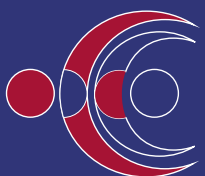


# ANNUAL **REPORT** 2016



Oifig an Stiúirhóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement

For further information contact:

**Office of the Director of Corporate Enforcement**

16 Parnell Square,  
Dublin 1.

**Tel:** 01 858 5800

**Lo-call:** 1890 315 015

**Fax:** 01 858 5801

**Email:** [info@odce.ie](mailto:info@odce.ie)

**Web:** [www.odce.ie](http://www.odce.ie)

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# DIRECTOR'S INTRODUCTION

## INTRODUCTION

In accordance with the provisions of section 954(1) of the Companies Act 2014, I am pleased to submit the 2016 Annual Report of the Office of the Director of Corporate Enforcement to the Minister for Jobs, Enterprise & Innovation, Ms. Mary Mitchell O'Connor, TD.

Having been appointed in August 2012, it is now approaching five years since I took up the role of Director. In that context, now is an opportune time to reflect on the more significant developments that have occurred over that period.

## HISTORICAL CONTEXT

### Enforcement

At the time of my appointment, the Office's various investigations into matters relating to the former Anglo Irish Bank Corporation ("Anglo") had been largely completed. Nevertheless, those matters continued to be highly resource intensive in that the Office had ongoing obligations to assist and support the Director of Public Prosecutions ("DPP") in examining the various investigation files that had been submitted and, thereafter, in supporting the DPP in the discharge of her disclosure obligations to accused persons.

Insofar as other criminal enforcement activity was concerned, the focus was largely on a narrow range of suspected company law offences, which were being investigated with a view to prosecution in the District Court. Specifically, the majority of open cases at that time concerned suspected offences relating to smaller companies' failure to maintain proper accounting records and to the activities of a number of individuals acting as auditors to smaller companies while not authorised to do so.

Civil enforcement at that time comprised principally of a cohort of long standing disqualification applications/appeals to the High Court and Supreme Court relating to issues connected with National Irish Bank and Bovale Developments respectively and a separate workstream concerned with seeking the disqualification of directors of companies that had been struck off while insolvent.

### Staffing and organisational structure

The Office had, at that time, a complement of staff comprising both civilians and members of An Garda Síochána, many of whom possessed significant experience in areas of relevance. However, as I have alluded to in previous Reports, a review of the Office's capabilities and skills base in the latter half of 2012 identified that, in particular, the Office had at that time a significant deficit in the area of in-house accountancy expertise. That deficit gave rise to a significant constraint on our ability to progress cases and to embark upon other enforcement initiatives. Similarly, due to an absence of in-house expertise in the area of IT forensics, the Office was reliant upon the assistance of the Garda Computer Crime Unit - which had its own well documented workload pressures to contend with. In addition, certain aspects of what was then the Office's structure also militated against organisational effectiveness.

### Environmental analysis - principal external inputs

At that time, most enforcement activity was driven by auditors' indictable offence reports and complaints from members of the public. Insolvent liquidations, which drive the liquidator statutory reporting process, were running at 1,400 per annum.

## DEVELOPMENTS OVER THE PAST FIVE YEARS

### Enforcement strategy & operations

In recent years, a conscious decision has been taken to shift the focus, insofar as criminal enforcement is concerned, away from summary prosecutions. District Court prosecutions tend to be concerned with wrongdoing of a less serious nature and, as such, the associated penalties can only be at the lower end of the spectrum, thereby providing limited dissuasive effect. In an effort to increase the Office's effectiveness, the focus has, therefore, shifted towards the investigation of more serious indications of wrongdoing. This activity, if subsequently considered appropriate by the DPP, results in prosecutions being initiated in the Circuit Criminal Court, where the available penalties, and associated potential for deterrent effect, are considerably higher. That change in emphasis has resulted in a substantial increase in the number of files being submitted to the DPP for consideration. Allied to this, the way in which we conduct investigations – both civil and criminal - has also evolved, with our primary investigative tools, i.e., the power to require the production of books and documents from companies under investigation and from third parties, now being more readily utilised. Moreover, in a digital age, requiring the production of “books and documents” is no longer confined to seeking paper records. Rather, demands in that regard now extend as far as requiring the production of email, text message and instant messaging app communications.

