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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 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 December 2020 the Advocacy Unit published a Single Guide which consolidated the seven information booklets already available. This Single Guide is a one-stop source of information, bringing together information about the main roles and responsibilities of key company stakeholders.

During the year under review, approximately 1,500 physical copies of the various ODCE publications, principally Information Books and Quick Guides, were issued to interested parties.

Seminars and exhibitions

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

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

During the year under review, Office staff delivered 12 presentations (2019: 30) to a combined audience of over 1,000. Many of these presentations dealt specifically with topics such as the role and duties of company directors and the advocacy, insolvency and enforcement ODCE roles.

The Office was also represented at a total of four exhibitions during the year (2019: 18). Details of the presentations delivered and the exhibitions attended respectively during the year under review are set out at Appendix 2.

Predictably, the ODCE programme of events was significantly impacted by the restrictions introduced in March 2020 as part of the public health response to Covid-19. Over the course of the remainder of 2020, the ODCE participated increasingly in remote events in the furtherance of its advocacy mandate.

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 and representations from members of the Oireachtas and/or from Committees established by the Oireachtas. Typically, these communications constitute expressions of concern as to whether company law is being breached, relate to cases under review, and/or comprise of requests for certain actions to be taken vis-à-vis certain persons/entities. Whilst all such communications and representations are carefully considered – and to the extent practicable, every assistance is provided to Deputies and Senators – the ODCE is entirely independent of the political system. As such, any actions taken by the ODCE are by reference to the underlying facts and circumstances as opposed to by reference to the source of the complaint.

Department of Enterprise, Trade & Employment

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

Companies Registration Office (“CRO”)

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

Office of the Revenue Commissioners

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

Garda National Economic Crime Bureau (“GNECB”)

As referred to in Chapter 1 of this Report, the Office’s staff complement includes a number of Gardaí. Whilst a matter for Garda management, these Gardaí have traditionally been allocated from the GNECB. In that context, the Office maintains ongoing contacts with GNECB on matters of mutual interest.

Irish Auditing and Accounting Supervisory Authority (“IAASA”)

In accordance with the provisions of the Act, the Director is a member of IAASA and has the consequential right to nominate a member to its Board of Directors. During the year under review, the term of membership of Mr. Conor O’Mahony, the Office’s Head of Insolvency & Corporate Services, concluded. I nominated Mr. David Hegarty, Enforcement Portfolio Manager in the ODCE, as a member of IAASA’s Board of Directors. Mr. Hegarty has also been appointed to the Board’s Risk & Audit Committee. In addition to this statutory relationship as outlined above, the Office engages regularly with IAASA on matters of mutual interest.

Company Law Review Group (“CLRG”)

The CLRG¹³ is a statutorily established advisory body to the Minister on matters relating to company law. The Director is a member of the CLRG and the ODCE is represented at both plenary meetings and at meetings of Committees whose work is pertinent to its remit.

- **Corporate Insolvency**

- » Mr. O’Mahony and Mr. Hegarty are both members of the CLRG’s Corporate Insolvency Committee, which has been tasked with reviewing legislation relating to the winding up of companies.

- **Corporate Governance**

- » Mr. O’Mahony is also a member of the Corporate Governance Committee, which has been tasked with reviewing legislation relating to corporate governance issues.

- **Compliance & Enforcement**

- » The Director is the Chairman of the Compliance & Enforcement Committee, which has been charged with examining current compliance and enforcement aspects of company law.

Arising from issues relating to Covid-19, the CLRG was particularly active during the year under review. The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 gave effect to several recommendations made by the Group, including provisions allowing for the holding of virtual meetings, the extension of deadlines to hold company AGMs and the extension of the time period for Examinership. The Group has also published a Report on a Legal Structure for the Rescue of Small Companies.

Review Group on Anti-Fraud and Anti-Corruption Structures

The Review Group, which was chaired by former Director of Public Prosecutions, Mr. James Hamilton, was established as part of the previous Government’s October 2017 package of measures aimed at enhancing Ireland’s capacity to address corporate, economic and regulatory crime and both the Director and Mr. David Hegarty were members of the Group. The Review Group’s Report, which contained 25 recommendations and which was published by the Minister for Justice in December 2020, has been accepted by Government. Relevant aspects of the Report are elaborated upon in the next Chapter.

Central Bank of Ireland

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

Accountancy profession

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

13. www.clr.org

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.

Legal profession

The ODCE’s legal staff regularly engage with their peers through the Regulatory Enforcement Network.

Digital forensics community in law enforcement

The Office’s Digital Forensics Specialist regularly engages with his peers through membership of a network of digital forensics professionals working in the regulatory/law enforcement field.

