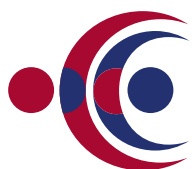


# ANNUAL REPORT

Office of The Director of Corporate Enforcement

2014



Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement

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# DIRECTOR'S INTRODUCTION





# DIRECTOR'S INTRODUCTION

## Introduction

In accordance with the provisions of section 16(1) of the Company Law Enforcement Act 2001, I am pleased to submit the Office's 2014 Annual Report to the Minister for Jobs, Enterprise & Innovation, Mr. Richard Bruton, TD.

## The year under review – principal outputs and outcomes

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

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

Notable contributions in that regard included:

- securing the rectification, on a non-statutory and therefore more cost effective basis, of a range of instances of non-compliance, including:
  - directors' loans issues to an aggregate value of approximately €66m;
  - issues relating to persons purporting to act as statutory auditors whilst not qualified to do so;
  - issues associated with the failure to maintain proper records of companies' financial affairs;
- successfully securing, in 281 separate instances, compliance on the part of a range of parties with their obligations under the Companies Acts through more formal measures;
- the securing of the disqualification of 6 individuals on foot of applications made to the High Court by the Office;
- the restriction of 177 company directors, and the disqualification of a further 16, on foot of liquidators' applications made to the High Court subsequent to the Office's having scrutinised the underlying liquidators' reports;
- the securing of 19 criminal convictions in the District Court for breaches of the Companies Acts; and
- in keeping with the strategic shift towards indictable cases, the prosecution of 2 separate cases in the Circuit Criminal Court, with 1 of those cases subsequently being successfully appealed to the Court of Criminal Appeal.

## The year under review – significant events and developments

### Criminal proceedings relating to the former Anglo Irish Bank Corporation

During the course of a 10 week period, the first trial to result from the Office's Anglo-related investigation – the so called "Section 60" trial – was heard before a Judge and jury. Having heard all the evidence, the jury found Mr. Pat Whelan and Mr. William McAteer guilty on 10 counts of alleged breaches of section 60 of the Companies Act 1963<sup>1</sup> and not guilty on a further 6 counts. The jury found the third defendant, Mr. Sean FitzPatrick, not guilty on 10 counts of alleged breaches of section 60 and, by direction of the trial Judge, returned verdicts of not guilty in respect of the other 6 charges. By direction of the trial Judge, the jury also returned not guilty verdicts in respect of a further 7 counts of alleged breaches of section 243 of the Companies Act 1990<sup>2</sup> against Mr. Whelan. In accordance with the provisions of section 160(1) of the Companies Act 1990, Mr. McAteer and Mr. Whelan are, by virtue of having been convicted on indictment of an offence under the Companies Acts, subject to Disqualification Orders for a period of 5 years commencing on the date of conviction.

A further trial, relating to alleged breaches of section 197<sup>3</sup> of the Companies Act 1990 by Mr. FitzPatrick, is scheduled to commence on 13 April, 2015.

In addition, the Director of Public Prosecutions (“DPP”) has directed further charges against both Mr. Whelan and Mr. McAteer relating to alleged breaches of section 297 of the Companies Act 1963<sup>4</sup>. The associated trial is scheduled to commence on 16 January, 2017.

As stated in my remarks in last year’s Report, the fact that these trials – despite the scale, complexity, many novel aspects and resource-intensive nature of the underlying investigations – are being brought before the Courts for adjudication by a Judge and jury demonstrates that the system for investigating possible company law offences at the more serious end of the spectrum is capable of responding appropriately and is fit for purpose.

## Appeals to the Court of Appeal – civil

Under the Companies Acts, the appropriate manner in which to bring to an orderly conclusion the existence of an insolvent company is by way of the appointment of a liquidator. This course of action, amongst other things, ensures that the behaviour of the company’s directors in the run up to the insolvency is subject to the liquidator’s scrutiny whereby, if the circumstances warrant it, the directors’ behaviour can then be brought to the attention of the Courts for an assessment as to whether restriction or disqualification is appropriate in the public interest.

