



Company Law Review Group

Annual Report 2014

March 2015

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Chairperson's Letter to the Minister for Jobs, Enterprise and Innovation

Mr. Richard Bruton TD,
Minister for Jobs, Enterprise and Innovation
23 Kildare Street
Dublin 2

12 March 2015

Dear Minister,

It is my pleasure to present to you the Annual Report of the Company Law Review Group (the 'Review Group') for 2014.

This past year has been one of the most significant for the Review Group with the enactment of the Companies Act 2014. Our First Report in 2002 introduced the vision of company law being consolidated, simplified and being made more accessible, with proposals to re-focus the law so that the private company limited by shares would be the standard company form, placed at the heart of the legislation.

When the Review Group was established, however, there were just 10 Companies Acts to review. Since then, there have been 7 more. While the Review Group played its part in the development of various pieces of legislation over that period of more than a decade, we never lost sight of our original vision for Irish company law of consolidation, simplification and accessibility.

The Companies Act 2014 is that ideal come to fruition. The Group believes that, with its enactment, we now have a Companies Code that will promote enterprise, facilitate commerce, enhance corporate governance and encourage commercial probity. On behalf of the Review Group, I would like to thank officials in your Department and in the Office of the Parliamentary Counsel, who worked so hard to bring this project to a successful conclusion.

Of course, company law does not stand still and the Review Group's Work Programme for 2014 and 2015 is now at the midway point. This Annual Report takes stock of progress made and work on hand. Alongside the work associated with the enactment process of the Companies Act, the Review Group has advanced its considerations of many of the other items that you have put to it and made itself available to provide advice to the Department on a number of EU proposals as requested. We look forward to making recommendations on a

number of fronts before the end of the current Work Programme in March of next year.

Finally, I would like to thank you Minister for the support and encouragement that you have given to us. We all look forward to working with you and your Department in building on the new framework to ensure that the law keeps pace with the demands of Ireland's economy.

Yours sincerely,

Dr Thomas B Courtney

Chairperson

1 Introduction to the Annual Report 2014

1.1 The Company Law Review Group

The Company Law Review Group (“The Review Group”) was established under the Company Law Enforcement Act 2001 to advise the Minister for Jobs, Enterprise and Innovation (“the Minister”) on changes required in companies’ legislation with specific regard to promoting enterprise, facilitating commerce, simplifying legislation, enhancing corporate governance and encouraging commercial probity.

The Review Group is comprised of practitioners of company law and of company administration, representatives of business, unions, the accounting profession, and nominees of regulators and of the Department of Jobs, Enterprise and Innovation (“the Department”). The Secretariat to the Review Group is provided by the Company Law Modernisation and Development Unit of the Department.

1.2 Highlights of 2014

The year 2014 was a landmark in the history of Irish company law. Following two years and two days making its way through the Houses of the Oireachtas, the Companies Bill 2012 was signed into law by the President on the 23rd of December 2014. Now cited as the Companies Act 2014, it is the largest substantive Act in the history of the State, modernising our company law code and consolidating 17 Acts and 15 Statutory Instruments, dating from 1963 to 2013, into a single coherent piece of legislation.

Given the scale of the Companies Act 2014, the Review Group was called on to devote most of its time this year to providing ongoing advice and assistance to the Department as the 2012 Bill, now 2014 Act, reached each of the various parliamentary stages in the Houses of the Oireachtas. Nevertheless, the Review Group also turned its attention to most of the other issues that are listed in the Work Programme for 2014/2016 and, by the end of 2014, many of these were well underway. The findings and recommendations adopted on those items will feature in the Review Group’s annual reports for 2015 and 2016. Further information is set out in Chapter 3 of this report.

1.3 Contact Information

The Review Group maintains a website, www.clr.org, where it publishes all its reports. The website also lists the members and sets out the current and previous Work Programmes.

The Review Group's Secretariat also receives queries relating to the work of the Group and is happy to assist members of the public. Contact may be made either through the website or directly to –

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Secretary to the Company Law Review Group
Department of Jobs, Enterprise and Innovation
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Dublin 2

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Email: sabha.greene@djei.ie

2 Membership of the Company Law Review Group

The Minister appointed the current members of the Review Group in May 2014, and their term of office runs to 31 May 2016.

In the course of 2014, there were significant developments in the membership of the Review Group. Firstly a few people departed, namely Helen Dixon, Mary Doyle, Tanya Holly, Aisling McArdle, Conall O'Halloran, Mark Pery-Knox-Gore, and Conor Verdon of the Department. Many of these former colleagues had been members for several years and all made significant contributions.

The Review Group welcomed some new members, Marion Berry, Eleanor Daly, Bernice Evoy, Gillian Leeson, John Loughlin, and Deirdre O'Higgins.

Another notable change to the membership was the Minister's decision to invite the Irish Society of Insolvency Practitioners to nominate a representative to the Group. Following that decision, the Review Group welcomed Barry Cahir as a new member.