Media

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

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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

	2020	%	2019	%
Statutory reports				
Liquidators' reports (initial) (s682)	426		558	
Liquidators' reports (subsequent) (s682)	243		314	
Total liquidators' reports (s682)	669	72	872	67
Liquidators' reports regarding possible criminality (s723)	0	0	1	1
Auditors' indictable offence reports (s393)	75	8	105	8
Examiners' reports (s534)	15	1	27	2
Professional Bodies' indictable offence reports (s931)	0	0	0	0
Professional Bodies non-indictable offence reports	0	0	0	0
Referrals				
Referrals from external parties	10	1	12	1
Complaints				
Complaints from members of the public	149	16	254	19
Other				
Disclosures under the Protected Disclosures Act 2014 ¹⁴	1	1	8	1
Applications seeking change to accounting year end ¹⁵	5	1	20	1
Total inputs from external sources	924	100%	1,299	100%

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)

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.

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

Since 2015, there has been in place 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.

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 a public limited company a minimum called up share capital of €500,000 is required. In the case of any other company, the corresponding figure is €100,000.

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

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, as a general policy position, 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.

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, 569²⁰ undertakings for restrictions and disqualifications had been accepted up to 31 December 2020. 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.

Companies entering liquidation

As can be seen from the Table below:

- the total number of insolvent liquidations (i.e., creditors' and Court liquidations combined) at 492 represented a reduction of 8% on 2019, and
- solvent liquidations, which accounted for 74% of all liquidations, decreased by 5% over the 2019 levels.

Table 6: Companies entering liquidation: 2014 – 2020

	2014	2015	2016	2017	2018	2019	2020
Creditors' liquidations	929	746	581	613	475	474	443
Court liquidations	78	70	61	63	59	62	49
Total insolvent liquidations	1,007	816	642	676	534	536	492
Members' liquidations	1,001	1,034	1,112	1,040	1,269	1,474	1,397
Total solvent liquidations²¹	1,001	1,034	1,112	1,040	1,269	1,474	1,397
Total liquidations	2,008	1,850	1,754	1,716	1,803	2,010	1,889

20. Comprises of 478 Restriction Undertakings, 26 Disqualification Undertakings and 65 Disqualification Undertakings entered in to by directors of dissolved insolvent companies.

21. 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.

Liquidators' s682 reports received – 2020

As can be seen from Table 5, a total of 669 liquidators' section 682 reports was received during the year (2019: 872), of which:

- 426 were initial reports²² (2019: 558); and
- 243 were subsequent reports²³ (2019: 314).

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 – 2020

Sector	2020		2019	
	Number	%	Number	%
Wholesale & retail	168	39	192	34
Construction	56	13	69	12
Community, social & other	32	8	44	8
Manufacturing & printing	22	5	27	5
Hotels, bars & catering	66	15	72	13
Marketing & promotion	2	0	7	1
Real estate & renting	13	3	34	6
Technology & telecommunications	20	5	38	7
Financial & leasing	26	6	39	7
Transport & distribution	11	3	14	3
Agriculture, mining & marine	4	1	9	2
Recruitment & security services	6	1	13	2
Total	426	100%	558	100%

Timeliness of liquidators' reporting

At year end, 87% of first reports due during the year had been received, with only 66 reports outstanding. The level of liquidators' failure to comply with their reporting obligations is low and, where appropriate, enforcement action, up to and including criminal prosecution, may result from such persistent breaches of statutory obligations.

Standard of liquidators' reporting

As reported in previous years, the standard of liquidators' reports received during the year was considered to be broadly satisfactory. However, in a small number of cases, the quality of reporting was not of the required standard. Where this arises, it is dealt with through engagement with the relevant practitioners. The vast majority of persons acting as liquidators are members of Prescribed Accountancy Bodies and, as such, are subject to supervision by their professional bodies.

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 rules for qualification to act as a liquidator. The Act defines five categories of individuals who are entitled to act as liquidators. These are:

- members of a Prescribed Accountancy Body holding a practising certificate;
- solicitors holding a practising certificate;
- members of any other professional bodies recognised for this purpose by IAASA (none currently);
- persons qualified to act as a liquidator in another EEA²⁴ state; and
- persons with practical experience of windings-up and knowledge of relevant law prior to the commencement of the Act.

22. An initial report is the first report received from a liquidator and is required to be submitted within six 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.

23. 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.

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

Applications for authorisation under (v) above were required to have been submitted to IAASA by 1 December 2017. IAASA has authorised a total of 22 individuals under this category.

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 website²⁵.

