



# Annual Report 2010

## Company Law Review Group



An Roinn Fiontar, Trádála agus Nuálaíochta  
Department of Enterprise, Trade and Innovation

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## **Chairperson's Letter to the Minister for Enterprise, Jobs and Innovation**

Dear Minister,

In accordance with Section 71 of the Company Law Enforcement Act 2001, I have pleasure in enclosing for your consideration the annual report of the Company Law Review Group for the calendar year 2010. In the course of 2010 we presented a report on our 2008-2009 work programme and it was very gratifying for the Review Group to learn that the recommendations made by the Review Group shall find form in the Companies Consolidation and Reform Bill which is in the course of being drafted. Since then we have commenced our consideration of our 2010-2012 Work Programme.

The priority which has been given in the 2010-2012 Work Programme for the Review Group to assist in the finalisation of the Bill ahead of addressing new issues, is most welcome. Important and all as new matters may be, the priority has to be the publication of the new Companies Bill. The Review Group is committed to seeing this process through and we look forward to working with your Department in refining the heads of Bill and assisting in the drafting process in every way we can.

I know that you share our vision for a state-of-the-art company law code for Ireland. The proposed new legislation simplifies and modernises Irish company law and the sooner it is enacted, the better for Ireland.

Finally, I would also like to thank the Review Group's Secretary, Mr John P Kelly and his staff for their dedication to the task in hand and for their unfailing support to the Review Group and to myself.

Yours sincerely,

Dr Thomas B Courtney

Chairperson

# 1 Introduction

- 1.1. Part 7 (Sections 67 to 71) of the Company Law Enforcement Act establishes the Company Law Review Group as a statutory advisory body to the Minister for Enterprise, Trade and Innovation.

judgements insofar as they relate to the Companies Acts,
- 1.2. Section 71 of that Act requires the Company Law Review Group to report annually to the Minister for Enterprise, Trade and Innovation by 31<sup>st</sup> March of each year on the activities of the Review Group during the preceding calendar year. This report is in fulfilment of that obligation for 2010 and will in turn be laid before the Houses of the Oireachtas by the Minister for Enterprise, Trade and Innovation in fulfilment of his obligation under that Section.
  - f) The approach to issues arising from the State's membership of the European Union, insofar as they affect the operation of the Companies Acts,
  - g) International developments in company law, insofar as they may provide lessons for improved State practice, and
  - h) Other related matters or issues, including issues submitted by the Minister to the Review Group for consideration.
- 1.3. The statutory functions of the Company Law Review Group are detailed in Section 68(1) of the Company Law Enforcement Act 2001, which provides:

The Review Group shall monitor, review and advise the Minister on matters concerning:

  - a) The implementation of the Companies Acts,
  - b) The amendment of the Companies Acts,
  - c) The consolidation of the Companies Acts,
  - d) The introduction of new legislation relating to the operation of companies and commercial practices in Ireland,
  - e) The Rules of the Superior Courts and case law
- 1.4. Section 70 of the Act sets out the two-yearly cycle of each work programme of the Review Group. The Group is currently midway through its 2010-2012 Work Programme, as assigned to it by the Minister for Trade and Commerce in March 2010.
- 1.5. This report consists of four parts, as follows:
  - (i) Outline of the Report and Recommendations from the 2008-2009 Work Programme
  - (ii) Update on the Companies Consolidation and Reform Bill
  - (iii) Review of the CLRG website, [www.clrg.org](http://www.clrg.org)
  - (iv) Work Programme 2010-2012

