



# Contents

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<b>1</b>	Introduction	1
<b>2</b>	Background	5
<b>3</b>	Work programme and modus operandi	8
<b>4</b>	EU Financial Service Action Plan	14
<b>5</b>	Relevant current and prospective primary legislation	16

## Introduction



**Minister Michael Ahern,**  
Minister for Trade & Commerce

This Annual Report of the Company Law Review Group (CLRG) for 2004 sets out the work programme of the Review Group in that year, and recounts the outputs and outcomes achieved. As this report falls within the middle of the Review Group's current two-year work programme 2004-2005 it is in the nature of a summary rather than a substantive report.

The CLRG is the statutory body established under Part 7 of the Company Law Enforcement Act 2001 to advise the Minister for Enterprise, Trade and Employment on the reform and modernisation of company law in Ireland.



**Dr. Thomas B. Courtney,**  
**Chairman,**  
Company Law Review Group

Membership of the Review Group is drawn from Government Departments, industry, social partners, professional bodies and regulators. It is chaired by Dr. Thomas B. Courtney, Head of Legal & Compliance Personal Lending, Bank of Ireland Group.

Members were appointed, and in some cases re-appointed, by the Minister for Enterprise, Trade and Employment for the 4-year term 2004-2007. Current membership is as follows:

# 1

*"The CLRG is the statutory body established under Part 7 of the Company Law Enforcement Act 2001..."*

# Board

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1

## Chair:

Dr. Thomas B Courtney  
Solicitor, Head of Legal &  
Compliance – Personal Lending, Bank of Ireland Group

## Members:

Paul Appleby	Director of Corporate Enforcement
Marie Daly	IBEC
Conall O'Halloran	Consultative Committee of Accountancy Bodies - Ireland
Paul Egan	The Law Society of Ireland
Paul Farrell	Registrar of Companies
Michael Halpenny	ICTU
Muriel Hinch	Revenue Commissioners
William Johnston	Arthur Cox
Deirdre Somers	Irish Stock Exchange
Jonathan Buttimore	Office of the Attorney General
Ralph MacDarby	Institute of Directors
Vincent Madigan	Department of Enterprise, Trade and Employment
Tanya Holly	Department of Enterprise, Trade and Employment
Maire O'Connor	McCann Fitzgerald
Lyndon MacCann S.C.	The Bar Council
Fiona Delahunty	Institute of Chartered Secretaries and Administrators
Nora Rice	Companies Registration Office
Enda Twomey	Irish Bankers' Federation
Noel Rubotham	Courts Service

## Alternate members:

Brian Binchy  
Kevin O'Connell  
Adrian Brennan  
Eamonn McHale  
Marie Hurley  
Aidan Lambe  
Ambrose Loughlin  
Donncha Connolly  
Des Fullam

2

Company Law Review Group

## New Members:

In the course of the year the Minister added the CEO-designate of the Irish Auditing and Accounting Supervisory Authority, Ian Drennan, and a nominee of the Irish Financial Services Regulatory Authority, Mary Burke, to the membership of the Review Group.

# 1

## Secretary to the Review Group:

Pat Nolan  
Principal Officer, Department of Enterprise, Trade and Employment

## Secretariat:

Daniel McAuliffe  
Administrative Officer  
Michael O'Leary  
Executive Officer  
Colin Delaney  
Clerical Officer  
Pamela Rickard  
Clerical Officer

## Company Law Review Group: Committees active in 2004

### Steering Group

#### Chair

Thomas B. Courtney

#### Members

Paul Egan  
Paul Farrell  
William Johnston  
Ralph MacDarby  
Vincent Madigan

#### Secretariat

Pat Nolan  
Daniel McAuliffe  
Michael O'Leary

### PLCs and associated issues

#### Chair

Paul Egan

#### Members

Máire Daly  
Mary Burke  
Fiona Delahunty  
Tanya Holly  
Vincent Madigan  
William Johnston  
Máire O'Connor  
Deirdre Somers  
Nora Rice



