



2020

**OFFICE OF THE
DIRECTOR OF
CORPORATE
ENFORCEMENT**
ANNUAL REPORT



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach
Office of the Director
of Corporate Enforcement

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Contents

DIRECTOR'S STATEMENT	1
Introduction	2
Overview of 2020	2
Outlook for 2021 and beyond	4
Criminal Enforcement	5
Review of Ireland's anti-fraud and anti-corruption structures and the associated Implementation Plan	6
Corporate Enforcement Authority ("CEA")	7
Concluding remarks	7
2020 IN NUMBERS	8
CHAPTER 1: OVERVIEW OF THE ODCE	10
Statutory Mandate	11
High level goals	11
Resources, organisational structure, governance arrangements & principal workstreams	12
CHAPTER 2: PROMOTING A GREATER UNDERSTANDING OF AFFECTED PARTIES' RIGHTS AND DUTIES UNDER COMPANY LAW	15
Introduction	16
Publications and outreach activities	16
Managing and developing relationships with external stakeholders	17
CHAPTER 3: COMPLIANCE AND ENFORCEMENT ACTIVITIES	20
Structure of this Chapter	21
PART A: INPUTS	21
EXTERNAL INPUTS	21
Liquidators' section 682 reports	22
Sectoral distribution of other external inputs (i.e. external inputs other than liquidators' section 682 reports)	25
Complaints	26
Auditors' indictable offence reports	26
Examiners' Reports	27
Referrals	27
Professional bodies' indictable offence reports	27
Liquidators' reports regarding possible criminality	28
Disclosures under the Protected Disclosures Act 2014	28

INTERNAL INPUTS	28
Introduction	28
Actions focussing on particular cohorts of persons	29
Investigations commenced on own initiative	29
Dissolved insolvent companies	29
Actions relating to liquidator performance/behaviour	30
Quantum of internal inputs – 2020	30
PART B: THROUGHPUTS	30
PART C: OUTPUTS	32
Insolvency-related enforcement measures & outputs arising from section 682 liquidator reports and examination of dissolved insolvent companies	32
Outputs from the section 682 process (i.e., liquidator reporting)	32
Total number of company directors restricted and disqualified during 2020	33
Facts and circumstances considered by the High Court in making Disqualification Orders and by the ODCE in offering Disqualification Undertakings	34
Facts and circumstances considered by the ODCE in offering Restriction Undertakings	35
Other (Non-Insolvency Related) Enforcement Measures & Outputs – 2020	37
Securing voluntary rectification/remediation	37
Securing compliance and progressing enquiries and investigations through the exercise of the Director’s statutory powers	38
Permitting/facilitating compliance through the exercise of the Director’s statutory functions	38
Principal civil litigation	38
Criminal proceedings	39
Referrals to professional and other regulatory and enforcement bodies	40
CHAPTER 4: PROVIDING QUALITY CUSTOMER SERVICE TO INTERNAL AND EXTERNAL STAKEHOLDERS	41
Provision of a quality customer service to external stakeholders	42
Provision of a quality customer service to internal stakeholders	44
Compliance with obligations on foot of law, regulation and by virtue of the Office’s status as a public sector entity established by statute	44
APPENDICES	47
APPENDIX 1: Allocated vs. actual expenditure 2018 – 2020	48
APPENDIX 2: Presentations delivered, exhibitions/events attended and publications issued	49
APPENDIX 3: Report under section 22 of the Protected Disclosures Act 2014	50
APPENDIX 4: Cases where Restriction Undertakings were given by company directors or Restrictions Declarations were made by the High Court pursuant to the Companies Act 2014	51
APPENDIX 5: Cases where Disqualification Undertakings were given by company directors or Disqualification Orders were made by the High Court pursuant to the Companies Act 2014	53
GLOSSARY	55

DIRECTOR'S STATEMENT



Introduction

I am pleased to submit the ODCE's 2020 Annual Report to An Tánaiste and Minister for Enterprise, Trade & Employment, Dr. Leo Varadkar, T.D. in accordance with the provisions of section 954(1) of the Companies Act 2014 ("the Act"). There are a number of topics that I would like to address herein but, before doing so, I would like to begin by giving an overview of 2020 and the principal factors that impacted upon the ODCE's activities during the year.



