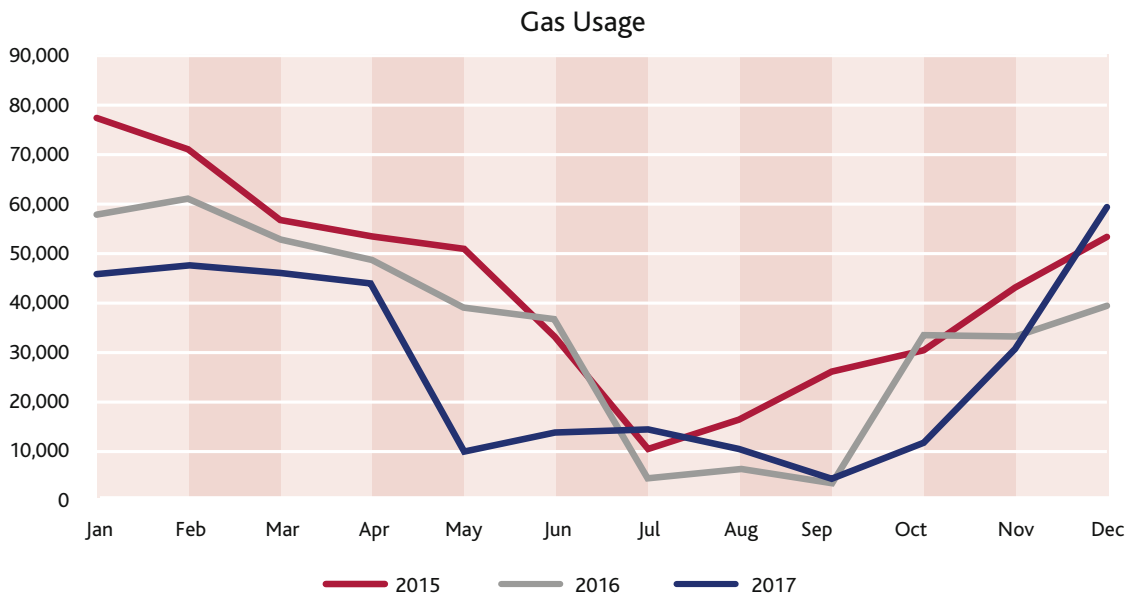
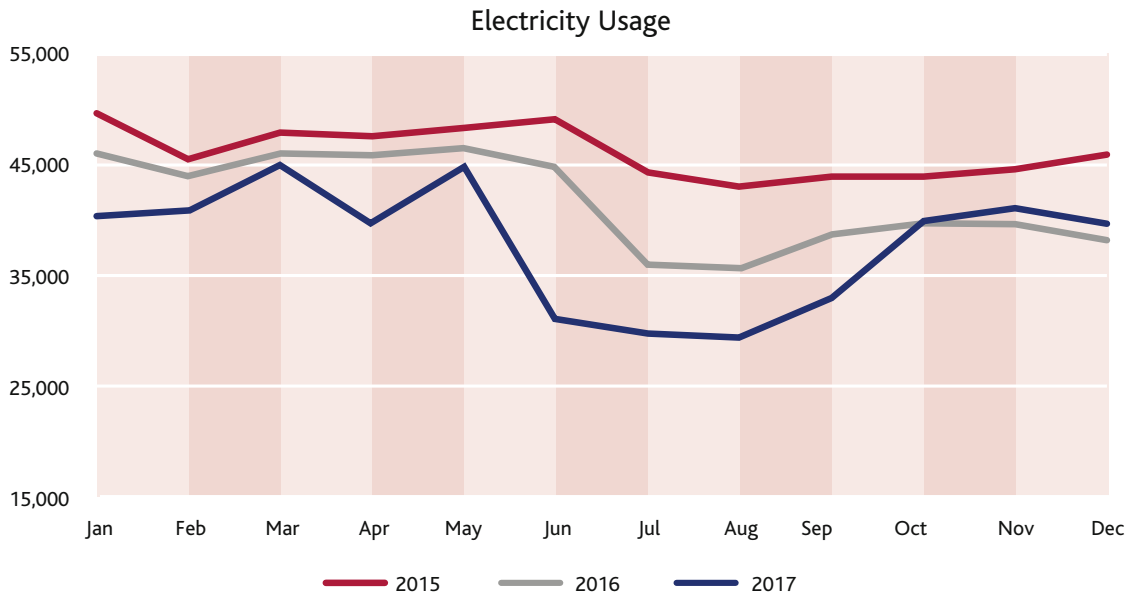
## Energy consumption

