



100th Plenary Meeting of the Company Law Review Group

Date: Wednesday 24th May 2023

Time: 4 p.m. to 5:30 p.m.

Venue: Mason Hayes & Curran
South Bank House, Barrow St, Dublin 4, D04 TR29
and Remote via 'Zoom'

Present: Paul Egan (Chairperson), Deirdre Ahern, Alan Carey, Barry Conway, Margaret Cullen, Richard Curran, Emma Doherty, Ian Drennan, Bernice Evoy, James Finn, Michael Halpenny, Tanya Holly, Neil Keenan, Eamonn Kennedy, Gillian Leeson, Irene Lynch Fannon, Kathryn Maybury, David McFadden, Salvador Nash, Fiona O’Dea, Gillian O’Shaughnessy, Maureen O’Sullivan, Doug Smith, Tracey Sullivan

Alternates: Susan Monaghan for Kevin Prendergast (IAASA)

In attendance: Deirdre Morgan, Dan O’Neill (**Secretariat**)
David Allen (Legal Researcher)

Apologies: Rosemary Hickey, Neil McDonnell, Niamh Ryan, Cathy Smith, Eadaoin Rock

Agenda

1. Welcome and Introduction by Chair

The Chairperson welcomed everyone to the meeting and noted apologies. The Chairperson welcomed Dr Margaret Cullen from the Institute of Directors in Ireland who replaced Thora Mackey in February.

2. Declarations of Interest under the CLRG’s Code of Practice

There were no declarations of interest.

3. Minutes of the 99th Review Group Meeting (for approval)

The minutes of the 99th Plenary were approved with no further amendments.

4. Upcoming EU and Irish Company Law Legislation

Fiona O’Dea (DETE) provided the following updates:

National

Scheme of Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2023 –

A public consultation was launched by the Department on 8th May with a deadline for receipt of submissions of 9th June. The consultation document was circulated to members of the CLRG. The areas of reform broadly relate to four distinct areas of company law including administration, corporate governance, corporate insolvency and enforcement and supervision.

There is no definite timeframe for the drafting of the General Scheme (of the Miscellaneous Bill), but DETE is aiming for Q2 2023, which would mean going to Government to seek approval to publish after the summer recess. But the submissions from the public consultation may have an impact on the timeframe.

Plan of Action on Collective Redundancies Following Insolvency Bill 2023 - A general scheme which amends redundancy, employment and company related law was published on the Department website. The Bill will undergo pre-legislative scrutiny before the Joint Oireachtas Committee on Enterprise, Trade and Employment (JCETE) on 31 May. The purpose of this Bill is to implement the outstanding company law and employment law commitments set out in the Plan of Action on Collective Redundancies following Insolvency by amending the Companies Act, 2014 and the Protection of Employment Act, 1977.

General Scheme of a Co-operative Societies Bill 2022 - Following the publication of the General Scheme of Bill in November 2022, pre-legislative scrutiny of the General Scheme by the JCETE commenced in December 2022, with Departmental officials attending a public meeting of the JCETE. The JCETE held a second public session in February 2023. A Drafter from the Office of the Parliamentary Counsel (OPC) has been assigned and a Bill is expected in late 2023.

Limited Partnerships Act, 1907 and Registration of Business Names Act 1963 - A General Scheme to replace the 1907 and 1963 Acts is at an advanced stage and it is hoped to get Government approval to publish the General Scheme in Q2 2023 before the summer recess.

EU

Transposition of Cross Border Mergers, Conversions and Divisions Directive (2019/2121) – The Department developed draft regulations to repeal and replace the Cross Border Merger Regulations 2008 (S.I. 157 of 2008); instructions issued to the OPC on 21 December 2021 for settlement. The 31 January 2023 transposition deadline was not achieved, and a second drafter was assigned in early 2023. Officials anticipate the regulations will be settled by the drafters and signed by the Minister by 26 May 2023. The Secretariat will update the Group

accordingly. It was confirmed that the immediate effects by this transposition would be transnational, and that Cross-Border Merger conversions would come under new regulations.

