

Chapter 3

Compliance and Enforcement Activities

Structure of this Chapter

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

Part A: Inputs

EXTERNAL INPUTS

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

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

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

Table 5 Inputs from external sources

	2018	%	2017	%
Statutory reports				
Liquidators' reports (initial) (s682)	606		652	
Liquidators' reports (subsequent) (s682)	260		240	
Total liquidators' reports (s682)	866	67	892	71
Liquidators' reports regarding possible criminality (s723)	1	1	0	0
Auditors' indictable offence reports (s393)	73	6	82	6
Examiners' reports (s534)	41	3	28	2
Professional Bodies' indictable offence reports (s931)	0	0	0	0
Professional Bodies non-indictable offence reports	0	0	4	0
Referrals				
Referrals from external parties	19	1	21	2
Complaints				
Complaints from members of the public	247	18	223	18

	2018	%	2017	%
Other				
Disclosures under the Protected Disclosures Act 2014 ¹⁴	5	1	1	0.5
Applications seeking change to accounting year end ¹⁵	40	3	11	0.5
Total inputs from external sources	1,292	100%	1,262	100%

The principal external sources of inputs driving the Office's activities over the year under review are elaborated upon below.

Liquidators' section 682 reports

Introduction – overview of the liquidator reporting regime

In summary, liquidators of companies that are in insolvent¹⁶ liquidation are required by law¹⁷ to report to the Office on the circumstances giving rise to the company's failure and on the conduct of any person who was a director of the company during the twelve months preceding the entry of the company into liquidation. The liquidator must also proceed to apply to the High Court for the restriction¹⁸ of each of the directors, unless relieved of that obligation by the Office¹⁹.

The essential aims of this statutory reporting regime are to:

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

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

¹⁴ The information that requires to be published by the Office pursuant to section 22 of the Protected Disclosures Act 2014 is set out later in this Chapter under the heading of Outputs.

¹⁵ Section 288 (10) (c)

¹⁶ A company is insolvent when it is unable to pay its debts as they fall due

¹⁷ Section 682 Companies Act 2014

¹⁸ Where an individual is restricted under section 819 of the Companies Act 2014, s/he may only act as the director or secretary of a company for a period of five years thereafter provided that the company concerned meets certain minimum capitalisation requirements. In the case of public limited company a minimum called up share capital of €500,000 is required. In the case of any other company, the corresponding figure is €100,000.

¹⁹ The process and scope of liquidator reporting are outlined in three main ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1 and Information Notice I/2009/1. These documents are available at www.odce.ie

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

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

Restriction and Disqualification Undertakings

The Act²⁰ introduced a statutory framework under which individuals who might otherwise face the prospect of Court proceedings can avoid having to attend Court by voluntarily agreeing to a restriction or disqualification as applicable (i.e., by providing a legally binding Undertaking to that effect).

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

There is no obligation on the recipient of a Notice to accept the offer (i.e., to provide the Undertaking). However, where the recipient intends to accept the offer, they must do so within 21 days (or within such longer period as may be allowed by the ODCE). During this offer period, neither the ODCE nor any other person who is aware of the issuing of the Notice may initiate proceedings for the restriction or disqualification of the recipient of the Notice on foot of the circumstances, facts and allegations as set out in the Notice.

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

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

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

²⁰ Sections 849 to 854 of the Companies Act, 2014

The Undertakings framework ensures that company directors, who are found to be in breach of the Act and facing restriction or disqualification proceedings, are dealt with in an efficient and effective administrative manner without the need for the involvement of the Courts. Following the implementation of the undertakings process by the ODCE, 368²¹ undertakings for restrictions and disqualifications have been accepted by the ODCE. While there is a significant additional administrative burden on the ODCE arising from this process, it has resulted in substantial cost and time savings for the liquidators and company directors concerned, as well as for the Courts system. The savings in monetary terms are estimated at €1m per annum.

Companies entering liquidation

As can be seen from the Table below:

- the total number of insolvent liquidations (i.e. creditors' and Court liquidations combined) decreased by 21% in 2018, and
- during 2018, the level of solvent liquidations increased by 22% compared to 2017 and accounted for 70% of all liquidations.

Table 6 Companies entering liquidation: 2012 - 2018

	2012	2013	2014	2015	2016	2017	2018
Creditors' liquidations	1,210	1,043	929	746	581	613	475
Court liquidations	107	76	78	70	61	63	59
Total insolvent liquidations	1,317	1,119	1,007	816	642	676	534
Members' liquidations	919	848	1,001	1,034	1,112	1,040	1,269
Total solvent liquidations²²	919	848	1,001	1,034	1,112	1,040	1,269
Total liquidations	2,236	1,967	2,008	1,850	1,754	1,716	1,803

Liquidators' s682 reports received – 2018

As can be seen from Table 5, a total of 866 liquidators' section 682 reports was received during the year (2017: 892), of which:

- 606 were initial reports²³ (2017: 652); and
- 260 were subsequent reports²⁴ (2017: 240).

²¹ Comprising of 331 Restriction Undertakings, 12 Disqualification Undertakings and 25 Disqualification Undertakings entered into by directors of dissolved insolvent companies

²² Whilst the Office has no role in solvent (i.e. members') liquidations, data in respect of same has been included in the interest of completeness.

²³ An initial report is the first report received from a liquidator and is required to be submitted within 6 months of his/her appointment. In the majority of cases, the decision as to whether or not to grant relief is made based on this report.

²⁴ In some cases a subsequent report is required from the liquidator when his/her investigations have progressed further. In circumstances where a subsequent report is considered to be necessary, 'relief at this time' is usually granted in respect of the initial report.

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

Table 7 Sectoral analysis of liquidators' initial section 682 reports received - 2018

Sector	2018		2017	
	Number	%	Number	%
Wholesale & retail	202	33	200	31
Construction	73	12	73	11
Community, social & other	47	8	61	9
Manufacturing & printing	33	6	34	5
Hotels, bars & catering	75	12	100	15
Marketing & promotion	10	2	15	2
Real estate & renting	49	8	50	8
Technology & telecommunications	37	6	40	6
Financial & leasing	40	7	40	6
Transport & distribution	18	3	16	2
Agriculture, mining & marine	7	1	18	3
Recruitment & security services	15	2	5	1
Total	606	100%	652	100%

Timeliness of liquidators' reporting

Over the course of the year, the Office issued 15 (2017:43) notices to liquidators advising them that they were in default of their statutory reporting obligations. Almost all of these defaults were promptly rectified as a result of this action and at the end of the year 94% of the first reports due during the year had been received with only 40 first reports outstanding. The level of liquidators' failure to comply with their reporting obligations is low and, where appropriate, enforcement action, up to and including criminal prosecution, may result from such persistent breaches of a liquidator's statutory obligations.