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

Gas consumption for the year was 331,000 kilowatt hours (kwh) (2016: 410,000 kwh), of which the ODCE was responsible for approximately 151,000 kwh. Electricity consumption was 453,000 kwh (2016: 499,000 kwh), of which the ODCE was responsible for approximately 207,000 kwh.

During the year, the Office continued to monitor its energy usage. By way of participation in a "Green Team" comprising of representatives of the building's various occupants, the Office continues to seek to devise initiatives to further curtail energy consumption. Two information sessions for staff on ways to reduce energy and water consumption at home and in work took place during the year, with the aim of encouraging behavioural change in relation to energy consumption. Plans for 2018 include some small retrofitting works such as sensors for light fittings, and gradually replacing CFL bulbs, where feasible, with LED bulbs. Energy usage charts for 2015 to 2017 are set out below.

The target for energy consumption reduction in 2017 was a further 5%. The energy performance outturn was a reduction of 9% in electricity usage and a reduction of 19% in gas usage, giving an overall saving of 14% for 2017 over 2016.



### 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.



# APPENDICES

# APPENDIX 1

## ALLOCATED VS. ACTUAL EXPENDITURE: 2015 – 2017

	2015		2016		2017	
	€000s	€000s	€000s	€000s	€000s	€000s
<i>Allocation</i>						
Exchequer Grant	5,091		5,015		4,895	
Exceptional Legal Costs	50		50		50	
		5,141		5,065		4,945
<i>Expenditure</i>						
Salaries	2,156.0		2,006.0		1976.1	
Advertising & Publicity	23.0		25.7		31.6	
Office Premises	346.8		320.5		415.3	
Legal Expenses	131.8		81.7		172.8	
Consultancy	245.1		50.0		196.2	
Computerisation	26.5		176.6		120.0	
Printing	64.4		23.2		14.8	
Incidental Expenses	8.4		12.0		7.4	
Travel & Subsistence	15.8		15.8		19.3	
Telecommunications	37.5		23.7		29.8	
Postal/Courier Services	4.9		14.7		12.5	
Office Machinery & Photocopying	3.6		60.6		3.9	
Human Resource Development	8.6		17.0		14.5	
		3,072.4		2,728.6		3014.2
<b>Amount surrendered</b>		<b>2,068.5</b>		<b>2,337.4</b>		<b>1,930.8</b>

## APPENDIX 2

### PRESENTATIONS DELIVERED BY STAFF OF ODCE DURING 2017

A breakdown of the categories are as follows:

Category	Number of presentations delivered	Audience
Third Level Institutions	12	350
Professional Bodies (including Accountancy bodies, Law Society and An Garda Síochána)	7	550
Public Bodies (including Government Departments & Agencies)	3	250
Others Bodies/Organisations (including the community & voluntary sectors)	4	200

