



92nd Plenary Meeting of the Company Law Review Group

- Date:** Monday 21st December 2020
- Time:** 10:00am – 11:30am
- Venue:** Zoom
- Present:** Paul Egan, Alan Carey, Barry Conway, Emma Doherty, Ian Drennan, Bernice Evoy, James Finn, Tanya Holly, Shelley Horan, Irene Lynch-Fannon, Ralph MacDarby, Vincent Madigan, Neil McDonnell, David McFadden, Salvador Nash, Fiona O’Dea, Conor O’Mahony, Gillian O’Shaughnessy, Maureen O’Sullivan, Kevin Prendergast, Maura Quinn, Doug Smith
- In attendance:** Tara Keane and Stephen Walsh (Secretariat)
- Apologies:** Máire Cunningham, Richard Curran, Michael Halpenny, Rosemary Hickey, Kathryn Maybury, Theresa Moore (alternative for Gillian Leeson), Grace O’Mahony (alternate for Eadaoin Rock),

AGENDA

1. Attendance and apologies

The Chairperson welcomed the new Secretary, Stephen Walsh. The Chair and several Group members paid tribute to outgoing Secretary, Tara Keane, for all her work for the CLRG and its committees, welcoming the fact that she would remain as a member of the Corporate Insolvency Committee in her new position.

The Chairperson noted apologies and welcomed the attendance of Grace O’Mahony (on behalf of Eadaoin Rock) and Therese Moore (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 13 October 2020

The minutes of the 91st Plenary meeting were approved. Under matters arising from the minutes, the Chairperson noted that the interim period of the Companies (Covid-19) (Miscellaneous Provisions) Act 2020 was extended to the 9th June 2021 by way of Government Order.

4. Report from the Corporate Governance Committee

The Chairperson introduced the Report from the Corporate Governance Committee on Artificial Intelligence and the Committee Chair, Salvador Nash, presented on the work of the Committee in relation to this report.

Any legislation introduced on AI will be constantly outpaced by technology and GDPR was reviewed in that context. It was agreed that any regulations on AI should be modelled on GDPR and that the Tánaiste should consider the fiduciary duties of directors in the context of AI. Any future regulations should include enforcement measures.

The Committee's recommendations were considered by the full Review Group and the Report was approved and adopted.

Members noted their thanks to the Committee Chair and its members for their work in preparing the report. Members also thanked the inputs received from Owen Lewis of KPMG on the use of AI and governance systems and Hannah Hassell of Mason, Hayes and Curran on GDPR.

5. Report from the Corporate Insolvency Committee

The Chair invited Professor Irene Lynch Fannon to present on the work of the Committee during 2020.

Professor Lynch Fannon thanked the Committee for their extraordinary efforts during 2020 and gave a detailed update on work undertaken during 2020 which included inoput into the Covid-19 Report, the Report on the potential framework for the rescue of small business, the ongoing work in relation to workers rights in liquidations and the practice of trading entities splitting their operations between trading and property and transactional avoidance.

It was noted that given that the Committee recently completed its work on small business rescue, it has had limited time available to complete its current programme of work.

The Committee has reached some tentative preliminary recommendations in relation to improving and simplifying the prescribed forms submitted to the CRO throughout the course of a liquidation to make information more easily understandable to creditors. The Committee also considers that information in relation to the realisation of assets should be more detailed.

The Committee has also set out a structured approach to its work in relation to the more complex issues surrounding restructuring and transactional avoidance around insolvency events.

These matters need to be finalised and agreed by the Committee at a future meeting.

The Tánaiste has asked the CLRG to report on these matters by the end of the year. However, given the volume of work already completed by the Committee, it was agreed that it is simply not possible to submit a full and final report before the end of year.

It was agreed that the Chair would write to the Tánaiste setting out the work done to date by the Committee and the plan for next year with a view to submitting a full and final report by the end of January 2021.

