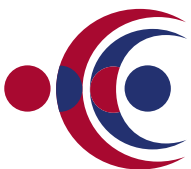


# Annual Report 2015



Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

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# TABLE OF CONTENTS

<b>DIRECTOR'S INTRODUCTION</b>	<b>3</b>
<b>AT A GLANCE</b>	<b>7</b>
<b>CHAPTER 1: OVERVIEW OF THE ODCE</b>	<b>9</b>
Statutory mandate	10
High level goals	10
Resources, organisational structure, governance arrangements & principal workstreams	11
<b>CHAPTER 2: PROMOTING A GREATER UNDERSTANDING OF AFFECTED PARTIES' RIGHTS AND DUTIES UNDER COMPANY LAW</b>	<b>15</b>
Introduction	16
Publications and outreach activities	16
Advocating legislative and policy enhancements	17
Managing and developing relationships with external stakeholders	18
<b>CHAPTER 3: CONFRONTING UNLAWFUL AND IRRESPONSIBLE BEHAVIOUR INSOFAR AS IT RELATES TO COMPANY LAW</b>	<b>20</b>
Structure of this Chapter	21
<b>PART A: INPUTS</b>	<b>21</b>
<b>EXTERNAL INPUTS</b>	<b>21</b>
Liquidators' section 682 reports	22
Sectoral distribution of other external inputs (i.e. external inputs other than liquidators' section 682 reports)	26
Complaints	27
Auditors' indictable offence reports	27
Examiners' Reports	28
Referrals	28
Professional bodies' indictable offence reports	28
Liquidators' reports regarding possible criminality	29
<b>INTERNAL INPUTS</b>	<b>29</b>
Introduction	29
Dissolved insolvent companies	29
Supervision of liquidators	30
Investigations commenced on own initiative	30
Quantum of internal inputs - 2015	30

<b>PART B: THROUGHPUTS</b>	<b>31</b>
<b>PART C: OUTPUTS</b>	<b>33</b>
Outputs from the section 682 process	33
Outputs of enforcement work	36
Securing voluntary rectification/remediation	36
Securing compliance through the exercise of the Director's civil powers	37
Referrals to professional and other regulatory bodies	37
Civil enforcement	37
Criminal enforcement	39
<b>CHAPTER 4: PROVIDING QUALITY CUSTOMER SERVICE TO INTERNAL AND EXTERNAL STAKEHOLDERS</b>	<b>42</b>
Provision of a quality customer service to external stakeholders	43
Provision of a quality customer service to internal stakeholders	45
Compliance with obligations on foot of law, regulation and by virtue of the Office's status as a public sector entity established by statute	45
<b>APPENDICES</b>	<b>48</b>
Appendix 1: Allocated vs. actual expenditure 2013 - 2015	49
Appendix 2: Publications issued, presentations delivered and exhibitions/events attended - 2015	50
Appendix 3: 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	55
Appendix 4: 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	63
Appendix 5: Cases where no Restriction or Disqualification Orders were made by the High Court pursuant to section 683 of the Companies Act 2014	64
<b>GLOSSARY</b>	<b>65</b>

# 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 2015 Annual Report of the Office of the Director of Corporate Enforcement to the Minister for Jobs, Enterprise & Innovation, Mr. Richard Bruton, TD.

## THE YEAR UNDER REVIEW - PRINCIPAL OUTPUTS AND OUTCOMES

As can be seen from the body of this Report, the Office continued to deliver a wide range of tangible outputs during the year, the combined effect of which has been to continue to contribute towards:

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

Notable contributions in that regard included:

- providing stakeholders with a comprehensive set of revised guidance and information materials to enable them to navigate the Act which, at 1,448 sections, is the largest piece of legislation ever to have been enacted in the State's history;
- successfully implementing the new statutory regime of Restriction and Disqualification Undertakings;
- obtaining, by way of a successful appeal to the Court of Appeal, clarification on the responsibilities of directors of insolvent companies who allow those companies to be struck off the Register;
- continuing the Office's strategic shift towards focussing its resources on indications of wrongdoing on the more serious end of the spectrum.