## EXHIBITIONS/EVENTS ATTENDED BY STAFF OF ODCE – 2017

Name of Event	Promoter	Venue
Wicklow Local Enterprise Office (LEO) Open Day	Wicklow LEO	Wicklow County Campus, Rathnew, Co. Wicklow
All Ireland Business Summit	All Ireland Business Summit	Hogan Suite, Croke Park, Dublin
Essential Supports & Services for Entrepreneurs (Spring Programme)	Dublin City Council	Dublin Business Library, Ilac Centre, Dublin
Kildare Business Expo	Kildare Chamber	Sheehy Motors, Naas, Co. Kildare
Bank of Ireland Wicklow Enterprise Event	Bank of Ireland	Grand Hotel, Wicklow Town
ICSA Annual Conference	Institute of Chartered Secretaries & Administrators (ICSA)	Ballsbridge Hotel, Dublin
Active Retirement Ireland Trade & Tourism Show	Guerin Media Limited	Industries Hall, RDS, Dublin
Small Firms Association (SFA) Annual Conference	SFA	Concert Hall, RDS, Dublin
Certified Public Accountants (CPA) Annual Conference	Certified Public Accountants	Crowne Plaza Hotel, Blanchardstown, Dublin
Grow SME Conference	Premier Publishing & Events	Main Hall, RDS
The Franchise Show (Ireland)	News Start Exhibitions Ireland Ltd.	Main Hall, No. 1, RDS, Dublin
Food & Drinks Business EXPO (Ireland) 2017	Premier & Fooddrinksevent.com	Convention Centre – City West, Dublin
Creating the Best Business Plan for your Business	Dublin City Council	Dublin Business Library, Ilac Centre, Dublin
Essential Supports and Services for Entrepreneurs	Dublin City Council	Dublin Business Library, Ilac Centre, Dublin
Irish Small & Medium Enterprise (ISME) Annual Conference	Irish Small & Medium Enterprise	Convention Centre, Citywest, Dublin
Taking Care of Business	30 Public Bodies	Printworks Building, Dublin Castle, Dublin



## APPENDIX 3

### REPORT UNDER SECTION 22 OF THE PROTECTED DISCLOSURES ACT 2014

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

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

### REPORTS RECEIVED DURING 2017

During the year ended 31 December, 2017 the ODCE received 1 protected disclosure.

### ACTION (IF ANY) TAKEN IN RESPONSE TO THE PROTECTED DISCLOSURES RECEIVED

On examination it was determined to fall outside the remit of the Office.

### SUCH OTHER INFORMATION RELATING TO THOSE PROTECTED DISCLOSURES AND THE ACTION TAKEN AS MAY BE REQUESTED BY THE MINISTER FOR PUBLIC EXPENDITURE & REFORM FROM TIME TO TIME

Not applicable.

## Appendix 4

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

Company Number	Company Name	Director Name		Date Restricted
331923	Air Separation Limited	Lisa	Diamond	11-May-17
331923	Air Separation Limited	Robert	Diamond	10-May-17
550644	Asian Hawkers Chilli Padi & Co Limited	Zulkifi	Basir	05-Jan-17
550644	Asian Hawkers Chilli Padi & Co Limited	Zuquan	Ren	23-Feb-17
550644	Asian Hawkers Chilli Padi & Co Limited	Deqng	Ye	06-Jan-17
550644	Asian Hawkers Chilli Padi & Co Limited	Lee	Yean Ng	06-Jan-17
357108	Bcon Communications Limited	Walter	Batt	30-May-17
390750	Callokee Limited	Meg	O'Keefe	09-Jan-17
444711	Clear Steps Limited	Sharif	Bouktila	06-Jan-17
444711	Clear Steps Limited	Rosaleen	Bouktila	01-Feb-17
280593	CMC Chemicals Limited	Clive	Mc Cormack	11-Jan-17
280593	CMC Chemicals Limited	Elizabeth	Mc Cormack	11-Jan-17
486345	Cullbay Limited	Deborah	Coyle	01-Mar-17
486345	Cullbay Limited	James	Whelan	02-Mar-17
495414	Curran Home Décor Limited	Jason	Curran	20-Jul-17
495414	Curran Home Décor Limited	Lisa	Walsh	20-Jul-17
89669	DC Graphics Limited	Derry	Costello	11-Jan-17
564214	Dcon Foods Limited	Conleth	Dooley	11-May-17
564214	Dcon Foods Limited	Eileen	Dooley	11-May-17
546371	Dr Facility Management Limited	Agnes	Kavanagh	05-May-17
546371	Dr Facility Management Limited	David	Kelly	05-May-17
571332	DSE Foundation Designated Activity Co.	Cian	Crossen	10-Oct-17
571332	DSE Foundation Designated Activity Co.	Francis	Crossen	16-Nov-17
65073	Edward Club Limited	Bryan	Long	06-Apr-17
65073	Edward Club Limited	Noel	Long	02-May-17
503011	Eleven Black Limited	Rosaleen	Bouktila	01-Feb-17
503011	Eleven Black Limited	Sharif	Bouktila	06-Jan-17