Standard of liquidators' reporting

As reported in previous years, the standard of liquidators' reports received during the year was considered to be broadly satisfactory. However, in a small number of cases, the quality of reporting was not of the required standard. Where this arises, it is dealt with through engagement with the relevant practitioners. The vast majority of persons acting as liquidators are members of Prescribed Accountancy Bodies and, as such, are under IAASA's supervisory remit (see further elaboration below).

Qualification for appointment as a liquidator or examiner

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

- i. members of a Prescribed Accountancy Body holding a practicing certificate;
- ii. solicitors holding a practicing certificate;
- iii. members of any other professional bodies recognised for this purpose by IAASA (none currently);

- iv. persons qualified to act as a liquidator in another EEA²⁵ state; and
- v. persons with practical experience of windings-up and knowledge of relevant law prior to the commencement of the Act who are authorised by IAASA. Before granting an authorisation of this type, IAASA has to be satisfied, having consulted the ODCE, that the person is a fit and proper person to act as a liquidator.

An individual who has applied to IAASA for authorisation under (v) above may continue to act pending the determination of their application.

As at 31 December 2018, IAASA had formally sought and received the views of the Director in respect of 25 individuals who applied for authorisation under this provision. At the same date a total of 21 such applications had been authorised by IAASA.

In addition to the qualification requirements prescribed in section 633, section 634 provides that all liquidators must have in place adequate professional indemnity insurance ("PII"). IAASA has issued Regulations prescribing the required level of PII required. These Regulations are available on IAASA's website²⁶.

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

Sectoral distribution of other external inputs (i.e. external inputs other than liquidators' section 682 reports)

As can be seen from Table 5, in aggregate those external inputs other than liquidators' section 682 reports accounted for 33% (2017: 29%) of total external inputs received during the year. The Table below provides an analysis of the sectoral distribution of those other external inputs.

Table 8 Sectoral distribution of external inputs other than liquidators' section 682 reports

Sector	2018		2017	
	Number	%	Number	%
Real estate & renting	70	17	91	25
Not a company	50	12	30	8
Finance & leasing	47	11	31	9
Wholesale & retail	30	7	34	9
Construction	27	6	19	5
Marketing & promotion	5	1	10	3
Technology & telecommunications	38	9	25	7
Manufacturing & printing	28	7	20	5
Community, social and personal	40	9	26	7
Insurance health & social work	39	9	25	6
Hotels, bars & catering	21	5	13	4
Transport & distribution	14	3	26	7
Agriculture, mining & marine	9	2	12	3
Recruitment & security services	2	1	8	2
Other business sectors	5	1	0	0
Total	425	100%	370	100%

²⁵ European Economic Area (EU States plus Liechtenstein, Iceland and Norway)

²⁶ <http://iaasa.ie/getmedia/1a9c9ab1-994e-4491-8f6c-6d8a40d27f64/S-I-No-127-of-2016.pdf>

Complaints

The Office receives substantial numbers of complaints annually from members of the public. During the year under review a total of 247 complaints were received (2017: 223), which accounted for 19% (2017: 18%) of all external inputs received. The Table below provides an analysis of the subject matter of complaints received.

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

	2018		2017	
	Number	%	Number	%
Annual/Extraordinary General Meeting related	21	9	28	13
Directors' conduct (responsibilities & filing)	29	12	29	13
Allegations of reckless/fraudulent/insolvent trading	34	14	35	16
Allegations of forgery/furnishing of false information/falsified documents	17	7	12	5
Relating to the issue of unpaid debts	10	4	13	6
Access to accounting records/minutes of meetings	9	4	13	6
Register of members related	19	7	10	4
Audit/auditor related	12	5	16	7
Receivership related	5	2	2	1
Issues relating to addresses	23	9	17	8
General shareholder rights issues	8	3	5	2
Acting as a director while a bankrupt/restricted/disqualified	5	2		
Companies trading whilst struck off the Register/dissolved	10	4	9	4
Relating to improper use of the word "Limited"	2	1	3	1
Liquidation/phoenix activity	10	4	11	5
Other	33	13	20	9
Total	247	100%	223	100%

Auditors' indictable offence reports

Introduction – overview of the auditor reporting regime

Section 393(1) of the Act provides that, where, in the course of and by virtue of their carrying out of an audit, information comes into the possession of a company's auditors which leads them to form the opinion that there are reasonable grounds for believing that an indictable offence under the Act has been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the ODCE.

Nature of suspected offences reported

During the year under review, a total of 73 (2017: 82) indictable offence reports were received from auditors. The Table below provides an analysis of the nature of suspected offences notified in those reports. It should be noted that the number of reports received does not accord with the number of suspected offences reported as, in a number of instances, reports received included reference to more than one suspected offence.

Table 10 Analysis of suspected indictable offences reported by auditors

	2018		2017	
	Number	%	Number	%
Directors' loan infringements	21	29	37	45
Failure to maintain proper accounting records	13	18	15	18
Provision of false statements to auditors	1	1	1	1
Issues relating to access to accounting records	1	1	1	1
Issues relating to the directors' approval of financial statements	2	3	2	2
Obligation to prepare Group Financial Statements	1	1	2	2
Entity Financial Statements	34	47	25	31
Total	73	100%	83	100%

Examiners' Reports

Pursuant to section 534(6) of the Act, where an examiner is appointed to a company, s/he shall, as soon as may be after it is prepared, supply a copy of the report to the ODCE. During the year under review, 41 such reports were received (2017: 28).

Referrals

As alluded to earlier in this Chapter, the Office forms part of a broader statutory framework that permits the exchange of confidential information between regulatory, enforcement and other relevant bodies, subject to safeguards and appropriate limitations. In that context, the Office receives referrals from other statutory bodies and entities from time to time. During the year under review, the Office received 19 (2017: 21) such referrals from a variety of sources.

Professional bodies' indictable offence reports

Recognised Accountancy Bodies ("RABs")²⁷

Where a RAB's Disciplinary Committee or Tribunal has reasonable grounds for believing that an indictable offence under the Act may have been committed by a person while that person was a member of the RAB, the RAB is required to report the matter to the Office²⁸.

