

**97th Plenary Meeting of the Company Law Review Group**

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| **Date:** | Thursday 26 May 2022 |
| Time**:** | 10:00 a.m. to 11:30 a.m. |
| **Venue:** | By MS Teams meeting participation software |
| **Present:** | Paul Egan (Chair), Alan Carey, Barry Conway, Máire Cunningham, Marie Daly, Emma Doherty, Bernice Evoy, James Finn, Michael Halpenny, Tanya Holly, Irene Lynch Fannon, Vincent Madigan, Kathryn Maybury, David Mc Fadden, Salvador Nash, Fiona O’Dea, Maureen O’Sullivan, Gillian O’Shaughnessy, Eadaoin Rock, Doug Smith  Therese Moore |
| **In attendance:** | Deirdre Morgan **(Secretariat)**  David Allen, B.L, Matthew Brady B.L **(Legal Researchers)** |
| **Apologies:** | Richard Curran, Ian Drennan, David Hegarty, Kevin Prendergast, Maura Quinn, Rosemary Hickey, Neil McDonnell, Ciara O’Leary |

1. **Attendance**

The Chair welcomed the new Secretary, Ms Deirdre Morgan, to the Group and noted apologies.

1. **Declarations of interest under the CLRG’s Code of Practice**

As per the Code of Practice, members are obliged to notify either the Secretariat or Chair should they have a conflict of interest in relation to any agenda item at Plenary or Committee meetings. No such interests were disclosed to the Chair or Secretariat.

1. **Minutes of the 96th Review Group meeting held on 24 March 2022**

The minutes of the 96th Plenary were approved.

1. **Consideration of the Report of the Corporate Governance Committee miscellaneous issues under the Companies Act**

The Committee Chair, Mr Salvador Nash, presented on the different issues considered by the Committee and the resulting recommendations. The recommendations were considered by the Review Group with further deliberation on issues 7 and 8. The report was agreed as amended and formally adopted. It was noted that some of the recommendations provide that further consideration be given by the Committee in due course. The Review Group members thanked the Committee Chair and members for their work in preparing the report.

1. **Update and planned programme of the Corporate Insolvency Committee**

The Committee Chair, Prof. Irene Lynch Fannon, advised that a potential system of Self-Administered Liquidation which was first recommended by the CLRG in its 2017 Report on the Protection of Employees and Unsecured Creditors and subsequently became item 8 of the CLRG’s work programme for 2020-2022 will be continued under the new proposed work programme. The Committee Chair informed the Group that preliminary research had been done on this issue by David Allen BL. This included a comparative assessment of what was available in relevant jurisdictions.

It was noted that the Department had responded to the Preventive Restructuring Directive (PRD) public consultation document and that the Committee will keep the transposition of the PRD under review.

1. **Update and planned programme of the Public Company Committee**

The Committee Chair, Paul Egan SC, stated that there are no items for consideration at present.

1. **Update and planned programme of the Corporate Governance Committee**

The Committee Chair, Mr Salvador Nash, set out a number of work items that will be considered by the new Committee including the Directors’ Compliance Statements which is being carried over from the 2020-2022 Work Programme.

1. **Update on Corporate Enforcement**

Ms Fiona O’Dea of DETE provided an update on the Companies (Corporate Enforcement Authority) Act 2021 (CEA). The timeframe for commencement and to provide for an establishment day for the Authority is still to be confirmed, but is likely to be in the coming weeks.