Company Number	Company Name	Director Name		Date Restricted
409465	Embracing Change Limited	Michael	Maguire	23-Mar-17
409465	Embracing Change Limited	Finbarr	O'Neill	23-Mar-17
336854	Exicom Services Limited	Deborah	Maddy	11-Aug-17
336854	Exicom Services Limited	Declan	Maddy	11-Aug-17
503012	F.L.R Services Limited	Rosaleen	Bouktila	01-Feb-17
503012	F.L.R Services Limited	Sharif	Bouktila	06-Jan-17
488602	Farm Force Enterprises Limited	Christopher	Mooney	05-Jan-17
488602	Farm Force Enterprises Limited	Ronan Thomas	Mooney	13-Jan-17
129122	Finglas Motors Limited	Karen	Murphy	31-Oct-17
482582	Force From Nature Limited	Leo	Dolphin	09-Mar-17
482582	Force From Nature Limited	Tom	Dolphin	20-Mar-17
415239	Halmur Limited	Kathleen	O'Halloran	12-May-17
415239	Halmur Limited	Sean	O'Halloran	12-Jun-17
340616	Holden Developments Limited	Philip	Mulligan	06-Jan-17
434722	Howlin Duggan Properties Limited	Claire	Howlin	26-Apr-17
434722	Howlin Duggan Properties Limited	Pauline	Howlin	04-May-17
515090	J C Bakery Limited	Vivienne	Lawson	11-May-17
515090	J C Bakery Limited	John	Whyte	11-May-17
518822	JN Beauty House Limited	Jennifer	Brennan	29-Dec-17
518822	JN Beauty House Limited	Nuala	Mullen	29-Dec-17
514338	Laztop Limited	Pamela	Monaghan	07-Oct-17
514338	Laztop Limited	John	Sweeney	23-Oct-17
512423	Melrose Locke Limited	David	O'Shea	01-Aug-17
512423	Melrose Locke Limited	Gavin	O'Shea	31-Jul-17
482673	Mi-Bos Catering Limited	Gavin	O'Shea	31-Jul-17
482673	Mi-Bos Catering Limited	Nora	Wyse	03-Jan-17
489513	Michael Ward Engineering Limited	Michael	Ward	16-Jan-17
489513	Michael Ward Engineering Limited	Philip	Ward	16-Jan-17
270506	Moonshot Limited	Aoife	Duffy	10-Feb-17
270506	Moonshot Limited	Mairead	Duffy	10-Feb-17
270506	Moonshot Limited	Padraig	Duffy	10-Feb-17
286956	Prism Fax Services Limited	Mark	Richardson	01-Jun-17
517104	Pro-Tec Sales and Marketing Limited	Joan	Meehan	30-Oct-17

