



104th Plenary Meeting of the Company Law Review Group

Date: Wednesday 29 May 2024

Time: 11 a.m. to 12.30 p.m.

Venue: Online via MS Teams

Minutes

Present

Paul Egan SC (Chair), Deirdre Ahern, Alan Carey, Barry Conway, Ian Drennan, Bernice Evoy, Eamonn Kennedy, Prof Irene Lynch Fannon, Kathryn Maybury, David McFadden, Susan Monaghan, Orla O'Brien, Fiona O'Dea, Grace O'Mahony, Maureen O'Sullivan, Niamh Ryan, Cathy Smith SC, Doug Smith, John Wheatley

In Attendance

Paul Thompson, Dan O'Neill (Secretariat)

Apologies

Margaret Cullen, Richard Curran, Emma Doherty, Anne Fitzpatrick, Michael Halpenny, Gillian Leeson, Tanya Holly, Neil Keenan, Katie Nagle, Neil McDonnell, Gillian Leeson, Salvador Nash, Eadaoin Rock (Grace O'Mahony attending as an alternate), Tracey Sullivan

1. Welcome from the Chair

The Chairperson welcomed everyone to the meeting and noted apologies.

2. Declarations of Interest

There were no declarations of interest.

3. Minutes of the 103rd Review Group meeting

The minutes of the 103rd Plenary were approved with no amendments. Doug Smith clarified he attended the 103rd Plenary.

4. Updates on EU and Irish company law legislation

Fiona O'Dea updated the group on legislative developments in the Department.

National

Scheme of Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2023 - This Bill seeks to enhance and strengthen enforcement and regulatory provisions in the Companies Act 2014. It will include provisions to place the facility for companies and I&Ps to hold meetings by electronic means on a permanent basis, following its introduction as a temporary measure during the Covid-19 pandemic.

On 20 March, the Joint Oireachtas Committee on Enterprise, Trade and Employment concluded its pre-legislative scrutiny of the General Scheme with no particular observations or

recommendations. The Department is engaging with the Parliamentary Counsel who are drafting the Bill. It is estimated that the Bill will go to Cabinet for approval to publish in early July.

Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Bill 2023 - 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. It implements the CLRG's 2021 reports on the topic. It also provides for the establishment of the Employment Law Review Group on a statutory basis – this group is modelled on the CLRG.

The Bill was signed by the President on 9 May and preparations are underway for its commencement.

General Scheme of a Co-operative Societies Bill - Steady progress is being made with the drafting of the Bill, however, due to the Bill's size (over 270 heads in the general scheme) and complex nature, it is expected to bring the drafted Bill to Government in Quarter 3 of this year.

Limited Partnerships Act, 1907 and Registration of Business Names Act 1963 - The General Scheme seeks to reform and modernise the regulatory framework and to enhance transparency in light of concerns raised in media coverage of the Pandora Papers in 2021.

The Department undertook a review of the Limited Partnership Act 1907 including a public consultation in 2019. The complexity of the issues arising necessitated extensive analysis, legal advice and consultation. The Department has been engaging with the CRO, CEA, D/Fin, D/Justice and the Central Bank to ensure the proposals for reform are robust and address concerns raised. The development of the General Scheme was also informed by the Economic Crime and Corporate Transparency Act 2023 which introduced reforms to tighten registration requirements and increase transparency measures for limited partnerships in the UK. This work is reaching conclusion, and a General Scheme is in the final stages of preparation for submission to Government for approval to draft.

The Department has offered to provide additional information to the CRLG as requested.

S.I. 626 of 2023 – Personal Injuries Resolution Board Act 2022 (Commencement of Certain Provisions) (No. 3) Order 2023 - The Programme for Government set down for the reform and enhancement of the Injuries Resolution Board, with the overarching aim to have more claims settled through the agency. This reform was achieved through the Personal Injuries Resolution Board Act 2022, signed into law by the President on 13 December 2023.

One of the key measures introduced in the Act was the provision of mediation as a new service being offered by the Board to resolve personal injury claims. Mediation is widely recognised as an effective way of resolving disputes quickly and in a cost-effective manner.

As envisaged by the Act, the Board's mediation service is being introduced on a phased basis. Mediation for employer liability injury claims was introduced by the Board on 14 December 2023. This was extended to public liability injury claims on 8 May 2024 (S.I. 187 of 2024) and will be extended to motor liability injury claims later in the year.

EU

A proposal for a Directive on Corporate Sustainability Due Diligence (CSDD) - A provisional agreement was reached at trilogues on 14 December 2023, with additional negotiations taking

place over the following months. An amended agreement was reached at Council on 15 March 2024, which was agreed by the European Parliament at plenary on 24 April 2024. The proposed directive is expected to be published in the Official Journal of the European Union in July/August 2024.

A proposal for a Directive on Upgrading Digital Company Law (UDCL) - A proposal for a Directive on Upgrading Digital Company Law (UDCL) was published by the European Commission on 29th March 2023. The UDCL proposal is intended to further EU digitalisation efforts and aims to enhance transparency about companies and trust between Member States, while reducing administrative burden for companies and other stakeholders, in cross-border situations. Agreement was reached on the proposal in March and ratified by the European Parliament at the end of April.

Similar to the CSDD, technical work is ongoing by the Commission and it is expected that the final Directive will be published in Q3.

