

**Minutes of the 88th Plenary Meeting
of the Company Law Review Group**

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| **Date:**  | 2nd March 2020 |
| **Time:**  | 10:00am – 12:00pm |
| **Venue:** | Buswells Hotel, Molesworth Street, Dublin 2. |

**Present:** Paul Egan, Michael Buckley, Barry Conway, Máire Cunningham, Helen Curley, Richard Curran, Bernice Evoy, James Finn, Tanya Holly, Gillian Leeson, John Loughlin, Ralph MacDarby, Vincent Madigan, Kathryn Maybury, Neil McDonnell, Salvador Nash, Gillian O’Shaughnessy, Maureen O’Sullivan, Kevin Prendergast, Doug Smith.

**In attendance:** Tara Keane (Secretariat) Michael Buckley (Central Bank), Fiona Donnellan (Revenue), Emma Roche-Cagney (Attorney General’s Office)

**Apologies:** Marie Daly, Emma Doherty, Ian Drennan, Michael Halpenny, David McFadden, Ciara O’Leary.

1. **Minutes & Matters arising**

The minutes of the 87th Plenary meeting were adopted. There were no matters arising.

1. **Code of practice**

As per the Code of Practice, members are obliged to notify either the Secretariat or Chairperson should they have a conflict of interest in relation to any agenda item at Plenary or Committee meetings.

The Chairperson requested that anyone with a conflict of interest make themselves known to the Secretariat. No such conflicts were declared.

1. **EU Measures and European Commission Proposals with relevance to company law**

The following updates were provided:

*a. Insolvency Directive (EU) 2019/1023 on preventive restructuring frameworks (second-chance Directive)*

The Directive was published on 20th June 2019 following its adoption by the European Council and European Parliament. The Department launched a public consultation on the transposition of the Directive at [dbei.gov.ie/en/Consultations/Public-Consultation-on-Directive-EU-2019-1023.html](https://dbei.gov.ie/en/Consultations/Public-Consultation-on-Directive-EU-2019-1023.html)

 The Consultation document and a Response Template were published on the Department’s website and can be accessed at the link below. The Consultation will close on 6 March 2020. The consultation was sent to the CLRG upon release. The Corporate Insolvency sub-group is finalising a response to the consultation.

*b. Company law digitalisation Directive (EU) 2019/1151*

The Directive on digital tools was published in the Official Journal on 11 July 2019 and entered into force on 31 July 2019. Under Article 2 of the Directive, Member States must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 August 2021. The CRO new ICT system is expected to meet the requirements

*c. Transposition of second Shareholders Rights Directive (Directive (EU) 2017/828)*

 The deadline for transposition of Directive (EU) 2017/828 (Shareholders’ Rights’ Directive) was 10 June 2019. The Department was continuing to work intensively with the Office of Parliamentary Counsel on the transposition of the Directive and expected that the S.I. would be finalised very shortly.

*d. Directive of 18 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions*

On 27 November 2019, the Directive on cross-border conversions, mergers and divisions was adopted by the European Parliament and the Council (Directive (EU) 2019/2121) This Directive clarifies the existing rules on cross-border mergers in the EU and, for the first time, has introduced rules on cross-border conversion and division for all Member States.

The Directive entered into force on 1 January 2020 and amended the so-called Codification Directive 2017/1132. Its provisions are not directly applicable, and it is up to the Member States to implement the Directive into national law. Member States must do so by 31 January 2023.

Any queries on EU Measures and European Commission Proposals can be directed to the Secretariat at clrg@dbei.gov.ie

1. **Pending Bills**

The following update was provided:

*a. General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018*

The General Scheme of this Bill was approved by Government and published on 4 December 2018. The main features of the Bill were agreed as part of the Government’s decision to adopt its package of ‘Measures to Enhance Ireland’s Corporate, Economic and Regulatory Framework’ (subtitled ‘Ireland combating “white collar crime”) (published November 2017). The General Scheme establishes the Office of the Director of Corporate Enforcement (ODCE) as an agency, in the form of a Commission, to be called the Corporate Enforcement Authority.

The Joint Oireachtas Committee on Business, Enterprise and Innovation was undertaking Pre-Legislative Scrutiny on the Bill at the time of the dissolution of Dáil Éireann and officials from the Department briefed the Committee on 5 February 2019. The Director of Corporate Enforcement appeared before the Committee on 19 February 2019. The Chair of the CLRG and Vincent Madigan appeared before the Committee on 2 April 2019 as did representatives from the Law Reform Commission. At the date of dissolution a date for the Minister’s appearance had still to be confirmed.