**Pat Nolan, Secretary,**  
Company Law Review Group

# Company Law Review Group: Committees active in 2004

1

## Guarantee Companies

### Chair

Ralph MacDarby

### Members

Marie Daly  
William Johnston  
Nora Rice  
Jonathan Buttimore Tom  
Fitzpatrick (*Revenue Cmrs.*)  
William Devine  
(*Law Society of Ireland*)

## Foreign Companies

### Chair

Paul Farrell

### Members

Nora Rice  
Vincent Madigan  
Paul Egan  
Connall O'Halloran  
Muriel Hinch

## Conversion and Re-registration

### Chair

Nora Rice

### Members

Paul Farrell  
Vincent Madigan  
Paul Egan  
Fiona Delahunty

## Collective Investment Schemes

### Chair

William Johnston

### Members

Vincent Madigan  
Tanya Holly  
Deirdre Somers  
Máire O'Connor  
Muriel Hinch/Marie Hurley  
Martina Kelly

The CLRG conducts its work via a committee system; details of membership are set out above. A summary of outcomes is set out below.

There is a requirement under Section 71 of the Company Law Enforcement Act 2001 that the Minister for Enterprise, Trade and Employment shall cause copies of each report of the Review

Group to be laid before the Houses of the Oireachtas within a specified time. In accordance with this provision the Second substantive Report of the Review Group was laid before the Houses of the Oireachtas in May 2004. All of the reports of the CLRG are available on its website, [www.clrg.org](http://www.clrg.org)

## Background

### First Report

The First Report of the Review Group (February 2002) mapped out the broad framework for overall reform and consolidation of the existing Companies Acts and related Statutory Instruments as well as focussing on detailed reform in a number of sectoral areas such as directors' duties, all dealt with in the context of the simplification and modernisation of the companies code and having regard to the well-established principles of creditor and shareholder protection.

On 26 July 2002 the Government approved the drafting of the General Scheme of a Company Law Consolidation and Reform Bill to give effect to the recommendations in the Review Group's First Report. The core principle on which the General Scheme is being drafted is the simplification of company law. This is manifested notably by the intention to establish the private company limited by shares as the standard type of company rather than the public company (plc) as is the case at present. Currently, 88% of all companies registered with the Companies Registration Office are private companies limited by shares. Consolidation in a single statute is itself a simplification measure, and the additional objectives of the initiative are that the reformed and streamlined companies code should be effective, intelligible to company law directors and shareholders, and that the law should reflect how business is actually transacted.

Simplifying and modernising our companies code is a key component of regulatory reform in Ireland. Because the proposed reforms will lead to increased efficiencies and to diminished costs they will have a positive impact on Ireland's competitiveness.

### Second Report

In March 2004 the Review Group published its second substantive report. That report presented the outcomes of the Review Group's Second two-year Work Programme 2002-2003. That Report builds on the framework established by the First Report and makes recommendations within the context of the proposed Consolidation and Reform Bill. The Second Report is more technical in nature than the First Report. It fleshes out recommendations from the First Report in the following sectoral areas:

- ▶ Liquidations
- ▶ Share capital
- ▶ Debentures and the registration of charges
- ▶ Corporate governance and company management regulations
- ▶ Audit and accounting issues

# 2

*"...focussing on detailed reform in a number of sectoral areas such as directors' duties..."*



# 2

The Second Report also takes account, at Chapter 9, of company law developments in the EU having regard, in particular, to the elaboration of the Financial Services Action Programme. To the greatest extent to which it is possible, the reform and consolidation of our domestic legislation is being approached such that it takes account of the suite of company law measures emerging at European level.

In addition, that Report outlines, at Chapter 3, the progress made to date in drafting the General Scheme of the Company Law Consolidation and Reform Bill. Since 2002 the Review Group has been working closely with the Department of Enterprise, Trade and Employment in the formulation of the draft Heads of the new Bill and to put flesh on the outline of the recommendations in the First Report.