## THE YEAR UNDER REVIEW – SIGNIFICANT EVENTS AND DEVELOPMENTS

### Restriction and Disqualification Undertakings

The enactment of the Act on 1 June, 2015 saw the bringing into force of a new regime of Restriction and Disqualification Undertakings. In essence, the Undertakings regime provides a statutory mechanism whereby, in appropriate circumstances, the Office can offer company directors the option of providing - on an entirely voluntary basis - a Restriction or Disqualification Undertaking rather than face the prospect of having to engage in legal proceedings before the High Court.

The enactment of this new statutory mechanism is an important development in that it affords the individuals concerned the opportunity to avoid the financial and other costs associated with litigation. Where Undertakings are provided by directors of insolvent companies, liquidators are, similarly, spared the expense, in terms of both time and legal fees, associated with taking proceedings before the High Court, thereby creating significant potential for reduced liquidation costs and resultant benefits for creditors. Furthermore, whilst the regime is still in its infancy, in the event that the provision of Undertakings becomes the norm, the result will be to significantly free up Court time to deal with other matters.

### Appeal to the Court of Appeal

The appropriate manner in which to bring to an orderly conclusion the existence of an insolvent company is by way of the appointment of a liquidator. This course of action ensures that the behaviour of the company's directors in the run up to the insolvency is subject to the appointed liquidator's scrutiny - which in turn is subject to oversight by this Office. For the foregoing reason, company law provides that, where the directors of an insolvent company do not pursue this course of action but, rather, elect to allow the company to be struck off the Register, i.e., to in effect abandon the company, it is open to this Office to apply to the Courts to have the company's directors disqualified.

For the foregoing reasons, it has, since the Office's establishment, been a strategic objective to seek to dissuade this form of behaviour. In furtherance of that objective, the Office has taken many such applications over the past decade and, on foot of those applications, 114 company directors have been disqualified and a further 9 have been restricted as an alternative to disqualification. As such, it has been an effective strategy in confronting such behaviour and providing a credible deterrent to others contemplating such behaviour.

The leading authority in this area of jurisprudence has long been the High Court case of "*Re Clawhammer*". Accordingly, when the High Court, in declining to make Disqualification Orders in two cases during 2014, departed from the principles laid down in the Clawhammer Judgement, this Office felt it necessary to have the matter adjudicated upon by an appellate Court and, for that reason, appealed the matter to the Court of Appeal. Of particular concern to the Office in this context was that, in declining to make Disqualification Orders, the High Court had taken into consideration factors such as the scale of the enterprise, the qualifications of the directors, the context within which transgressions had taken place (including the economic downturn) and the directors' past behaviour.

The Office's appeal was heard in October 2015 and, when the Court delivered its Judgement, it unanimously rejected the approach taken by the High Court and reaffirmed the approach adopted in the Clawhammer Judgement.

The Court of Appeal's Judgement is, therefore, of considerable significance to the work of this Office in that it has brought clarity to this aspect of directors' duties. It is also an important judgement in that, in addition to being of direct application to the Office's programme of Disqualification applications, it is of relevance to the Office's examination of, and adjudication upon, liquidators' reports more generally and to liquidators' Restriction applications before the High Court.

### Criminal enforcement

As has been detailed in previous Reports, the Office has, over recent years, gradually been shifting its focus away from District Court prosecutions in favour of seeking to confront more serious indications of wrongdoing that, if supported by sufficient evidence, would be more likely to be tried on indictment. This shift continued during 2015 and, in addition to referring one file to the DPP during the year, at year end, one case was before the Courts and the Office had 18 individuals and companies under investigation with a view to the possible referral of matters to the DPP for consideration.

## THE YEAR AHEAD

The coming year presents a range of challenges and opportunities for the Office.