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 28% (2019: 33%) 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	2020		2019	
	Number	%	Number	%
Real estate & renting	41	16	57	14
Not a company	36	14	81	19
Finance & leasing	40	16	43	10
Wholesale & retail	7	3	32	8
Construction	10	4	23	5
Marketing & promotion	2	1	13	3
Technology & telecommunications	18	7	30	7
Manufacturing & printing	14	5	24	6
Community, social & personal	29	11	49	12
Insurance, health & social work	7	3	18	4
Hotels, bars & catering	16	6	10	2
Transport & distribution	7	3	25	6
Agriculture, mining & marine	8	3	6	1
Recruitment & security services	4	2	6	1
Other business sectors	16	6	10	2
Total	255	100%	427	100%

25. <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 149 complaints were received (2019: 254), which accounted for 16% (2019: 19%) of all external inputs received. The Table below provides an analysis of the subject matter of complaints received.

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

	2020	%	2019	%
Annual/Extraordinary General Meeting related	22	15	25	10
Directors' conduct (responsibilities & filing)	20	13	44	17
Allegations of reckless/fraudulent/insolvent trading	24	16	39	15
Allegations of forgery/furnishing of false information/falsified documents	15	10	27	11
Relating to the issue of unpaid debts	9	6	6	2
Access to accounting records/minutes of meetings	2	1	7	3
Register of members related	11	8	16	6
Audit/auditor related	9	6	12	5
Receivership related	2	1	2	1
Issues relating to addresses	13	9	24	9
General shareholder rights issues	3	2	5	2
Acting as a director while a bankrupt/restricted/disqualified	0	0	0	0
Companies trading whilst struck off the Register/dissolved	3	2	9	4
Relating to improper use of the word "Limited"	1	1	1	1
Liquidation/phoenix activity	12	8	10	4
Other	3	2	27	10
Total	149	100%	254	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 75 (2019: 105) 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

	2020	%	2019	%
Directors' loans infringements	17	23	25	24
Failure to maintain proper accounting records	4	5	5	5
Provision of false statements to auditors	1	1	0	0
Issues relating to access to accounting records	0	0	0	0
Unavailability of audit exemption	3	4	0	0
Obligation to prepare Group Financial Statements	2	3	2	2
Entity Financial Statements	45	60	72	68
Falsification of books or documents	3	4	1	1
Total	75	100%	105	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, 15 such reports were received (2019: 27).

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 10 (2019: 12) such referrals from a variety of sources.

Professional bodies' indictable offence reports

Recognised Accountancy Bodies ("RABs")²⁶

Where a RAB's Disciplinary Committee or Tribunal has reasonable grounds for believing that an indictable offence under the Act may have been committed by a person while that person was a member of the RAB, the RAB is required to report the matter to the Office.²⁷

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 488, 558, and 688 refers to a Disciplinary Committee or a Tribunal of a Prescribed professional body associated with section 633 (setting qualifications for appointment of examiners and receivers).

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

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

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

27. Section 931(4) of the Act

On 19 December 2018, S.I. No. 570 of the 2018 Companies Act 2014 (Prescribed Professional Bodies) Regulations 2018 prescribing professional bodies 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 (2019: 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. No such reports were received by the Office during the year (2019: 1).

Disclosures under the Protected Disclosures Act 2014²⁸

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

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

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

INTERNAL INPUTS

Introduction

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

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

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

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

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

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

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 (i.e., between Units);
- 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 companies²⁹. However, company law also provides³⁰ 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 restrict³¹ the director(s) where it adjudges that disqualification is not warranted under the particular circumstances³².

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 2020, the Office identified and examined 24 cases involving directors of companies which were struck off the Register whilst having significant outstanding liabilities. As a result of the examination of these cases, involving 66 struck off companies, 18 directors were disqualified. All of these disqualifications arose on foot of Disqualification Undertakings given pursuant to section 851 of the Act. See Appendix 5 for details of directors disqualified during 2020.

29. Section 842(h) of the Companies Act 2014

30. Section 843(3) of the Companies Act 2014

31. Section 819 of the Companies Act 2014

32. 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”.³³

Whilst the section 682 Liquidators report process, as outlined earlier in this Chapter, provides the Office with a means of indirectly supervising certain aspects of liquidators’ work, from time to time the Office considers it appropriate or otherwise necessary to engage in more direct supervision of liquidators’ work. This, more direct, supervision is effected through the exercise of the powers conferred by section 653 of the Act.³⁴

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 – 2020

During the course of 2020, a total of 23³⁵ (2019: 43) internal inputs were generated.

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 conclude 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.