Ian Drennan, Director

Overview of 2020

Context

As the year began, the World Health Organisation ("WHO") was working to determine the source, nature and modes of transmission of a newly identified strain of coronavirus. Ireland's first case was confirmed in late February and, by early March, the WHO had declared that the virus could be characterised as a pandemic. By the end of March, stringent public health measures had been put in place in an effort to curb the spread of Covid-19 and to ease the pressures on our health system.

The impact of Covid on citizens and on the economy has been profound, with many businesses having to cease trading indefinitely, thousands losing their jobs and those fortunate enough to continue to be in employment having to adapt quickly to new ways of working. In keeping with public health measures, most ODCE staff have been working remotely since then and it is a testament to them that, for the most part, there has been minimal disruption to services. It is also the case, however, that certain of the ODCE's activities do not lend themselves to remote working and, consequently, there has (as is permitted by public health Regulations in respect of essential services) been an ongoing on-site presence throughout – particularly on the part of investigative (civilian and Garda), legal, digital forensics and, as necessary to maintain operations, corporate services staff.

Corporate insolvency

The impact of Covid on the ODCE's activities has been felt, perhaps most acutely, in the area of corporate insolvency. In response to concerns expressed by business representative groups and professional advisors that company directors might be subject to unwarranted restriction proceedings arising from Covid-related insolvencies, the ODCE issued a public statement reiterating the factors that it takes into account in determining whether restriction is an appropriate public protection response. That statement was widely welcomed as significantly mitigating the concerns of company directors who, through no fault of their own, might find themselves faced with pandemic-related corporate insolvency and, as a result, come under ODCE scrutiny.

Liquidator reports received during 2020 were down almost a quarter on 2019 levels. This substantial reduction reflects a number of factors, including the underlying downward trend in insolvent liquidations in recent years and the impact of public health restrictions on liquidators' ability to discharge their functions. As evidenced by the fact that, at year end, the number of cases on hand was half that at the beginning of the year, the ODCE successfully capitalised on that reduction during the year.

The level of restrictions and disqualifications imposed by way of statutory undertaking in any given year is largely a function of the number of liquidator reports received. Consequently, the substantial fall off in liquidator report numbers had the knock-on effect of reducing, by 38%¹, the number of company directors restricted and disqualified by way of undertakings during the year.

Despite the overall reduction in restriction and disqualification numbers for the year by 24%, the number of Orders granted by the High Court on foot of liquidators' applications increased by 35%.

In contrast to the foregoing, the ODCE's activities in respect of dissolved insolvent companies (which is not driven by liquidators' reports but, rather, by the ODCE's internal analysis of companies that have been struck off whilst owing significant debts) resulted in 18 company directors being disqualified, a level consistent with 2019.

1. Typically, multiple restrictions or disqualifications will arise in each relevant insolvent company, hence the reduction in undertakings exceeding the reduction in reports received.

The aggregate of public protection restrictions and disqualifications imposed on company directors by the ODCE through undertakings during the year was 265 years and 82 years respectively. In addition, at 14 years and three months, 2020 saw the High Court hand down the longest period of disqualification on record to a company director.

Also on the theme of Covid-19 and corporate insolvencies, the ODCE, through its membership of the Company Law Review Group (“CLRG”), contributed to reports prepared for An Tánaiste relating to both company law issues arising by reason of the pandemic and a proposed legal structure for the rescue of small companies.

Investigations and enforcement

Both auditors’ indictable offence reports and complaints from members of the public were also down substantially on 2019 levels – 29% and 41% respectively. It is not unreasonable to surmise that Covid also contributed to these reductions. However, whatever the reasons, these stark falls had a bearing on the nature of investigative and enforcement work undertaken during the year. Investigations follow a lifecycle – from initiation to information gathering to analysis to further information gathering to drawing conclusions and determining what enforcement action, if any, might be warranted having regard to the underlying facts and circumstances. The scale and nature of the individual investigations in being in any given year, together with where in the lifecycle each investigation is, influence the profile of investigative work undertaken over the course of that year.