A Proposal for a directive on Multi-vote Share Structures -The European Parliament adopted the proposal at first reading on 24 April 2024 and it is further scheduled to go before the European Parliament in the Autumn to consider the updated version following corrections from lawyer-linguists.

There is a two-year deadline for transposition after the entry into force of the Directive. In terms of transposition, some minor amendments to the Companies Act are likely.

A proposal for a Directive harmonising certain aspects of insolvency law (Insol III) - The EU Working Party has completed first round of negotiations of the text. The Department has continued to engage key stakeholders, including the standing CLRG Insolvency Sub-Committee. There is a political impetus to accelerate agreement on the proposal.

Regulations to give further effect to Directive 2004/25/EC - In 2022, the process set out in s459 of the Companies Act 2014 was amended to provide for an efficient operation of unclaimed considerations of dissenting shareholders of all companies except traded PLCs in a takeover and ensure a person so entitled can make a claim at any time. It is proposed that the reform made in 2022 be extended to traded PLCs by way of regulations pursuant to the European Communities Act 1972.

5. Update of the CLRG Committees on Work in Progress

i Corporate Insolvency Committee (Prof. Irene Lynch Fannon)

Professor Lynch Fannon briefed there had been no further Insolvency Committee meetings on Insol III since the previous Plenary in March. Issues such as Directors' Duties may prove very problematic, and clarity will be required on the 'pre-pack' regarding the position for employees. There was a meeting held in May on the proposal for a Late Payments Regulation, to replace the current Late Payment Directive, which aims to bring about significant changes that the European Commission believes are necessary to address shortcomings in the current rules. ISME believes this may have a negative impact on their members. Further discussions may be required on this.

ii **Corporate Governance Committee** (Paul Egan on behalf of Salvador Nash)

Adoption of Report on Company Incorporations that may Infringe on Registered Trademark Rights

The Committee examined an issue raised by the Law Society's Intellectual Property and Data Protection Law Committee concerning trademark squatting. This is the bad faith registration or use of a generally well-known company name that may infringe on a registered trademark, often with the sole motive to sell the company to the brand owner for a profit at a later stage.

The Committee initially reviewed seven options in an effort to find a solution. When reviewing the options, the Committee was very mindful of the lack of information available on the prevalence of this problem, which is hard to determine given it is often settled privately outside of court. However, there was an appreciation among the Committee that bad faith registrations or name squatting does occur albeit it is not clear how often the issue arises in practice.

The Committee concluded that using existing structures was preferable and agreed that a 'fast-track' procedure direct to the Courts for non-complex, obvious cases of bad faith registrations or name squatting was preferable. Additionally, should an obvious case become complex, the case is already in the Court system and can resume the normal process for more complex cases of passing off.

In respect to business names, the inclusion of this remedy in the proposed General Scheme to replace the Registration of Business Names Act 1963 is recommended for consideration.

The Committee recommended an amendment to the court process to permit applications by way of Originating Notice of Motion. This recommendation relies on existing and established procedures while at the same time facilitating, should the need arise, the escalation of complex cases to a full court hearing.

The Committee agreed that this option was a feasible and cost-efficient remedy and should be put forward as a recommendation to the Minister.

The CLRG Chair thanked the Corporate Governance Chair, members, and contributors for their work on the report.

The report was formally approved by the Committee for delivery to the Minister.

iii **Public Company Committee** (Paul Egan)

The Committee Chair stated that there were no immediate updates. The Listed Entity Directive would be disposed of in due course.

iv **Corporate Enforcement Committee** (Paul Thompson)

Mr Thompson thanked members for their expressions of interest in being a member of this reconstituted Committee and he hoped the committee would be constituted prior to the next Plenary in September.

6. Matters arising from practice

CRO - Maureen O'Sullivan, Registrar of Companies

Ms O' Sullivan provided an update on operational matters.

CEA –Ian Drennan, CEO Corporate Enforcement Authority

Mr Drennan provided an update on matters arising in practice.

7. CSRD Presentation (*Orla O’ Brien*)

Ms O’ Brien gave a presentation to the Group on the Corporate Sustainability Reporting Directive (EU) 2022/2464 (CSRD). Ms O’ Brien discussed the background, scope, reporting requirements, the extensive level of stakeholder engagement, the timeframe for implementation and possible future development.

In response to questions posed, Ms O’ Brien clarified the proposed structure of the Regulations in amending the Companies Acts. Ms O’ Brien also advised of the forthcoming increases to the balance sheet and turnover thresholds for micro, small, medium and large companies in the Companies Act 2014 by 25 per cent. Finally, Ms O’ Brien advised that CSRD was not expected to impact on Friendly Societies.

8. Work Programme Update (Paul Thompson)

Mr Thompson thanked everyone for their suggestions and said that the Secretariat and the Chair would be in touch in due course.

9. AOB

- The Chair stated he would circulate Minister Burke’s Letter which, acknowledges receipt of the 2023 Annual Report and which thanked the Members for their work during 2023.
- The Chairman advised that the EU and International Affairs Committee would be running a seminar on Privacy versus Transparency on 10th October to be chaired by Helen Dixon.
- The next Plenary meeting would be held in September.
- The Chair concluded the meeting and wished everyone well for the Summer.

Ends