A drafter from the Office of the Parliamentary Counsel worked with the Department to complete a draft of the Bill for publication. Publication of which will depend on the outcome of pre-legislative scrutiny.

Any queries on upcoming legislation can be directed to the Secretariat at clrg@dbei.gov.ie

1. **Annual Report 2019**

The Chairperson provided an overview of the Draft Annual Report to the Group, noting that the text of the report and its appendices had been furnished to all members. The Report provides a summary of the Group’s progress on the Work Programme to date and notes all plenary meetings as well as outlining the membership of the Group’s various Committees.

There was one outstanding item of drafting to be settled, relating to one proposal of the Corporate Governance Committee on the Summary Approval Procedure. The Chairperson proposed to liaise with the present and former Chairs of the Committee, Salvador Nash and Ralph MacDarby to finalise that drafting.

The Draft Report was adopted, subject to such redrafting as would result from the consultation between the Chairperson and Messrs Nash and MacDarby.

1. **Committee updates**

Updates were provided by the various Committee Chairs as detailed below.

**a.** **Corporate Enforcement Committee**

The Chairperson, on behalf of Ian Drennan, Committee Chairperson reported the reasons as to why the work of the Committee has been deferred, in light of the Corporate Enforcement Authority Bill, the Law Reform Commission Report and the issue regarding disclosure of the Anglo Report to the Oireachtas Committee, the Corporate Enforcement Committee’s deliberations and conclusions would in all likelihood be duplicative and might be overtaken by events

On a related matter and for information, a draft report of the Hamilton Group had been circulated to Group members in recent weeks and comments on that draft had been furnished to the Department of Justice.

**b.** **Corporate Governance Committee**

 Mr Salvador Nash, Committee Chairperson reported that the Committee continued to work through a number of miscellaneous items referred to it by the Chairperson and as well as finalising its work on the Summary Approval Procedure Report. Its work can be broadly categorised into three categories –

1. Finalising the text of its review of the operation of the Summary Approval Procedure as provided for in the Work Programme;
2. Items previously considered by the CLRG which have not been actioned; and
3. Items which have never been considered by the CLRG.

Where an item has been previously considered, it has been decided that the original recommendation still stands unless further submissions have been made in respect of the issue.

Work continues on those items which have not been subject to any consideration or review by the CLRG. Of particular note is a proposed amendment in relation to section 449(1) of the Companies Act made by Euroclear Bank as part of the package of consequential company law amendments it considers necessary to facilitate the migration of securities post - Brexit. This is a priority item for the Committee.

**c. Insolvency Committee**

* Professor Irene Lynch-Fannon, Committee Chairperson reported to the meeting.

The Department of Business, Enterprise and Innovation sought submissions to a public consultation on the transposition of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019, amending Directive (EU) 2017/1132 on restructuring and insolvency. The Directive seeks to reduce barriers for cross border investment, reduce the cost of insolvency and support efforts to reduce non-performing loans.

The Committee is currently finalising a draft response to the consultation which has sought views only in respect of the discretionary elements of the Directive.

The Committee note that the consultation is drafted in such a way so as to examine the Directive against Ireland’s existing examinership process, seeking to highlight areas where examinership may need to be adjusted to comply with the Directive. However, there was consensus amongst the Committee that certain of the provisions of the Directive sit more comfortably within Ireland’s scheme of arrangement process.

The Committee would urge the Department to consider the totality of corporate restructuring processes in the State rather than confine itself solely to examinership. The overall view of the Committee was that examinership is an excellent tool and we are already ahead of Europe when it comes to corporate rescue.

Given the tight time frame within which a response needed to be prepared, it will not be possible to give the full Review Group an opportunity to make substantive comments on the submission. It will however be circulated for information.

**d. Part 23 Committee**

The Chairperson reported that the continued to examine the consequential company law amendments which Euroclear Belgium consider necessary to facilitate the migration of securities post-Brexit. A draft report from the Committee is at an initial stage and will be circulated for comment in the coming weeks before submission to the Minister.

**e. Statutory Committee**

The Chairperson reported that Committee would be reconvened as and when responses to proposed legislation are required within a short time frame.

1. **Practice updates**

There were no practice updates or issues arising in practice signalled for discussion.

1. **Next meeting date**

The Review Group will meet again in June to discuss its Work Programme 2020 2022.

1. **AOB**

There were no matters signalled to the Secretariat.

The meeting then ended.