



## 94th Plenary Meeting of the Company Law Review Group

<b>Date:</b>	Tuesday, 29 June 2021
<b>Time:</b>	09:30 am to 11 am
<b>Venue:</b>	Zoom
<b>Present:</b>	Paul Egan, Alan Carey, Barry Conway, Máire Cunningham, Richard Curran, Marie Daly, Emma Doherty, Michael Halpenny, David Hegarty, Tanya Holly, Irene Lynch-Fannon, Vincent Madigan, Kathryn Maybury, Neil McDonnell, David McFadden, Therese Moore, Salvador Nash, Fiona O’Dea, Conor O’Mahony, Grace O’Mahony, Gillian O’Shaughnessy, Maureen O’Sullivan, Kevin Prendergast, Maura Quinn.
<b>In attendance:</b>	Stephen Walsh (Secretariat), David Allen (Legal Researcher), Liam O’Flaherty (Legal Researcher)
<b>Apologies:</b>	Rosemary Hickey, Ian Drennan, Bernice Evoy, James Finn, Taya Holly, Doug Smith.

### 1. Attendance and apologies

The Chairperson noted apologies and welcomed Conor O’Mahony and David Hegarty who are attending on behalf of Ian Drennan.

The Chair also welcomed Grace O’Mahony attending on behalf of Eadaoin Rock and Therese Moore attending on behalf of Gillian Leeson.

### 2. 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 Chairperson 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 Chairperson or Secretariat.

### **3. Minutes of the Review Group meeting held on 03 March 2021**

The minutes of the 93rd Plenary meeting were approved.

### **4. Report from the Corporate Insolvency Committee**

Committee Chairperson, Professor Irene Lynch Fannon, provided an overview of the Report of the Corporate Insolvency Committee dealing with Work Stream 2 and 3 of Work Programme Item 1 of the CLRG Work Programme. There are a number of company law provisions being reviewed including sections 599, 604, 608 and 610. Third party funded litigation in insolvency is being looked at in the context of insolvency only. Most common law jurisdictions permit it. There is no proposal coming forward in relation to a state fund for such purpose.

The recent SCARP Bill is based on the Committee's report from the end of 2020. The Chair paid tribute to all the members of the Committee and the Secretariat and the Legal Researcher for their work.

In relation to SCARP and repudiation of contracts (leases) the Department confirmed that this can happen under (1) a court approved process or (2) an out of court process. Under the Bill the Process Advisor can engage with the contracting party on the issue.

### **5 Report from the PLC Committee**

The Chair of the PLC Committee confirmed that the Committee is looking at the definition of shareholder under the Shareholder Rights Directive (SRD) and the commencement date of dematerialised shareholdings in a public company and the consequences of issues on migration. The Committee is not proposing an amendment to the definition of shareholder in the Companies Act as the EU are currently working on a definition of the word under the SRD. The Committee is looking at companies being able to identify their shareholders, for transparency reasons. On the dematerialisation issue for public companies and securities the Committee is considering if the impact date should be 1 January 2023. The Committee is also looking at the timeframes that affect voting at meetings and Scheme of Arrangement majorities.

The Chair acknowledged the work of the Legal Researcher and thanked members of the Committee, particularly the Registrars.

The Chair acknowledged that some of the issues are complicated as they come under policy responsibility of the Department of Finance.

### **6 Report from the Corporate Governance Committee**

The Chair of the Corporate Governance Committee confirmed that the current objective of the Committee was to produce an autumn report. Two meetings have been held so far and a further two meetings are expected. A number of miscellaneous corporate governance proposals are being reviewed. The Chair thanked the members of the committee for their work to date.

ICTU mentioned that director compliance statement is on the current work programme and ICTU will engage with the Chair of the Corporate Governance Committee on the matter.

## **7 Report from the Corporate Enforcement Committee**

David Hegarty confirmed that there are a number of developments relevant to the Committee and the continuation of its work including the Hamilton Review Group Report where 9 of the 25 recommendations are relevant to ODCE and 5 recommendations are relevant to Gardai powers. The implementation plan of the review group has to give effect to some of these powers.

On the Corporate Enforcement Amendment Bill, Pre-Legislative Scrutiny was completed in April and it is expected to go to Cabinet quite soon. The General Scheme of the Police Powers Bill has been published. The Bill does provide for the possibility of a three-member Enforcement Authority.

## **8 Upcoming EU and Irish company law**

Ms Fiona O’Dea from DETE presented an update on upcoming law and proposed law.

### **European Proposals with relevance to company law**

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

- The Directive was published on 20 June 2019 following its adoption by the European Council and European Parliament. The Department launched a public consultation on the Directive, which has now closed, and is actively considering the responses received. The Department will also consider the Directive in the context of recommendations received from the CLRG in relation to the rescue of small businesses.
- Given the disruption and additional legislative requirements arising as a result of COVID-19, Ireland sought and was granted a year-long extension (17 July 2022) as provided for under Article 34 paragraph 2.

#### ***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’s new ICT system is expected to meet the requirements and transposition via legislation is not expected to be necessary. A mapping exercise for submission to the Commission is being finalised. All requirements of the Directive are expected to be met and transposition via legislation is not necessary.