### Strategic shift towards confronting more serious wrongdoing

The rationale underpinning the strategic shift in emphasis alluded to above is a desire on our part to focus our available resources on those activities that are most likely to maximise our effectiveness as an enforcement body. Specifically, we believe that our resources, which are provided by the taxpayer, are better used in confronting serious indications of criminality rather than on lower level transgressions that, in many instances, can be dealt with more effectively by other, less formal, means. Similarly, when one has regard to the level of penalties that are available to the District Court, and to the level at which District Court sanctions have historically been pitched, we believe that, where secured, convictions on indictment have the potential – when taken together with the Office's work in the insolvency area – to offer a significantly enhanced deterrent against future such wrongdoing. In any event, based on the profiles of the cases that we are currently investigating (for example, having regard to the nature of the alleged behaviour, the potential criminality involved and the monetary values concerned), these cases will, if sufficient evidence can be gathered to support the mounting of prosecutions, be likely to be more appropriate to trial before the Circuit Court.

Our ambition to tackle more serious criminality is not, however, without its consequences and risks.

Investigations into more serious matters tend to be on a larger scale and to involve matters of greater complexity. This gives rise to an opportunity cost in that, by definition, a smaller portfolio of cases can be run at any given time. Similarly, cases of this nature regularly overlap with other, non-company law, legislation – such as, for example, Theft & Fraud Offences legislation – and frequently involve a multi-jurisdiction dimension. This, in turn, presents challenges such as interacting with other jurisdictions' law enforcement authorities and Court systems. The foregoing factors, together with the fact that, in our experience, prosecutions on indictment tend to be much more robustly defended than at District Court level, all add to the challenges and risks associated with this type of work.

That said, this type of work is hugely varied, carries with it many novel aspects and is challenging, both intellectually and professionally, and, as such, is immensely rewarding. For those reasons, we are fully committed to meeting the challenges that this work presents.

## Staffing

Reflective of the aforementioned shift in the nature of Office's enforcement work, the Office's staffing profile has been evolving over recent years. The most recent, and most significant, development in that regard is the imminent appointment of a cohort of forensic accountants who will augment and complement our existing team of experienced investigative and support staff. As referenced earlier, we currently have a substantial number of investigations in being and the appointment of these additional professional resources will greatly enhance our capacity to advance these matters and, more generally, to significantly enhance our investigative capabilities.

Due to a combination of retirement and transfer, we currently have a further two vacancies for senior investigative staff and, having completed the aforementioned recruitment of forensic accountancy expertise, our next priority is to move to fill those posts.

## CONCLUDING REMARKS

In conclusion, I would once again like to thank my colleagues for their ongoing commitment and dedication to the achievement of the Office's objectives. The year under review, which has been challenging for the Office's staff to an unprecedented degree, both personally and professionally, has, again, seen colleagues' willingness to promote and embrace change and to take on additional responsibility. The degree to which colleagues have been on hand to support each other in times of personal and professional adversity has been truly remarkable.

I would also like to express my sincere gratitude to the Minister and his officials for their ongoing support, without which, in particular, securing approval for the key additional resources referred to above would not have been possible.

**Ian Drennan**

*Director*

**29 April, 2016**



# AT A GLANCE



## ENFORCEMENT

### Sources of our work

- In excess of 1,400 statutory reports and referrals received from liquidators, auditors, examiners, professional bodies and other regulatory and enforcement authorities
- Implementation of a new Restriction and Disqualification Undertakings regime, as provided for by the Act
- 290 complaints received from members of the public
- Almost 70 internally generated inputs, ranging across bankruptcy, audit, fraud, disqualification and filing issues