6. Upcoming EU and Irish company law

(i) European Proposals with relevance to company law

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

- The Directive was published on 20th 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.
- While Ireland is still working towards full transposition (by 17 July 2021) we cannot rule out the possibility of seeking a one-year extension as provided for under Article 34 paragraph 2, given the disruption and additional legislative requirements arising as a result of COVID-19.

a(i). 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.
- This is necessary as a result of Brexit: the UK system will no longer be an approved Central Securities Depository (or CSD) under EU law.
- Euronext Dublin (formerly the Irish Stock Exchange) announced in October 2018 that it would transfer the settlement of trades in Irish equities and other exchange traded instruments from CREST (UK) to Euroclear Bank Belgium (EU). The Migration

of Participating Securities Act 2019 will facilitate this migration for the issuers that choose to avail of it.

- Euroclear Bank operates a fully electronic (ie dematerialised) and intermediated (legal title to all shares is held by the CSD on trust and does not transfer with trades) system. The main purpose of the provisions in Part 4 is to provide for this fully dematerialised and intermediated system.
- Part 4 of the Act is due to be commenced in March 2021: Euronext Dublin has provisionally set 15 March 2021 as the live date for migration.

b. 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 is currently underway.

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

On 27 November 2019, the Directive on cross-border conversions, mergers and divisions was adopted by the European Parliament and the Council (Directive (EU) 2019/2121). This Directive clarifies the existing rules on cross-border mergers in the EU and, for the first time, has introduced rules on cross-border conversion and division for all Member States.

The Directive entered into force on 1 January 2020 and amended the Codification Directive 2017/1132. The Department launched a public consultation focused on the Member State options which closed in October 2020. The submissions will be analysed and the Department is taking part in EU Commission transposition workshops. Member States must transpose the Directive by 31 January 2023.

(ii) Department Legislation

a. 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 General Scheme establishes the Office of the Director of Corporate Enforcement (ODCE) as an agency, in the form of a Commission, to be called the Corporate Enforcement Authority.

The Programme for Government sets out the commitment to establish the Office of the Director of Corporate Enforcement (ODCE) as a stand-alone statutory body. Accordingly, the Companies (Corporate Enforcement Authority) Bill is included as a priority on the Government's legislation programme for Autumn 2020.

The General Scheme was resubmitted to the Joint Committee on Enterprise, Trade and Employment for its consideration and pre-legislative scrutiny is underway again. Publication

of the Bill will depend on the outcome of scrutiny which we understand will not be concluded in this session.

The Chair asked if a future update could be provided on the migration of companies issue as there has been requests on an extension to the CEST system. On the Corporate Enforcement legislation, the Chair asked was there a delay in relation to the submission to the Oireachtas Committee of a report. The Chair also asked for an update on the reviews and/or consultations in relation to Limited Partnership Act 1907 and the Registration of Business Names Act 1963.

7. Matters arising from practice

Maureen O'Sullivan referred to the new CRO portal which went live recently. There will now be a lot more use of the e-forms and all incorporations must now be done online. This has resulted in significant change to CRO back office work.

Máire Cunningham raised the issue of the variation of class rights and Section 88, it is still an issue for some companies and asked that this issue be kept on the agenda in order to have it resolved. The Chair mentioned that there is a proposed amendment to deal with that issue in the Corporate Enforcement Bill. An analysis of the CLRG recommendations on share capital and corporate governance fed into the Bill.

8. AOB

Doug Smith and Professor Irene Lynch Fannon asked when the Small Business Rescue report will be published on the CLRG website. The Secretariat confirmed that it will be published on the website shortly.

The Department wishes to refer an issue to the Corporate Insolvency Committee for consideration next year. The CLRG is asked to consider whether section 633 of the Companies Act 2014 should be amended to facilitate its practical application.

The Department also wishes to refer a number of matters to the Part 23 Committee for its consideration next year and will be in touch with the Chairperson with further detail in the New Year.

Fiona O'Dea took the opportunity, on behalf of the Department, to thank the Chair and members of the CLRG and its Committee Chairs and members for their work during the year and in meeting extremely tight timelines.

9. Date of next meeting

The Chairperson outlined that the Committee's next meeting would take place when the next Committee Report was finalised for approval.

The meeting then concluded.