A further consequence of shifting the emphasis towards investigating more serious indications of wrongdoing is that, in addition to identifying possible offences under company law, an increasingly regular feature of such investigations is the identification of possible offences under other legislative codes such as, for example, Criminal Justice legislation. These investigations, which tend to be larger and more complex than the historical District Court cases alluded to above, have taken us into new areas such as theft, deception, the use of false instruments and invoice discounting fraud. Insofar as the legacy civil litigation referred to above is concerned, all of those cases have now been brought to a conclusion.

### Capability enhancement

A credible enforcement body must be self-sufficient in specialisms central to its remit and, as such, the absence of in-house expertise in the aforementioned areas of accountancy and IT forensics was not sustainable. Over recent years therefore, and with the support of successive Ministers and their officials, the Office's pre-existing capabilities have been further enhanced through the recruitment of five new investigative accountants (with a further two such positions currently in the process of being filled). These new staff members have come from a variety of backgrounds - including other law enforcement agencies and professional services firms – and, as such, have substantially increased our capacity. More recently, and again with the support of the Minister and her Department, we have engaged in a process to recruit a digital forensics specialist - a role that will be pivotal given the ever increasing extent to which documentation and other material is provided to us, or otherwise obtained by us, in electronic form. That appointment is expected to be made shortly.

At the time of writing, through a combination of retirement, transfer and, in the case of the former Head of Enforcement, appointment as Chief Executive of the Irish Auditing & Accounting Supervisory Authority, we have three vacancies in key senior positions. With the Department's support and assistance, we are currently working towards the filling of those positions. Until recently, we also had two vacancies at the more senior levels within our Garda contingent. In that context, I am pleased to be able to report that we have recently been assigned a new Detective Sergeant. At the time of writing, the key post of Detective Inspector remains vacant but the Garda authorities are fully aware of the necessity to fill that post as a matter of priority.

### Environmental analysis – trends and developments

In the realm of insolvent companies, giving administrative and operational effect to the statutory undertakings regime introduced by the 2014 Act was a major challenge. The Office's Insolvency team rose to that challenge admirably and that process is now fully embedded within the Office's insolvency activities. The results have been significant. During 2016 in excess of one hundred undertaking offers were accepted, in each case resulting in significant savings to both liquidators and the directors who accepted those undertaking offers and who otherwise would have had to incur the time, cost and disruption associated with being a party to High Court litigation. The undertakings regime has, therefore, significantly increased the effectiveness of the whole process under which we supervise liquidators' statutory reporting.

Increases in the audit exemption threshold have seen more companies avail of exemption, with a consequential reduction in the number of auditors' indictable offence reports being received. This has led to, for example, a reduction in the number of issues coming to our attention relating to contraventions of directors' loans provisions. This development, combined with our ongoing approach of seeking to address suitable cases through proportionate means (such as voluntary rectification, the issuing of cautions etc.), has enabled us to both focus on serial offenders and to devote resources towards new and emerging issues – such as, for example, issues arising from examiners' reports, non-compliance with accounting standards in certain sectors and issues arising under protected disclosure legislation.

## Issues relating to criminal investigation

Indications first emerged in late 2008 suggesting the existence of certain issues of concern regarding the conduct of the affairs of Anglo Irish Bank Corporation plc. As a licenced bank, Anglo was subject to the supervisory and enforcement remit of the then Financial Regulator. That being the case, the ODCE could, at that time, have sought to distance itself from events at the bank. However, it chose not to pursue such a course of action but, rather, to initiate an investigation - the scale, novelty and complexity of which could not have been envisaged and which ultimately transpired to be unprecedented in the history of both the ODCE and the State.

Following an initial assessment, several separate strands of inquiry were identified and a number of those strands of inquiry have subsequently resulted in persons being convicted before the Courts. Specifically, investigations undertaken by this Office have resulted in:

- the conviction during 2014 of both Mr. William McAteer and Mr. Pat Whelan for the giving of unlawful financial assistance by Anglo for the purchase of its own shares;
- the conviction of Mr. William McAteer during 2016 for fraudulent trading on foot of a plea of guilty; and
- the conviction of Mr. Pat Whelan during 2016 for failing to maintain a licensed bank's register of loans to directors on foot of a plea of guilty.