The full current membership is –

Dr. Thomas B. Courtney	Chairperson
Deirdre-Ann Barr	Minister's Nominee
Marion Berry	Department of Jobs, Enterprise & Innovation
Brian Boyle	Revenue Commissioners
Jonathan Buttimore	Office of the Attorney General
Barry Cahir	Irish Society of Insolvency Practitioners
Eleanor Daly	Law Society of Ireland
Marie Daly	Irish Business and Employers' Confederation
Stephen Dowling	Bar Council of Ireland
Ian Drennan	Director of Corporate Enforcement
Paul Egan	Minister's Nominee
Bernice Evoy	Banking and Payments Federation Ireland

Mark Fielding	Irish Small and Medium Enterprises Association Ltd.
Joseph Gavin	Central Bank of Ireland
Michael Halpenny	Irish Congress of Trade Unions
Brian Hutchinson	Minister's Nominee
William Johnston	Minister's Nominee
Brian Kelliher	Irish Funds Industry Association
Gillian Leeson	Irish Stock Exchange
John Loughlin	Consultative Committee of Accountancy Bodies, Ireland
Ralph MacDarby	Institute of Directors in Ireland
Vincent Madigan	Minister's Nominee
Kathryn Maybury	Small Firms Association
Deirdre O'Higgins	Department of Jobs, Enterprise & Innovation
John O'Malley	Irish Auditing and Accounting Supervisory Authority
Nóra Rice	Companies Registration Office
Jon Rock	Institute of Chartered Secretaries and Administrators
Noel Rubotham	Courts Service
Sabha Greene	Secretary – Department of Jobs, Enterprise and Innovation

Some members have nominated alternates for specific periods of time or areas of work, and they are –

Anthony Collins	Institute of Directors in Ireland
Marie Hurley	Revenue Commissioners
Aidan Lambe	Consultative Committee of Accountancy Bodies – Ireland
Esther Lynch	Irish Congress of Trade Unions
Kevin O’Connell	Office of the Director of Corporate Enforcement
Conor O’Mahony	Office of the Director of Corporate Enforcement
Kevin Prendergast	Office of the Director of Corporate Enforcement
Lyndsay Smyth	Revenue Commissioners

Over the course of 2014, the Review Group received assistance from others. In particular, it would like to thank the following for their time and help –

Raymond Byrne, Law Reform Commission

Elaine Cassidy, Department of Jobs, Enterprise & Innovation

Naomi Clohisey, Department of Jobs, Enterprise & Innovation

Patrick Conboy, Department of Jobs, Enterprise & Innovation

Tara Coogan, Department of Jobs, Enterprise & Innovation

Jane Farrell, Office of the Director of Public Prosecutions

Cormac Forristal, Law Reform Commission

Henry Matthews, Office of the Director of Public Prosecutions

Andrew Munro, Department of Justice and Equality

Doncha O’Sullivan, Department of Justice and Equality

Tara Smith, Law Reform Commission

3 Implementation of the Work Programme 2014 – 2016 to date

3.1 Introduction

The Minister, following consultation with the Review Group, determines the programme of work to be undertaken by the Review Group, again on a two year cycle. The current Work Programme was adopted in March 2014 for the period 2014 – 2016. Accordingly, this annual report is, to a large extent, a reflection of work in progress. A full report on the completion of the current Work Programme will feature in the Review group’s annual report for 2015.

Over the course of 2014, the Review Group met 3 times in full plenary. It conducted the rest of its work either in Committee format or through regular informal contact with the Department.

3.2 Content of the Work Programme 2014-2016

The Work Programme is as follows –

Priority Item

1. Provide ongoing advice to the Department of Jobs, Enterprise and Innovation on the provisions of the Companies Bill 2012, including responding to queries raised by the Parliamentary Counsel and assisting the Department in advising the Minister on matters arising in the course of the passage of the Bill through the Houses of the Oireachtas and, once enacted, its subsequent implementation.

Other Items for Consideration

2. Examine and make recommendations on whether it will be necessary or desirable to amend company law in line with recent caselaw and submissions received after the publication of the Companies Bill 2012 and which were not included in the Bill, in particular those proposals relating to –
 - Part 6 of the Companies Bill 2012 (financial statements, annual return and audit)
 - Part 8 of the Companies Bill 2012 (receivers)
 - Part 10 of the Companies Bill 2012 (examinerships)

- Part 11 of the Companies Bill 2012 (winding up)
 - Part 12 of the Companies Bill 2012 (strike off and restoration)
3. Examine and make recommendations on whether it is necessary or desirable to provide for amendments to the law relating to the representation of a company before the Courts.
 4. Examine and make recommendations on whether it is necessary or desirable to adopt, in Irish company law, the UNCITRAL Model Law on Cross-Border Insolvency.
 5. Review the enforcement of company law and, if appropriate, make recommendations for change.
 6. Provide ongoing advice to the Department of Jobs, Enterprise and Innovation on EU proposals, as requested by the Department, including proposals arising from –
 - The EU Action Plan on company law and corporate governance
 - The review of the EU’s insolvency regime

3.3 Report on implementation of the Work Programme

For the priority item (Item 1), the Review Group made itself available to the Department on issues arising from the Companies Bill 2012 as requested. This included providing detailed briefings for members of the Houses of the Oireachtas, assisting in responding to queries and issues that arose in the course of the Bill’s parliamentary progress and providing advice on submissions received in the Department. Further information on this topic is set out in Chapter 4 of this report.