### Outputs from our work

- Following the scrutinising of reports submitted to the Office by liquidators of insolvent companies, 171 company directors restricted and a further 14 disqualified by the High Court
- Restriction Undertakings obtained from directors of insolvent companies
- Directors' loan infringements, in 89 cases and to an approximate aggregate value of €21m, rectified on foot of Office actions
- As a proportionate and cost effective alternative to formal enforcement actions, cautions issued to a total of 73 companies
- 18 statutory demands for relevant information issued to persons suspected of acting as company directors whilst being undischarged bankrupts
- 132 directions issued to relevant parties requiring them to comply with their statutory obligations under company law
- 4 demands issued for the production of companies' accounting records and other relevant documents
- 7 referrals made to professional bodies
- successful appeal to the Court of Appeal of a High Court decision not to disqualify the directors of a company struck off the Register whilst insolvent (with the High Court decision being overturned and Restriction Declarations being made in respect of the directors)
- disposal of the last remaining NIB legacy issue, by way of the Supreme Court, with the consent of the parties, vacating the original High Court Order (which had imposed a disqualification for a period of nine years) and, in lieu thereof, making an Order disqualifying the Respondent for a period of four years and six months together with an Order directing the Respondent to pay a contribution towards the ODCE's costs
- in keeping with the ongoing strategic shift towards the investigation of more serious indications of wrongdoing:
  - a reduced level of prosecutions in the District Court;
  - an increased caseload of investigations where the intention is, depending upon the sufficiency of available evidence, to refer the underlying matters to the DPP for consideration as to whether to direct charges on indictment; and
  - as alluded to above, concrete steps taken towards significantly augmenting the Office's investigative capabilities through the recruitment of a number of forensic accountants/investigators

## ADVOCACY

- 21 new/revised information and guidance publications issued
- 70 information presentations (to a combined audience of in excess of 3,000) delivered and 15 exhibitions attended

## FINANCIAL

- The cost of running the Office during 2015 was €3m, some 60% of its allocation for the year and an increase of 2% on the previous year

## INVESTIGATIVE CAPABILITIES

- Following receipt of all necessary approvals, newspaper advertisements placed for seven new forensic accountant/investigator positions in November 2015

# CHAPTER 1

## OVERVIEW OF THE ODCE



## STATUTORY MANDATE

### Companies Act 2014

The Companies Act 2014 ("the Act") came into effect during the course of 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>1</sup>.

### Office of the Director of Corporate Enforcement

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

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

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

### Principal functions of the Director

The Director's principal functions are set out in the Act<sup>2</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>3</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>4</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>5</sup> provides that the Director shall be independent in the performance of his functions.

## HIGH LEVEL GOALS

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

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

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

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

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

2 Section 949

3 i.e. before the District Court

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

5 Section 949(3)

## 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 the Table below.

**Table 1 ODCE staff complement - 2015**

Staff Numbers (WTE <sup>6</sup> )	31 December, 2015	31 December, 2014
Actual complement in place	37.5	40.0

The decrease in actual numbers during the year is attributable to a combination of retirements and transfers outward. During 2014, the ODCE secured Department of Public Expenditure & Reform sanction to recruit a number of accountants to address the historical in-house deficiency in this important area. Securing the associated necessary approvals regarding prospective recruits' terms and conditions of employment and recruitment etc., proved to be a lengthy process and, consequently, it was not possible to finally advertise publicly for these positions until November, 2015.

The composition of the Office's staff complement as at 31 December, 2015, together with comparative data, is set out in the Table below.

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

Grade	31 December, 2015	31 December, 2014
Director	1	1
Heads of Function <sup>7</sup> (excluding Garda)	4	4
Legal Advisors	2	2
Accountants	0	1
Solicitors	1	2
Assistant Principals	3	3
Higher Executive Officers	7	7
Executive Officers	5.8	6
Clerical Officers	7.7 <sup>8</sup>	7.5 <sup>8</sup>
<i>Detective Gardaí (on secondment from the Garda Bureau of Fraud Investigation)</i>		
Detective Inspector (Head of Function)	1	1
Detective Sergeants	2	2
Detective Gardaí	2	2.5
Garda	1	1
<b>Total</b>	<b>37.5</b>	<b>40.0</b>

6 Whole Time Equivalent

7 Includes 1 Legal Advisor, 1 Solicitor and 1 Principal Officer

8 Includes 1 temporary Legal Secretary

## Financial resources

The Office is funded via the Department of Jobs, Enterprise & Innovation's ("the Department") Vote (Vote 32). The Table below sets out details of the Office's 2015 allocation and expenditure respectively.