²⁷ A RAB is an accountancy body that is permitted to authorise its members and member firms, subject to those members having satisfied certain criteria, to act as statutory auditors and audit firms respectively. There are five RABs, i.e., the:

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

²⁸ Section 931(4) of the Act

Prescribed Professional Bodies (“PPBs”)

Where the Disciplinary Committee or Tribunal of a PPB finds that a member conducting an examinership or receivership has not maintained appropriate records, or has reasonable grounds for believing that the member has committed an indictable offence under the Act during the course of an examinership or receivership, the PPB concerned is required to report the matter to the Office.

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

‘Prescribed professional body’ in relation to sections 448, 558, and 688 refers to a Disciplinary Committee or a Tribunal of a Prescribed professional body.

The bodies are:

- ACCA - Association of Chartered Certified Accountants
- AIA - Association of International Accountants
- CIMA - Chartered Institute of Management Accountants
- CIPFA - Chartered Institute of Public Finance and Accountancy
- ICAEW - Institute of Chartered Accountants in England & Wales
- ICAI - Institute of Chartered Accountants in Ireland
- ICAS - Institute of Chartered Accountants of Scotland
- ICPAI - Institute of Certified Public Accountants in Ireland
- Law Society of Ireland

On 19 December 2018, S.I. No. 570 of 2018 Companies Act 2014 (Prescribed Professional Bodies) Regulations 2018 pursuant to Sections 448 and 558 of the Companies Act 2014 came into effect. The regulations cover the reporting obligations of professional bodies where they detect misconduct by their members while acting as Receivers or Examiners. No reports of this nature were received from PPBs during the year (2017: 0).

Liquidators’ reports regarding possible criminality

In addition to their reporting obligations under section 682 as detailed above, in accordance with section 723(5) of the Act, liquidators are required, in circumstances where it appears that any past or present officer of the company concerned has been guilty of any offence in relation to the company, to make a report to the DPP and also to refer the matter to the ODCE. This reporting obligation extends to all liquidations, solvent and insolvent (i.e. both Members’ and Creditors’ Voluntary liquidations and Court liquidations) alike. One such report was received by the Office during the year (2017: 0).

Disclosures under the Protected Disclosures Act 2014²⁹

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

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

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

²⁹ The Protected Disclosures Act 2014 is available at <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/pdf>

INTERNAL INPUTS

Introduction

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

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

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

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

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

Actions focussing on particular cohorts of persons

During the course of the year under review enquiries were initiated in a number of instances in which suspicions arose that persons who were undischarged bankrupts, disqualified or restricted may have been acting as company directors or in other specified roles (e.g., such as auditors) while not permitted to do so (or, in the case of restricted persons, only subject to certain conditionality).

Investigations commenced on own initiative

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

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

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

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

Dissolved insolvent companies

The Office characterises as “*dissolved insolvent companies*” those companies that:

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

It is open to the Office to apply to the High Court for the disqualification of the directors of such struck off companies³⁰. However, company law also provides³¹ that the Court cannot disqualify a person who demonstrates to the Court that the company had no liabilities at the time of strike off or that those liabilities had been discharged before the initiation of the disqualification application. In considering the sanction to be imposed, the Court may instead restrict³² the director(s) where it adjudges that disqualification is not warranted under the particular circumstances³³.

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

Where it appears to the Office that a director is liable to be disqualified in these circumstances, it may offer the individual concerned the opportunity to voluntarily submit to a Disqualification Undertaking. In the context of the foregoing, also worthy of note is the fact that, where a company is struck off the Register, its remaining assets are vested in the Minister for Public Expenditure & Reform in accordance with the provisions of the State Property Act 1954.

During 2018 the Office examined the actions of the directors of 18 companies which were struck-off the Register whilst having significant outstanding liabilities.

As a result of the examination of 18 of the companies struck off (including a further examination of 77 related companies):

- 21 directors of 11 companies submitted to Disqualification Undertakings under section 851 of the Act;
- steps are being taken in the case of 3 companies for restoration to the Register and the discharging of the relevant outstanding debts.

It is anticipated that, during 2019, a similar number of directors will be disqualified in these types of cases either by way of High court applications under section 842(h) or by voluntarily consenting to Disqualification Undertakings under section 851 of the Act. See Appendix 5 for details of directors disqualified.

³⁰ Section 842(h) of the Companies Act 2014

³¹ Section 843(3) of the Companies Act 2014

³² Section 819 of the Companies Act 2014

³³ Section 845(3) of the Companies Act 2014

Actions relating to liquidator performance/behaviour

One of the statutory functions of the Director is to:

“... exercise, insofar as the Director considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under this Act”³⁴.

Whilst the section 682 Liquidators report process, as outlined earlier in this Chapter, provides the Office with a means of indirectly supervising certain aspects of liquidators’ work, from time to time the Office considers it appropriate or otherwise necessary to engage in more direct supervision of liquidators’ work. This, more direct, supervision is effected through the exercise of the powers conferred by section 653 of the Act³⁵.

Section 653 of the Act provides that the Director may:

- either on his own initiative or on foot of a complaint from a member, contributory or creditor of a company, request production of a liquidator’s books for examination – either in relation to a particular liquidation process, or to all liquidations undertaken by the liquidator; and
- seek the liquidator’s answers to any questions concerning the content of such books, and all such assistance in the matter as the liquidator is reasonably able to give.

The powers conferred upon the Director by section 653 are accompanied by certain safeguards and limitations, i.e.:

- the Office must inform the respondent liquidator of the reason(s) as to why the request is being made; and
- a request may not be made in respect of books relating to a liquidation that has concluded more than six years prior to the request.

Quantum of internal inputs - 2018

During the course of 2018, a total of 79³⁶ (2017: 97) internal inputs were generated.

³⁴ Section 949(1)(e) of the Companies Act 2014

³⁵ Section 446 of the Act includes a similar provision relating to receivers

³⁶ Relating to the broad categories of bankruptcy, disqualification, restriction and examinership.

PART B: THROUGHPUTS

Generally speaking, inputs, irrespective of whether from internal or external sources, result in the opening of a case file. In the case of liquidators' section 682 reports, cases generally reach a natural conclusion when a decision has been taken as to whether or not to relieve the liquidator of the obligation to seek the company's directors' restriction/disqualification and, where relief is granted, the file is usually closed.