That can best be illustrated by way of comparative example. Investigative work undertaken during 2017 – when the ODCE’s investigation into Independent News & Media (“INM”) was at its height – was characterised by the issuing of no fewer than 46 statutory Notices and Requirements under company law relating to the production of documents and the provision of associated information and explanations respectively. In the same year, just five Orders were obtained pursuant to section 52 of the Criminal Justice (Theft & Fraud Offences) Act 2001.

In contrast, during 2020 when the portfolio of investigations was markedly different in nature, just five Requirements issued under company law relating to the production of documents and provision of associated information and explanations respectively. However, 54 Orders were obtained pursuant to section 52 of the Criminal Justice (Theft & Fraud Offences) Act 2001. These information gathering activities were in addition to 14 suspect interviews under caution, seven searches under warrant and nine arrests.

Arising from investigative work undertaken by the ODCE during 2020, a total of 55 criminal charges were directed against named individuals. Criminal charges related, amongst others, to alleged offences of fraudulent trading, the furnishing of false information, theft and money laundering.

Investigative assets and related matters

Having regard to the ODCE’s criminal caseload on hand during 2020, and the associated demands on investigative resources, I wrote to the Garda Commissioner in July 2020 for the purpose of seeking his agreement to the temporary allocation of a number of additional members of An Garda Síochána (i.e., an additional six detective Gardaí over and above the ODCE’s Government-approved permanent allocation for a period of six months) to assist with progressing particular elements in a number of large scale criminal investigations.

In November 2020, this Office was advised that the Commissioner had approved the temporary allocation sought, which was to be filled from a competition, then ongoing, to fill detective Garda posts in the Garda National Economic Crime Bureau (“GNECB”). Further to that approval, two additional detective Gardaí were assigned in mid-April 2021. As at 28 April 2021, assignment of the remaining four is still awaited.

Outlook for 2021 and beyond

Corporate insolvency

Given the scale in the fall-off of liquidator reports received during 2020, and on the assumption that this year will see something of a return to normal as the vaccine roll out progresses and restrictions begin to be lifted, it is reasonable to anticipate that 2021 will see some reversal in that regard. That, in turn, would be expected to see an increase in the number of restriction and disqualification undertakings being issued. Depending upon how the Courts operate for the remainder of the year, restrictions and disqualifications on foot of liquidators’ applications may also see increases.

The foregoing analysis is based on pre-Covid levels of insolvency. There is, however, a view that current State supports are masking true levels of corporate financial distress. If this is the case, as the longer-term effects of Covid permeate the economy and the various State financial supports taper off, it might reasonably be expected that the level of corporate insolvencies will increase, potentially substantially. That, in turn, would be expected to see an increase – of a magnitude yet to be seen – in liquidator reports coming through the system.

As referenced earlier herein, during the year, the CLRG prepared a Report for An Tánaiste on a possible legal structure for the rescue of small companies. The Report recommends a scheme that is based, to some extent, on examinership but which is designed to be less complex and, by extension, a less expensive solution for distressed companies. The proposals, which envisage the ODCE having a substantial role in the process, are currently under review by An Tánaiste and his officials.

Advocacy

For reasons already referenced herein, the ODCE’s advocacy activities – which include a large element of stakeholder-facing outreach – have been significantly impacted. It is our hope that, as restrictions begin to be lifted, those activities can recommence on a face to face basis. In the interim, we will continue, to the extent practicable, with electronically-based advocacy initiatives.

Investigations and enforcement

As evidenced by the foregoing narrative, the ODCE’s investigative and enforcement activities have continued throughout the public health restrictions (although they have been curtailed to some extent through, for example, difficulties encountered in interviewing witnesses due to Covid-related considerations). That will continue to be the case in 2021. In addition to awaiting the conclusion of the current High Court Inspectorship into INM, we anticipate that a number of investigations will result in files being submitted to the DPP for consideration this year.