A further strand of inquiry resulted in Mr. Sean FitzPatrick being indicted, by direction of the DPP, on 27 charges - including 21 charges relating to allegations of having made misleading, false or deceptive statements to Anglo's then auditors Ernst & Young. The resultant trial, which is ongoing at the time of writing, has become the longest running criminal trial in the history of the State.

As has been widely reported in the media, during the course of that trial, the investigation that preceded those charges being directed has been the subject of significant criticism by counsel for the defence, particularly as regards the process by which witness statements were obtained from two Ernst & Young witnesses. Regrettably, certain aspects of that investigation, including the manner in which those statements were obtained, fell below appropriate standards. In that context, both this Office and counsel for the DPP have acknowledged that to be the case. Having carefully considered the matter after lengthy legal argument, the trial judge ruled that certain of those practices were unlawful. However, he further ruled that, notwithstanding the deficiencies detailed above, it was nevertheless appropriate that the two witnesses concerned be heard by the jury.

It will ultimately be for the trial judge and the jury, in discharging their respective roles, to determine the outcome of that case. More broadly, there is however a risk that the case-specific criticisms referred to above could lead to a perception that this Office's investigative procedures as they now exist are fundamentally flawed. Any such perception would not be supported by the facts. In that context, it is important to note that, quite aside from the extent to which the structure and capabilities of this Office and its investigative procedures have been enhanced over recent years, no such issues have arisen in the other trials that have resulted from this Office's Anglo-related investigations. Rather, the underlying issues arose several years ago, in this particular strand of the investigation only, and for reasons that are elaborated upon below.

By late 2008, and in an era when principles based/light touch regulation was being espoused - both nationally and internationally, and by regulators and the regulated alike - the ODCE had both firmly established its independence and, insofar as criminal investigation was concerned, had acquired significant experience of District Court prosecutions. Nevertheless, at this remove it is clear that, despite having acquired that experience, the Office was simply not equipped at that time to run multiple parallel investigations of the scale and complexity involved. While the Office demonstrated a willingness at that time to initiate a series of investigations, it is clear that there was a significant underestimation of the scale and complexity respectively of that strand of the investigation that was initially prioritised, i.e., the investigation that resulted in the conviction of Mr. McAteer and Mr. Whelan for the provision of unlawful financial assistance. This, in turn, resulted in that strand continuing to absorb resources, and, critically, Garda resources, to a greater extent and for considerably longer than had initially been anticipated. Against that backdrop, a course of action was adopted under which the lead role in obtaining statements from the two Ernst & Young witnesses was assumed by a small number of senior civilian staff. However, none of these individuals had any training or experience of taking witness statements. Moreover, the inappropriateness of the approach that was subsequently adopted in obtaining those statements was not sufficiently appreciated nor were the attendant risks responded to appropriately.

During the course of the trial, the jury has also heard of an earlier incident in which documents relating to the case were destroyed by an ODCE staff member. Further details of that incident, and the circumstances in which it occurred, have been ventilated in open court but not before the jury. Accordingly, I am at the time of writing precluded from commenting further on that matter. In the fullness of time all the facts concerning that incident will doubtless emerge.

No organisation is perfect and the pursuit of excellence, be it in the area of investigation or otherwise, is an ongoing organisational challenge. Several years on, as an organisation we have a broader skills base, a greater depth of experience and a far greater appreciation of the necessity to employ appropriate procedures and manage risk. In that context, Anglo-related



cases are only one aspect of this Office's criminal investigative activity. In that regard, as can be seen from the body of this Report, the DPP directed charges of deception, use of a false instrument and furnishing false information during 2016 based on one ODCE investigation file. On another file, the DPP the directed that the suspect be charged with fraudulent trading (based on an invoice discounting fraud) and, on 24 April 2017, the person charged with that offence was arrested by Gardaí from the ODCE and entered a plea of guilty to that charge. At the time of writing, the DPP is considering another file in which a range of serious charges have been recommended under both company law and Criminal Justice legislation. In addition to the foregoing, a number of other large scale and complex investigations are underway and are at various stages of advancement.