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

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

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

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

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

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

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

Table 11 Throughput of liquidators' section 682 reports - 2018

Section 682 reports on hand at 1 January, 2018		457
All reports received during 2018	866	
Less: Reports the subject of determinations during 2018	971	
Section 682 reports on hand at 31 December, 2018		352

Table 12 Throughput of other cases - 2018

Other cases on hand at 1 January, 2018		89
New cases opened during 2018	504	
Less: Cases concluded during 2018	439	
Other cases on hand at 31 December, 2018		154

PART C: OUTPUTS

Insolvency-Related Enforcement Measures & Outputs 2018 arising from Section 682 Liquidator Reports and Examination of Dissolved Insolvent Companies

Key Outputs and Statistics

Outputs from the section 682 process (i.e., liquidator reporting)

The Office made definitive decisions (i.e. decisions other than to grant 'Relief at this time') on 701 liquidators' reports during 2018 (2017: 600), with a further 270 decisions made to grant 'Relief at this time' (2017: 265).

Of the 701 definitive decisions taken during 2018, a total of 545 were made in respect of initial reports (2017: 501), with a further 156 being made in respect of subsequent reports (2017: 99).

The decisions taken in respect of initial and subsequent reports respectively are analysed in the Tables 13,14 & 15 below.

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

Decision Type	2018		2017	
	Number	%	Number	%
Full relief ³⁷	602	62	549	63
No relief ³⁸	70	7	39	5
Partial relief ³⁹	25	3	12	2
Relief at this time ⁴⁰	270	28	265	30
Total	967	100%	865	100%

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

Decision Type	2018		2017	
	Number	%	Number	%
Full relief ³⁷	497	74	476	76
No relief ³⁸	39	6	19	3
Partial relief ³⁹	8	1	6	1
Relief at this time ⁴⁰	129	19	126	20
Total	673	100%	627	100%

³⁷ Full relief is granted in cases where the Office forms the opinion that, based on the information available (including the liquidator's report(s)), all of the directors of the insolvent company appear to have acted honestly and responsibly in the conduct of the company's affairs.

³⁸ No relief is granted in cases where the Office forms the opinion that, based on the information available (including the liquidator's report(s)), there is insufficient evidence to demonstrate that any of the directors of the insolvent company acted honestly and responsibly in the conduct of the company's affairs.

³⁹ Partial relief is granted in circumstances where, based on the information available (including the liquidator's report(s)), the Office forms the opinion that some, but not all, of the directors of the insolvent company appear to have acted honestly and responsibly in the conduct of the company's affairs.

⁴⁰ 'Relief at this time' is granted in cases where the Office is satisfied that the liquidator needs more time in which to progress/complete his/her investigations into the circumstances giving rise to the company's demise. Similarly, on occasion, the Office considers it necessary to postpone making a definitive decision due to the complexity of certain companies' affairs and the associated necessity for supplemental engagement with the liquidators concerned. Where 'Relief at this time' is granted, the liquidator will be required to submit a subsequent report.

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

Decision Type	2018		2017	
	Number	%	Number	%
Full relief ³⁷	105	35	73	31
No relief ³⁸	31	11	20	9
Partial relief ³⁹	17	6	6	2
Relief at this time ⁴⁰	141	48	139	58
Total	294	100%	238	100%

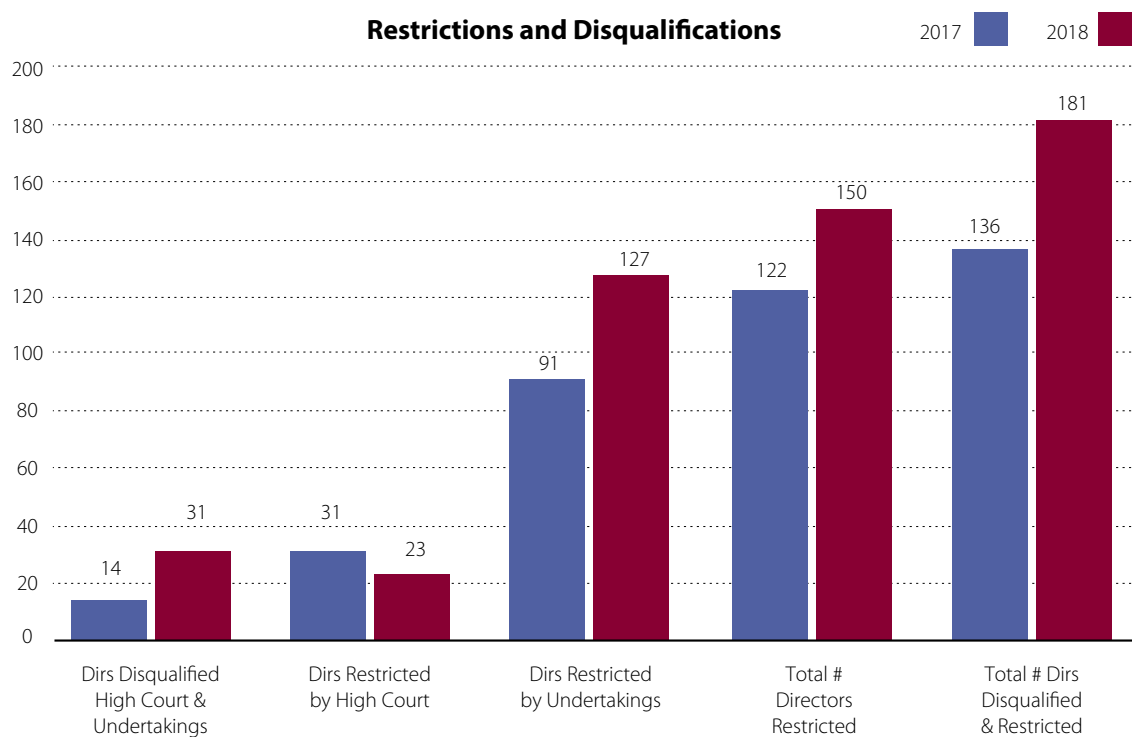
Chart 1: Restrictions & Disqualifications 2017/18