## Members of the Company Law Review Group 2010/2012

<b>Dr. Thomas B. Courtney (Chairperson)</b>	Arthur Cox
<b>Paul Appleby</b>	Director of Corporate Enforcement
<b>Deirdre-Ann Barr</b>	Matheson Ormsby Prentice
<b>Jonathan Buttimore</b>	Office of the Attorney General
<b>Jim Byrne</b>	Revenue Commissioners
<b>Marie Daly</b>	Irish Business and Employers Confederation (IBEC)
<b>Helen Dixon</b>	Registrar of Companies
<b>Ian Drennan</b>	Irish Auditing and Accounting Supervisory Authority (IAASA)
<b>Mike Duignan (replaced Daryl Byrne)</b>	Irish Stock Exchange
<b>Paul Egan</b>	Mason Hayes + Curran
<b>Mark Fielding</b>	Irish Small and Medium Enterprises Association Ltd. (ISME)
<b>Joseph Gavin (replaced George Treacy)</b>	Financial Regulator
<b>Michael Halpenny</b>	Services, Industrial, Professional and Technical Union (SIPTU)
<b>Tanya Holly</b>	Department of Enterprise, Trade and Innovation
<b>William Johnston</b>	Arthur Cox
<b>Brian Kelliher (replaced Patricia Taylor)</b>	Irish Funds Industry Association
<b>Ralph MacDarby</b>	Institute of Directors
<b>Vincent Madigan</b>	Department of Enterprise, Trade and Innovation
<b>Kathryn Maybury (replaced Brian O'Kane)</b>	Small Firms Association (SFA)
<b>Declan Murphy (replaced Lyndon McCann)</b>	Bar Council of Ireland
<b>Conall O'Halloran</b>	Consultative Committee of Accountancy Bodies – Ireland (CCAB-I)
<b>Mike Percival</b>	Irish Banking Federation (IBF)
<b>Mark Pery-Knox-Gore</b>	Law Society of Ireland
<b>Nora Rice</b>	Companies Registration Office (CRO)
<b>Noel Rubotham</b>	Courts Service
<b>Jon Rock</b>	Institute of Chartered Secretaries and Administrators (ICSA)

### Secretariat:

John P Kelly (Secretary): Department of Enterprise, Trade and Innovation  
Eric Giguère: Department of Enterprise, Trade and Innovation

## 2 Outline of the Report and Recommendations from the 2008-2009 Work Programme

2.1 The CLRG published its Report on its 2008-2009 Work Programme in May 2010. The Report addressed a number of wide ranging issues in company law. Of particular importance are the re-use of CRO information, the modernisation issues in relation to distributions by companies and requirements concerning share capital, the extension of the audit exemption to companies limited by guarantee and to dormant subsidiaries in a corporate group.

### **Main Recommendations of the 2009 Report**

2.2 The *2009 Report* can be downloaded from the website of the Company Law Review Group at [www.clrg.org](http://www.clrg.org). Among the most significant recommendations are the following:

#### *Powers of the Registrar of Companies to rectify incorrect entries made in the Register of Companies*

The CLRG was asked to consider ways of correcting the company register if it was found to contain incorrect information about the companies or their directors. The Review Group recommended, subject to some safeguards, that companies should be permitted to rectify inaccurate or incorrect particulars which have been delivered to the CRO.

#### *Examine the need for provisions regarding the re-use of CRO information*

This issue was previously considered by the CLRG in its 2007 Report. In its conclusion, the Review Group had acknowledged that certain concerns such as identity theft and data protection issues had arisen and that more work was needed before a recommendation could be made. The matter was extended into the 2008-2009 Work Programme.

The CLRG heard that the CRO was seeking legal advice to revise Licence Agreements for customers to whom the CRO sells bulk data from the register. Central to these discussions will be an examination of the issues presenting around personal data and the re-use of such data. The issue as to whether there is a requirement for legislation as to the re-use of CRO data will also be clarified. This issue will be further considered under the Group's 2010-2012 Work Programme.

#### *Consider the need for limited liability partnerships (LLPs)*

The CLRG was asked to consider the issue of LLPs and the current limitation on the number of partners in partnerships. The Group consulted widely on the issue and found no strong tide of opinion running in favour of introducing LLPs. The Group recommended the establishment

of an inter-departmental committee to consider the removal of the twenty-partner limit and whether accountants and solicitors should be permitted to form LLPs or companies, in the case of solicitors and accountants.

*Re-examine the provisions regarding distributions and share capital*

This issue had been identified as a matter that could possibly affect Ireland's competitiveness since there is the possibility that transactions conducted by Irish companies could suffer a competitive disadvantage compared with those utilising UK companies. The Review Group recommended the introduction of a provision into Irish law equivalent to what is in the UK Companies Act 2006.

*Consider the extension of the audit exemption regime to small companies limited by guarantee*  
Public companies limited by guarantee (CLGs) must have their accounts audited and cannot avail of the audit exemption for private companies which satisfy certain conditions. The Review Group recommended that audit exemptions should extend to CLGs, subject to conditions.