**Table 3 Financial allocation and expenditure - 2015**

	Allocation €000s	Expenditure €000s	%
Pay	2,884	2,156	75
Non-pay	2,207	916	41.5
Exceptional legal costs	50	0	0
<b>Total</b>	<b>5,141</b>	<b>3,072</b>	<b>60</b>

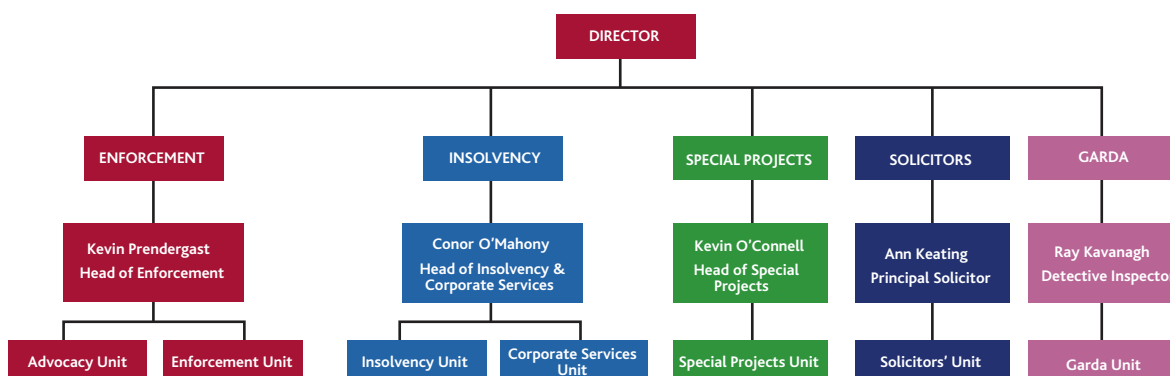
The principal reasons as to why actual expenditure differed from the allocation were as follows:

- savings on Pay resulting from vacancies that arose during the course of the year (principally retirements and transfers out) and the delay in receipt of approvals necessary to proceed with recruitment; and
- the Non-pay allocation for the year included provision for estimated 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 five Heads of Function. The Office's organisational structure is set out in the organogram below.



## Governance arrangements

A Management Board – which comprises of the Director and each Head of Function – considers issues of Office-wide relevance. Issues of key importance in that context include organisational performance and risk management.

## Principal workstreams

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

Accordingly, effective communication between Units, and that each Unit take an organisation-wide perspective when performing its functions, is a critical success factor. Accordingly, this is an approach that is both encouraged and facilitated by the 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, who principally, although not exclusively, reside within the Insolvency Unit. This workstream also encompasses the recently implemented Undertakings regime, which is further elaborated upon later in this Report.	3
Examination of complaints and statutory reports	The examination of complaints and statutory reports (such as, for example, auditors' indictable offence reports) is the responsibility of the Enforcement function. Dependent upon the nature of the issues arising, the Enforcement function may: <ul style="list-style-type: none"> <li>• address the issues itself, e.g., by way of voluntary rectification/ remediation or through the use of certain of the Director's statutory powers;</li> <li>• designate the matter as being one 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>• following consultation with the Director, refer the matter to the Special Projects Unit;</li> <li>• refer the matter to a third party, for example, another regulatory or enforcement body.</li> </ul>	3
Civil enforcement litigation	For the most part, civil enforcement litigation is managed by the Enforcement Unit in conjunction with the Solicitors' Unit.  Civil litigation, such as seeking the disqualification of directors of companies that have been struck off the Register of Companies <sup>9</sup> whilst having undischarged debts, is managed jointly by the Insolvency and Principal Solicitor's Units.	3

<sup>9</sup> See [www.cro.ie](http://www.cro.ie) for further information regarding the Register.