Chart 2: Profile of ODCE adjudications and related statistical data 2017/18

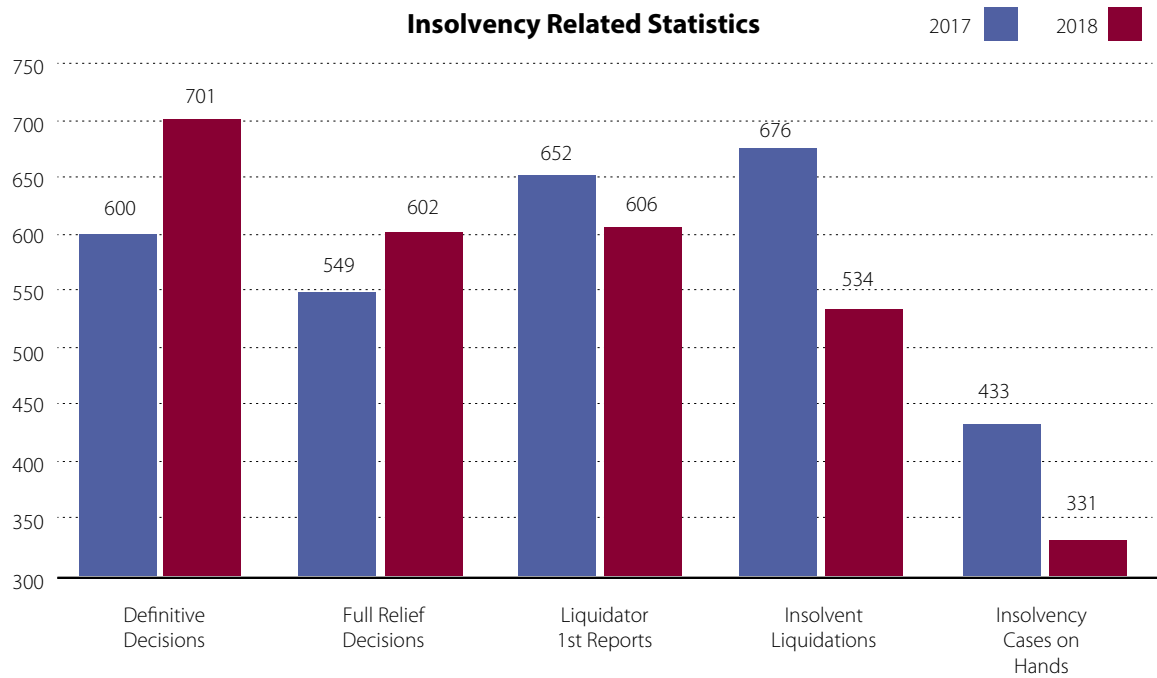
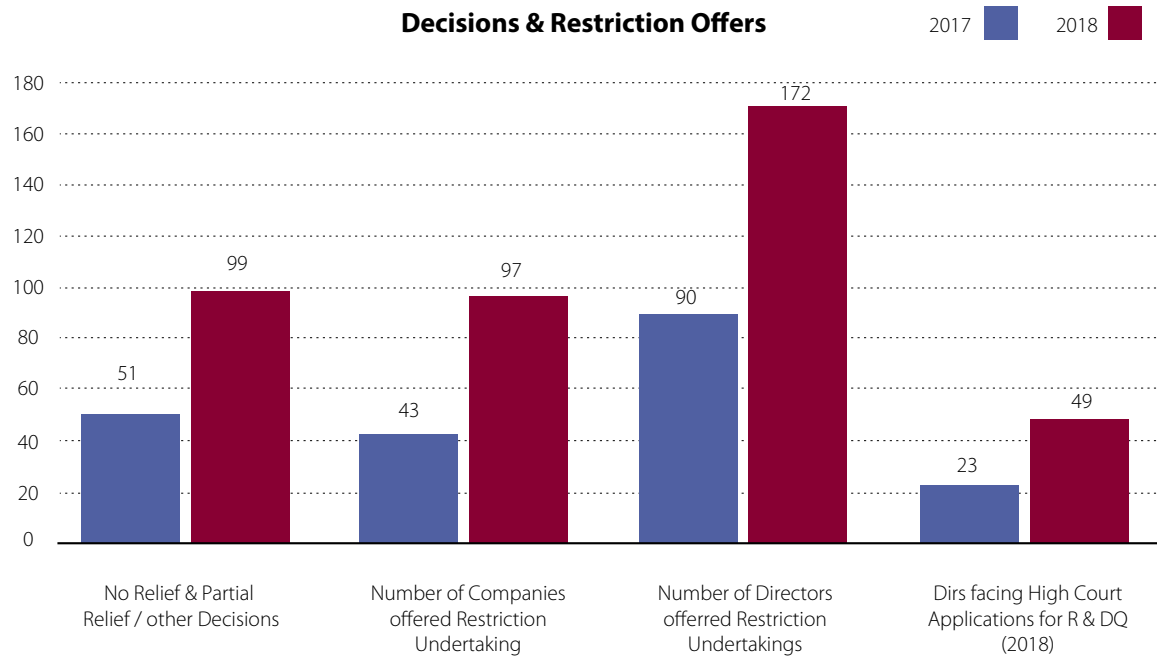


Chart 3: Profile of ODCE adjudications and related statistical data 2017/18



Restriction and Disqualification Undertakings

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

Table 16 Undertaking offers issued, accepted and declined

	2018		2017	
	Cases	Directors	Cases	Directors
Restrictions: ⁴¹				
Number of offers issued	97	172	43	90
Number of offers accepted	72	127	42	83
Number of offers not accepted	13	22	1	4
Number of offers outstanding at year end:	12	23	2	3
Disqualifications:				
Number of offers issued	7	8	3	4
Number of offers accepted	3	3	1	1
Number of offers not accepted	3	2	1	1
Number of offers outstanding at year end:	1	3	1	2

Outcome of liquidators' Court applications

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

At any given time a considerable number of company directors face restriction or disqualification proceedings in the High Court. At 31 December 2018 a total of 49 directors who had declined to enter into Undertakings in respect of decisions made during the year faced such proceedings.

Table 17 Results of liquidators' Court applications – 2018

	2018		2017	
	Cases	Directors	Cases	Directors
Restriction Declarations granted	14	23	17	31
Disqualification Orders granted	5	7	6	9
Declarations or Orders not granted	0	0	7	11
Total	19	30	30	51

⁴¹ A number of restrictions accepted in 2018 relate to undertakings offered in 2017.

On foot of Undertakings or Court Orders, a total of 150⁴² (2017: 122) directors were restricted and 10⁴³ (2017: 10) directors disqualified. Further analysis of the Orders made by the Court on foot of liquidators' applications and Undertakings is provided in Appendices 4 and 5.