*Further consider the extension of the audit exemption regime to dormant subsidiaries.*

The Review Group recommended that companies classified as dormant that are members of a group should be entitled to avail of the audit exemption and that the term "dormant company" be

defined as a company that had no significant accounting transactions which were required to be entered in the company's records during the period (as defined in UK legislation) and whose assets and liabilities consist solely of investment in or amounts owed to and due from other companies within the group.

*Review the optional elements under the Second Directive 2006/68/EC (Capital Maintenance)*

This Directive contained mandatory elements that were transposed by Statutory Instrument 89/2008. At the time, it was decided to leave the optional elements of the Directive to the upcoming Companies Consolidation and Reform Bill.

While these optional elements are provided for in the General Scheme, there was little substantive assessment of the merits or otherwise of these provisions done by the CLRG. Therefore, at the request of the Minister, the CLRG was asked to consider the optional elements in view of the implications for the Bill. The Group made fifteen recommendations in relation to the optional elements.

*Rented accommodation used as registered offices causing problems for landlords*

The CLRG considered a proposal by a landlord that the Companies Acts be amended to prevent tenants of residential property from using the address of a property as a company's registered office without the

prior written consent of the owner to that usage. The Group recommended no change to the law as it believed, among other things, that the proposal would be unworkable and difficult to enforce.

- 2.3 While there is no obligation on the part of the the Minister to legislate in respect of any recommendation from the CLRG, most of them have been enacted into law or will be as part of the Companies Consolidation and Reform Bill. The recommendations would normally be processed by the Department for a wider public policy perspective before proceeding to legislation.



### **3 Update on the Companies Consolidation and Reform Bill**

- 3.1 The CLRG submitted the General Scheme of the Companies Consolidation and Reform Bill to the Minister for Enterprise, Trade and Employment in March 2007. On 25 July 2007 the Government approved the General Scheme of the Companies Consolidation and Reform Bill, as prepared by the CLRG, for drafting by the Office of Parliamentary Counsel. Drafting began in December 2007.
- 3.2 The Companies Consolidation and Reform Bill will consolidate the existing 15 Companies Acts, as well as other regulations relating to the incorporation and operation of companies, into a single Act, comprising in the region of 1,400 sections. Its provisions cover the incorporation of companies, corporate governance, duties of directors and secretaries, financial statements and auditors, receivers, reorganisations and examinerships, windings-up and compliance and enforcement. The provisions are brought together in a coherent manner that will facilitate business people in incorporating and operating companies on a day-to-day basis.
- 3.3 Detailed work on drafting the Companies Consolidation and Reform Bill led by the Department of Enterprise, Trade and Innovation, in close cooperation with the Office of
- the Parliamentary Counsel is continuing.
- 3.4 In 2010, the drafting focus centred on the fifteen constituent Parts of "Pillar A" of the Bill. "Pillar A" will contain all of the law applicable to the new private company limited by shares (the "cls"), the default company type under the proposed legislation. In the latter part of 2010, members of the CLRG contributed to important work whereby advanced drafts of constituent Parts, which had been developed by OPC and the Department, were reviewed by CLRG members with expertise relevant to individual Parts.
- 3.5 It is expected that drafting of the constituent Parts of "Pillar A" will be completed by the end of March 2011, and that a "soft copy" version of "Pillar A" will be published at that stage for general information and consultation.
- 3.6 It is understood that work will then focus on completing the drafting of "Pillar B", which contains the law applicable to all company types other than the private company limited by shares, with a view to the complete Bill being published in early 2012.

## 4 Review of the Company Law Review Group Website – [www.clr.org](http://www.clr.org)

4.1 The Company Law Review Group website, [www.clr.org](http://www.clr.org) was launched in 2002 and has been used through the years as a means of disseminating information to the public and interested parties.

4.2 The website averaged 796 unique visitors per month in 2010. The statistics regarding traffic on the website are set out across.

4.3 The website gives access to all the publications of the Review Group, lists its current members and also sets out the current and previous work programmes.

4.4 The CLRG Secretariat also receives numerous email queries relating to the work of the CLRG and is happy to assist the public.