For the foregoing reason, the Companies Acts provide that, where the directors of an insolvent company do not pursue this course of action but, rather, elect to allow the company to be struck off the Register, i.e., in effect abandon the company, it is open to this Office to apply to the Courts to have the company’s directors disqualified.

Since this Office’s establishment, it has been a strategic objective to seek to dissuade this form of behaviour and, in furtherance of that objective, this Office has taken many such applications over the past decade. Naturally, in selecting cases to bring to Court, this Office has sought, to the extent practicable, to focus on those cases where significant liabilities remain undischarged and extenuating circumstances have not been a feature. Notwithstanding that the Court has absolute discretion as to whether to impose disqualification, this workstream has been one that, over the years, has resulted in 115 company directors being disqualified, with a further 10 having been restricted as an alternative to disqualification. As such, it has been an effective strategy in sanctioning such behaviour, thereby serving as a deterrent to others.

During the year under review, four such applications were determined by the High Court and, whilst this Office was successful in two of those cases, in the other two cases, the Court declined to make Disqualification Orders. Having considered the two judgements in question, it was decided to appeal those decisions to the Court of Appeal. At the time of writing, one of those appeals has been withdrawn (due to the emergence of new information post the lodging of the appeal) and the other is scheduled to be heard by the Court of Appeal in October 2015.

## Enactment of the ICAV Act

During the year under review, the Department of Finance continued to progress the Irish Collective Asset-management Vehicles (“ICAVs”) Bill through the Oireachtas, culminating in the Bill’s enactment and coming into effect in March 2015. ICAVs are special purpose corporate entities provided for as part of the Government’s IFSC Strategy and for which primary regulatory responsibility resides with the Central Bank. However, the legislative framework governing their establishment is largely based on company law. Under the ICAV Act 2015, this Office has been conferred with certain regulatory functions vis-à-vis ICAVs – for example, the ODCE now has functions relating to seeking the restriction and disqualification of ICAV directors in certain circumstances, applying to Court for Compliance Orders against non-compliant ICAVs and the summary prosecution of certain offences under the ICAV Act.

The regulation of entities by multiple Agencies can give rise to associated risks. In view of the fact that the Act confers functions upon the ODCE in respect of an entirely new cohort of entities, this Office engaged extensively with the Departments of Finance and Jobs, Enterprise & Innovation respectively during the year under review, with a particular emphasis on seeking to ensure that the legislative and regulatory framework will be appropriate, robust and effective.

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3 Section 197 deals with false statements to auditors

4 Section 297 deals with criminal liability of persons concerned with fraudulent trading of a company

## Appeals to the Court of Appeal – criminal

Having considered the file submitted by this Office, the DPP had previously directed that the Defendant, Mr. Ignatius Forde, be charged with fifty counts of alleged breaches of sections 187<sup>5</sup> and 242<sup>6</sup> of the Companies Act 1990. This case went to trial during the year under review. Mr. Forde entered guilty pleas in respect of thirteen counts on the indictment. Mr. Forde was convicted by the Circuit Criminal Court on one count of an offence under section 242(1) and fined €1,000. The Court took the remaining forty nine counts on the indictment into consideration.

The DPP appealed the above sentence to the Court of Appeal on the grounds of undue leniency. The Court of Appeal subsequently found the sentence imposed by the Circuit Criminal Court to have been unduly lenient and, accordingly, increased the original sentence such that Mr. Forde was ordered to serve 200 hours community service in lieu of a twelve month term of imprisonment and the original fine of €1,000 was increased to €3,000.