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

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

- the actions of two directors of a Dissolved Unliquidated Company (i.e. a company struck-off the Register of Companies in accordance with Section 733 of the Companies Act 2014) were examined. All other companies that the directors of this company were associated with were also examined and of these 5 companies were also involuntarily struck off the Register of Companies for failure to file annual returns. An examination of the last annual returns filed in respect of these companies found that the Balance Sheets recorded creditors totalling €1,277,808.00. The directors did not contest these figures and did not take remedial measures to correct them. Both directors consented to Disqualification Undertakings for a period of 5 years.
- a member of the public made a complaint to the ODCE in relation to the conduct of two directors of a Dissolved Unliquidated Company. An examination of the activities of these directors found that there had been a failure to file annual returns in respect of 4 companies of which they were directors. As provided for under Section 957 of the 2014 Act an exchange of information took place between the ODCE and the Revenue Commissioners where the making of an application for a Disqualification Order in accordance with Section 842(h) of the 2014 Act was being contemplated. The Revenue Commissioners advised the ODCE of a default of €358,708 in tax and interest in respect of two of the companies. The last annual returns filed in respect of all companies recorded creditors totalling €466,476 in respect of two of the companies. A search indicated that there were 7 unsatisfied judgements registered against two of the companies. The directors did not contest the findings of the ODCE and did not take remedial measures to correct them. Both directors consented to Disqualification Undertakings for a period of 4 years.
- the director of a company involved in the provision of sports software solutions accepted a Disqualification Undertaking. The company continued to trade while insolvent to the detriment of its creditors. Over a period of three years the creditor deficit increased significantly from €71,493 in 2012 to €600,048 at liquidation. The company failed to maintain proper accounting records and to file statutory returns. The director of the company used third party funds from the company's online registration account to pay for day to day business expenses of the company including wages, operating overheads and the construction of an office from which the company operated. Company monies amounting to approximately €41.5k were misapplied for the director's own personal use. The company failed to file VAT returns, to pay its VAT liabilities in a timely manner and, in addition, underdeclared its 2014 VAT liability by €68,338. The director of the company was found not to have acted honestly and responsibly and consented to a Disqualification Undertaking for a period of 5 years.
- a company involved in the provision of specialist IT and data processing services traded for 4 years and went into liquidation in January 2017. Based on evidence presented by the liquidator the two company directors were found not to have acted honestly and responsibly in relation to the conduct of the Company's affairs. The directors were not compliant with their obligations to the Revenue Commissioners and failed to discharge significant Revenue liabilities of approximately €105,000. The liquidator reported that the directors made preferential payments to themselves in the form of excessive salaries while simultaneously withholding taxes due to Revenue. Both directors drew excessive amounts of company

⁴² Appendix 4

⁴³ Appendix 5

funds to cover personal expenses and allowed the company to continue to trade when they knew that the company was insolvent. Both directors failed to co-operate in the liquidation process and acted dishonestly and irresponsibly in their role as directors. One director consented to a Disqualification and the remaining director consented to a Restriction Undertaking for a period of five years.

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

Set out below are examples of the types of issues that were considered by the High Court in making Restriction Orders or to which regard was had by the ODCE in offering Restriction Undertakings (and in response to which Undertakings were accepted). The full list is set out at Appendix 4 to this Report. The Orders/Undertakings were on foot of liquidators' section 682 reports and, where necessary, the provision of additional information and clarification as sought by the ODCE.

- a company which was operating as an English Language Training School traded for three years from July 2011 to April 2014 entered liquidation in June 2014. The company was a provider of business and English language courses, primarily to students from outside the European Union, who were in the State on visas issued for educational purposes. At the height of its operations almost 500 students from outside the European Union were enrolled on courses to be provided by the Company. Based on evidence presented by the liquidator one director was found not to have acted honestly and responsibly in relation to the conduct of the company's affairs. The director was not compliant with her obligations to the Revenue Commissioners and owed €29,000, failed to file returns to the CRO, failed to cooperate fully with the liquidator, did not keep proper books and records, failed to supervise and control the Company's activities and allowed the Company to divert income to other companies and third parties, made significant preferential payments to herself and continued to accept payments from applicants for enrolment on courses in the knowledge that the Company was insolvent and was unlikely to provide the courses being paid for. The director consented to a Restriction Undertaking for a period of five years;
- three directors of a number of related companies which operated a restaurant and related businesses in Dublin were found not to have acted honestly and responsibly in relation to the conduct of the affairs of the companies. Based on evidence presented by the liquidator the directors were not, among other things, compliant with their obligations to the Revenue Commissioners and owed over €550,000 cumulatively, allowed the accumulation of over €2.9 million in liabilities to creditors, failed to file returns to the CRO, failed to cooperate with the liquidator, failed to maintain proper financial systems and proper books and records, failed to hand over assets, books and records to the liquidator, failed to supervise and control the Company's activities and allowed the Company to divert income to other companies and third parties, made significant fraudulent preferential payments to creditors, related companies and themselves, failed to provide evidence relating to asset transfers within the related companies, continued trading while knowing that the Company was insolvent, allowed one company to continue to trade while struck-off the CRO register and failed to hold valid liquor licences. Each of the three directors consented to Restriction Undertakings for a period of five years;
- a company involved in the provision of IT consultancy services traded for 10 years and went into liquidation in January 2017. Based on evidence presented by the liquidator the two company directors were found not to have acted honestly and responsibly in relation to the conduct of the Company's affairs. The directors were not compliant with their obligations to the Revenue Commissioners and failed to discharge significant Revenue liabilities of approximately €285,000. The liquidator reported that the directors preferred themselves by allowing the company to expend excessive funds in respect of the directors' remuneration and in so doing failed to act honestly and responsibly. Both directors consented to Restriction Undertakings for a period of five years;