### Website statistics 2010

Unique visitors	9,193
Visits	13,461
Page views	70,980
Hits	217,046

## 5 Work Programme 2010-2012

- 5.1 In addition to the substantial amount of work arising from assisting and advising on the Companies Consolidation and Reform Bill, as described above, the Review Group is actively pursuing its current Work Programme.
- by shareholders of certain companies to a judgment creditor on the entries for respective companies” and report back to him by 15 December 2010 with its recommendations.*
- 5.2 The Minister for Trade and Commerce approved the new Work Programme of the Company Law Review Group in March 2010. In accordance with Section 70(1) of the Company Law Enforcement Act 2001, the work Programme is assigned by the Minister at least once every two years.
- The dedicated Committee tasked with this item met a number of times during the last quarter of 2010. The Committee’s recommendations were accepted by the Group and presented to the Minister by the agreed date. The recommendations made by the CLRG will appear in the Group’s 2012 Report.
- 5.3 The Work Programme is attached as Appendix 2 and is available on the Group’s website at [www.clr.org](http://www.clr.org).
- 5.4 The Group has set up dedicated committees to consider the issues that the Minister has assigned to it for review. The membership of each committee is set out in Appendix 3.
- 5.5 The Minister for Trade and Commerce wrote to the Chairman of the CLRG in September 2010 asking the Group to consider as a matter of urgency item 12 of the Work Programme on the issue of *“the High Court directing the CRO to enter in the company register charges due*

**Appendix 1**

**Functions of the CLRG**

**Part 7, Company Law Enforcement Act, 2001**

**Section 67  
Establishment of CLRG**

There is hereby established a body to be known as the CLRG.

Minister to the Review Group for consideration.

**Section 68  
Functions of the Review Group**

- (1) The Review Group shall monitor, review and advise the Minister on matters concerning—
  - (a) The implementation of the Companies Acts,
  - (b) The amendment of the Companies Acts,
  - (c) The consolidation of the Companies Acts,
  - (d) The introduction of new legislation relating to the operation of companies and commercial practices in Ireland,
  - (e) The Rules of the Superior Courts and case law judgements insofar as they relate to the Companies Acts,
  - (f) The approach to issues arising from the State’s membership of the European Union, insofar as they affect the operation of the Companies Acts,
  - (g) International developments in company law, insofar as they may provide lessons for improved State practice, and
  - (h) Other related matters or issues, including issues submitted by the

- (2) In advising the Minister the Review Group shall seek to promote enterprise, facilitate commerce, simplify the operation of the Companies Acts, enhance corporate governance and encourage commercial probity.

**Section 69  
Membership of Review Group**

- (1) The Review Group shall consist of such and so many persons as the Minister from time to time appoints to be members of the Review Group.
- (2) The Minister shall from time to time appoint a member of the Review Group to be its chairperson.
- (3) Members of the Review Group shall be paid such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.
- (4) A member of the Review Group may at any time resign his or her membership of the Review Group by letter addressed to the Minister.
- (5) The Minister may at any time, for stated reasons, terminate a person’s membership of the Review Group.

**Section 70**  
**Meetings and business of Review Group**

- (1) The Minister shall, at least once in every 2 years, after consultation with the Review Group, determine the programme of work to be undertaken by the Review Group over the ensuing specified period.
- (2) Notwithstanding Subsection (1), the Minister may, from time to time, amend the Review Group's work programme, including the period to which it relates.
- (3) The Review Group shall hold such and so many meetings as may be necessary for the performance of its functions and the achievement of its work programme and may make such arrangements for the conduct of its meetings and business (including by the establishment of sub-committees and the fixing of a quorum for a meeting) as it considers appropriate.
- (4) In the absence of the chairperson from a meeting of the Review Group, the members present shall elect one of their numbers to be chairperson for that meeting.
- (5) A member of the Review Group, other than the chairperson, who is unable to attend a meeting of the Review Group, may

nominate a deputy to attend in his or her place.

**Section 71**  
**Annual Report and provision of information to Minister**

- (1) No later than 3 months after the end of each calendar year, the Review Group shall make a report to the Minister on its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within a period of 2 months from the receipt of the report.
- (2) A report under Subsection (1) shall include information in such form and regarding such matters as the Minister may direct.
- (3) The Review Group shall, if so requested by the Minister, provide a report to the Minister on any matter—
  - (a) concerning the functions or activities of the Review Group, or
  - (b) referred by the Minister to the Review Group for its advice.