## Work programme and modus operandi

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### 3

*“...Steering Group, a bureau of members within the Review Group, oversees the strategic direction of the reform project...”*

#### **Work programme and modus operandi**

Because of the paramount objective of delivering the new Bill and progressing it to enactment the Minister for Enterprise, Trade and Employment, in assigning a third two-year work programme to the Review Group to cover 2004-5 asked the Group to focus entirely on working with the Department of Enterprise, Trade and Employment to progress the Heads of the Consolidation Bill and the resulting Bill through to enactment. Accordingly, this goal set the parameters and the priority for the work of the Group in 2004. To that end the Group proceeded to draft the Heads of Group of Parts A of the new Bill as outlined below. The Review Group then moved on to drafting the Heads for Group of Parts B.

The Review Group works by means of a Committee structure, with Committees being established to draft each outstanding Part of Group of Parts A and each Part of Group of Parts B.

The modus operandi requires that each of these committees applies to the relevant Part of Group of Parts B a consideration of each Head of Group of Parts A, i.e. whether to apply, disapply or modify these Heads and to determine which additional provisions need to be included in that distinct Part of Group of Parts B.

The Steering Group, a bureau of members within the Review Group, oversees the strategic direction of the reform project and scrutinises all committee reports before commending these for approval to the full membership of the Review Group. In practice, the Steering Group also reviews individually each draft Head of the new Bill, making such amendments as it sees fit. Thus, all proposals go through two levels of scrutiny prior to final adoption by the Review Group and circulation for wider consultation. In November 2004 the Steering Group had an intensive review of Group of Parts A over 2.5 days, working in session for a cumulative 20 hours work. The review also applied overall consistency and clarity to the draft General Scheme, in particular to the transition arrangements which should apply on introduction of the CLS<sup>1</sup> (Part A2), to Debentures and Charges (Part A7) and Winding Up (Part A11). One interesting conclusion from this review was that on enactment of the new Bill about one-third of existing statutory company law would be disappplied from the CLS.

<sup>1</sup> The CLS is the new model type of company as recommended by the Company Law Review Group in its First Report (Paras. 3.6.5 and 3.6.6.) and approved in principle by Government. The CLS, a private Company limited by shares, will be established as the model type of company by the forthcoming Company Law Consolidation and Reform Bill.

## Work programme and modus operandi

### Committee on PLCs and Associated Issues

One of the most active committees dealing with individual Parts of the General Scheme of the Consolidation and Reform Bill has been the committee chaired by Paul Egan. Its work was divided into two programmes, respectively dealing with:

- (i) *Statutory company law for public companies limited by shares (PLCs) and with the related matters of the European Company Statute (Societas Europaeae) (ECS) and arrangements and reconstructions insofar as they are relevant to PLCs, in the light of the EU Directive 2004/25/EC on Takeover Bids.* In addition to developing the Heads for Parts B2, B3 and A9. This enabled the clarification of the provisions of the Statutory Instrument to give effect to the ECS and to allow for its later integration into Group of Parts B.
- (ii) *Securities law arising from the Financial Services Action Plan, identifying the implementation options for the Market Abuse Directive 2003/6/EC and Prospectus Directive 2003/71/EC.* This Committee assisted the Department in the preparation of draft text for statute law to facilitate the transposition of the Prospectus and Market Abuse Directives. B. It is envisaged that these Directives, together with the Transparency Directive 2004/109/EC will be enacted by a suite of separate Statutory Instruments which in due course can be amalgamated in a single enactment.