## The year ahead

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

### Companies Act

A substantial volume of work has been undertaken, with more in progress, in preparation for the coming into effect of the Companies Act on 1 June. In addition to revising the current suite of information publications, and providing supplementary material as necessary, considerable work has been done in preparation for the coming into force of the legislative provisions governing restriction and disqualification undertakings. Upon the coming into force of the Act, the restriction undertakings regime in particular, is expected to give rise to a significant additional workstream for this Office. However, this new regime should yield benefits in terms of reducing the caseload of the Courts, reducing the administrative burden on company directors who would otherwise face Court proceedings and, by reducing liquidators' legal costs, increasing the levels of funds available in liquidations.

### Staffing

Reference was made in last year's Report to the fact that a review of existing resources had identified, in particular, an insufficiency of in-house accountancy expertise and the limiting effect of that deficiency. During the year under review, and with the support of the Department, the Office was successful in securing sanction to recruit six new accountants together with an in-house IT forensics capability. At the time of writing, the Office is liaising with the Department with a view to putting in train the associated recruitment processes.

### Strategic direction of enforcement work

As alluded to in last year's Report, the Office's enforcement focus has shifted towards more complex and serious company law investigations. Indeed, the Office's current portfolio of criminal investigations is reflective of that shift, with a number of cases that have the potential to result in referrals to the DPP now in train. Once in place and suitably inducted, it is anticipated that the aforementioned additional capabilities will significantly increase our capacity to realise our ambitions in that regard.

## Concluding remarks

In conclusion, I would once again like to thank my colleagues for their ongoing commitment and dedication to the achievement of the Office's objectives. The year under review has, again, seen colleagues' willingness to promote and embrace change and to take on additional responsibility.

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

**Ian Drennan**

*Director*

31 March, 2015



# AT A GLANCE



## AT A GLANCE

### ADVOCACY

- 2 new information and guidance publications issued
- 42 information presentations delivered and 15 exhibitions attended

### ENFORCEMENT

#### Sources of our work

- In excess of 1,600 statutory reports received from liquidators, auditors and professional bodies
- Over 230 complaints received from members of the public
- Almost 50 internally generated inputs

#### Outputs from our work

- Following the scrutinising of reports submitted to the Office by liquidators of insolvent companies, 177 company directors restricted and 16 disqualified by the High Court
- Directors' loan infringements to the value of approximately €66m rectified on foot of Office actions
- 7 separate matters referred to professional accountancy bodies regarding matters relevant to their members
- Compliance with the Companies Acts secured in 281 separate instances through the exercise of the Director's civil powers
- 6 individuals disqualified on foot of applications made to the High Court by the Office
- 19 criminal convictions secured in the District Court, resulting in aggregate fines of €27,500 being imposed and costs of €4,750 being awarded to the Office
- In keeping with the strategic shift towards indictable cases, 2 separate cases were tried in the Circuit Criminal Court. One of these cases was subsequently successfully appealed to the Court of Criminal Appeal by the DPP on grounds of undue leniency.

## INVESTIGATION RELATING TO THE FORMER ANGLO IRISH BANK CORPORATION PLC

Following a 10 week trial that ran from February to April 2014:

- Mr. Pat Whelan found guilty on 10 counts of alleged breaches of section 60 of the Companies Act 1963 and not guilty on a further 6 counts
- Mr. William McAteer found guilty on 10 counts of alleged breaches of section 60 of the Companies Act 1963 and not guilty on a further 6 counts
- Mr. Sean FitzPatrick found not guilty on all 16 counts of alleged breaches of section 60 of the Companies Act 1963
- Mr. Pat Whelan found not guilty on all 7 counts of alleged breaches of section 243 of the Companies Act 1990
- Messrs. Whelan and McAteer sentenced to 240 hours of community service each
- Arising from having been convicted on indictment of an offence under the Companies Acts, pursuant to section 160(1) of the 1990 Act, Mr. McAteer and Mr. Whelan are both subject to Disqualification Orders for a period of 5 years commencing on the date of conviction.

### FINANCIAL

- The cost of running the Office during 2014 was €3m, some 64% of its allocation for the year and a reduction of 4% on the previous year.