## Appendix 2

### CLRG Work Programme 2010-2012

#### ***Priority Items***

1. Provide ongoing advice to the Department of Enterprise, Trade and Employment on queries raised by the Parliamentary Counsel arising from the drafting of the Companies Consolidation and Reform Bill.
2. The Chair and individual members of the CLRG, as appropriate, to provide advice on the General Scheme of the Companies Consolidation and Reform Bill, with a view to its publication as a Bill in the Houses of the Oireachtas in 2012.
8. Examine the need for provisions regarding the re-use of CRO information.
9. Consideration of the adoption, in Irish company law, of the UNCITRAL Model Law on Cross-Border Insolvency.
10. Advise on the various requirements on auditors to report under criminal justice legislation, under company law and, in particular, Recommendations arising out of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

#### ***Other Items for Consideration in 2010/2012***

3. Review of the Committee of Public Accounts' First Interim Report on the Loss of Fiduciary Taxes arising from abuse of Limited Liability.
4. Consideration of the implications for Irish company law of the European Court of Justice judgment in the Cartesio Case C-210/06 relating to the transfer of a registered office from one jurisdiction to another and to recommend options.
5. Consideration of the representation of a company before the Courts.
6. Consideration of the application of IFRS 27 and consequences for Sections 62, 149(5) and 72 of the Companies Acts 1963.
7. Provide ongoing advice to the Department of Enterprise, Trade and Employment on EU proposals, as requested by the Department.
11. To examine specific provisions under the Companies Acts and to review if, in practice, their application is consistent with the underlying policy objectives of the legislation, including improved compliance. Namely:
  - (i) Abuse of Strike-off provisions;
  - (ii) Late-filing penalties, and, in particular, the loss of exemption from the need to conduct a statutory audit;
  - (iii) With reference to a small, select number of offences, consider whether there is proportionality between the seriousness of the offence (and the likelihood of malpractice) and its enforcement and whether offences under the Companies Acts should be subject to civil or criminal action, or both.
12. The appropriateness of recording on the register of companies the making of charging orders over shares.

### Appendix 3 - CLRG Committees 2010-2012

#### Item 3. Review of the PAC's Report on the *Loss of Fiduciary Taxes arising from abuse of limited liability*

Chair: Ralph MacDarby  
Jim Byrne  
Marie Daly  
Paul Egan  
Nóra Rice  
Conor O'Mahony (ODCE alternate)

#### Item 4. Implications of the ECJ Judgment of the Cartesio Case

Chairs – Tanya Holly / Jonathan Buttimore  
Jim Byrne  
Helen Dixon  
Mark Pery Knox Gore  
Nóra Rice  
Kathryn Maybury  
Jon Rock

#### Item 5. Representation of a company before the Courts

Chair – Declan Murphy  
Jim Byrne  
Nóra Rice  
Jonathan Buttimore  
Ann Keating (ODCE alternate)  
Noel Rubotham  
Jon Rock

#### Item 6. Consideration of the application of IFRS 27

Chairs – Chair Conall O'Halloran and Aidan Lambe  
Jim Byrne  
Deirdre-Ann Barr  
Paul Egan  
Pat A Houlihan - DETI  
John Moynihan - DETI  
Vincent Madigan  
Tanya Holly  
Prof. Ciaran O'Hogartaigh

#### Item 8. Re-use of CRO information

Chair – Helen Dixon  
Jim Byrne  
Ralph MacDarby  
Jon Rock  
Kathryn Maybury

#### Item 9. Adoption of the UNCITRAL Model Law on Cross-Border Insolvency.

Chair – Noel Rubotham  
Jim Byrne  
Jonathan Buttimore  
Adrian Brennan (ODCE alternate)

#### Item 10. OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions

Chair – Ian Drennan  
Jim Byrne  
Paul Egan  
Ralph MacDarby  
Mark Pery Knox Gore  
Kevin Prendergast (ODCE alternate)

#### Item 11. Examination of Specific provisions under the Companies Acts

Chair – Deirdre Ann Barr  
Jim Byrne  
Marie Daly  
Helen Dixon  
Ralph MacDarby  
Nóra Rice  
Jonathan Buttimore  
Jon Rock  
Kathryn Maybury  
Denis Hosford (ODCE alternate)

Item 12. The appropriateness of recording on the register of companies the making of charging orders over shares

Chair – William Johnston

Jim Byrne

Deirdre-Ann Barr

Marie Daly

Helen Dixon

Paul Egan

Mark Pery Knox Gore

Nóra Rice

Jonathan Buttimore

Kathryn Maybury

Mike Percival