33. Section 949(1)(e) of the Companies Act 2014

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

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

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

- meeting the complainant, typically with a view to obtaining an enhanced understanding of the issues being complained of;
- meeting the directors (for example, in a case relating to directors' loans);
- exercising civil powers, such as, for example, issuing demands to:
 - » companies and their directors for the production of the minutes of meetings and statutory registers;
 - » companies and their directors for the production of the company's books and documents;
 - » 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);
 - » auditors requiring the provision of supplementary information regarding an indictable offence report received;
 - » persons acting, or purporting to act, as auditors for the production of evidence of their qualifications;
 - » bankrupts who are acting as company directors and secretaries, seeking sworn statements relating to their insolvency status; and
 - » liquidators requiring that they file outstanding section 682 reports;
- exercising criminal powers, such as, for example, executing search warrants 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 – 2020

Section 682 reports on hand at 1 January, 2020	299
All reports received during 2020	669
Less: Reports the subject of determinations during 2020	810
Section 682 reports on hand at 31 December, 2020	158

Table 12: Throughput of other cases – 2020

Other cases on hand at 1 January, 2020	194
New cases opened during 2020	278
Less: Cases concluded during 2020	223
Other cases on hand at 31 December, 2020	249

PART C: OUTPUTS

Insolvency-related enforcement measures & outputs arising from section 682 liquidator reports and examination of dissolved insolvent companies

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 531 liquidators’ reports during 2020 (2019: 632), with a further 279 decisions made to grant “Relief at this time” (2019: 331).

Of the 531 definitive decisions taken during 2020, a total of 421 were made in respect of initial reports (2019: 498), with a further 110 being made in respect of subsequent reports (2019: 134).

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

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

Decision type	2020	%	2019	%
Full relief ³⁶	466	58	525	55
No relief ³⁷	46	6	75	8
Partial relief ³⁸	19	2	21	2
Relief at this time ³⁹	279	34	331	35
Total	810	100%	952	100%

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

Decision type	2020	%	2019	%
Full relief ³⁶	384	74	448	73
No relief ³⁷	28	5	34	5
Partial relief ³⁸	9	2	10	2
Relief at this time ³⁹	97	19	124	20
Total	518	100%	616	100%

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

Decision type	2020	%	2019	%
Full relief ³⁶	82	28	77	23
No relief ³⁷	18	6	41	12
Partial relief ³⁸	10	3	11	4
Relief at this time ³⁹	85	62	207	62
Total	195	100%	336	100%

36. 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.
37. 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.
38. 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.
39. ‘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.

Total number of company directors restricted and disqualified during 2020

A total of 56 (2019: 94) directors were restricted and five (2019: 12) directors were disqualified (on foot of Undertakings or Court Orders). In addition, 18 directors of dissolved insolvent companies were disqualified by means of Disqualification Undertakings (2019: 22). Further details of the Orders made by the High Court on foot of liquidators' applications and on foot of Undertakings is provided in Appendices 4 and 5.

The reduction in the numbers of directors being sanctioned in connection with insolvent companies is due to a combination of factors including the overall reduction in the number of companies going into insolvent liquidation in recent years and the associated fall off in liquidators' reports received as a consequence and the impact of public health restrictions on both liquidators' and the High Court's activities.

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.

In 2020, following consideration of liquidators' reports on companies in insolvent liquidation, 67 directors were offered Restriction Undertakings and seven directors were offered Disqualification Undertakings.

The Table below sets out the number of Undertaking offers issued during 2020, together with details of the number of offers accepted and not accepted at the year end. Of the offers of a Restriction Undertaking made to the 64 directors during 2020, 50 were accepted. In addition, three further offers of Restriction Undertakings made in 2019 and outstanding on 1 January, were also accepted in 2020, bringing the total number of directors Restricted by Undertakings in 2020 to 53.

Table 16: Undertaking offers issued to directors in 2019 and accepted/not accepted in 2020

	2020	2019
	Directors	Directors
Restrictions:		
Number of offers issued	67	112
Number of offers accepted	53	83
Number of offers not accepted	17	29
Disqualifications:		
Number of offers issued	7	11
Number of offers accepted	3	8
Number of offers not accepted	4	3

Liquidators' Court Applications

As indicated earlier in this Chapter, where liquidators are not granted relief by the Office and where invitations to submit to Undertakings are not offered or not accepted, the liquidators concerned are required to apply to the High Court seeking the restriction or disqualification of relevant company directors. At 31 December 2020, a total of 21 directors who had declined to enter into Undertakings in respect of decisions made during the year faced such proceedings.

It is important to note that, at any given time, a considerable number of company directors face restriction or disqualification proceedings in the High Court. A further cohort of directors who, prior to 2020, were either not offered Undertakings or who did not accept Undertakings continue to face restriction or disqualification proceedings.

The Table below sets out details of the results of liquidators' applications to the High Court during the year.

Table 17: Results of liquidators' Court applications – 2020

	2020		2019	
	Cases	Directors	Cases	Directors
Restriction Declarations granted	3	3	6	11
Disqualification Orders granted	2	2	3	4
Declarations or Orders not granted	1	3	2	4

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 and in cases where Disqualification Undertakings were offered by the ODCE and subsequently accepted by the directors concerned. These include the case of Westman Plant and Civils Limited (in Liquidation), in which the High Court handed down the longest period of disqualification ever imposed under the Companies Acts. The full list is set out at Appendix 5.