# OVERVIEW OF THE ODCE

1



# CHAPTER 1

## OVERVIEW OF THE ODCE

### Statutory mandate

#### Office of the Director of Corporate Enforcement

The Company Law Enforcement Act 2001 (“CLEA”)<sup>7</sup> provided for the creation of the position of Director of Corporate Enforcement (“the Director”). 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 CLEA<sup>8</sup>. They include to:

- i. encourage compliance with the Companies Acts;
- ii. investigate instances of suspected offences under the Companies Acts;
- iii. enforce the Companies Acts, including by the prosecution of offences by way of summary proceedings<sup>9</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>10</sup> under the Companies Acts 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 Companies Acts.

In addition, section 192 of the Irish Collective Asset-management Vehicles Act 2015 (“the 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 CLEA<sup>11</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.

---

7 Section 7

8 Section 12(1)

9 i.e. before the District Court

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

11 Section 12(2)

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

## Resources, organisational structure, governance arrangements & principal workstreams

### Human resources

As at 1 January 2014, the Office had an actual staff complement of 41.9 whole time equivalents (“WTE”) (1 January, 2013: 45.5). At year end, the Office’s actual staff complement stood at 40 (31 December, 2013: 41.9) WTE. The composition of the Office’s staff complement as at 31 December, 2014 is set out in the Table below.

**Table 1**  
Analysis of actual staff complement (WTEs) – as at 31 December, 2014

Grade	Number
Director	1
Heads of Function <sup>12</sup> (excluding Garda)	4
Legal Advisors	2
Accountants	1
Solicitors	2
Assistant Principals	3
Higher Executive Officers	7
Executive Officers	6
Clerical Officers	7.5 <sup>13</sup>
<b>Detective Gardaí (on secondment from the Garda Bureau of Fraud Investigation)</b>	
Detective Inspector (Head of Function)	1
Detective Sergeants	2
Detective Gardaí	2.5
Garda	1
<b>Total</b>	<b>40</b>

During the year under review, the Office was, in response to a request for same, granted sanction to recruit 6 additional accountants plus a Higher Executive Officer possessing IT forensics capabilities. At year end, the Office was liaising with the Department with a view to putting in train the associated recruitment processes.

### 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 2014 allocation and expenditure respectively.

<sup>12</sup> Includes 1 Legal Advisor and 1 Solicitor

<sup>13</sup> Includes 1 temporary Legal Secretary

Table 2  
Financial allocation and expenditure – 2014

	Allocation €000s	Expenditure €000s	%
Pay	2,465	2,216	90
Non-pay	2,207	796	36
Exceptional legal costs	50	0	0
<b>Total</b>	<b>4,722</b>	<b>3,012</b>	<b>64</b>