Given that 2020 levels of auditors’ reports and complaints from members of the public were significantly down on more typical levels, we anticipate that there will be some reversal in 2021, which in turn will give rise to associated enforcement activities over the remainder of the current year.

Criminal Enforcement

This Office has a range of enforcement options at its disposal. Prosecution (or referral to the DPP) is not, therefore, our default response to indications of breaches of company law. If it were, every company director who has failed to ensure that a company's name appears outside each of its places of business or to ensure that directors' names appear on a company's letterhead would face prosecution. Such an approach to enforcement might, if adopted, make for very impressive headline prosecution statistics year on year. However, such an approach would also likely raise legitimate questions as to the appropriateness and credibility of this Office's strategic approach towards fulfilling its statutory mandate. Similarly, the number of prosecutions in any given year is not an appropriate performance metric. Were we to adopt such a metric, we would leave ourselves open to the charge that criminal prosecutions were being brought solely in order to achieve performance targets.

Criminal prosecutions are, therefore, only one component of the ODCE's enforcement activity and only one means by which this Office's performance can be measured. Work relating to corporate insolvencies, as detailed above, forms a substantial proportion of the ODCE's overall activities. In addition, many indications of breaches of company law are dealt with in a proportionate and resource-efficient manner that never requires the initiation of an investigation or prosecution – for example, by way of education, the provision of assistance to complainants, through securing voluntary rectification by way of exercising our powers of persuasion, through the issuing of warnings and, where necessary, by issuing statutory directions to comply with obligations (which, where necessary, we enforce through the Courts).

Nevertheless, due to their high profile nature, our criminal investigation and prosecution activities tend to attract most attention in public discourse. On occasion, we experience unrealistic expectations in that regard. For example, in the past few weeks alone, the ODCE has been called upon to investigate matters that fall within the financial services realm as well as suggested non-compliance with financial contractual obligations. There have even been calls on social media for the ODCE to investigate the alleged inappropriate deployment of Covid-19 vaccines in hospital settings. However, consistent with its statutory mandate, the ODCE's investigations are primarily for the purpose of establishing whether breaches of company law may have occurred. Contingent upon the facts and circumstances, they sometimes extend beyond that – most frequently into apparent breaches of theft & fraud and anti-money laundering legislation given that breaches of company law do not always occur in isolation – but, in accordance with our statutory mandate, company law is always our starting point. In that context, it is important to appreciate that company law is not, nor was it ever intended to be, a vehicle through which every conceivable alleged instance of so-called “white collar” crime concerning a company, however tangentially, can be addressed.

The strategy underpinning the ODCE's approach to criminal enforcement has, in recent years, been to focus on issues coming within our remit that are suggestive of wrongdoing at the more serious end of the spectrum which have the potential for serious harm to individuals and businesses and the associated potential to damage public confidence and Ireland's reputation. Our investigative work has resulted in serious criminal charges being directed against individuals and criminal convictions being secured for serious instances of wrongdoing under both company law and wider criminal justice legislation. In recent weeks alone, the ODCE has secured criminal convictions for fraudulent trading, the use of false instruments and the furnishing of false information – all of which are serious criminal offences. The strength of the cases in these prosecutions is evidenced by the fact that all of the aforementioned convictions were on the basis of pleas of guilty having been entered by the accused persons.

The societal benefits of such investigations and prosecutions are clear – they provide the transparency and individual accountability intrinsic to a well-regulated business environment, and are essential in safeguarding the public and the business community from economic crime. We as an organisation, mindful of the corrosive effect of so-called “white collar” crime on society and its citizens, view the holding of individuals, as well as entities themselves, to account as essential in deterring future misconduct.