- a company operating as a food and beverage retailer traded for 14 years and went into liquidation in February 2017. Based on evidence presented by the liquidator one company director was found not to have acted honestly and responsibly in relation to the conduct of the Company's affairs while the other director was found to have no involvement in the business and the liquidator was relieved of his obligation to make an application for the restriction of this director. The remaining director was not compliant with their obligations to the Revenue Commissioners and failed to discharge liabilities to Revenue. The liquidator reported that the director made preferential payments from the proceeds of a liquor licence to himself and made selective discharge of payments to a number of unsecured creditors. The director placed his own interests ahead of the company when he transferred part of the proceeds of an asset to himself. The director consented to a Restriction Undertaking for a period of five years;
- a company operating in the haulage and commercial vehicle repairs industry went into liquidation in 2015 after trading for five years. The directors were found not to have acted honestly and responsibly by this Office despite a Full Relief recommendation by the liquidator. The deficit at time of liquidation amounted to €368,278. The directors failed to fully discharge the company's liabilities to the Revenue Commissioners amounting to €87k owed at the time of liquidation. It was found that the directors failed to declare all taxes due and also significantly under-declared taxes; it was only as a result of a Revenue S23 Assessment that the true tax liability was declared. There was also evidence to suggest that other trade creditors were preferred over the Revenue Commissioners. In addition, it was identified that there was a failure to properly account for motor vehicles and plant & machinery transferred into the Company or to provide proof of ownership in respect of certain vehicles when requested. There was a failure to prepare and file a statutory Annual Return and Financial Statements with the Companies Registration Office. The two directors consented to Restriction Undertakings for a period of 5 years;
- a company traded for three years as a bookmaker having taken over a number of betting shops formerly operated by the director and a relative. The company had an estimated deficit of €276k at date of liquidation. The directors were found not to have acted honestly and responsibly on the basis that they had failed to make Betting Duty returns and payments for three years resulting in a Betting Duty liability of €196k. Based on the evidence presented by the liquidator, it was demonstrated that the directors used funds, properly due to the Revenue Commissioners, to facilitate continued trading of a loss-making business. The directors were offered the opportunity to voluntarily consent to a Restriction Undertaking but declined. As a result, the liquidator was obliged to initiate proceedings in the High Court where they were subsequently restricted by order of the Court;
- a company who offered computer software consultancy ceased trading in 2017 and, following the issue of a final demand letter, the Revenue Commissioners petitioned the High Court to have the company wound up. The directors were found not to have acted honestly and responsibly on the basis that they had failed to file tax returns since the date of incorporation and failed to pay tax liabilities as they fell due. The company continued to trade despite the directors being aware that the company was insolvent. The company failed to meet its CRO filing obligations and the directors failed to cooperate with the liquidator or to provide him with the company's books and records and failed to provide a Statement of Affairs. The two directors consented to Restriction Undertakings for a period of 5 years.

Success of Undertakings Framework

The Undertakings framework introduced in 2015 provides an innovative, cost and resource-effective means of dealing with issues which would otherwise involve multiple Court appearances and associated costs. In addition to being less stressful on the individual concerned it is cheaper and faster than the Courts-based approach. The programme contributes towards better regulation and an improved environment for business generally. The programme has also improved perceptions, both domestically and internationally, of how Ireland's company law is implemented and enforced.

Since its introduction, close to 400 individuals have given undertakings and have voluntarily accepted Restriction or Disqualification under the Companies Act, 2014, without the need for proceedings before the High Court. It is estimated that the new procedures have delivered savings of some €4 million. About 80% of all cases where restriction or disqualification is considered to be merited are now dealt with by way of voluntary undertakings.

In 2017, the programme was short-listed in the Civil Service Excellence and Innovation Awards, an annual event aimed at recognising staff excellence and innovation in the Civil Service.



ODCE Insolvency Unit staff members. Left to right: Conor O'Mahony, John Nolan, Kathleen Glackin, Anna O'Byrne, Marie Devaney.

Outputs from enforcement work

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

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

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

Securing voluntary rectification/remediation

Directors' loans infringements

In 18 cases (2017: 39) where suspected directors' loan infringements had been reported by auditors, or had otherwise come to attention, the Office's actions resulted in rectifications (including the repayment/reduction of loans) totalling €6.1m (2017: €15.5m). Such rectifications are in the interests of affected companies' members and creditors.

Failure to comply with accounting standards

Section 291(3) of the Act requires companies to prepare their financial statements, *inter alia*, in accordance with applicable accounting standards. Section 291(9) provides that failure to comply with that requirement is a Category 2 offence on the part of the company and any officer in default. In 34 (2017: 25) instances where companies' failure to comply with accounting standards had been reported to the Office by way of indictable offence reports, warnings issued to the companies in question. Specifically, the directors of the companies in question were afforded the opportunity to address the underlying non-compliance and warned that, in the event of reoccurrence, enforcement action was the likely response.

Persons acting as company directors while not permitted to do so

During the year, the Office undertook a review of the register of disqualified and restricted persons as maintained by the Registrar of Companies. Arising from the review, 67 persons (2017: 53) appeared to be in contravention of such orders and undertakings. Following ODCE intervention, the individuals' positions were regularised.

During the year under review, the Office examined compliance with respect to two particular issues:

- the requirement for a company to have a director resident in the European Economic Area (EEA) subject to the company holding a bond to a value of €25,000. Following consultation with the Companies Registration Office where the Bonds in question are filed, a sample of cases were examined, all of which were in compliance regarding the 'renewal' of Company Bonds;
- section 142 Companies Act 2014 – Limitation on number of directorships. The Act sets out the limitation on a person to hold no more than 25 directorships subject to a number of exemptions. Following receipt of data from the Companies Registration Office, a project was undertaken whereby circa 20% of the total Directorships register was examined. Having regard to the exemptions outlined in Section 142, no cases were identified where a director had more than 25 directorships contrary to company law.

Total cautions issued

In addition to the foregoing, cautions issued to a total of 63 companies (2017: 58) on a variety of matters.

Securing compliance and progressing enquiries and investigations through the exercise of the Director's statutory powers

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

- serving 5 statutory directions to produce specified books or documents under section 778 of the Act (2017: 12);
- serving 1 statutory direction requiring third parties to produce books and documents under section 780 of the Act (2017: 7);
- serving 39 statutory requests on auditors for information under section 393 of the Act (2017:10);
- serving 45 statutory requirements on Companies to produce minutes of directors' meetings under section 166 of the Act (2017: 5);
- serving 3 statutory requirements to produce minutes of general meetings under section 199 of the Act (2017: 2);
- serving 16 orders under Section 52 of the Criminal Justice (Theft and Fraud Orders) Act 2001 (2017: 5);
- issuing 48 statutory directions (2017: 45), pursuant to section 797(1) of the Act, requiring liquidators to comply with their obligations (reporting and Court applications) under section 682;
- issuing 4 directions under section 797 of the Act in relation to Court Order Compliance (2017: 2)
- issuing 2 directions under Section 335(5) of the Act in relation to the availing of audit exemption (2017: 0);
- issuing 1 direction under Section 791 of the Act in relation to the disclosure of information for certain purposes; and
- issuing 1 direction under 792 of the Act in relation to disclosure of information to competent authority.

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

During the year, 40 requests (2017: 11) were received from companies seeking a direction disapplying the limitation in section of 288(9) of the Act, under which, ordinarily, a company may not alter its current or previous year end date more than once in a five-year period.