## CHALLENGES AHEAD

Change is an integral, and indeed a healthy, aspect of every organisation and, as new staff join us and existing staff seek new opportunities elsewhere, that change will inevitably continue and we will continue to evolve as an organisation. The immediate priorities and challenges in that regard are the filling:

- of the senior level vacancies referred to above and the two additional accountant posts with suitably qualified and experienced candidates; and
- by the Garda authorities of the vacant Detective Inspector post.

We also face challenges in terms of ongoing training and development, and, in particular, sourcing suitably specialised training. In a similar vein, keeping abreast of technological developments is an ongoing challenge. The appointment in the near future of a digital forensics specialist will be an important step in that regard.

## CONCLUDING REMARKS

For obvious reasons, much of the foregoing has dealt with our investigative activities. However, it is important not to lose sight of that fact that, alongside those activities, the Office:

- runs a large scale operation under which liquidators' statutory reports are examined and adjudicated upon and, depending on the underlying circumstances, matters are referred to the High Court and company directors are afforded the opportunity to avoid court proceedings by way of statutory undertakings;
- engages in advocacy activities aimed at assisting stakeholders to comply with their obligations and vindicate their rights respectively;
- operates a range of support services, including:
  - servicing freedom of information requests from members of the public;
  - servicing parliamentary questions from members of Dáil Éireann;
  - servicing press queries (within confidentiality parameters);
  - maintaining a website and associated information services for stakeholders' benefit; and
  - providing a full suite of support services to the Office and its staff complement.

In that context, I would once again like to thank my colleagues for their hard work and commitment during the year. I would also like to welcome those who have recently joined us, whose skills and experience will serve to enhance our existing skill sets. Similarly, I would like to thank those who left us during the year and subsequently, and who, by virtue of their expertise and experience, will be difficult to replace. In particular, I would like to thank Kevin Prendergast, whose endless willingness to assume greater responsibility is sorely missed. I would like to take this opportunity to wish them all the very best for the future.

Finally, I would like to thank most sincerely the Minister and her officials for their continued and ongoing support of the ODCE and of what we are seeking to achieve in terms of enhancing Ireland as a low risk economy in which to conduct business and in seeking to ensure that wrongdoing in a company law context is tackled and dealt with appropriately.

**Ian Drennan**  
 Director  
 28 April, 2017

# AT A GLANCE

## ENFORCEMENT

### Sources of our work

- In excess of 1,050 statutory reports and referrals received from liquidators, auditors, examiners, professional bodies and other regulatory and enforcement authorities
- Almost 250 complaints received from members of the public
- Almost 130 internally generated inputs

### Outputs from our work

- Following the scrutinising of reports submitted to the Office by liquidators of insolvent companies, 90 company directors restricted and a further 11 disqualified by the High Court
- 93 Restriction Undertakings obtained from directors of insolvent companies
- Directors' loan infringements, in 60 cases and to an approximate aggregate value of €17m, rectified on foot of Office actions
- As a proportionate and cost effective alternative to formal enforcement actions, cautions issued to a total of 61 companies
- 108 directions issued to relevant parties requiring them to comply with their statutory obligations under company law
- 7 demands issued for the production of companies' and third parties' books and records and other relevant documents
- in keeping with the ongoing strategic shift towards the investigation of more serious indications of wrongdoing:
  - submission of 5 investigation files to the DPP for consideration, with the recommendations including charges under both company law and the Criminal Justice (Theft and Fraud Offences) Act 2001
  - an ongoing caseload of large scale 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

## ADVOCACY

- 43 information presentations (to a combined audience of approximately 1,400) delivered and 14 exhibitions attended
- revised information and guidance published regarding the reporting of company law offences to the ODCE

## FINANCIAL

- The cost of running the Office during 2016 was €2.73m, some 54% of its allocation for the year and an decrease of 11% on the previous year

## INVESTIVATIVE CAPABILITIES

- Recruitment of five new forensic accountants and the initiation of a process towards the recruitment of a digital forensics specialist

# CHAPTER 1

## OVERVIEW OF THE ODCE

## STATUTORY MANDATE

### Companies Act 2014

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>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

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

<sup>2</sup> Section 949

<sup>3</sup> i.e. before the District Court

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

<sup>5</sup> Section 949(3)

## RESOURCES, ORGANISATIONAL STRUCTURE & 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 - 2016**

Staff Numbers (WTE <sup>6</sup> )	31 December, 2016	31 December, 2015
Actual complement in place	37.5	37.5

As is discussed in more detail elsewhere in this Report, 5 new accountants were recruited and appointed during 2016. However, a number of retirements and transfers out resulted in there being no net change in overall year-on-year numbers.