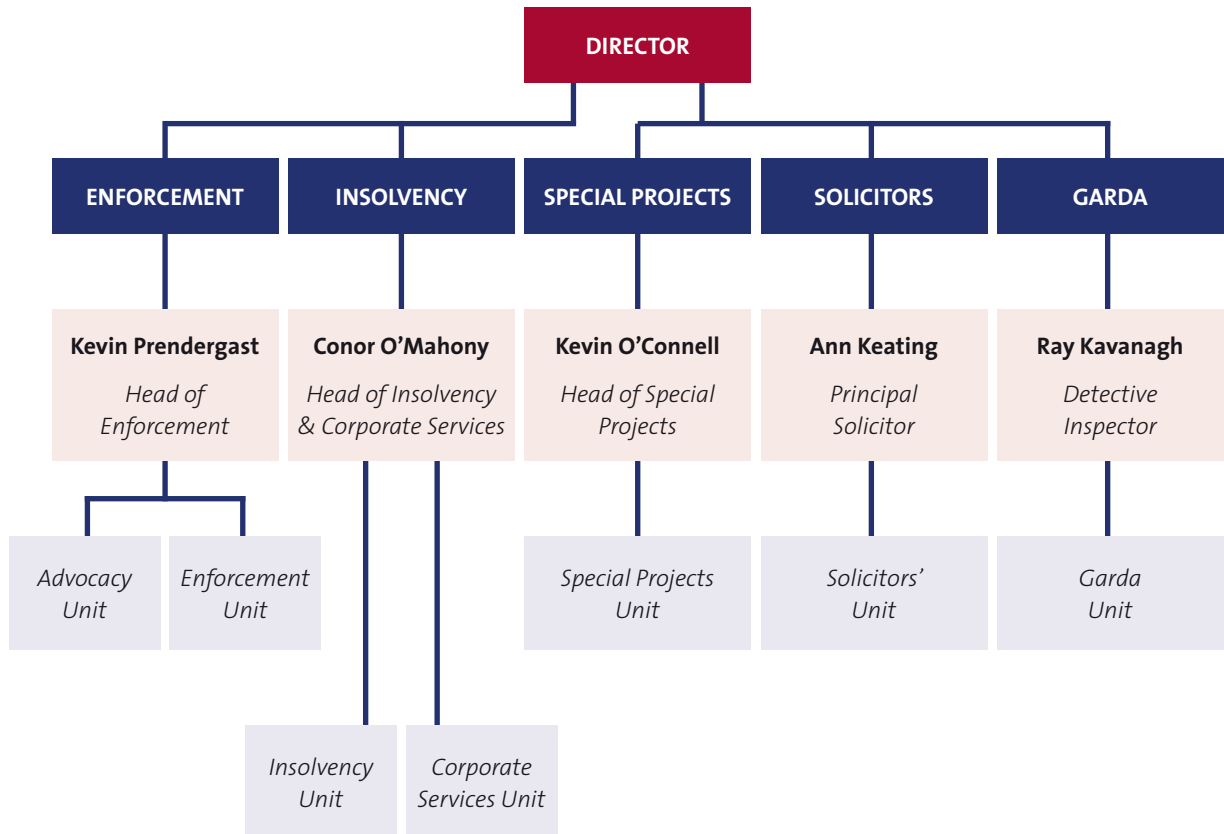
The principal reasons as to why actual expenditure differed from the allocation were as follows:

- savings on pay resulting from staff reductions arising from both vacancies carried forward from 2013 and arising during the year under review; and
- certain legal costs which had been anticipated as might arise during the year did not do so. These costs relate to certain long running litigation to which the Office has been party – the timing as to when those costs might crystallise is, therefore, uncertain.

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

### Organisational structure

Having regard to the Director’s principal statutory functions and the associated workstreams, the Office is structured into seven Units, with each Unit coming under the responsibility of one of five Heads of Function. The Office’s organisational structure is set out in the organogram below.



## Governance arrangements

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

## Principal workstreams

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

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

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

**Table 3**  
**Principal workstreams**

Workstream	Unit(s) principally involved	Chapter
Encouraging compliance with the Companies Acts	Responsibility for encouraging compliance with the Companies Acts 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 reside in the Insolvency and Enforcement Units respectively.	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 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

Workstream	Unit(s) principally involved	Chapter
Civil enforcement litigation	<p>For the most part, civil enforcement litigation is managed by the Enforcement Unit in conjunction with the Solicitors' Unit.</p> <p>Civil litigation, such as seeking the disqualification of directors of companies that have been struck off the Register whilst having undischarged debts, is managed jointly by the Insolvency and Principal Solicitor's Units.</p>	3
Criminal investigation and prosecution	<p>The investigation of possible criminal breaches of the Companies Acts is undertaken by the Enforcement Unit – or, in certain circumstances, by the Special Projects Unit – in conjunction with the Garda Unit.</p> <p>Once a decision has been taken to initiate summary criminal proceedings, the prosecution becomes a collaboration between the Enforcement, Garda and Solicitors' Units. Investigations in which a prosecution on indictment is envisaged involve collaboration on the part of the Enforcement Unit, or Special Projects Unit as applicable, with the Garda and Solicitors' Unit.</p> <p>In circumstances where, having reviewed an investigation file as submitted by the Office, a decision is taken by the DPP to initiate a prosecution on indictment, the provision of subsequent support to the Office of the DPP (for example, regarding disclosure to the defence), is primarily the responsibility of the Enforcement – or Special Projects Unit as applicable – and Garda Units.</p>	3
Supervision of liquidators' behaviour	<p>Actions taken to supervise liquidators' behaviour (such as, for example, seeking the production of 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 will, 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