Company Number	Company Name	Director Name		Date Restricted
517104	Pro-Tec Sales and Marketing Limited	John	Meehan	30-Oct-17
119956	Sandquay Restaurants Limited	Donald	Jeffrey	16-Jan-17
119956	Sandquay Restaurants Limited	Nigel	Leeming	16-Jan-17
331479	Sandquay Trading Corporation Limited	Donald	Jeffrey	16-Jan-17
331479	Sandquay Trading Corporation Limited	Nigel	Leeming	16-Jan-17
425346	Sandyford Security Solutions Limited	Raymond	Shimmins	12-May-17
425346	Sandyford Security Solutions Limited	Pearl	Shimmins	12-May-17
79032	Seamus Kavanagh & Company Limited	Patricia	Kavanagh	25-Oct-17
79032	Seamus Kavanagh & Company Limited	Seamus	Kavanagh	25-Oct-17
472688	Sharjah Limited	Vivienne	Lawson	11-May-17
472688	Sharjah Limited	John	Whyte	11-May-17
290203	South Aer Services Limited	Rachel	O'Driscoll	24-Mar-17
290203	South Aer Services Limited	Pat	Forde	24-Mar-17
133264	T. Hogan (Builders) Limited	Thomas	Hogan	24-Oct-17
470671	The Carlyle Institute Limited	John	Morris	23-Nov-17
470671	The Carlyle Institute Limited	Simon	Morris	12-Dec-17
470671	The Carlyle Institute Limited	Stephen	Murray	28-Nov-17
395316	The Kiosk Man Limited	Angelina	Kelly	31-May-17
395316	The Kiosk Man Limited	Joseph	Kelly	31-May-17
502209	Tulpany Limited	Thomas	King	03-Feb-17
502209	Tulpany Limited	Christopher	McCormack	03-Feb-17
502209	Tulpany Limited	Patrick	Ryan	31-Jan-17
492816	Turntol Limited	Daniel	Crowley	06-Jan-17
492816	Turntol Limited	Alan	King	03-Jan-17
363578	Vantrac Limited	David	Carry	10-May-17
363578	Vantrac Limited	Elaine	Hanlon	10-May-17
540091	Waterview Restaurant Limited	Alan	Groarke	16-Jan-17
540091	Waterview Restaurant Limited	Thomas	Groarke	16-Jan-17
341804	Windrush Hair Design Limited	Finbarr	O'Neill	23-Mar-17
341804	Windrush Hair Design Limited	Michael	Maguire	23-Mar-17
341804	Windrush Hair Design Limited	Marie	O'Neill	10-Mar-17
67642	A.T.F. Limited	Forte	Teresa	11-Dec-17

Company Number	Company Name	Director Name		Date Restricted
369906	Clongill Kitchen & Wardrobe Manufacturers	Curtis	David	21-Nov-17
369906	Clongill Kitchen & Wardrobe Manufacturers	Curtis	Thomas	21-Nov-17
496066	J.P. Castle (Dundalk) Limited	Shields	Antoinette	16-Jan-17
496066	J.P. Castle (Dundalk) Limited	Toner	Frank	16-Jan-17
352786	J.P. Castle Building Contractors Limited	Shields	Antoinette	16-Jan-17
352786	J.P. Castle Building Contractors Limited	Toner	Frank	16-Jan-17
30568	M. & J. Wallace Limited	Wallace	Sasha	24-Oct-17
485590	McElhinney Fashions Limited	MacSuibhne	Aongus	06-Nov-17
485590	McElhinney Fashions Limited	Sweeney	Neil	06-Nov-17
520430	Mixgreens Franchising Limited	Nolan	Kieran	30-Jan-17
520430	Mixgreens Franchising Limited	Sundaram	Shanmugam	15-Apr-17
472730	North Kerry Home Developments (Ireland)	Collins	David	18-Dec-17
472730	North Kerry Home Developments (Ireland)	O'Brien	Orla	18-Dec-17
470338	Paris Bakery and Pastry Limited	Forel	Yannick	24-Apr-17
470338	Paris Bakery and Pastry Limited	Savill	Ruth	24-Jul-17
245715	Photologic Limited	Gallagher	John	23-Feb-17
270842	Refresh Limited	Finglas	Niamh	20-Nov-17
270842	Refresh Limited	McCartan	Paul	20-Nov-17
326841	Shemburn Limited	Edgeworth	George Michael	13-Feb-17
326841	Shemburn Limited	Edgeworth	Michael	24-Jul-17
326841	Shemburn Limited	Kember	Anthony Howard	03-Jul-17
162010	Tamerlane Limited	Nolan	Paul	27-Feb-17
357712	The Pilot Training College of Ireland Limited	Edgeworth	George Michael	24-Jul-17
357712	The Pilot Training College of Ireland Limited	Edgeworth	Michael	13-Feb-17
357712	The Pilot Training College of Ireland Limited	Kember	Anthony Howard	03-Jul-17
484036	Ticketfriend Limited	Rabbitt	Liam	23-Oct-17
217509	Window & Roofing Concepts Limited	May	Gerard Francis	04-Dec-17
217509	Window & Roofing Concepts Limited	May	Derek	04-Dec-17
436342	Windsor Corporate Catering Limited	Sally Anne	Luykx	17-Jul-17
436343	Windsor Corporate Catering Limited	Huibrecht	Luykx	17-Jul-17

