

96th Plenary Meeting of the Company Law Review Group

- Date:** Thursday, the 24th of March 2022.
- Time:** 10.00 a.m. to 11.00 a.m.
- Venue:** via MS Teams
- Present:** Paul Egan (Chair), Alan Carey, Barry Conway, Máire Cunningham, Richard Curran, Marie Daly, Emma Doherty, Ian Drennan, Bernice Evoy, James Finn, Michael Halpenny, David Hegarty, Tanya Holly, Tara Keane, Irene Lynch Fannon, Rosemary Hickey, Gillian Leeson, Vincent Madigan, Kathryn Maybury, David Mc Fadden, Neil McDonnell, Salvador Nash, Maureen O'Sullivan, Gillian O'Shaughnessy, Kevin Prendergast, Maura Quinn, Eadaoin Rock, Doug Smith
- In attendance:** Bernard O'Connor, Stephen Walsh (**Secretariat**)
David Allen, B.L, Matthew Brady B.L (**Legal Researchers**)
- Apologies:** Maura Quinn, Fiona O'Dea, and Tracey Sullivan.

1. Attendance

The Chairperson noted apologies and welcomed members of the Company Law Review Group to the Plenary Meeting.

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 Wednesday, the 15th of December 2021

The minutes of the 95th Plenary meeting were formally approved.

4. Approval of the Company Law Review Group Annual Report 2021

The Company Law Review Group Annual Report 2021 was formally approved subject to some minor corrections of the composition of Committees.

5. Practice Updates

The Chair indicated that he was hopeful that an extension to the temporary provisions of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 would be considered by Government. It was indicated that there was a concern that virtual company meetings might not necessarily show management control and process. However, in general virtual meetings were working well in practice..

6. Report from the Corporate Insolvency Committee

Corporate Insolvency Committee Chairperson, Professor. Dr. Irene Lynch Fannon, provided an overview of the ongoing work that was being undertaken by way of background research in relation to Self-Administered Liquidations. A preliminary meeting had been held and it was proposed that David Allen B.L was carrying out a scoping exercise assessing what was the best model framework that could be adopted, drawing in particular on the simplified liquidation model as utilised in Australia. Further work would be carried out on this topic by the committee, with the intention of progressing matters further in the coming months.

7. Update on the work of the CLRG Corporate Governance Committee

Corporate Governance Committee Chairperson, Salvador Nash, confirmed to the Meeting that the current objective of the Committee was to progress work in relation to the Report on Miscellaneous Corporate Governance matters. A number of miscellaneous corporate governance proposals are being reviewed in detail and it was envisaged that the committee would meet in the next few months to finalise a Draft Report.

8. Update by Ian Drennan, Director of Corporate Enforcement

Mr Ian Drennan indicated that because the Companies (Corporate Enforcement Authority) Bill was now enacted that there was a lot of activity in the Enforcement space at the moment. In particular, the Economic Crime Corruption Forum was in operation, issues relating to knowledge, training and capacity building were progressing. It was envisaged that a Chair for the Forum would be appointed in the near future.

The Police Powers Bill was quite a significant piece of forthcoming legislation, and it was envisaged that the ODCE would have a role in relation to that legislation. In relation to the Co-operative societies Bill, the ODCE would have a possible role as envisaged in that legislation as well.

9. Update by Ms. Tara Keane, Assistant Principal, Company Law Review Unit, DETE on legislative developments in Company Law

Ms. Tara Keane from DETE presented an update on upcoming company law legislation.

European Proposals with relevance to company law

- **Preventative Restructuring Directive (EU) 2019/1023**

Draft Regulations are well advanced and with the OPC for scrutiny and settlement. Practical aspects of the transposition are being considered e.g., EWS, checklist and statistics.

- **Transposition of Cross Border Mergers, Conversions and Divisions Directive** – work is underway with OPC on drafting the necessary regulations, in tandem with working with the Courts Service on Rules of the Superior Courts and also the CRO in relation to Forms. Transposition deadline is 31 January 2023.

- **Transposition of Public Country by Country Reporting Directive** – public consultation closed in February and responses are being analysed in relation to the 2 options in the Directive. Respondents were in favour of adopting the MS options therefore it is likely this is the approach that will be recommended to the Minister whose approval is necessary. Transposition deadline is June 2023.

- **Negotiation of a Directive on Corporate Sustainability Reporting** (amending the Accounting Directive, the Audit Directive, the Audit Regulation and the Transparency Directive) to replace the Non-financial Reporting Directive – Council reached general approach in February 2022. DETE awaits the outcome of the European Parliament consideration of the proposal. Next steps will be trilogues. The French Presidency is ambitious to conclude on this file, if possible during its tenure in the first half of this year.

- **Proposal for a Directive on Corporate Sustainability Due Diligence**

On 23rd February, the European Commission published a proposal for a Directive on Corporate Sustainability Due Diligence (CSDD). The CSDD sets out obligations for companies regarding adverse human rights and environmental impacts arising from their operations, their subsidiaries, and their value chains. Companies will be required to conduct human rights and environmental due diligence to identify actual or potential adverse impacts and prevent / mitigate / minimise the extent of such impacts.