WESTMAN PLANT AND CIVILS LIMITED (IN LIQUIDATION) DIRECTOR DISQUALIFIED FOR 14 YEARS AND 3 MONTHS

Mr. Kevin Rabbitte, a director of Westman Plant and Civils Limited (in Liquidation), was disqualified from being a company director for a period of **14 years and 3 months**. This is the longest period of disqualification ever imposed by the High Court under the Companies Acts. In addition, the Court ordered that Mr. Rabbitte should be held personally liable for €1.5m of the debts of the company.

Details of the case were set out in a judgement delivered on 30 January 2020⁴⁰. The judgement noted that the Court had heard that the company had been engaged in a missing trader intra-Community VAT fraud. The liquidator had reported that the company's VAT number had been used to purchase intra-Community goods to the value of over €8m and engaged in sales of these goods in the State. However, despite charging VAT on such sales, no VAT was paid and false VAT returns showing a nil liability were made throughout the entire lifetime of the company. The judge noted that it appeared to him that **"...the only trade engaged in by the company has been the business of fraud"**.

40. Myles Kirby (In his Capacity as Official Liquidator of Westman Plant and Civils Ltd (In Liquidation)) v Rabbitte [2020] IEHC 703 (Unreported, High Court, O'Moore J., 30 January 2020) https://www.courts.ie/search/judgments/%22westman%20type%3AJudgment%22%20AND%20%22filter%3Aalfresco_radio.title%22

OTHER EXAMPLES OF CIRCUMSTANCES IN WHICH COMPANY DIRECTORS WERE DISQUALIFIED BY THE HIGH COURT AND BY THE ODCE THROUGH THE USE OF DISQUALIFICATION UNDERTAKINGS

Company A

The actions of two directors of a dissolved insolvent 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, four other companies had also been involuntarily struck off the Register of Companies for failing to file annual returns. An examination of the last annual returns filed in respect of these companies found that the Balance Sheets recorded aggregate creditors totalling €3.7m. In respect of one of the companies, two unsatisfied judgments were registered against it and there were 11 unsatisfied charges. 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 four years.

Company B

An examination of the activities of two directors of a dissolved insolvent company found that there had been a failure to file annual returns in respect of two companies of which they were directors. The Revenue Commissioners advised the ODCE of a default of some €250,000 in tax, exclusive of interest, in respect of one of the companies. The last annual return filed in respect of one of the companies recorded creditors of more than €5m. The second company had failed to file any annual returns in the Companies Registration Office. Enquiries identified that there were 14 unsatisfied charges registered against one of the companies. The directors did not contest the findings and did not take remedial action to correct them. Both directors consented to Disqualification Undertakings for a period of four years.

Company C

A company which traded in the auto repair sector went into liquidation during 2019. The two directors of the company failed to liquidate the company in a timely manner and traded for a protracted period while insolvent. The directors were not compliant with reporting obligations to the Revenue Commissioners, failed to pay taxes as they fell due over a protracted period and allowed the accumulation of liabilities to the Revenue Commissioners amounting to over €100,000. In addition, it was reported that the directors failed to maintain proper books and records and used a personal bank account for sales proceeds and making payments on behalf of the company. The liquidator's report indicated that one director was in contravention of section 239 of the Act by removing significant sums from the company at a time when these funds should have been used to meet Revenue liabilities. One of the directors consented to a Disqualification Undertaking for a period of five years.

Company D

A company trading in the provision of property maintenance services was liquidated in 2019 by the High Court following a petition by the Revenue Commissioners. The director of the company failed to discharge liabilities to the Revenue Commissioner as they fell due. Unpaid VAT and PAYE liabilities to Revenue amounted to over €250,000. The liquidator also reported that €40,000 in taxes deducted from employees' wages were not remitted to the Revenue Commissioners. The director permitted the company to continue to trade when he knew, or ought to have known, that the company was insolvent, failed to maintain proper books and records and did not co-operate with the liquidator. This director consented to a Disqualification Undertaking for a period of five years.

Facts and circumstances considered by the ODCE in offering Restriction Undertakings

Set out below are examples of the types of issues that were considered in cases where undertakings were offered by the ODCE and accepted by the individuals concerned. In all cases, the restriction applies for the standard period of five years.

The Orders/Undertakings arose following consideration by the ODCE of liquidators' section 682 reports and, where necessary, after the ODCE sought and obtained additional information and/or clarification. The full list is set out at Appendix 4.