### Guarantee Companies/ Designated Activity Companies

The Review Group constituted a committee chaired by Ralph MacDarby to consider simplification issues arising for guarantee companies in the context of the new Bill. The main conclusions of that Committee, as subsequently considered by the Steering Group are that:

- ▶ guarantee companies (to which the specific part of the Bill dealing with Guarantee Companies is to relate) should be defined as companies limited by guarantee and not having a share capital (in other words equivalent to the existing public guarantee company)
- ▶ all guarantee companies should be required to have an objects clause;
- ▶ Existing guarantee companies that have a share capital should be treated as a form of Designated Activity Company
- ▶ guarantee companies will be required to have a minimum of two members but there will be no limitation on the maximum number of members
- ▶ an audit exemption provision will be extended to guarantee companies – the level of ceiling applying has yet to be determined

This Committee is about to (end February 2005) move on (March 2005) to a consideration of the designated activity company.

# 3

*“...consider simplification issues arising for guarantee companies in the context of the new Bill.”*

## Work programme and modus operandi

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### 3

#### **Collective Investment Schemes Committee**

In tandem with the Department of Enterprise, Trade and Employment and in the context of establishment of a dedicated section in the Department to deal with corporate governance of the funds industry this Committee, chaired by William Johnston, considered the optimal complementary structures for company, security and collective investment scheme law and recommended a framework which is set out later in this report. This Committee also identified those issues which needed to be addressed in the Company Law Consolidation Bill as distinct from those being dealt with in the Investment Funds, Companies and Miscellaneous Provisions Bill or to be addressed in the consolidation of Collective Investment Schemes Bill.

#### **Foreign companies Committee**

A committee chaired by Paul Farrell, is considering issues arising from the existence of 'Place of Business' status alongside 'Branch' status, and the possibility that companies which were in effect Branches were designating themselves as Places of Business because of the lesser disclosure required. The committee will shortly report on its conclusions to the Steering Group of the Review Group.

#### **Committee on Conversion and Re-registration of Companies**

This Committee, chaired by Nora Rice, is concerned with devising common procedures for the conversion and Re-registration of companies from one type into

another. At present the ability for companies to convert from one type to another is limited: for example a company which has re-registered from unlimited to limited cannot re-register again as unlimited. A company limited by guarantee without a share capital cannot re-register as a CLS. The Committee continues its analysis, in the context also of the pending 10th Company Law Directive on cross-border mergers and the pending 14th Directive on the cross-border migration of company seat (registered office).

#### **Other Forms of Association**

Following a review of various miscellaneous provisions in company law dealing with 'Other Forms of Association', e.g., building societies, industrial and provident societies, etc., the CLRG also decided during 2004 that a separate Part comprising such provisions was not warranted for inclusion in the Consolidation and Reform Bill.

The Review Group also considered how best to achieve publicity for the reforms proposed in the new Bill and how to develop an awareness of these among users of company law. The shortcomings of paid advertisements for such a specialised product were realised but it was agreed that the monthly gazettes, etc., of the interests represented on the Group would be a very good way to reach the target audience, with a focus on the major innovations in the reform initiative. Members of the Group have been

## Work programme and modus operandi

active in facilitating the dissemination of information to their respective networks by this and other means. However, the website of the Group, [www.clrg.org](http://www.clrg.org) is by far the most common means used of reaching the target audience, with all draft Parts of the Bill being posted on the website for the purposes of consulting all stakeholders. The most recent audit of quality customer service in the Department of Enterprise, Trade and Employment rated the CLRG website and the related information and consultation work carried out by the Group's secretariat very highly.

### General Scheme of the Company Law Consolidation and Reform Bill

As with the recommendations in the First Report the recommendations arising from the second substantive report are being factored into the General Scheme of the Company Law Consolidation and Reform Bill with a view to facilitating the Minister for Enterprise, Trade and Employment to bring an integrated set of legislative proposals (the General Scheme of a Bill) to Government for agreement. The target date for this is late 2005.