Civil remedies sought

Dissolved insolvent companies

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

Other civil litigation

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

Table 18 Details of civil proceedings – 2018

<p><i>Console Suicide Bereavement Counselling Ltd (In Liq) – The High Court – 2016 No. 273 COS</i></p>	<p>The ODCE issued a Notice of Motion seeking an Order of the High Court for liberty to interrogate electronic material obtained during an investigation that had been on-going since May 2016. Initially Orders of the Court were obtained in summer 2016. Some twelve separate parties were served with the Director’s Motion to include one individual by way of e-mail who resided outside of the Jurisdiction. After adjournments, to allow some of the Respondents to obtain representation by way of Legal Aid, that Motion was heard on 27 July 2018. On that date a comprehensive list of search terms was agreed as between the relevant parties and then included as a Schedule to the High Court Order. On 19 September 2018 and again on 4 October 2018 other Orders were obtained from the High Court to permit an extension of the Court approved list of search terms.</p>
<p><i>In the Matter of Independent News and Media plc – The High Court – 2018 No. 300 Judicial Review – IN&M PLC -v-The Director of Corporate Enforcement and In the Matter of Independent News and Media plc – The High Court – 2018 No. 124 COS – The Director of Corporate Enforcement -v- IN&M PLC</i></p>	<p>Following a lengthy and detailed investigation conducted into allegations contained in a disclosure made to the ODCE by Mr. Robert Pitt, former Chief Executive Officer, Independent News & Media plc (INM) under the Protected Disclosures Act 2014 in November 2016 and further allegations raised by Mr. Pitt in August 2017, the ODCE applied to the High Court for the Appointment of Inspectors to INM on the 23 March 2018, pursuant to section 748 of the Companies Act 2014.</p> <p>The ODCE’s investigation into the affairs of INM was conducted over a period of approximately 15 months. Over the course of the investigation, a total of 33 statutory requirements for the provision of documents, explanations and assistance respectively were served on INM and on several other parties. This resulted in the ODCE assembling a substantial volume of documentary evidence, including email and text message communications.</p> <p>Following a review of the materials assembled over the course of the investigation, the ODCE identified a number of matters of serious concern relating to INM. While extensive use was made of the ODCE’s statutory powers, a point was reached where, in the ODCE’s assessment, the further progression of this investigation necessitated the deployment of the more powerful investigative tools reserved by law to High Court Inspectors. Such Inspectors have significant statutory powers not available to the ODCE, including the powers of compellability and examination of relevant persons on oath.</p>

	<p>INM subsequently took Judicial Review proceedings in the High Court seeking to quash the ODCE's decision to seek the appointment of Inspectors. In a judgement delivered on 1 June 2018, Mr. Justice Seamus Noonan rejected that argument and dismissed INM's application.</p> <p>The matter progressed to hearing in July 2018 and judgment was reserved. Following his judgement of 4 September 2018, the President of the High Court, Mr. Justice Peter Kelly, on 6 September 2018, ordered, pursuant to section 748 of the Companies Act 2014, the appointment of Inspectors to INM. The inspectors are Mr. Sean Gillane, SC and Mr. Richard Fleck, CBE. The Inspectors will investigate the various matters set out in their Terms of Reference as set out in the Order of the President of the High Court. In doing so, the Inspectors will have at their disposal the wide range of powers provided to them under the Companies Act 2014.</p>
<p><i>DTCC Data Depository (Ireland) Ltd</i> <i>The High Court – 2018 No. 185 COS</i></p>	<p>Pursuant to EC Council Regulation No. 2157/2001 and the European Communities (European Public Limited Liability Company) Regulation 2007, an Irish registered company made application to the High Court, on notice to the ODCE, for the proposed formation of a European Public Limited Liability company, also called a <i>Societas Europaea</i>, by its merger with a UK registered company. There were no circumstances suggesting that the ODCE should object to the proposed merger and, accordingly, this was communicated to the Applicant's solicitors with the High Court subsequently making the appropriate Order.</p>
<p><i>Access Plastics Ltd</i> <i>And</i> <i>Access Plastics Manufacturing Ltd</i> <i>And</i> <i>In the Matter of Section 847 of the</i> <i>Companies Act 2014</i> <i>And</i> <i>In the Matter of an Application of John</i> <i>Vero</i> <i>The High Court – 2018 No. 254 COS</i></p>	<p>The Applicant, pursuant to section 847 of the Companies Act 2014, sought relief from an Order of Disqualification obtained in 2017. That Order was for a period of 5 years following the relevant individual's plea of guilty to an offence on indictment under section 1078(2)(a) of the Taxes Consolidation Act 1997. The Applicant, pursuant to section 847, was required, amongst other things, to notify the ODCE of his impending application. After extensive correspondence between the Director and the Applicant's solicitors, the High Court granted a limited Order for Relief on very strict grounds to include that the sale of the relevant companies be completed within three months, that the Applicant's functions in both companies be limited to those outlined in his solicitors' correspondence submitted to both the ODCE and the Court, that his proposed contract of employment be submitted to the ODCE for approval and that the Applicant make an agreed contribution towards the Costs of the ODCE and the Revenue Commissioners.</p>

Summary criminal proceedings

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

Indictable criminal proceedings – charges directed and subsequent prosecutions

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

- the DPP directed charges under the Companies Act 1963, the Criminal Justice (Theft and Fraud Offences) Act 2001 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 on foot of an investigation file submitted during 2017. At the date of writing, a trial date is awaited;
- arising from an investigation file submitted during 2017, and in respect of which a plea of guilty was entered, an individual was sentenced to 18 months' imprisonment (with the final 6 months suspended) for the offence of Fraudulent Trading contrary to section 297 of the Companies Act 1963; and
- a number of other large-scale investigations were progressed with a view to submitting files to the DPP for consideration as to whether charges should be directed on indictment.

Referrals to professional and other regulatory bodies

Whilst there is an obligation upon the ODCE to keep confidential information that comes into its possession, there is statutory provision⁴⁴ for the disclosure of information to certain third parties (including other regulatory bodies and certain professional bodies) provided that certain prescribed criteria are satisfied.

Pursuant to the foregoing provision, 1 referral (2017: 4) was made to the RABs during the year. Having regard to its statutory remit *vis-à-vis* the RABs, such referrals are always copied to IAASA.

Issues typically referred to RABs include:

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

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

⁴⁴ Section 956 of the Companies Act 2014