

**87th Plenary Meeting of the Company Law Review Group**

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| **Date:** | 2nd December 2019 |
| **Time:** | 11:00am – 12:00pm |
| **Venue:** | Room 110, Department of Business, Enterprise and Innovation, Kildare Street, Dublin 2.  Mr. Paul Egan (Chairperson), Barry Conway, Máire Cunningham, Helen Curley, Richard Curran, Marie Daly, Jeanette Doonan, Bernice Evoy, James Finn, Michael Halpenny, Tanya Holly, John Loughlin, Irene Lynch-Fannon, Ralph MacDarby, Kathryn Maybury, Neil McDonnell, Salvador Nash, Gillian O’Shaughnessy, Maureen O’Sullivan, Eadaoin Rock.  Tara Keane (Secretariat), Emma Geraghty (DBEI), David Hegarty (on behalf of Ian Drennan)  Barry Cahir, Emma Doherty, Ian Drennan, Rosemary Hickey, Gillian Leeson, Kevin Prendergast |

**Present:**

**In attendance:**

**Apologies:**

**Agenda**

1. **Minutes & Matters arising**

The minutes of the 86th Plenary were adopted.

There were no matters arising.

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

The following updates were provided:

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

The Directive was published on 20th June 2019 following adoption by the European Council.

The Department is engaging in an exercise mapping the Directive against the examinership provisions in the Companies Act 2014 and considering any relevant updates and amendments to support transposition of the Directive. It is intended to launch a public consultation on the Member State options before the end of the year, also seeking observations on the general suitability of examinership under the Directive also. The consultation will be sent to the CLRG upon release.

**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 shall 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 of the Directive.

**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.  We are continuing to work intensively with the Office of Parliamentary Counsel   on the   transposition of the Directive and expect that the S.I.  will be finalised shortly.

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

The Directive was adopted on the 18th of November and introduces comprehensive procedures for cross-border conversions and divisions and provides for additional rules on cross-border mergers of limited liability companies established in an EU member state. They also offer further simplifications that will apply to all three operations. The directive will enter into force 20 days after its publication in the Official Journal of the EU. Member states will then have 36 months to adopt the measures necessary for its implementation.

1. **Pending Bills**

The following update was provided:

**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 provides for the establishment of the Corporate Enforcement Authority with all the same functions and powers that the Director of Corporate Enforcement has with some modifications to reflect a new commission structure. Head 9 (Membership of the Authority) provides for up to 3 full time Commissioners and is designed to give the Authority the flexibility to structure itself to meet the differing demands of its remit, which includes investigation, prosecution, supervision, and advocacy, and along clear lines of responsibility. Head 11 (Staff of the Authority) gives the Authority the ability to appoint its own staff. The General Scheme also provides for new investigative tools, notably new search and entry powers to enhance the Authority’s ability to gather evidence that is help electronically.  Parts 3, 4 and 5 make amendments to the Companies Act 2014 to give effect to certain recommendations of the CLRG in relation to share capital, corporate governance and unsecured creditors.

The Joint Oireachtas Committee on Business, Enterprise and Innovation is currently undertaking Pre-Legislative Scrutiny on the Bill 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. A date for the Minister’s appearance has still to be confirmed.

A drafter from the Office of the Parliamentary Counsel has been assigned and has 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.

**The Migration of Participating Securities Bill 2019**

Government approved the drafting of the Migration of Participation Securities Bill 2019 on 17th July 2019.The legislation facilitates the long-term transition of the Irish Securities Market from its current settlement system based in London to another Central Securities Depository based within the European Union.

The legislation is part of the Government’s response to the direct impact of the decision of the United Kingdom to leave the EU. Brexit means that the Irish market will no longer be able to access the current UK settlement system called CREST.

In the event of a “Hard Brexit”, the European Commission has adopted a temporary and conditional equivalence decision for UK based Central Securities Depositories. This equivalence decision for UK based CSDs expires on the 31st March 2021. Thus, migration to the new system must be completed by this date.

The Bill is a priority for Government in the Autumn term as part of its overall Brexit preparations and was initiated on the 20th of November and second stage on Tuesday 26th November.

**Finance (Tax Appeals and Prospectus Regulation) Bill 2019**

Further to the update given in October, the Bill has now completed second stage in the Seanad.

1. **Committee updates**

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

**Corporate Enforcement Committee**

Further to the Committee Chairperson’s update at our last plenary, a recommendation will issue to the CLRG Chairman that the Committee’s work be deferred while the Corporate Enforcement Bill is still under pre-legislative scrutiny and the LRC’s Report on Regulatory Powers and Corporate Offences is still under consideration by the Department of Justice. It is preferable that the Committee consider the issues within its remit with the benefit of the results of those parallel processes and deliberations.

**Corporate Governance Committee**

Further to its adoption at our last plenary, the Committee’s report on the Summary Approval Procedure will be submitted to the Minister before Christmas.   
  
The Committee continues to work through a number of miscellaneous items referred to it by the Chairperson and hope to make a submission to the Department by the end of February, in time for the Review Group’s Annual Report.

**Insolvency Committee**  
The Committee is expected to begin its consideration of winding up and the regulation of liquidators in the New Year. An initial discussion document will issue in early December for the Committee’s consideration before meeting in January.

**Part 23 Committee**

The Migration of Participating Securities Bill was initiated 20th November. The Committee are meeting in early December and its consideration of any arising implications from a company law perspective are ongoing.

**Statutory Committee**

An overview of the Committee’s work to date was given. It was outlined that the Committee would reconvene as and when responses to proposed legislation were required within a short time frame.

1. **Practice updates**

The Chairperson, Mr. Paul Egan provided an update on the application of S.I. No. 110/2019 - European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019.

1. **Update on work programme**

The Chairperson gave an update on the progression of the work programme to date. Two items of work are outstanding:

1. The Corporate Enforcement Report
2. Winding up and the Regulation of Liquidators.
3. **AOB**

There were no matters signalled under any other business.