# 3

*"...all draft Parts of the Bill being posted on the website for the purposes of consulting all stakeholders."*

The framework of the new Companies Bill was devised to have the following structure:

<b>Group A</b>	<b>Private company limited by shares</b>
Part 1	Preliminary and Definitions
Part 2	Incorporation and Consequential Matters
Part 3	Share Capital
Part 4	Corporate Governance
Part 5	Duties of Directors and other Officers
Part 6	Accounts, Audit and Annual Return
Part 7	Debentures and Registration of Charges
Part 8	Receivers
Part 9	Arrangements and Reconstructions
Part 10	Examinerships
Part 11	Winding-Up
Part 12	Dissolution and Reinstatement
Part 13	Compliance, Investigation and Enforcement
Part 14	Regulatory and Advisory Bodies <sup>3</sup>

<sup>3</sup> Office of the Director of Corporate Enforcement, Companies Registration Office, Irish Accounting and Auditing Standards Authority, Company Law Review Group

## Work programme and modus operandi

# 3

### **Group B Companies and bodies corporate other than the private company limited by shares**

Part 1	Definitions
Part 2	Public Limited Companies
Part 3	European Companies (Societas Europaeae or 'SE')
Part 4	Designated Activity Companies
Part 5	Guarantee Companies
Part 6	Unlimited Companies
Part 7	Overseas Companies
Part 8	Unregistered Companies
Part 9	Conversion and Re-registration
Part 10	Miscellaneous Bodies Corporate
Part 11	Collective Investment Schemes

In the course of detailed analysis of the constituent Parts of the General Scheme of the Bill it has become clear that the structure of Group of Parts B may require to be somewhat adjusted. A final decision on this will be taken in 2005. By January 2005, Parts A2, A3, A4, A5, A7, A8, A9, A10, A12, A13 and A14 of the draft Heads of the Bill to reform and consolidate company law had been approved by the Review Group, and were available to the public on the CLRG's website [www.clr.org](http://www.clr.org)

Part A11, dealing with Winding Up, is virtually complete. This is by far the longest part in the Bill, with upwards of 160 Sections. What has emerged from the work of the Review Group is a substantially more streamlined and coherent set of provisions, with a merging, where feasible, of sections for the three different types of windings up (members' voluntary, creditors voluntary, and court-

ordered), a more strategic and less operational oversight of court-ordered liquidations and proposals for the regulation of liquidators. Of all the Parts circulated this received the most submissions.

Completion of Part A6, Accounts, Audit and Annual Return, has had to await finalisation of the draft Regulations to implement the Modernisation Directive and the exercise of options provided for in the International Accounting Standards Regulation, see 4 below. As of 28 February 2005 these Regulations are on the point of finalisation. The European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 were enacted on 24 February 2005.<sup>2</sup>

Part A1, which will deal with issues such as interpretation and commencement, will be the last Part of the General Scheme to be drafted.

<sup>2</sup> Statutory Instrument no. 116 of 2005



# EU Financial Service Action Plan

## 4

*“...proposal to decouple FSAP primary markets measures from Irish consolidated company law...”*

### EU Financial Service Action Plan

One of the meta-objectives of the Review Group has been to ensure that the initiative to reform domestic law should dovetail with any reforms to European company law arising from the Financial Services Action Plan (FSAP)<sup>3</sup>. To that end the Review Group considered the issue of how to address the implementation and consolidation in Ireland of company law, broadly speaking, which has emerged and will continue to emerge from EU initiatives set in train under the FSAP. In the past five years, as a consequence of the FSAP, the EU has adopted an unprecedented number of measures both updating existing law, such as that on prospectuses and insider trading, but also embarking into previously unregulated territory, such as market manipulation and takeover bids.

On foot of an analysis of content and context of FSAP measures the Review Group agreed the following principles:

- ▶ *The consolidation Bill will incorporate as much of stable company law as it can*
- ▶ *In the medium term investment companies [(Part XIII of the 1990 Act) will be decoupled from company law proper] and provided for in a separate enactment*

- ▶ *The FSAP measures relating to primary securities markets activity - the Market Abuse Directive, Prospectus Directive and Transparency Directive, along with EU Commission measures made under those Directives - will be decoupled from company law proper. Ideally they will be treated as a distinct suite of legal instruments*
- ▶ *The decision as to whether the FSAP provisions should be enacted as primary legislation or statutory instruments will be taken on a pragmatic case-by-case basis*