The composition of the Office's staff complement as at 31 December, 2016, together with comparative data, is set out in the Table below.

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

Grade	31 December, 2016	31 December, 2015
Director	1	1
Heads of Function <sup>7</sup> (excluding Garda)	3	4
Legal Advisors	1	2
Accountants	5	0
Solicitors	1	1
Assistant Principal Officers	3	3
Higher Executive Officers	7	7
Executive Officers	4.8	5.8
Clerical Officers	6.7	7.7 <sup>8</sup>
<i>Detective Gardaí (on secondment from the Garda National Economic Crime Bureau)</i>		
Detective Inspector	0	1
Detective Sergeants	2	2
Detective Gardaí	2	2
Garda	1	1
<b>Total</b>	<b>37.5</b>	<b>37.5</b>

<sup>6</sup> Whole Time Equivalent

<sup>7</sup> Includes 1 Legal Advisor, 1 Solicitor and 1 Principal Officer

<sup>8</sup> 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 2016 allocation and expenditure respectively.

**Table 3 Financial allocation and expenditure - 2016**

	Allocation €000s	Expenditure €000s	%
Pay	2,808	2,006	71
Non-pay	2,207	722	33
Exceptional legal costs	50	0	0
<b>Total</b>	<b>5,015</b>	<b>2,728</b>	<b>54</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 the recruitment of new staff in respect of whom sanction had previously been granted; 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.

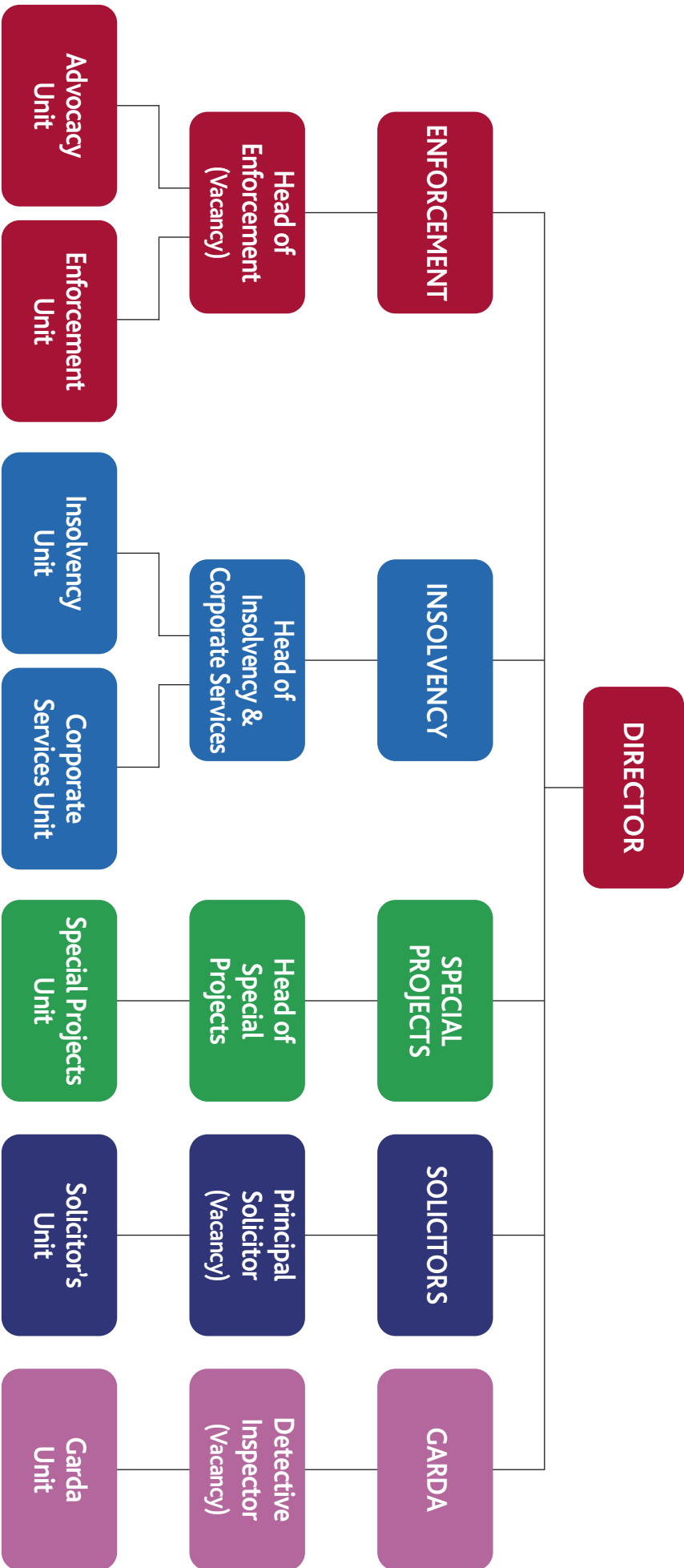
A more detailed analysis of expenditure incurred during the year is set out at Appendix 1 to this Report.