Workstream	Unit(s) principally involved	Chapter
Criminal investigation and prosecution	<p>The investigation of possible criminal breaches of the Act is undertaken by the Enforcement Unit – or, in certain circumstances, by the Special Projects Unit – 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, Garda and Solicitors' Units. Investigations in which a prosecution on indictment is envisaged involve collaboration on the part of the Enforcement Unit – or Special Projects Unit as applicable – with the Garda and Solicitors' 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 – or Special Projects Unit as applicable - and Garda Units.</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 Units. In circumstances where such activities result in the necessity to engage in litigation, the Solicitors' Unit becomes involved.</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



# CHAPTER 2

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



## INTRODUCTION

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

- the development 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

The Act, the largest single piece of legislation to be enacted in the history of the State, was passed into law on 23 December, 2014, and came into effect almost in its entirety on 1 June, 2015. In response to the enactment and commencement of the Act, the Office updated its entire suite of Information Books and Quick Guides<sup>10</sup>. In total, 19 Information Books and Quick Guides were updated and published for stakeholders' benefit. This work also included redesigning the publications to clearly differentiate them from the pre-Companies Act editions. Also, all publications have been made available in the Irish language in accordance with the requirements of the Official Languages Act. A list of these publications, all of which are available in hard copy format from the ODCE and for download from the ODCE's website<sup>11</sup>, is set out at Appendix 2.

The Office also updated two Information Notices, again to reflect the impact of the Act in certain areas. These are (i) Information Notice I/2015/1<sup>12</sup>, dealing with required disclosures on company websites and in emails; and (ii) Information Notice I/2015/2<sup>13</sup>, dealing with company letterhead requirements.

During the year under review, in excess of 18,000 copies of the various ODCE publications, principally revised Information Books and Quick Guides, were issued to interested parties. In agreement with the ODCE, the Companies Registration Office ("CRO") issued approximately half of these documents to persons registering new companies<sup>14</sup>. The remainder were, in the main, 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 January 2015, the Office published a list of insolvent companies and the associated liquidators in respect of whom the ODCE had identified the requirement for the submission to the ODCE of a liquidator's report in 2014. The purpose of publishing this list was to enable interested parties to bring any matters of concern in relation to an insolvent company in liquidation to the attention of the liquidator and/or the ODCE, in order that any such concerns could be taken into account in determining whether or not an application for restriction of the company's directors should be made to the High Court. Further detail regarding this aspect of liquidators' reporting obligations to the ODCE is set out in Chapter 3 of this Report.

During the year, the ODCE also published six bi-monthly lists setting out details of (i) insolvent companies in liquidation; and (ii) the associated liquidators for whom a section 682 reporting obligation would arise during 2015. The purpose of publishing these lists is to enable interested parties to bring any matters of concern in relation to the companies listed to the attention of the liquidator and/or the ODCE, in order that any such concerns can be taken into account when determining whether or not an application for restriction of one or more of the company's directors should be made to the High Court or whether a Restriction Undertaking should be sought by the ODCE from one or more of the company's directors as an alternative to Court proceedings. Further detail regarding both the section 682 and Undertakings processes is set out in Chapter 3 of this Report.

10 Information Books are comprehensive guidance on the powers and responsibilities of various parties under company law. Quick Guides are shorter guides on these, and other, topics, which are prepared in accordance with the Plain English guidelines as advocated by the National Adult Literacy Agency.

11 <http://www.odce.ie/en-gb/publications.aspx>

12 Replaced Information Notice I/2007/2

13 Replaced Information Notice I/2010/2

14 The CRO typically issues the ODCE Quick Guide on Company Directors as part of its pack as issued to newly incorporated companies.

## 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 70 presentations (2014: 38) to a combined audience of in excess of 3,300 people. Many of these presentations dealt specifically with the new Act and the ODCE's enhanced remit and enforcement policies in that context. During the year, the Office was also represented at a total of 15 exhibitions (2014: 15), which included continued involvement in the highly successful "Taking Care of Business" series of events promoted by the Department. Details of the presentations delivered and exhibitions attended respectively during the year are set out at Appendix 2 to this Report.

