



COMPANY LAW REVIEW GROUP  
an grúpa athbheithnithe dlí cuideachtaí

annual report 2002

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Mr Thomas B Courtney, Chairman,  
Company Law Review Group

**Ms Mary Harney TD**  
**Tánaiste and Minister for Enterprise**  
**Trade and Employment**  
**Kildare Street**  
**Dublin 2**

**31 March 2003**

Dear Tánaiste,

In accordance with Section 71 of the Company Law Enforcement Act 2001 I have the honour to forward to you for your consideration the annual report of the Company Law Review Group for the calendar year, 2002.

The report outlines:

- the primary import of the recommendations in the Review Group's *First Report*, published 28th February 2002;
- the strategy and framework for company law devised to give effect to those recommendations;
- the progress made to date on drafting the heads of a new Companies Bill which will give effect to the Review Group's recommendations;
- the initiatives undertaken on facilitating access by interested parties and members of the public to the company law reform project; and
- the progress made to date on the second work programme of the Review Group.

The project to reform and modernise company law is currently the biggest single regulatory reform project in train in Ireland. As Chairman of the Review Group I was greatly encouraged by the positive response on the part of Government and other stakeholders to the totality of the recommendations in the *First Report*. The Review Group remains focused on the goal of

ensuring that the proposed new company law regime will enhance competitiveness both within the State and *vis-à-vis* other States.

We are very happy to assist your Department to draw up heads for the legislative proposals, which are necessary to give effect to the recommendations in the *First Report*. Simultaneously, we are examining issues in the 6 areas assigned to us for our second work programme, with the objective that legislative proposals emerging from these areas later this year will be considered by the Government alongside the proposals which give effect to the recommendations in the *First Report*.

I would like to commend to you the contribution of the members of the Group to the reform project. As with preparation of our *First Report* there has been a huge pro bono commitment of time and expertise, often outside regular working hours. I would, further, like to express my appreciation, and that of the Group, for the work and expertise of the staff of your own Department, lead by Pat Nolan, who serve as our secretariat.

The Company Law Review Group, working in close harmony with the Department, has led to the development of a unique company law policy network, grounded in the realities of business and the need to deliver shareholder and creditor protection, enforcement of the law and good corporate governance. The structure and modus operandi of the Review Group allows wide consultation with key stakeholders in company law in the formulation of proposals, a process that can only add clarity, authority and transparency to the simplification and restructuring project.

Yours sincerely

Thomas B Courtney  
**Chairman**

- 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 Employment.
- 1.2.** Section 71 of that Act requires the Company Law Review Group to report annually to the Minister for Enterprise, Trade and Employment by 31 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 2002 and will in turn be laid before the Houses of the Oireachtas by the Tánaiste and Minister for Enterprise, Trade and Employment in fulfilment of her obligation under that Section.
- 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 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 Minister to the Review Group for consideration.
- 1.4.** Section 70 of the Act sets out the two-yearly cycle of each work programme of the Review Group. The Review Group completed its first work programme with the publication of its report on that programme on 28 February 2002. The Group is currently midway through its second work programme 2002-2003, as assigned to it by the Tánaiste and Minister for Enterprise, Trade and Employment.
- 1.5.** This report consists of four parts, as follows:
- (i) Purpose, role and functions of the Company Law Review Group.
  - (ii) *First Report* of Company Law Review Group: outline of main recommendations and follow up to the report.
  - (iii) Development of Company Law Review Group website, <http://www.clr.org>
  - (iv) Second Work Programme of Company Law Review Group: outline of main issues and review of areas being considered for reform.
- 1.6.** Part 7 of the Company Law Enforcement Act 2001 is attached as Appendix 1 to this report



## 2

## Purpose, Role and Functions of the Company Law Review Group

**2.1.** As set out above, the Company Law Review Group is a statutory advisory body to the Minister for Enterprise, Trade and Employment on the reform and modernisation of Irish company law. It is devised as the engine for delivering a world-class companies code in Ireland, i.e. the intention is to make company law a factor of competitive advantage in the Irish economy, while retaining the highest standards of shareholder and creditor protection. Establishment of the Review Group was one of a number of recommendations in the Report of the Working Group on Company Law Compliance and Enforcement (Government Publications, Dublin, November 1998). The purpose and role conceived for the Review Group is set out very clearly in that report:

*There is vital urgency in ensuring that Ireland, as a potential place in which to do business and from which to do business, has a first class system of company law that places Ireland in the forefront as a contender for the location of international commerce.*

*Amending legislation to reform company law should be regarded as a constant feature on the agenda of the Department of Enterprise, Trade and Employment. A reforming Bill should be laid before the Oireachtas every two years.*

*A Company Law Review Group ... should be established on a statutory basis as soon as possible that would form the basis ... for this legislative process.*

**2.2.** The Review Group accordingly was set up in February 2000 on foot of government decision. The Group operated on an administrative basis until it was accorded a statutory advisory status by the Company Law Enforcement Act 2001. Part 7 of that Act sets out the role and the advisory responsibilities of the Review Group and the basis on which its members are appointed. The Review Group is a standing advisory body that operates on a two-yearly cycle. Every second year the Group is assigned by the Minister for Enterprise, Trade and Employment a work programme of issues for consideration. The First Report of the Review Group was the culmination of its work programme for 2000-2001 and was published on 28 February 2002.

**2.3.** The membership of the Company Law Review Group is set out page 4.

**2.4.** The secretariat of the Review Group is provided by the Department of Enterprise, Trade and Employment. Funding for the Review Group, excluding pay of the Departmental officials who service it, was **€118,000** in 2002 and its provision for 2003 is **€115,000**.

**2.5.** The Review Group operates by way of plenary and committee meetings. A schema of committees and membership of these is attached at Appendix 2. A committee has been set up to progress each area in the Review Group's Second Work programme, a dedicated drafting group has been set up to assist and advise on legislation being drafted and a Steering Group oversees the strategic management of the entire work of the Review Group.



Pat Nolan, Secretary,  
Company Law Review Group



Company Law Review Group  
Secretariat team: Colin Delaney,  
Paul Shortt, Jason Rehill

### *Membership of the Company Law Review Group*

#### **Chair:**

Thomas B. Courtney     Solicitor, Secretary, ICS Building Society

#### **Members:**

Paul Appleby	Director of Corporate Enforcement
Alacoque Condon	High Court Examiner's Office, Courts Service
Marie Daly	IBEC
David Devlin	Consultative Committee of Accountancy Bodies Ireland
Paul Egan	The Law Society of Ireland
Paul Farrell	The Registrar of Companies
Michael Halpenny	ICTU
Muriel Hinch	Revenue Commissioners
Martin Jacob	Institute of Chartered Secretaries and Administrators
William Johnston	Arthur Cox
Roger Kenny	Office of the Attorney General
Ralph MacDarby	Institute of Directors
Vincent Madigan	Department of Enterprise, Trade and Employment
Máire O'Connor	Ernst & Young
John O'Donnell SC	The Bar Council
Nora Rice	Companies Registration Office
Deirdre Somers	Irish Stock Exchange
Enda Twomey	Irish Bankers' Federation

#### **Alternates:**

Brian Binchy	Irish Bankers' Federation
Adrian Brennan	Office of the Director of Corporate Enforcement
Jonathan Buttimore	Office of the Attorney General
Louise Campbell	Irish Stock Exchange
Marie Hurley	Revenue Commissioners
Aidan Lambe	Institute of Chartered Accountants in Ireland
Dermot Madden	Office of the Director of Corporate Enforcement
Kevin O'Connell	Office of the Director of Corporate Enforcement

#### **Secretariat:**

Pat Nolan (Secretary)	Department of Enterprise, Trade and Employment
Paul Shortt	Department of Enterprise, Trade and Employment
Jason Rehill	Department of Enterprise, Trade and Employment

The Review Group is also assisted by Tanya Holly, Company Law Legal Adviser to the Department of Enterprise, Trade and Employment.