## Appendix 5

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

Company Number	Company Name	Director Name		Disqualified From	To
67642	A.T.F. Limited	Forte	Annino	11-Dec-17	10-Dec-22
404470	Hype Hair Salon Limited	Mulligan	Dervla	23-Jan-17	23-Jan-24
		Mulligan	Thomas Edward "Eddie"	23-Jan-17	23-Jan-24
30568	M. & J. Wallace Limited	Wallace	Michael "Mick"	24-Oct-17	24-Oct-23
441308	Motorway Security Limited	Khan	Abrash	03-Apr-17	02-Apr-27
		Sheikh	Kaleem	03-Apr-17	02-Apr-27
460093	Shebeen Shic Limited	Bourke	Jonathan	17-Jul-17	17-Jul-24
50148	Wood Products (Longford) Limited	Fox	Vincent	22-May-17	21-May-23
		McGowan	Patrick	22-May-17	21-May-25
182468	L.M. Services Limited	Murphy	Leslie	16-Feb-17	15-Feb-22

## Appendix 6

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

Company Number	Company Name	Date of Court Order	No. of Directors
401575	Alan Logue Catering Limited	27-Mar-17	2
350415	The Daisy Label Limited	25-May-17	2
451129	Daisy Touring Limited	25-May-17	2
357712	The Pilot Training College of Ireland Limited	13-Feb-17	1
485590	McElhinney Fashions Limited	06-Nov-17	1
460093	Shebeen Shic Ltd	17-Jul-17	1
436343	Windsor Corporate Catering Limited	16-Oct-17	2

**Notes:**

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

## GLOSSARY

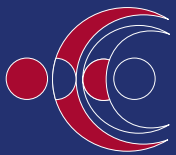
<b>Act</b>	Companies Act 2014
<b>AGM</b>	Annual General Meeting
<b>Anglo</b>	The former Anglo Irish Bank Corporation plc
<b>CAB</b>	Criminal Assets Bureau
<b>CLRG</b>	Company Law Review Group
<b>CPD</b>	Continuing Professional Development
<b>CRO</b>	Companies Registration Office
<b>Department</b>	Department of Jobs, Enterprise & Innovation ( <i>name changed to the Department of Business, Enterprise and Innovation with effect from 2 September 2017</i> )
<b>Director</b>	Director of Corporate Enforcement
<b>DPP</b>	Director of Public Prosecutions
<b>FAQs</b>	Frequently Asked Questions
<b>FoI</b>	Freedom of Information
<b>GNECB</b>	Garda National Economic Crime Bureau
<b>IAASA</b>	Irish Auditing & Accounting Supervisory Authority
<b>IAIR</b>	International Association of Insolvency Regulators
<b>ICAV</b>	Irish Collective Asset-management Vehicle
<b>ICAV Act</b>	Irish Collective Asset-management Vehicles Act 2015
<b>Minister</b>	Minister for Business, Enterprise & Innovation
<b>MoU</b>	Memorandum of Understanding
<b>NALA</b>	National Adult Literacy Association
<b>ODCE/Office</b>	Office of the Director of Corporate Enforcement
<b>Oireachtas</b>	Collective term for the Upper and Lower Houses of Parliament
<b>PAYE</b>	Pay As You Earn
<b>PII</b>	Professional Indemnity Insurance
<b>PPB</b>	Prescribed Professional Body
<b>PQ</b>	Parliamentary Question
<b>PRSI</b>	Pay Related Social Insurance
<b>RAB</b>	Recognised Accountancy Body
<b>Register</b>	Register of Companies maintained by the CRO
<b>RCT</b>	Relevant Contracts Tax
<b>SI</b>	Statutory Instrument
<b>VAT</b>	Value Added Tax
<b>WTE</b>	Whole Time Equivalent











Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

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