EXAMPLES OF CIRCUMSTANCES IN WHICH COMPANY DIRECTORS WERE RESTRICTED BY THE ODCE THROUGH THE USE OF RESTRICTION UNDERTAKINGS

Company E

A company which produced specialised clothing went into liquidation in late 2018. The company had a deficit at liquidation of nearly €500,000. The company owed of the order of €175,000 to trade creditors and a further €185,000 to the Revenue Commissioners. The two named directors of the company failed to wind up the company in a timely manner and allowed the company to continue trading for a protracted period while insolvent. The directors permitted the dissipation of assets of the company for no value. A further person was found to have acted as a shadow director. All three directors consented to Restriction Undertakings (five years).

Company F

A company which operated in the hospitality sector went into liquidation in late 2019. The company which had a relatively small turnover had a closing deficit of circa €160,000 at liquidation. The liquidator reported that the company had been insolvent for its entire history and traded insolvently for a protracted period. The liquidator found that the director of the company was not compliant with his obligations to the Revenue Commissioners or the Companies Registration Office. The Revenue Commissioners were due circa €90,000 at liquidation. The director consented to a Restriction Undertaking (five years).

Company G

A vehicle importing company traded in the import of cars from the United Kingdom. The company went into liquidation in 2018 with a deficit of nearly €500,000 at the date of liquidation. The directors failed to discharge VAT liabilities of over €150,000. The directors also failed to maintain books and records to the standard required to facilitate verification of expenses charged to the company regarding travel and subsistence and failed to prepare and file accounts with the Companies Registration Office as required under the Companies Act 2014. Both directors consented to Restriction Undertakings (five years).

Company H

A company trading in the provision of property inspections and safety compliance services was liquidated in July 2019 by the High Court following a petition by the Revenue Commissioners. The directors failed to discharge tax liabilities totalling €61,500 to the Revenue Commissioners at the time of liquidation. The directors failed to declare, or pay, any taxes in 2017 or 2018 and made only minimal payments in 2016. The directors withdrew €51,400 from the company between July 2017 and August 2018 and an additional €20,346 in cash withdrawals were made which were not declared as director income to the Revenue Commissioners. The directors also did not, in contravention of the Companies Acts, provide the liquidator with all of the company's books and records. The directors also failed to prepare and file accounts with the Companies Registration Office as required under the Companies Act 2014. Both directors consented to Restriction Undertakings (five years).

Company I

A company trading in the construction sector was liquidated in late 2017 by the High Court following a petition by the Revenue Commissioners. Unpaid VAT and RCT liabilities amounted to some €200,000. There was a failure to comply with a Court order to file a Statement of Affairs for the company, the directors permitted the company to continue to trade when they knew, or ought to have known, that the company was insolvent and there was a failure to co-operate with the liquidator. The director concerned consented to a Restriction Undertaking (five years).

Company J

A company that carried out building maintenance and fire safety services was consistently non-compliant with its Revenue obligations throughout its trading period. The company understated quarterly PAYE declarations. While these were subsequently corrected, when the P35 annual returns were filed, the company used the Revenue Commissioners as a source of credit. At the date of liquidation, the company had accumulated a total liability of nearly €70,000 in unpaid VAT, PAYE and Corporation Tax. The directors allowed the company to continue to trade for a protracted period when the directors knew that the company was insolvent and unable to pay its debts as they fell due. Both directors consented to Restriction Undertakings (five years).

Company K

A company involved in the reconditioning and sale of wood pallets failed to file numerous statutory tax returns and did not pay its taxes as they fell due. At the date of liquidation, the company owed Revenue nearly €100,000 in respect of PAYE, PRSI, USC and VAT. The evidence indicated that the company used monies owed to the Revenue Commissioners to fund its activities. Both directors consented to Restriction Undertakings (five years).

Other (Non-Insolvency Related) Enforcement Measures & Outputs – 2020**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 regulatory or enforcement Agencies (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 13 cases (2019: 23) 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 €5.7m (2019: €27.2m). 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 2020, 40 (2019: 72) instances of companies' failure to comply with accounting standards were reported to the Office by way of auditors' indictable offence reports. The underlying nature of the issues involved (for example, differing interpretations of an accounting standard) are such that most such matters are capable of being resolved to the ODCE's satisfaction by way of voluntary rectification.

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, six persons (2019: 31) appeared to be in contravention of such orders and undertakings. Following ODCE intervention, the individuals' positions were regularised.

Total cautions issued

In addition to the foregoing, cautions issued to a total of 19 companies (2019: 28) on a variety of matters.

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

A broad range of legislative provisions were utilised during the course of the year under review in order to both secure compliance with company law and to progress enquiries and investigations respectively. Statutory powers exercised and other investigative measures included:

- serving 54 orders under section 52 Criminal Justice (Theft and Fraud Offences) Act 2001 (2019: 28);
- the execution of seven (2019: 13)⁴¹ search warrants;
- the arrest of nine persons (2019: 5), with six of those persons (2019: 4) subsequently being detained under section 4 of the Criminal Justice Act 1984 for questioning;
- meeting 14 (2019: 11) persons by arrangement having volunteered to provide statements under caution;
- serving two statutory directions requiring third parties to produce books and documents under section 780 of the Act (2019: 2); and
- serving three statutory requests on auditors for information under section 393 of the Act (2019: 39).