## 3

## First Report of Company Law Review Group: outline of main recommendations and follow up to the report

- 3.1.** The *First Report* of the Review Group, which was completed on target in December 2001, was published on 28 February 2002, and widely disseminated to interested parties.
- 3.2.** In its *First Report* the Review Group came to the conclusion that it is necessary to create a new structure for Ireland's company laws that will provide the wherewithal for innovation and capacity building. The recommendations in the *First Report* are intended to provide the cornerstone for the new companies code. The Review Group's aspiration is, through a series of reports, to establish a company law framework perceived as among the world's best; a framework with a degree of efficiency and effectiveness in legislation and indeed in the administration of justice such that Ireland becomes a forum of choice for dispute resolution by corporate litigants. In this respect the Review Group is ever mindful of the statutory injunction contained in s 68(2) of the 2001 Act, viz.:

*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.*

- 3.3.** The focus of its *First Report* (31 December 2001) is on simplification and improving transparency. The general objectives of the report are that the reformed and streamlined companies code should be effective, intelligible to company law directors and shareholders, and that the law should reflect how business is actually transacted. The **big idea** at the heart of the report is to replace the public company (*plc*), by the most common type of company, the private company limited by shares, as the standard type of company in Ireland. This will accord with the actual reality that 89% of all companies registered in Ireland are private companies limited by shares.

- 3.4.** The reform will bring the totality of the content of the Companies code, insofar as it applies to private companies, into a single Part of a new principal Companies Act. A director or other stakeholder in a private company will only have to read that Part of the new Act instead of, as at present, having to plough through many provisions which relate only to *plcs* limited by shares or to specialised forms of company. This will bring the advantage, particularly to small and medium sized businesses, of clarity and relative simplicity in the regulatory and compliance regime. Those very substantial Parts of the Act that only concern *plcs* limited by shares and the other more esoteric types of company will be physically distinct from the Part applying to private companies limited by shares.
- 3.5.** Consistent with the work programme assigned to the Review Group by the Tánaiste and Minister for Enterprise, Trade and Employment the *First Report* contains Chapters dealing with the following substantive issues:

- The Simplification of Irish Company Law
- Simplification: Corporate Governance
- Simplification: Creditor Protection
- Simplification: Shareholder Protection
- Simplification: Incorporation and Registration
- Simplification: Criminal Acts and Omissions
- Simplification: Prospectuses and Public Offers
- Corporate Capacity and Authority
- Directors and Other Officers
- Corporate Litigation
- The Regulation of Insolvency Practitioners
- Investment Companies
- Consolidation of company law



Tánaiste and Minister for Enterprise Trade and Employment, Mary Harney TD and Mr Thomas B Courtney, Chairman of the Company Law Review Group

- 3.6. The Report also contains a number of proposals intended to mitigate the position of creditors who find themselves disadvantaged on foot of the increased use from time to time by the Companies Registration Office of strike-off from the Companies Register as a means of enforcing compliance with filing requirements.

### *Main recommendations in the First Report*

- 3.7. The *First Report* can be downloaded from the website of the Company Law Review Group at [www.clrg.org](http://www.clrg.org). The report contains 195 distinct recommendations. Among the most significant and innovatory of these are the following (references are to relevant paragraphs in the report):

*Private company limited by shares to become the model company type in Companies Acts. (3.6.5)*

This will have the effect of greatly simplifying the regulatory regime for companies and of making the law clearer and more accessible.

*Framework of consolidated Companies Act mapped out. (17.3.2)*

Following implementation of the extensive reform and restructuring proposed in the Review Group's Report the intention is to consolidate the 10 main Companies Acts and associated statutory instruments.

*Companies facilitated to transact business electronically and by sending abbreviated information to members. (A number of recommendations in Chapters 4 and 6)*

This will allow companies to use available technology efficiently. Protections will remain for shareholders.

*Companies, other than plcs, need not hold an agm if members consent unanimously. (4.5.6)*

This is intended to deal with the actual practice of how a private company organises its affairs.