1. **Upcoming EU and Irish company law**

Ms Fiona O’Dea of DETE updated the group on legislative developments, namely:

* A General Scheme for a **Limited Partnerships Bill,** to replace the 1907 Act,is being worked on to incorporate issues raised in light of the media coverage around the Pandora Papers.
* Work continues on the drafting of the General Scheme of a **Registration of Business Names Bill** to replace 1963 Act. The Department is liaising with the CRO with a view to finalising the scheme later in 2022.
* A scoping exercise of legislative proposals is currently underwayfor **a proposed General Scheme of a Companies (Miscellaneous Provisions) Bill**.
* Work is underway on both the regulations for the **transposition of Cross Border Mergers, Conversions and Divisions Directive (EU) 2019/2121** as well as the Rules of the Superior Courts and the CRO in relation to Forms. Transposition deadline is 31 January 2023.
* The public consultation on the **Transposition of Public Country by Country Reporting Directive** **(EU)2021/2101** closed in February with the majority of respondents supporting adoption. The report was submitted to the Minister. Transposition deadline is 22 June 2023.
* On the **Negotiation of a Directive on Corporate Sustainability Reporting**, the European Council reached a general approach in February 2022. Trialogues are taking place throughout May.
* **A proposal for a Directive on Corporate Sustainability Due Diligence (CSDD)** was published by the European Commission on 23rd February 2022. The Department is engaging at EU working party level to clarify the practical implications for stakeholders.  Negotiations at EU level may well continue into 2023. The Department has begun a process of engagement with key stakeholders and intends on conducting a public consultation on the proposals in due course to help inform government's position.
* The Department is finalising a proposed policy response to the issues raisedin the public consultation on **Proposed Co-operative Societies legislation**. It is envisaged that the General Scheme will be brought to Government in Q2 2022.
* Draft Regulations are well advanced to transpose the mandatory provisions of the **Preventive Restructuring Directive** **(EU) 2019/1023.**

1. **Update on applications for membership**

The Secretary provided a brief update on the progress of the appointment process for the new membership of the Review Group, which is intended to be finalised by end June.

The Chair noted that this is the last meeting for some of the members, and thanked Vincent Madigan and Maura Quinn who have indicated that they will not be looking to be reappointed. Many members thanked Vincent, founding member of the CLRG in 2000, for his many years of commitment to the CLRG.

1. **Matters arising from practice**

The CRO Registrar, Maureen O’Sullivan, updated the group on a number of issues:

* The CRO IT system was upgraded just before Easter and some additional functionality is now available including the ability to save draft submissions and reorder the watchlist which were requested by presenters.
* The CRO is now accepting certified copies of Bonds for companies without a non-EEA director.
* There have been two applications to date under the SCARP process.
* There will be a continuing expansion of mandatory electronic filing of documents.
* The CRO strike-off process, which was suspended during the pandemic, is being resumed, along with the recommencement of issuing of summonses for prosecutions for failure to file annual returns.
* The CRO public office was closed during COVID. Due to the increase in electronic filing of documents (just under 90% of documents filed during 2021 were filed electronically) it is not considered that there is sufficient need to return to the provision of a public office. CRO will continue to facilitate the filing of key time-sensitive documents (Court Orders, matters related to stock exchange filings etc) by prior arrangement.
* In relation to compliance with the registration of beneficial owners, companies have a 90% compliance rate, with societies at 73%.
* With the commencement of the Criminal Justice Act (Money Laundering and Terrorist Financing) (Amendment) Act 2021, there has been an increase in searches of the RBO register. There has also been an increase in discrepancy notices and non-compliance notices. In early 2023, there will be a requirement for directors to provide their PPS numbers to validate their identity There has also been an increase in discrepancy notices and non-compliance notices.
* The CRO evaluating the impact of the EU Preventive Restructuring Directive. This Directive obliges Ireland to provide certain statistics on an annual basis to the EU commencing in mid-2023. The Registrar confirmed that the CRO currently only accepts ROS electronic signatures but will consider other e-signatures such as DocuSign in the future.

1. **AOB**

The Secretary advised that the CLRG 2021 Annual Report was noted at Cabinet on 24 May and will now be laid before the Oireachtas.

1. **Date of next meeting**

The Chair confirmed that a preliminary date for the next Plenary meeting is September 2022 with the new membership. He confirmed that the new committees could get up and running in advance of that meeting.