Such benefits are not, however, easily won. Certain of the challenges faced by the ODCE are the age old ones – pace of progression of investigations typically being the most frequent criticism. However, these types of cases require patience and fortitude as they can take a comparatively longer period of time to complete than the average criminal justice case – sometimes several years or more from the opening of a file to its referral to the Director of Public Prosecutions for consideration. Once charges are preferred, it can take years for a trial date to be fixed. The ODCE’s file in relation to the former charity Console for example, was referred to the DPP in May 2019. A pre-trial hearing has been scheduled for January 2022, with the trial itself scheduled for January 2023. In this context, the publication of the Criminal Procedure Bill 2021 last January is a welcome development, the primary purpose of which is to provide for pre-trial hearings, which it is anticipated will deliver much needed efficiencies, and fewer delays, in the case management of large scale economic crime prosecutions.

Other significant challenges to criminal investigation are also familiar, albeit with modern nuance. Many of the corporate entities, and indeed individuals, that come to our attention are prominent and very well resourced. As is their right, they typically use every legal resource at their disposal in response to investigative efforts, with assertions of privilege and/or privacy increasingly becoming tools of attack as well as defence. The days of evidence residing in dusty ledgers and steel filing cabinets are long gone. Documentary records are in the cloud, communications are digital, vast swathes of information reside on smartphones and other ubiquitous portable devices. Legislative reform is necessary to reflect technological developments and the ODCE has made submissions – and has exercised significant influence – on policy development in multiple fora in this regard – most recently through membership of the Hamilton Review Group (“HRG”), which made specific recommendations with respect to reform relating to privacy rights in the context of digital searches.

Central to the ODCE’s success in tackling the ever-present challenges associated with complex criminal investigation is its unique multidisciplinary structure which draws on the complementary skills, expertise, experience and ethea of both civilians and police officers. Since my appointment, and with the invaluable support of successive Ministers, Governments and Departmental officials, the ODCE has considerably strengthened its investigative capabilities through the recruitment of highly skilled and experienced accounting, legal and digital forensics professionals and major investment in technology and training.

Review of Ireland’s anti-fraud and anti-corruption structures and the associated Implementation Plan

That brings me to the HRG, of which this Office was a member and whose Report was published by the Minister for Justice in December 2020. The HRG made a number of recommendations which have the potential to considerably enhance Ireland’s overall capacity to tackle economic crime.

Notable recommendations of direct relevance to this Office include the:

- establishment of an Economic Crime & Corruption Forum, comprising of regulatory and enforcement agencies including the ODCE;
- expedited enactment of the Criminal Procedure Bill, providing, *inter alia*, for a preliminary pre-trial procedure in criminal trials;
- extension of certain surveillance powers to this Office and other Agencies;
- amendment of legislation relating to warrants to:
 - » reflect technological advances (e.g., cloud-based storage of data);
 - » address certain privacy-related issues; and
 - » provide for standalone warrants empowering the warrant holder to require the provision of passwords to electronic devices,
- amendment of the Custody Regulations to facilitate attendance at, and participation in, suspect interviews by ODCE civilian staff (e.g., accountants, digital forensics experts); and
- amendment of section 50 of the Criminal Justice Act 1997 (as amended) to cover all arrestable offences (thereby extending currently available detention periods during which suspects can be interviewed).

The publication, in recent weeks, by the Minister for Justice of the associated Implementation Plan is most welcome and, with economic crime rightly at the forefront of the political agenda, this Office looks forward to contributing, together with its counterparts, to bringing the HRG’s recommendations to fruition.

Corporate Enforcement Authority (“CEA”)

During 2020, ODCE staff continued to work closely with Ministers Varadkar’s and Troy’s officials to lay the groundwork for the establishment of the CEA. In January last, representatives of this Office appeared before the Joint Oireachtas Committee on Enterprise, Trade & Employment to discuss the General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018².

The Committee published its Report on 20 April³. The Committee’s support for the ODCE’s position on a range of legislative issues – including warrants, privacy, civilian attendance at suspect interviews and privilege – is welcome. The Committee’s view that the CEA’s resourcing levels should be kept under ongoing review to ensure that they are adequate is also welcome.