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

During the year, five requests (2019: 20) were received from companies seeking a direction disapplying the limitation in section 288(9) of the Act, under which, ordinarily, a company may not alter its current or previous year end date more than once in a five-year period.

Principal civil litigation

During the year under review, the Office was also involved, *inter alia*, in the following civil proceedings.

Table 18: Details of principal civil proceedings – 2020

<p><i>Cumann Peile na h-Éireann</i> “Football Association of Ireland”</p> <p><i>The High Court – 2019 391 COS</i> <i>The High Court – 2020 66 COS</i></p>	<p>Following the issuance of statutory demands pursuant to section 778 of the Companies Act 2014, and the execution of search warrants pursuant to section 787 of the Act, the ODCE instituted proceedings, pursuant to sections 788 and 795 of the Act, for the purpose of obtaining the Court’s determination on certain documents over which an assertion of legal professional privilege and/or privacy had been asserted.</p> <p>In November 2020, the High Court appointed an independent person pursuant to section 795(6) of the Companies Act 2014 for, <i>inter alia</i>, the preparation of a report to assist the Court in making its determination as to whether material the subject of the proceedings is privileged.</p> <p>As at 31 December 2020, this litigation remained ongoing.</p> <p>In March 2021, the High Court appointed a further independent person for similar purposes as referenced above.</p>
<p><i>Re Independent News and Media Plc</i> [2018] 124 COS (Unreported, High Court, Kelly P., 4 September 2018)</p> <p><i>Buckley v. Fleck (and Others)</i> [2021] IEHC 101 (Unreported, High Court, Simons J., 15 February 2021)</p>	<p>The Court-appointed Inspectors delivered their Second Interim Report to the High Court on 27 April 2020.</p> <p>In accordance with the provisions of section 759 of the Companies Act 2014, the Court ordered that a copy of the Second Interim Report be furnished to the ODCE. Following applications to the High Court by a number of parties, the Court ordered, on 10 June 2020 and 24 June 2020 respectively, that copies be furnished to the various Applicants.</p> <p>The Inspectors indicated in the Second Interim Report that the exigencies of the current crisis (Covid-19) made it impossible at that stage to accurately indicate when they might expect to be in a position to deliver a Final Report.</p> <p>By way of High Court proceedings commenced in April 2020, Mr. Leslie Buckley, former Chairman of Independent News & Media plc (“INM”), sought Orders pursuant to section 749 of the Companies Act 2014 for the recusal of the High Court-appointed Inspectors on stated grounds from the investigation ordered by the High Court pursuant to section 748 of the 2014 Act.</p> <p>This matter was heard by the High Court over a period of eight days in October 2020. Judgment was delivered on 15 February 2021 and Mr. Buckley’s application for the recusal of the Court appointed Inspectors was refused by Mr. Justice Garrett Simons.</p>

41. Five pursuant to section 787 of the Act, one pursuant to section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 (as substituted by section 6 of the Criminal Justice Act 2006) and one pursuant to section 48 of the Criminal Justice (Theft & Fraud Offences) Act 2001

Criminal proceedings

Following from its strategic objectives of confronting indications of wrongdoing at the more serious end of the spectrum, the Office's criminal investigative resources tend to be concentrated on larger, more complex investigations that, typically, result in files being submitted to the DPP for consideration as to whether charges should be directed on indictment. However, the Director does also, depending upon the underlying facts and circumstances, direct the summary prosecution of alleged offences as and when considered appropriate. Set out hereunder is a summary of criminal enforcement activity over the year under review.

During 2020:

- i. files were submitted to the DPP in respect of four separate investigations;
- ii. the Director of Corporate Enforcement issued directions to charge, or otherwise, in respect of three separate investigations;
- iii. directions were received from the DPP to charge, or otherwise, in respect of three separate investigations;
- iv. in aggregate, arising from (ii) and (iii) above, a total of 45 criminal charges were preferred against five separate individuals, i.e., in respect of alleged offences in the nature of:
 - » contravening a Restriction Order contrary to section 855 of the Companies Act 2014;
 - » contravening a Restriction Order contrary to sections 161 and 240 of the Companies Act 1990 as amended;
 - » acting under directions of a restricted person contrary to section 856 Companies Act 2014;
 - » fraudulent trading contrary to section 297 Companies Act 1963 as amended;
 - » fraudulent trading contrary to section 722 Companies Act 2014;
 - » money laundering contrary to sections 7(1)(a)(ii), 7(1)(b) & 7(3) Criminal Justice (Money Laundering & Terrorist Financing) Act 2010;
 - » theft contrary to section 4 Criminal Justice (Theft & Fraud Offences Act) 2001; and
 - » providing false information contrary to section 876 Companies Act 2014;
- v. two individuals were prosecuted in the District Court for alleged breaches of company law;
- vi. three individuals were prosecuted in the Circuit Court (i.e., on indictment) for alleged breaches of company and criminal justice legislation.