Transposition of public Country by Country Reporting Directive (2021/2101) – The Department developed draft regulations and instructions issued to the OPC for settlement on 8 November 2022. It is expected that the transposition deadline of 22 June 2023 will be achieved.

A proposal for a Directive on Corporate Sustainability Due Diligence (CSDD) was published by the European Commission on 23 February 2022. The proposal will create legally binding obligations on companies to address the adverse environmental and human rights impacts arising from their own operations, their subsidiaries' operations and their chain of activities.

Following intensive negotiations at EU working party level, political agreement on the general approach was then agreed at Competitiveness Council on 1 December 2022. The CSDD file is now with the European Parliament for consideration. A plenary vote of the Parliament's final position will be held on 1 June. Trilogue negotiations between the European Parliament, Council and the European Commission will then commence, and a final Directive is not expected to emerge until the end of the year.

Directive on Corporate Sustainability Reporting (CSRD) which replaces the Non-financial Reporting Directive entered into force in January 2023. Ireland and other Member States now have 18 months to transpose the Directive i.e., mid 2024.

A stakeholder webinar was held on the 26 January 2023 with nearly 500 stakeholders in attendance. A Public Consultation seeking the views of stakeholders and interested parties on the Member State options contained within the Directive closed on 9 March 2023 and responses have been analysed. Work is underway on the draft Regulations to transpose the new rules and the Department is also planning a further stakeholder event for before the summer break on the preferred policy options to be taken.

A proposal for a Directive on Upgrading Digital Company Law (UDCL) was published by the European Commission on 29 March. The UDCL proposal will further the EU's digitalisation efforts by increasing the information held on companies/limited partnerships at national and EU level. The proposal also seeks to reduce obstacles to cross-border expansion/activities by eliminating the need for certain formalities such as the apostille/certified translation of documents, this should result in the reduction of administrative burdens and facilitate mutual recognition of company law documents between Member States. The proposal utilises the "once-only" principle to ensure that companies when setting up a branch or new company in another Member State can utilise the information contained in the national business register. There have been two working party meetings to date with a further meeting scheduled for June 2023.

European Union (Dematerialised Securities) Regulations 2023 These are complex regulations providing for dematerialisation of securities under the Central Securities Depository Regulations. It is expected that drafting and legal settlement to be completed shortly.

Two proposals for directives were published in December 2022 and are part of the Commission's priority to advance the Capital Markets Union (CMU), which Ireland fully supports.

- **A Proposal for a Directive on Multi-vote Share Structures**

This Proposal is part of the Commission's Listing Act package and is designed to allow companies use multiple-vote shares when listing for the first time on SME Growth Markets.

Ireland's main objective on this was to maintain sufficient flexibility so as, if implemented, it would not negatively impact on systems in Ireland where multi-vote share structures already exist, and this was achieved. Negotiations are expected to commence in October 2023.

In Ireland, a public consultation on the proposal took place in February 2023 but responses were very limited. The Department has engaged with key stakeholders and CLRG public company sub-committee has examined it.

- **Proposal for a Directive harmonising certain aspects of insolvency law (Insol III)**

aims to address obstacles to freedom of capital movement and cross-border investment within the EU through harmonisation of corporate insolvency regimes – particularly in the context of avoidance actions.

Consideration of the proposal is still at an early stage at EU working party level, negotiations have taken place on Titles I, II and III to date. Ireland has engaged bilaterally with the Commission on some fundamental aspects of the Proposal which have potential to negatively interfere with our common law jurisdiction, and our sophisticated insolvency regime. A public consultation on the Proposal took place in February 2023, but responses were quite limited.

The Department has begun a process of engagement with key stakeholders and has formed a technical group to advise on certain aspects – which includes members of the CLRG Insolvency Committee. This technical group's input is valuable to the Department as it is at this point of the negotiation process that Ireland can influence to direction of the proposal.

To note, the Department is leading on negotiations for this Proposal which covers areas of competency from the Department of Finance, Department of Justice and the Courts Service.