The transition from an Office of the Department to an Agency will bring with it challenges. But, more importantly, it will bring with it opportunities. This Office looks forward to the enactment of the Bill and to the establishment on a statutory footing of the CEA over the coming months.

In readying ourselves for the transition, approval has been sought, and granted, for a number of new posts – for the purposes of both equipping the CEA to assume the additional responsibilities that accompany Agency status and further enhancing our investigative wherewithal. We look forward to advertising these new and exciting opportunities over the coming months and, through that campaign, to strengthening yet further our investigative capabilities.

Concluding remarks

In conclusion, I would like to thank An Tánaiste and Minister Troy and their officials for their continued support during the year. As ever, I would like to record my sincere appreciation for the professionalism, dedication and commitment shown throughout the year by my ODCE colleagues. It has been a challenging year and it is through their effort and resilience that this Office’s operations continued with minimal disruption throughout.

Ian Drennan
Director

28 April 2021

2. The transcript of the debate is available at https://www.oireachtas.ie/en/debates/debate/joint_committee_on_enterprise_trade_and_employment/2021-01-22/2/
3. <https://www.oireachtas.ie/en/publications/18464>

2020 in Numbers

 **669**
Liquidators' Reports Received


14.25
Longest (in years)
Disqualification
imposed by the High Court


265
Aggregate (in years)
Restrictions Imposed
by the ODCE


1,500
Guidance Documents
Disseminated


€5.7m
Directors' Loans Rectified


€4.3m
Cost of 2020
Operations


73
Company Directors Restricted


32
Company Directors Disqualified


82
Aggregate (in years)
Disqualifications
Imposed by the ODCE

12

Criminal
Convictions



7

Search Warrants
Executed



55

Criminal Charges
Directed



75

Auditors' Indictable
Offence Reports Received



100

Percentage of Convictions
Secured Based on Guilty Pleas

149

Complaints
Received



14

Voluntary
Cautioned Interviews



65

Production
Orders Issued



9

Arrests



6

Terabytes of Digital Evidence
Seized, Processed and Analysed

1

OVERVIEW OF THE ODCE



Statutory Mandate

Companies Act 2014 (as amended)

The Companies Act 2014 (“the Act”) came into effect in June 2015. Except where the circumstances otherwise require therefore, all statutory references in this Report are to the Act as opposed to the various Companies Acts that it replaced. The full text of the Act can be accessed on the Irish Statute Book website⁴.

Office of the Director of Corporate Enforcement

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

- staff assigned by the Minister; and
- members of An Garda Síochána seconded pursuant to Government Decision.

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 Act⁵. They include to:

- i. encourage compliance with the Act;
- ii. investigate instances of suspected offences under the Act;
- iii. enforce the Act, including by the prosecution of offences by way of summary proceedings⁶;
- iv. refer cases, at his discretion, to the Director of Public Prosecutions (“DPP”) where the Director has reasonable grounds for believing that an indictable offence⁷ under the Act has been committed; and
- v. exercise, insofar as he feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Act.

Independence of the Director

The Act⁸ 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:

1. promote a greater understanding of affected parties’ rights and duties under company law;
2. confront unlawful and irresponsible behaviour insofar as it relates to company law; and
3. provide a quality customer service to internal and external stakeholders.

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

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

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

5. Section 949 Companies Act, 2014

6. i.e., before the District Court

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

8. Section 949(3) Companies Act, 2014

Resources, organisational structure, governance arrangements & principal workstreams

Human resources

The ODCE's actual (i.e., as opposed to approved) staff complement at the beginning and end of the year respectively are detailed in Table 1 below.

Table 1: ODCE staff complement – 2019/2020

Staff Numbers (WTE) ⁹	31 December 2019	31 December 2020
Actual complement in place	42	43

The composition of the Office's staff complement as at 31 December 2020, together with comparative data, is set out in Table 2 below.