## ADVOCATING LEGISLATIVE AND POLICY ENHANCEMENTS

Given its mandate of promoting compliance, and enforcing non-compliance, with company law, the Office is well placed to offer an informed perspective on policy discussions and debates that take place at national and EU level regarding company law and associated topics – although, clearly, the Office must limit the number of issues to which it can devote detailed consideration having regard to competing priorities in the enforcement and insolvency realms respectively. In that context, the Office made submissions in response to a number of policy proposals during the year, further details of which are set out below.

### Companies Legislation

During the year the Office continued to work with the Department on issues relating to the commencement of the Act. Subsequent to its commencement on 1 June, the Office has engaged with the Department on further upcoming companies' legislation, notably the implementation of the EU Audit Directive and Regulation, which is scheduled for 2016<sup>15</sup>.

### ICAV legislation

Irish Collective Asset-management Vehicles ("ICAVs") are special purpose financial entities which, although not companies, feature some of the characteristics of a company. Pursuant to a Government Decision that the ODCE should have a role in the regulation of ICAVs, during the year under review the Office continued to engage with the Department and the Department of Finance respectively on the proposed legislation introducing ICAVs and, in particular, on the robustness of the proposed regulatory framework that will apply to such entities given that primary responsibility for the regulation of these entities resides with the Central Bank. The ICAV Act was passed into law on 4 March, 2015<sup>16</sup>.

### Other advocacy activities

In addition to the foregoing, the Office responded to the request for input to the Corporate Strategy Document of An Garda Síochána for the period 2016-2018, as well as commenting on the Communications (Retention of Data) Bill 2015.

<sup>15</sup> The Audit Directive 2014/56/EC and Audit Regulation (EU) No 537/2014 were adopted on 16 April, 2014. The measures set out therein are due to be transposed by Member States by 17 June, 2016.

<sup>16</sup> Number 2 of 2015

## 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>17</sup>, the Minister, the Department, other statutory/regulatory bodies and those providing professional services to companies and company directors and officers. The Office's interactions during the year with certain of its key stakeholders are summarised below.

### Members of the Oireachtas

The Office, from time to time, receives communications 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>18</sup> and Senators<sup>19</sup>.

### Department of Jobs, Enterprise & Innovation

Office staff continued to liaise with colleagues in the Department throughout the year on matters of mutual interest. The Office has been afforded representation at Departmental divisional management meetings and, outside of those formal structures, there are regular contacts as the need arises.

### 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 Bureau of Fraud Investigation ("GBFI")

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 GBFI. The Office's close working relationship with An Garda Síochána, and GBFI in particular, is critical to its criminal enforcement work. In that context, the Office meets with GBFI 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.

During the year, the IAASA Board met on 10 occasions. The ODCE nominee attended 9 of those meetings. IAASA's 2015 Annual Report will be available on its website<sup>20</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.

### Company Law Review Group ("CLRG")

The CLRG<sup>21</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. During the year, the Office contributed to, amongst others, the following issues as considered by the CLRG:

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17 Collective term for the Upper and Lower Houses of Parliament

18 Members of the Lower House of Parliament

19 Members of the Upper House of Parliament

20 [www.iaasa.ie](http://www.iaasa.ie)

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

**Representation of a company before the Courts**

The CLRG continued its review of this topic during the year under review and, at year end, retention of the current position under company law was approved at plenary.

**Review of the enforcement of company law**

The CLRG continued its examination of this topic during the year under review and, at year end, its deliberations were ongoing.

**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, in particular in respect of insolvency related matters. In that context, the two bodies met on a number of occasions during the year. Moreover, the two bodies shared information in respect of four separate matters (2014: 29). This reduced level of exchange 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. Office representatives held two formal meetings with the accountancy bodies' senior management during the year.

**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.

**Other interested parties**

In addition to the stakeholder groups referred to above, the Office also met, and/or worked, with a range of other stakeholder groups and interested parties during 2015, including the Law Reform Commission, the Irish Business & Employers' Confederation and the Insolvency Service of Ireland.

**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.