The proposal has been published against a backdrop of a variety of other EU initiatives in the Environmental, Social and Governance (ESG) area. These include a proposed Directive on Corporate Sustainability Reporting (CSRD),

Regulations relating to Sustainable Finance Disclosure and Taxonomy and various sector specific initiatives.

Discussions on the CSDD, are at a very preliminary level, have begun in the Council Company Law Working Party and are likely to continue until early 2023. Thereafter, trilogue negotiations (European Parliament, Commission, Council) will take place and a finalised Directive may not emerge until later in 2023.

Department Legislation

- **Companies (Corporate Enforcement Authority) Act 2021** – while this legislation was enacted in 2021, OPC noticed a single cross-referencing error in section 11 – the reference to Schedule 2 should be sSchedule 1. The Redundancy Payments (Amendment) (No 2) Bill was amended at Dáil Committee Stage on 23 February to correct the error. This Bill passed all remaining stages in the Seanad on 22 March 2022 and its enactment is a priority for Government. Commencement of the Companies (Corporate Enforcement Authority) Act 2021 will follow as soon as possible thereafter.

It is intended that all aspects of the Act will be commenced as soon as possible provided that the legal, operational, and resourcing matters integral to the Authority's establishment have been finalised to the Tánaiste's satisfaction.

In parallel, commencement orders are being drafted to commence the relevant provisions of the Act after its amendment.

- **Limited Partnerships General Scheme to replace 1907 Act** - Work had been underway on the drafting of a new law governing Limited Partnerships at the time of the publication of the Pandora Papers and this work has now been extended in light of the Papers to incorporate issues raised. It is expected that work on finalising the proposals will proceed over the coming months with the General Scheme being brought to Government as soon as possible thereafter.
- **Register of Business Names General Scheme to replace 1963 Act** – work continues on this General Scheme to update and modernise the legislation. The Department is liaising with the CRO on a draft of the General Scheme, with a view to finalising it later in 2022.
- **Proposed Co-operative Societies legislation.** Work is nearing completion on proposed legislation to repeal the Industrial and Provident Societies Acts 1893-2021 and provide a modern and effective legislative framework suitable for the diverse range of organisations using the co-operative model in Ireland. A public consultation seeking the views of stakeholders on certain aspects being considered for inclusion in forthcoming Co-operative Societies legislation was held in January – February 2022. Forty responses to the consultation have been received. The Department is in the process of

reviewing the responses prior to finalising the legislative proposals. It is our intention that a General Scheme of a Co-operative Societies Bill seeking permission to draft will be brought to Government in Q2 2022.

- **Updates on the proposed Companies (Miscellaneous Provisions) Bill.** It is intended that the Companies (Miscellaneous Provisions) Bill 2022 will include amendments to the Companies Act 2014 with the aim of enhancing the powers of the Corporate Enforcement Authority (CEA). Proposals include those which would provide additional powers to the CEA, streamline procedures, deliver administrative efficiencies, and strengthen reporting requirements. In this regard a scoping exercise of legislative proposals is currently underway. Proposals under consideration have arisen from:
 - Actions arising from recommendations contained in Report of the Hamilton Review Group on the review of structures and strategies to prevent, investigate and penalise economic crime and corruption;
 - Submissions made by the ODCE to the Joint Oireachtas Committee on Enterprise, Trade and Employment;
 - Heads that were ultimately omitted from the Companies (Corporate Enforcement Authority) Act 2021;
 - Discussions with the Department of Justice in relation to the Garda Síochána (Powers Bill) being brought forward by the Minister for Justice;
 - Scoping of the Competition (Amendment) Bill 2022 for issues relevant to the CEA.
 - Some proposals may be more appropriately addressed by way of cross-cutting legislation. Officials are working with the relevant stakeholders in scoping the relevant proposals.

10. Companies Registration Office Update

Ms. Maureen O’Sullivan, CRO Registrar indicated that the CRO’s I.T infrastructure was being significantly upgraded, and the tagging of financial statements was now possible. The CRO had attended before the Oireachtas in December 2021 to discuss the integrity of the CRO Register, in circumstances where they became aware of Directors being appointed without their consent being obtained. Another issue was instances of TCSPs operating without authorisation from the Department of Justice. However, it was explained that because of the volume of annual submissions and the number of companies that the CRO depended on good faith in relation to filings.

The CRO was finalising an inter-connected European Insolvency Database, and technical collaboration with the Insolvency Service of Ireland and the Courts Service was near completion. CRO was liaising with various stakeholders because they would need to upgrade their software.

11. AOB

The Chair indicated to the meeting that Stephen Walsh, the Secretary to the CLRG was taking up a new role, and he wanted to wish him the best in his new role and thank him on behalf of the CLRG for his dedicated service to the CLRG.

The Chair thanked both the members of the CLRG and its various committees for the work they had undertaken over the course of the year.

12. Date of next meeting

The next Plenary meeting of the Review Group will take place on Thursday, 19th May 2022, 3.00-5.30 pm.