Table 2: Analysis of actual staff complement (WTEs)

Grade	31 December 2019	31 December 2020
Director	1	1
Heads of Function (excluding Garda)	3 ¹⁰	3 ¹⁰
Enforcement Lawyers	2	2
Digital Forensic Specialist	1	1
Forensic Accountants	4	4
Solicitors	1	1
Assistant Principal	3	3
Higher Executive Officers	8	7
Executive Officers	5	5
Clerical Officers	6.6	7
Detective Gardaí (on secondment pursuant to Government Decision)		
Detective Inspector (Head of Function)	1	2 ¹¹
Detective Sergeants	3	3
Detective Gardaí	4	4
Total	41.6	43

Financial resources

The Office is funded via the Department of Enterprise, Trade & Employment's ("the Department") Vote (Vote 32). Table 3 below sets out details of the Office's 2020 allocation and expenditure respectively.

Table 3: Financial allocation and expenditure – 2020

	Allocation €000s	Expenditure €000s	%
Pay	3,740	2,295	61
Non-pay	2,317	2,015	87
Exceptional legal costs	50	0	0
Total	6,107	4,310	71

9. Whole Time Equivalent

10. 2 Enforcement Portfolio Managers and 1 Principal Officer

11. One of the Detective Inspectors in situ was awaiting re-deployment following promotion and therefore supernumerary.

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

- savings on Pay resulting from vacancies that remained unfilled or arising during the year (principally retirements and leavers); and
- legal costs arising during the year were less than anticipated, although some will fall to be defrayed in 2021. In addition, a procurement exercise that was expected to generate significant expenditure had not reached a conclusion at year-end.

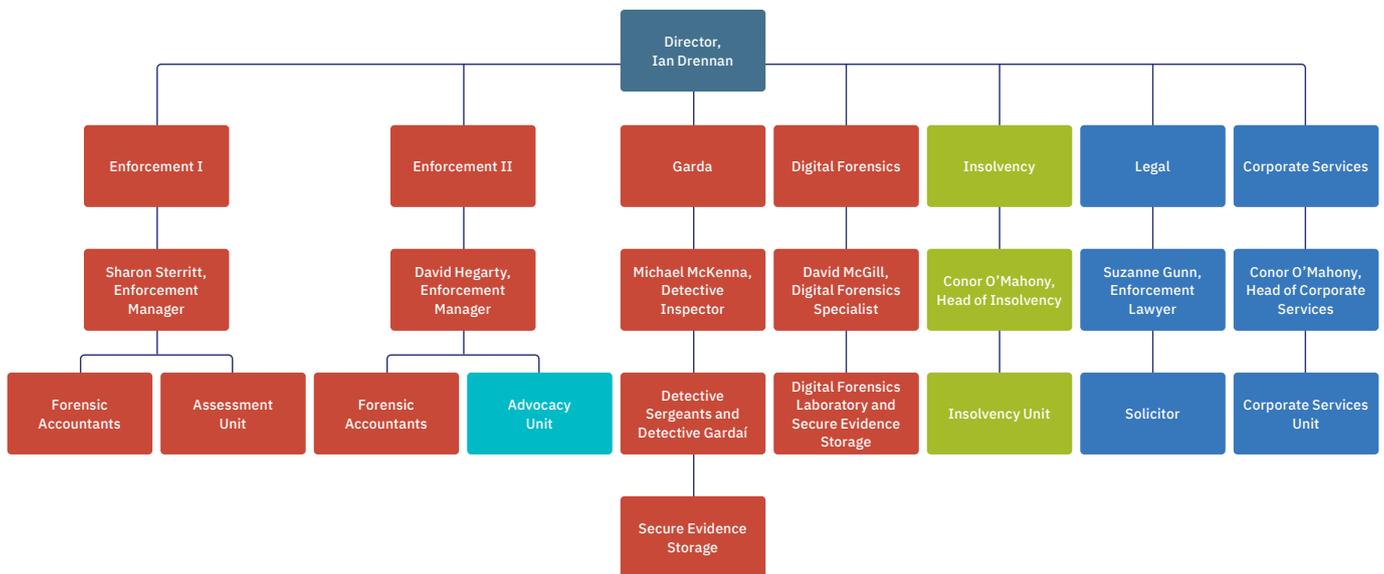
A more detailed analysis of expenditure incurred during the year is set out at Appendix 1 to this Report.