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

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

In addition to its corporate publications, the Office from time to time develops and publishes information and guidance for stakeholders' benefit. The publication of such material is typically on foot of the enactment of a new piece of legislation or in response to issues identified through other aspects of the Office's work (e.g., on aspects of company law that appear to be giving rise to significant levels of non-compliance). During the year, the Office issued 2 new publications (2013: 6). Details of those publications are set out in the Table below.

**Table 4**  
Publications issued – 2014<sup>14</sup>

Date Issued	Publication
January 2014	List of insolvent companies and reporting liquidators in respect of which the ODCE has identified the requirement for a "Section 56 Report" in 2013
January 2014	Companies (Miscellaneous Provisions) Act 2013 – Information Notice

In January 2014, the Office published a list of insolvent companies and the reporting liquidators in respect of whom the ODCE had identified the requirement for a "Section 56 Report" in 2013. The purpose of 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, so 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 the section 56 process is set out in Chapter 3 of this Report.

From time to time the Office publishes Information Notices on, for example, newly enacted legislation for stakeholders' benefit. In that context, the Office published one such document during the year – on the subject of the Companies (Miscellaneous Provisions) Act 2013<sup>15</sup>.

In addition to the foregoing, the Office issued in excess of 22,000 copies of its various publications during 2014. In particular, the Office's updated information books proved to be popular, as did the Office's expanding range of Quick Guides. By agreement with the Office, the Companies Registration Office ("CRO") issued approximately half of these documents to persons registering new companies<sup>16</sup>. The remainder were, in the main, issued in response to public demand, either at events exhibitions and presentations or as a result of persons contacting the Office directly.

During 2014 the Office commenced work on redrafting its suite of Information Books to reflect the anticipated enactment of the Companies Act. It is intended that revised Information Books will be available for stakeholders' benefit in advance of commencement of the Act on 1 June, 2015.

## 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 elements 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 businesses;
- professionals engaged in the provision of advice to companies and company directors, who are well placed to relay the compliance message to clients and so considerably expand the reach of the Office;
- 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 to lack a knowledge of company law and, as a result, tend to need, and derive benefit from, guidance on corporate governance and related matters.

During the year, Office staff delivered 42 presentations (2013: 60) to a combined audience of in excess of 2,500 people. During the year, the Office was also represented at a total of 15 exhibitions (2013: 16), which included a continued involvement in the highly successful "Taking Care of Business" series of events. Details of the presentations delivered and exhibitions attended respectively during the year are set out at Appendix 2 to this Report.

## Advocating legislative and policy enhancements

Given its mandate of promoting compliance, and enforcing non-compliance, with company law, the Office is well placed to offer an informed perspective on policy discussions and debates that take place at national and EU level regarding company law and associated topics. In that context, the Office made submissions in response to a number of policy proposals during the year. Further details are set out below.

## The Companies Act

During the year, the Office continued its work in assisting the Department in progressing the Bill (the primary purpose of which is to consolidate the current body of company law, which, at present, is contained in 16 Acts of the Oireachtas<sup>17</sup> as well as numerous Statutory Instruments and Regulations) through the legislative process. The Companies Act<sup>18</sup>, which was signed into law on 23 December, 2014, also contains a number of new amendments and additions to company law, certain of which are dealt with in further detail elsewhere in this Report.