## Organisational structure

During the year under review the Office was divided into seven Units, with each Unit coming under the responsibility of one of five Heads of Function. That organisational structure is set out in the organogram below.

As elaborated upon in further detail elsewhere in this Report, the Office's structure and capabilities have been evolving in recent years with a view to bringing them into closer alignment with the Office's remit and mandate. With the recruitment of further specialist staff, that will continue to be the case over the coming years.

ORGANISATIONAL STRUCTURE





## 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 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 and Garda Units.</p> <p>In circumstances where, having reviewed an investigation file as submitted by the Office, a decision is taken by the DPP to initiate a prosecution on indictment, the provision of subsequent support to the Office of the DPP (for example, regarding disclosure to the defence), is primarily the responsibility of the Enforcement 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

Following on from 2015, during which the Office published an entirely revised suite of information and guidance publications to reflect the provisions of the Companies Act 2014, 2016 saw the publication of a further information publication directed towards company auditors. Specifically, Information Notice I/2016/1, which replaced the previously existing Information Notice I/2009/4 was published having been developed in conjunction with the accountancy profession. The revised document is available on the ODCE's website<sup>10</sup>.

During the year under review, approximately 16,000 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>11</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 2016, 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 2015. 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 2016. 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.

### 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.

<sup>10</sup> <http://www.odce.ie/Portals/0/EasyDNNNewsDocuments/633/Reporting%20Company%20Law%20Offences.pdf>

<sup>11</sup> The CRO typically issues the ODCE Quick Guide on Company Directors as part of its pack as issued to newly incorporated companies.

During the year, Office staff delivered 43 presentations (2015: 70) to a combined audience of approximately 1,400 people. Many of these presentations dealt specifically with the, still relatively 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 14 exhibitions (2015: 15). 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>12</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>13</sup> and Senators<sup>14</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 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 2016. IAASA's 2016 Annual Report will be available on its website<sup>15</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>16</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:

<sup>12</sup> Collective term for the Upper and Lower Houses of Parliament

<sup>13</sup> Members of the Lower House of Parliament

<sup>14</sup> Members of the Upper House of Parliament

<sup>15</sup> [www.iaasa.ie](http://www.iaasa.ie)

<sup>16</sup> [www.clrg.org](http://www.clrg.org)

### **Corporate Insolvency**

The Office's Head of Insolvency & Corporate Services, Mr. Conor O'Mahony, is a member of the Corporate Insolvency Subcommittee, 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 Subcommittee, which has been charged with examining current compliance and enforcement aspects of company law and reporting its recommendations back to the plenary.

### **Corporate Governance**

The Office's Head of Insolvency & Corporate Services, Mr. Conor O'Mahony, is a member of the Corporate Governance Subcommittee, which has been charged with examining certain submissions referred to the CLRG by the Department of Jobs, 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, 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 five separate matters (2015: 4). 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.