Digital Forensics

In 2018, sanction was sought and received for extensive expansion of the capabilities of the Digital Forensics Unit. During a two-year project, procurement of advanced digital forensics and eDiscovery software took place, with the completion of the installation of the system at the end of 2020. The commissioning of this system has equipped the Office with a state-of-the-art facility that significantly increases the capacity of the Digital Forensics Unit to deal with the complexities that often arise in modern corporate investigations.

Organisational structure

Having regard to the Director’s principal statutory functions and the associated workstreams, the Office is structured into a number of Units. The organisational structure is set out in the organogram below.



Key: Civil/criminal enforcement, Advocacy, Supervision of insolvent companies, Professional and support services

Principal workstreams

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

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

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

Table 4: Principal workstreams

Workstream	Unit(s) principally involved	Chapter
Encouraging compliance with company law	Responsibility for encouraging compliance with company law 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 is co-ordinated through the Legal or Advocacy Units.	2
Reviewing and adjudicating upon liquidators' reports	Liquidators' reports are reviewed, examined and adjudicated upon by the Insolvency Unit. Decisions on whether to grant relief in respect of directors of companies on foot of liquidator recommendations are made by experienced insolvency case officers in conjunction with ODCE's forensic accountants and legal advisors, where appropriate.	3
Examination of dissolved insolvent companies	The Insolvency Unit also implements a policy of examining dissolved insolvent companies having significant liabilities and makes decisions as to whether the disqualification of the relevant directors should be pursued.	3
Implementation of the Undertakings Framework	Since June 2015 this workstream forms an integral and vital element of the Insolvency Unit's functions and encompasses additional administrative procedures relating to the Undertakings Regime for the restriction and disqualification of company directors. This results in very significant cost savings and a more efficient and effective implementation of the Act, as it applies to insolvency.	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"> » address the issue itself, e.g., by way of voluntary rectification/remediation or through the use of certain of the Director's statutory powers; » designate the matter as being one warranting further investigation; » refer the matter to the Insolvency Unit, e.g., where the issues in question relate to an insolvent company; » refer the matter to a third party, for example, another regulatory or enforcement body. 	3
Civil enforcement litigation	For the most part, civil enforcement litigation is managed by the Enforcement function in conjunction with the Legal function. Civil litigation, such as seeking the disqualification of directors of companies that have been struck off the Register of Companies ¹² whilst having undischarged debts, is managed jointly by the Insolvency and Enforcement functions, again in conjunction with Enforcement Lawyers.	3
Criminal investigation and prosecution	The investigation of possible criminal breaches of company law is undertaken by the Garda Unit in conjunction with the Enforcement and Digital Forensics Units. Once a decision has been taken to initiate summary criminal proceedings, the prosecution becomes a collaborative exercise between the Enforcement, Legal and Garda Units. Investigations in which a prosecution on indictment is envisaged involve collaboration on the part of the Enforcement, Garda and Legal functions. In circumstances where, having reviewed an investigation file as submitted by the Office, a decision is taken by the DPP to initiate a prosecution on indictment, the provision of subsequent support to the Office of the DPP (for example, regarding disclosure to the defence), is primarily the responsibility of the Enforcement and Garda Units.	3
Supervision of liquidators' behaviour	Actions taken to supervise liquidators' behaviour (such as, for example, reviewing liquidators' books and records) is a collaborative effort between the Insolvency and Enforcement functions.	3
Provision of support services	The provision of support services to other areas of the Office is the primary responsibility of the Corporate Services Unit. 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.	4
Relationship management and development	Whilst certain Units, by virtue of the nature of their principal operations, have a greater degree of interaction 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.	2

12. See www.cro.ie for further information regarding the Register.

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 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.