The proposal to decouple FSAP primary markets measures from Irish consolidated company law is driven by issues of timing and pragmatism as well as by concern for appropriate thematic regulation. While a number of the FSAP measures are concerned with traded companies' governance and traded companies' accounts others are more clearly concerned with the marketing of financial products and the provision of information in relation to them. The measures to do with governance and accounts will, to the greatest extent possible, be incorporated in the Bill, while the other measures will not. The decoupling proposal does not mean a 'hands off' approach by the Review Group to FSAP measures. The CLRG will continue to have the primary advisory role on FSAP measures and their

<sup>3</sup> On 11 May 1999 the European Commission adopted an Action Plan outlining a series of policy objectives and specific measures to improve the European Single Market for financial services during the following five years. The Action Plan (FSAP) suggested indicative priorities and timescales for legislative and other measures to tackle three strategic objectives:

- ▶ ensuring a single market for wholesale financial services
- ▶ open and secure retail markets
- ▶ state-of-the-art prudential rules and supervision

appropriate transposition into Irish law to the extent that FSAP measures have a significant company law element and, as such, fall within the policy and legislative responsibility of the Department of Enterprise, Trade and Employment.

## Prospectus Directive

The Review Group recognised that a particular issue arose with regard to the Prospectus Directive due to the fact that the law with regard to Prospectuses is governed by both domestic and EU-derived legislation, thus giving rise to a “lack of cohesion between key aspects of these main bodies of legislation (leading) to confusion, uncertainty and inconsistency in the application of public offers legislation.”<sup>4</sup> The issues are comprehensively analysed in Chapter 9 of the Review Group’s First Report. The implementation of the Prospectus Directive by Statutory Instrument, while achieving transposition, could not by itself address the problem of confusion because the Statutory Instrument could not be used to repeal or reform the disclosure provisions in the Companies code deriving from the 1963 Act. Accordingly, while the body of the Directive will be implemented by Statutory Instrument the legacy anomalies in primary law are being addressed in the Investment Funds, Companies and Miscellaneous Provisions Bill. At the time of writing, this Bill is making its way through the Oireachtas, with an anticipated enactment date of June 2005.

<sup>4</sup> Para. 9.1.3 of First CLRG Report

<sup>5</sup> DTI/HM Treasury, Modernisation of Accounting Directives/IAS Infrastructure, March 2004, [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

<sup>6</sup> Statutory Instrument no. 116 of 2005.

## Modernisation Directive/IAS Regulation

In the course of 2004 the Group confirmed its agreement of the general thrust of the proposed take up of national options on the Modernisation Directive (Directive 2003/51/EC) and IAS Regulation (Regulation (EC) 1606/2002) as set out in a discussion document circulated by the Department of Enterprise, Trade and Employment.

However, the Group also took account of the strategy proposed in the consultation document in the UK with regard to the proposed British approach to implementation of Modernisation and IAS provisions.<sup>5</sup> The Review Group agreed on the importance of maintaining consistency with the UK provisions on the grounds that the close association between the accountancy bodies in both jurisdictions makes it desirable that the Irish provisions are similar to the UK provisions. The advice of the accounting profession to the Department was that the optimal outcome was that these instruments would need to be implemented in Irish law by more detailed Regulations than originally envisaged. The European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 were enacted on 24 February 2005.<sup>6</sup> It is intended that the changes proposed will be worked into Part A6 of the new Bill and drafting has been set in train on this basis.

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## Relevant current and prospective primary legislation

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# 5

*“...pending eventual removal to the proposed consolidated collective investment schemes legislation.”*

### Relevant current and prospective primary legislation

#### Investment Funds, Companies and Miscellaneous Provisions Bill

The General Scheme of this Bill was approved by Government on 30 November 2004 and forwarded to the Office of the Parliamentary Counsel for formal drafting. It comprehends 7 different parts, including notably, providing for implementation of the Market Abuse Directive, resolving problems caused by the current possible application of two differing legal bases to Prospectus law, and addressing issues raised by the Funds industry. At the time of writing, this Bill is going through the Oireachtas.