5. Update from the Committees

a) Insolvency Standing Committee

The Committee Chair, Prof Irene Lynch Fannon, advised that in respect of the technical group on Insol III proposal there have been two meetings to date and the work of the group is proceeding title by title. The negotiations may take 18 months. The Commission has indicated its intention to have the proposal passed in 2024 with a view to transposing it in 2026. Key issues include the role of competent authorities and the Courts, and the separation of personal and corporate insolvency. A simplified liquidation procedure, which differs from the version discussed by the CLRG's Corporate Insolvency Committee in 2022, is

contained in the proposal but includes personal insolvency which does not fit with Ireland's current system.

b) Corporate Governance Committee

The Committee Chair, Salvador Nash, reported that the committee had commissioned two surveys on the Directors' Compliance Statement (DCS); responses were sought from both directors and practitioners. There was a disappointing response overall despite the surveys being widely advertised through member channels. A working paper on the survey results had been circulated to the committee but was subsequently withdrawn. A revised version will be circulated in due course. Seven themes came out of the survey.

c) Public Company Committee

The Committee Chair, Mr Paul Egan, advised that a research paper from a legal researcher has been commissioned on Parts 17, 23 and 24, and other sections of the Companies Act 2014 where policy responsibility or the relevant Minister's remit lies outside of this Department.

6. Matters arising from practice

Maureen O'Sullivan CRO updated the members on the following:

- The introduction of the PPSN requirement for directors did not go live at the end of April as originally planned. This is due to an I.T. enhancement being added. It is expected to go live on 11 June. The A1, B1, B10, B69 and B7 are among the forms that it will now be mandatory to file electronically and will be available online from June.
- The PPSN will be used to validate identity and used purely for matching with Social Protection records and will not be publicly accessible. An IPN will be the record identifying number for individuals who do not have a PPSN.
- Enforcement of Companies Act – a contract will shortly be placed for printing and posting of enforcement letters for non-filing of annual returns. It is estimated that around 40,000 companies are late in filing their annual returns. Letters will issue during June. It will be Q3/Q4 before any companies are struck off the register.
- It will be mandatory to complete cross-border merger forms online.
- There is no backlog in relation to the CRO processing incorporation A1, B1 or B10 forms.
- Reference was made to CJEU Case C-200/23 (Signatures as personal data), and it was stated that the CRO cannot redact information that is currently publicly available.
- It was noted that 40 of the most used forms out of 150 forms will be mandatory online. 94% of submissions were filed online in 2022. There is a cost/benefit balance around the remaining forms to be considered.
- The issue of merging forms was discussed. The view that this could lead to less transparency was expressed.

Ian Drennan CEA updated the members on the following:

- The CEA has, to date, received 33 SCARP Process Adviser reports – in respect of which 8 did not result in a rescue plan and 3 had objections to the proposed rescue plan. To date, unsecured creditors are recovering, on average, 3-5% of debt. Process Advisor costs, to date, have ranged from €10k-70k. The CEA intends to publish a high-level document for the purpose of providing stakeholders with the more salient information emerging from SCARP reports.
- There are several ongoing criminal investigations in progress and/or before the Courts.
- There had been an 87% increase in reports of insolvency liquidation in the period Jan-April 2023 compared to last year, which is to be expected.
- The forthcoming resumption of the Registrar’s strike off programme means that the CEA’s programme of seeking the disqualification of struck off, insolvent companies’ directors can also resume. Given the number of companies currently in potential strike off territory (i.e., c. 40,000), a significant number of consequential disqualifications can be expected during 2024 and beyond.
- Section 747 of the 2014 Act, which provides that certain parties (including creditors) can apply to the High Court for the appointment of an Inspector. There appears to be an upward trend in the use of this provision which, until recently, had not been utilised. The outcome of the WFS Forestry case, currently before the High Court, will, therefore, likely be significant in terms of establishing precedent.
- The CEA has advertised for the position of Director of Criminal Enforcement, link [here](#).

7. AOB

- Deirdre Morgan stated that the 2022 Annual Report had been noted at the Cabinet meeting on 16th May 2023 and that the document would be laid before the Oireachtas shortly.

8. Date of 2023 plenary meetings

The next Plenary meeting will be held in October 2023.