The Review Group’s Committee on representation of a company before the courts (Item 3) met again during 2014 and opened consultations with stakeholders with a view to reporting back to the full Review Group in 2015.

The Review Group decided to consider enforcement of company law (Item 5) in the full plenary session, rather than referring it to a Committee. This was to be able to benefit from the full range of experience and expertise among the members. To open the debate, the Director of Corporate Enforcement and colleagues from his Office made a presentation on the issues from their perspective. We also invited representatives from the Office of the Director of Public Prosecutions, the Law Reform Commission and the Department of Justice and Equality to give us their insights. This area of work will continue into 2015.

Turning to EU developments, the members of the Review Group provided ongoing advice and assistance to the Department on EU proposals concerning insolvency, money laundering, and shareholder engagement (Item 7). This advice was given in the context of the Department's representation of the Irish position at EU negotiations. Given recent developments on insolvency, in particular at EU level, it was decided to take up work on the UNCITRAL model (Item 4) in 2015.

As mentioned above the Review Group placed its focus on the enactment of the Companies Act 2014. Accordingly, the issues listed at Item 2 will be approached in the course of 2015 with a view to making recommendations that take the new law into account.

4 Enactment of the Companies Act 2014

The Companies Act 2014 was signed into law by President Higgins on 23 December 2014. It repeals and replaces the Companies Acts 1963 – 2013, restructuring and consolidating the provisions of those Acts, together with several Regulations, into a single coherent Act. It also introduces a number of important reforms, designed to make it easier to operate a company in Ireland.

For the Review Group, this event was a true milestone, because it marked the fulfilment of its vision, initially set out in its First Report, in February 2002. That vision was to radically refocus Irish company law by placing the most common company type, the private company limited by shares, to the fore of the legislation. Then, as now, virtually 90% of all companies registered with the Companies Registration Office were in the form of private companies limited by shares, usually small or medium sized businesses with just 2 or 3 directors. Yet, company law treated such companies as an afterthought, obliging them to comply with cumbersome and inappropriate rules that had been designed for much larger and more complex company forms. Moreover, since the principal Act of 1963, there had been 16 further Companies Acts, 15 Statutory Instruments and a great deal of case law so that the law had become impenetrable and excessively bureaucratic for the majority of businesses.

In the years since that First Report, the Review Group has devoted its efforts to giving effect to that vision. It began by preparing the Heads of a Bill, culminating with the publication in 2007 of the General Scheme of the Companies Consolidation and Reform Bill. The main innovation of the General Scheme was that it restructured company law, placing the most common company type at the heart of the legislation, bringing together all the provisions that apply to that company type into one place and ordering those provisions to follow logically the life-cycle of a company. Each of the remaining company types, such as PLCs, guarantee companies, unlimited companies, then had its own dedicated part in the General Scheme. This would make it easier for anyone involved with any of the available company types to find the law that applies to their company more easily.

Over the next 5 years, the Review Group worked closely with the Department and the Office of the Parliamentary Counsel, translating the General Scheme into the Companies Bill 2012, published by the Government on the 21st of December 2012.

It was another 2 years before the Bill passed all Stages in the Houses of the Oireachtas. Throughout the course of that period, TDs and Senators received comprehensive briefings on all aspects of the Bill as they considered their views. Also during that time, the Department received submissions with more than 1,000 suggestions for changes to the Bill. In the end, over 800 amendments

were tabled and discussed, and at least 750 of them were accepted. For all of that time, members of the Review Group frequently cooperated with the Department, providing advice on proposals for amendment and participating in presentations.

Speaking in late 2014, towards the end of the Bill's parliamentary process, the Minister summed up the importance of this reforming legislation, saying –

“This Government is determined to make Ireland the best small country in the world in which to do business, so that more businesses can start-up, grow and create the jobs we need. A key part of our Action Plan for Jobs is implementing a series of changes to reduce the administrative burdens imposed by Government on business.

“The Companies [Act] is a ground breaking piece of legislation. ..[making]it easier for companies to know and understand their legal obligations. It also implements a series of major reforms to allow for more electronic transactions, to reduce red tape and to make it easier and cheaper to run a company in Ireland. It will make a real difference to our international competitiveness. It will save businesses in terms of compliance costs and will ultimately make it easier to create jobs.”

Since the enactment of the Companies Act 2014, the Minister has announced that he intends to commence it on 1 June 2015.

Report 2014 – Appendix 1

Committees: Chairs and Members

Item 3 Committee –

To examine whether it is necessary or desirable to provide for amendments to the law relating to the representation of a company before the courts

Chair: Brian Hutchinson

Members: Jonathan Buttimore

Stephen Dowling

Brian Boyle & Marie Hurley (Revenue)

Ralph MacDarby

Vincent Madigan

Kevin Prendergast

Jon Rock

Noel Rubotham