As at 31 December:

- vii. three matters remained before the District and Circuit Courts; and
- viii. two files were with the DPP awaiting decisions as to whether to direct charges or otherwise.

CRIMINAL PROCEEDINGS: CASE STUDIES**Mr. John Canny**

Arising from an ODCE investigation, and following receipt of directions from the DPP, Mr. John Canny, 40 Foxborough Road, Lucan, Co. Dublin, a former employee of Philips Ireland, was charged with 25 counts of alleged offences contrary to section 4 of the Criminal Justice (Theft & Fraud Offences) Act 2001 (theft) and two counts of alleged offences contrary to section 876 of the Companies Act 2014 (Furnishing False Information). The investigation commenced after a complaint was made to the ODCE by solicitors representing Western Biomedical Technologies and its parent company, Philips Ireland. In the complaint, it was alleged that falsified returns had been filed with the Companies Registration Office and that there had been a theft of over €30,000 from a Philips Ireland bank account. The Court was told that the money was removed from the account by Mr Canny in a series of over 80 transactions. In every instance, the money was lodged directly into Mr. Canny's personal bank account. This figure was subsequently revised down to €26,051 after allowance was made for wages and genuine expenses due. Mr Canny subsequently repaid all of the money in question. Mr. Canny entered pleas of guilty to nine counts of theft relating to amounts totalling €31,000 and to one count of furnishing false information and was sentenced to 18 months' imprisonment, with the entire sentence suspended for a period of 18 months.

Mr. Pearse O'Connor

Arising from an ODCE investigation into the affairs of Pearse Roofing and Cladding Limited, and following receipt of directions from the DPP, in August 2018 Mr. Pearse O'Connor, The Crescent, Lennonstown Manor, Dundalk, Co. Louth, was charged with alleged offences contrary to section 7(1)(a)(ii), 7(1)(b) and 7(3) Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 (Money Laundering), section 297 of the Companies Act 1963 (Fraudulent Trading), and section 26 of the Criminal Justice (Theft & Fraud Offences) Act 2001 (Using a False Instrument). The charges related to the alleged dishonest solicitation of payments from Keys Commercial Finance Limited. Mr. O'Connor subsequently entered pleas of guilty, in April 2021, to one count of Fraudulent Trading and five counts of the Use of a False Instrument. The matter has been adjourned to October 2021 for the preparation of a probation report and to fix a date for sentencing.

Ms. Patricia Kelly

Arising from an ODCE investigation into the affairs of Console Suicide Bereavement Counselling Limited (in Liquidation), and following receipt of directions from the DPP, Ms. Patricia Kelly, 59 Alexandra Manor, Clane, Co. Kildare, was charged with alleged offences contrary to section 297 of the Companies Act 1963 (Fraudulent Trading), section 722 of the Companies Act 2014 (Fraudulent Trading) and sections 7(1)(a)(ii) and 7(3) of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 (Money Laundering). A pre-trial hearing has been scheduled for January 2022 and the trial has been scheduled for 11 January 2023.

Mr. Shane Murphy

Arising from an ODCE investigation into the affairs of Prochill Limited, and on foot of directions from the Director of Corporate Enforcement, Mr. Shane Murphy, 43 The Willows, Carrigaline, Co. Cork, was charged with, *inter alia*, two counts of alleged offences of acting in contravention of a restriction order contrary to section 855 of the Companies Act 2014. On entering a plea of guilty before the District Court, Mr. Murphy was disqualified from acting as a company director for a period of three years and fined €850.

Mr Kooi Hin (Keith) Yeap

Arising from an ODCE investigation, and following receipt of directions from the DPP, Mr Kooi Hin (Keith) Yeap, 47 Main Street, Bray, Co. Wicklow, was charged with alleged offences contrary to section 876 of the Companies Act 2014 (Furnishing False Information). The charges related to six companies. A book of evidence was served at Dublin District Court on 20 April 2021, and the matter was sent forward to the next sitting of the Dublin Circuit Criminal Court for trial.

Referrals to professional and other regulatory and enforcement bodies

Whilst there is an obligation upon the ODCE to keep confidential information that comes into its possession, there is statutory provision⁴² for the disclosure of information to certain third parties (including other regulatory and enforcement bodies and certain professional bodies) provided that certain prescribed criteria are satisfied.

42. Section 956 of the Companies Act 2014