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<sup>16</sup> The CRO typically issues the ODCE Quick Guide on Company Directors as part of its pack as issued to newly incorporated companies.

<sup>17</sup> Collective term for the Upper and Lower Houses of Parliament

<sup>18</sup> Number 38 of 2014

## ICAV legislation

Irish Collective Asset-management Vehicles (“ICAVs”) are special purpose financial entities which, although not companies, feature some of the characteristics of a company. Pursuant to a Government Decision that the ODCE should have a role in the regulation of ICAVs, during the year under review the Office continued to engage extensively with the Department and Department of Finance respectively on the proposed introduction of ICAVs under Irish legislation and, in particular, on the robustness of the proposed regulatory framework that will apply to such entities given that primary responsibility for the regulation of these entities resides with the Central Bank.

## Other advocacy activities

In addition to the foregoing, the Office contributed to the Department of Finance’s submission to the World Bank’s “Doing Business” Report on Ireland and also responded to the Department of Justice’s discussion paper on a single consolidated detention power for members of An Garda Síochána.

## 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, 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 the Companies Acts are 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>19</sup> and Senators<sup>20</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 the Companies Acts.

### Garda Bureau of Fraud Investigation (“GBFI”)

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

## Irish Auditing and Accounting Supervisory Authority (“IAASA”)

In accordance with the provisions of the Companies (Auditing and Accounting) Act 2003 (“2003 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.

The ODCE nominee attended 8 of the 9 Board meetings that he was eligible to attend, together with 3 meetings of the Board’s Audit Committee of which he is also a member. IAASA’s 2014 Annual Report will be available on its website<sup>21</sup> once it has been laid before the Oireachtas by the Minister.

In addition to this statutory relationship as outlined above, the Office engaged regularly with IAASA during the year on matters of mutual interest.

## Company Law Review Group (“CLRG”)

The CLRG 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 Office is represented at both plenary meetings and at meetings of Committees whose work is pertinent to its remit. During the year, the CLRG continued its work on its 2012/2014 work programme<sup>22</sup>. The Office contributed to, amongst others, the following issues as considered by the CLRG:

### **Representation of a company before the Courts**

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

### **Review of the enforcement of company law**

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

## Central Bank

The ODCE and the Central Bank have in place a Memorandum of Understanding 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 29 separate matters (2013:24).

## Accountancy profession

The accountancy profession plays an important role in assisting the work of the Office, through both the mandatory reporting obligation for auditors to report suspected indictable offences under the Companies Acts and the wider support for the Office’s compliance message which its members can deliver to their clients. As such, the Office seeks to work closely with the accountancy bodies to support them in ensuring that their members are fully informed of their statutory reporting obligations and to apprise them of the assistance that the Office can be to those of their members’ clients that occupy positions as company directors and officers.

Office representatives held 2 formal meetings with the accountancy bodies’ senior management during the year.

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<sup>21</sup> [www.iaasa.ie](http://www.iaasa.ie)

<sup>22</sup> The CLRG’s Annual Reports are available at [www.clrg.org](http://www.clrg.org)

### Irish Stock Exchange

The Office held 1 formal meeting with senior staff of the Irish Stock Exchange on matters of mutual interest during 2014.

### International Association of Insolvency Regulators (“IAIR”)

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

### Other interested parties

In addition to the stakeholder groups referred to above, the Office also met, and/or worked, with a range of other stakeholder groups and interested parties during 2014, including the European Commission, the Department of Social Protection, the Health Service Executive and Pobal.

### Media

The Office typically deals with hundreds of media queries annually. Whilst the Office is mindful of the important role 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 has already made its way into 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.

Where appropriate, members of Office staff contribute articles to the media and relevant publications. One such article was contributed to Public Affairs Ireland during 2014 on the subject of directors’ duties in the context of publicly funded organisations.