#### Complementary structures for company, security and collective investment scheme law

The structures below were considered by the Review Group in consultation with the Department and have been agreed as the framework for the further elaboration of company law and those specialised law codes which are to be read together with company law.

#### Funds industry measures

In the immediate term, the Department of Enterprise, Trade and Employment has taken the General Scheme of the Investment Funds, Companies and

Miscellaneous Provisions Bill to the Office of the Parliamentary Counsel for the purposes of drafting a Bill. Insofar as funds are concerned the aim of the Bill is to provide for a new investment vehicle – the non-UCITS Common Contractual Funds<sup>7</sup> and to provide for cross investment and segregated liability for investment funds. The Bill makes necessary changes to pave the way for smooth transposition of the EU Directives relating to Prospectus and Market Abuse. The Bill also contains some miscellaneous company law provisions and minor amendments to consumer law.

The company law provisions of this Bill, when enacted, will be incorporated in the ensuing consolidation of company law, pending eventual removal to the proposed consolidated collective investment schemes legislation.

#### Consolidation of Collective Investment Schemes

In the medium term, the Department of Enterprise, Trade and Employment intends to consolidate the legislation relating to funds. At present a fund can be constituted as a company, unit trust, etc. In principle, the purpose of consolidating collective investment schemes is to set out the different types of corporate vehicle which a fund may utilise, and then to set out common regime provisions to apply whatever the corporate form is.

<sup>7</sup> A Common Contractual Fund is a new investment vehicle which is aimed at enabling pension funds to pool their investments in a tax-efficient manner.

## Relevant current and prospective primary legislation

### Company Law Review Group (CLRG) Recommendations

The recommendations on Collective Investment Schemes in the CLRG First Report have been reviewed in the light of (a) the Investment Funds, Companies and Miscellaneous Provisions Bill 2004, and (b) the proposed consolidation of collective investment schemes outlined above. The conclusion is that in this area the Company Law Review and Consolidation Bill will focus on the recommendations at para. 16.8.3 and 16.8.7 of the CLRG First Report, to wit:

- ▶ Sections 252(1), 253, 256(2) and 266(1) of the 1963 Act should be modified in their application to investment companies so as to dispense with the requirement for a shareholders' resolution in the voluntary winding-up of an investment company and to facilitate limited duration investment companies. **(16.8.3)**
- ▶ The disapplication of s53 of the 1990 Act by s 55 of the 1990 Act in the case of UCITS investment companies should be extended to non-UCITS investment companies. **(16.8.7)**

### Company Law Consolidation and Reform Bill – approach to funds issues

The process envisaged is that Part XIII of the 1990 Act will be amended to take account of the CLRG recommendations referred to above. Pending the eventual removal of provisions relating to funds from the consolidated companies code

to the Consolidated Collective Investment Schemes Bill act both of the amendments above will be located in a reconstituted Part XIII along with the other provisions relating to Funds. In effect, the Part of the Company Law Consolidation and Reform Bill dealing with collective investment schemes will consist of amended Part XIII.

### Legislative outcome

In summary, following the conclusion of the current two-year programme, we anticipate that the CLRG will have devised the following structure for what is now contained in the Companies Acts and ancillary Regulations, made under the European Communities Acts 1972 and 1973:

- ▶ company law, in the Companies Consolidation and Reform Bill
- ▶ securities law relating to primary markets activity, in a suite of Statutory Instruments, enacted (in the case of the Market Abuse and Prospectus Directives) and planned (in the case of the Transparency Directive), with provisions as to civil liability and criminal penalties in the Companies Consolidation and Reform Bill
- ▶ collective investment schemes law, to be amalgamated in a new Collective Investment Schemes Bill

# 5

*“...provisions as to civil liability and criminal penalties in the Companies Consolidation and Reform Bill.”*



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