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

- Directive (EU) 2019/2121 (as regards cross-border conversions, mergers and divisions) amending Directive 2017/1132 (codification of company law), entered into force on 1 January 2020. This Directive clarifies the existing rules on cross-border mergers and, for the first time, has introduced harmonised rules for cross-border conversions and divisions for all Member States.
- The Department conducted a public consultation focused on the MS options which closed in October 2020. The submissions have been analysed and following further engagement with relevant authorities a Policy Proposal and Regulatory Impact Assessment are in development. Department officials are participating in Transposition Workshops and the Directive must be transposed by 31 January 2023.

**Department Legislation**

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

- The Companies (Corporate Enforcement Authority) Bill is a legislative priority for this session. This legislation has been in development since the Government adopted the package of Measures to Enhance Ireland's Corporate, Economic and Regulatory Framework in October 2017. The package included the action to establish the Office of the Director of Corporate Enforcement as an independent company law compliance and enforcement agency.
- The General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018 was published on December 4th, 2018. My Department worked with the Office of the Parliamentary Counsel on the drafting of the Bill and the Director was consulted on the draft legislation on an ongoing basis.
- Pre-legislative scrutiny on the General Scheme of the Bill had not concluded at the time of the dissolution of the last Dáil and began again in December 2020. The Director of the Office of Corporate Enforcement attended the Committee on 22nd January and the Tánaiste and Minister Troy attended on 29th January 2021. The Joint Committee published its report and recommendations on the General Scheme of the Bill on 20th April 2021. These have been reviewed in the Department and it is intended to revert to Government with a stamped Bill before the Summer.

***General Scheme of Companies (Rescue Process for Small and Micro Companies) Bill 2021***

- The Bill has been drafted and was approved by Government for publication on 22 June.

- A waiver of pre-legislative scrutiny was granted by the Joint Committee for Enterprise, Trade & Employment.
- The Bill is now being fast-tracked through all stages and is scheduled for debate in the Dáil on 2 July 2021 with the aim of enactment prior to the summer recess.

#### ***Extension of Companies (Miscellaneous Provisions) (Covid-19) Act 2020***

- In December 2020, the Government approved the extension of the interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 to 9 June 2021. The Act makes temporary amendments to the Companies Act 2014 and the Industrial and Provident Societies Act 1893 to address issues arising as a result of Covid-19.
- The Act ensures that 240,000 companies and 950 industrial and provident societies in Ireland can hold their AGMs and general meetings by electronic means. It also makes provision in respect of business solvency by increasing the period of examinership to 150 days and increasing the threshold at which a company is deemed unable to pay its debts to €50,000.
- On 18 May, the Cabinet approved a further extension of the Act to 31 December 2021.

#### ***Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020***

- Part 4 of the Act provides for miscellaneous amendments to the Companies Act 2014 to facilitate the operation of a substitute securities settlement system, compatible with the law of the EU after the transition period.
- The Part 4 Commencement Order was signed on the 5 March 2021 with the 15 March 2021 being the appointed day when Part 4 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 came into operation.

#### ***Co-operative Societies Bill 2021***

- The Industrial and Provident Societies Acts 1893-2018 provide the statutory regulatory basis for the formation and general operation of industrial and provident societies (primarily co-operatives) in Ireland. The current legislative framework is a largely Victorian statutory code incorporating a number of antiquated provisions.
- The purpose of the Bill is to consolidate and modernise the existing Industrial and Provident Societies legislation and to ensure that an effective legislative framework suitable for the diverse range of organisations using the co-operative model in Ireland is in place. The Bill is very substantial and complex in nature and will, among other things, provide co-operative societies with a distinct legislative identity reflecting the co-operative ethos; reduce the number of members required to form a co-operative; revise the provisions on debentures; introduce audit exemptions in

line with the approach taken in the Companies Act 2014; strengthen the governance provisions and revise the powers of the Registrar of Friendly Societies.

- Work on the Bill is progressing well and the Department intends to launch a public consultation over the Summer period seeking views on a wide range of areas, including the types of persons who will be able to set up a co-operative, audit exemption thresholds, matters to be included in the rules of the societies, etc., and to inform stakeholders of the approach taken on other issues.
- The Department can confirm that the outdated term “Industrial and Provident Society” will not be used in the new legislation.

#### ***Registration of Business Names Act 1963***

- Following recent engagement with the Companies Registration Office, further revision of the Draft Heads for the replacement of the Registration of Business Names Act 1963 is ongoing and will progress as resources allow.
- The CLRG submission is under consideration.

#### ***Limited Partnership Bill***

- The Department carried out a public consultation in March 2019. Work on a draft General Scheme is advanced in the Department but other legislative priorities have meant that the modernisation project awaits the completion of the priority projects. The Department hopes to make further progress on the project in the second half of this year.
- The submissions to the public consultation were considered as was the CLRG submission. The submissions are published on the Department’s website but as the Department is still working on the Heads the process is not final.

### **9. Matters arising from practice**

The Registrar of Companies (Maureen O’Sullivan) mentioned a number of issues including the end of the filing extension period and issues around the reopening of the CRO public office.

#### **10. AOB**

No matters arose under AOB.

#### **11. Date of next meeting**

The next Plenary meeting of the Review Group will take place once the next Report is ready for consideration.

The meeting then ended.