*Reduce minimum number of company directors from 2 to 1 for private companies. (11.8.11)*

This is intended to allow for as much flexibility as possible. Although it will be possible for a private company to have a single director it will be necessary to have a distinct company secretary.

*Remove statutory declarations for registration and incorporation. (7.4.12/7.4.13)*

This is a simplification measure and will facilitate electronic filing with the Companies Registration Office.

*Establish realistic levels of minimum fine for summary offences; increase the lowest maximum fine for indictable offences to €12,500. (8.5.2/8.5.6)*

This will introduce a minimum fine for summary company law offences and a lowest maximum fine for indictable offences. The recommendation is intended to provide a penalty proportionate to the relative severity of the offences.

*Private companies limited by shares should have the legal capacity of natural persons. (10.9.2)*

This will end the ultra vires doctrine for private companies and bring clarity to the vexed question of the powers of a company.

*Fiduciary duties of directors should be stated in the Companies Acts. (11.3.6/11.3.7)*

This is being done for clarity and completeness. At present most such duties are common law ones and are not specifically expressed in the companies code.



*All forms of investment funds (investment companies, UCITS, non-UCITS, Unit trusts) should be regulated by a Collective Investment Schemes Act, distinct from the Companies Acts. (16.7.3)*

This will bring clarity and consistency to the regulation of investment funds.

*A Commercial Division should be established within the High Court to deal with business-to-business and business-to-State litigation. (12.9.4)*

This recommendation is aimed at providing for the efficient transaction of business-to-business and business-to-State litigation.

*Insolvency practitioners (liquidators, receivers and examiners) should be regulated through Recognised Professional Bodies. (13.9.8)*

This will introduce professional regulation for insolvency regulators.

- 3.8.** The *First Report* maps out a framework for the consolidation of what is currently an extremely complex companies code into a single act. The code at present comprises: ten Acts, all of which have to be read with reference to each other; in excess of 1,000 individual sections of law; and in excess of 300 separate offences.
- 3.9.** The context to this is that the Working Group on Company Law Compliance and Enforcement recommended the consolidation of the companies code in addition to setting up the Office of the Director of Corporate Enforcement and the establishment of the Company Law Review Group. The Office of the Director of Corporate Enforcement and the Company Law Review Group were both

given statutory effect by the Company Law Enforcement Act 2001. The Review Group agreed on the importance of consolidating the companies code and was keen to ensure convergence between the review and consolidation initiatives. To that end the Group considered the appropriate sequencing of the consolidation and review projects. Because the substantial restructuring of the companies code and its principal Act, the Act of 1963, is recommended in its *First Report*, the Group came to the considered opinion that it would be best to implement the first major review of company law, i.e. the restructuring undertaken on foot of this report, *before* consolidating the companies code.

- 3.10.** The Review Group prepared its *First Report* on the premise of a 'two-Bill' outcome differentiating between reform and consolidation. The approach envisaged by the Review Group in its *First Report* would have seen the enactment of a company law reform and pre-consolidation Bill comprehending a very large schedule of pre-consolidation measures, followed by a consolidation Bill. The exigencies of the consolidation procedure in the Oireachtas would have necessitated this two-stage approach.
- 3.11.** With this project in mind the Drafting committee of the Review Group set about the task of disaggregating the provisions of the Companies Acts to assign these as appropriate to the structure envisaged in the Company Law Review Group's Report. In carrying out this task it became clear how voluminous and complicated the pre-consolidation component of the first Bill would be.

- 3.12.** Well over half the provisions considered required amendment solely to achieve the model set out at *para 3.7.3* of the *First Report*, i.e. regardless of any substantive change to content. If the Department were to proceed at the same time to effect the recommendation at *para 8.4.4* of the *First Report* to amend the basis on which all offences are set out in the Companies Acts a further layer of complexity would be added to the restructuring and reform process. It also became clear that because strict rules apply with regard to consolidation there was a limit on the amount of modernisation and rationalisation that could be achieved by this approach.
- 3.13.** This led the Review Group to reflect on whether it made better sense to aim for a single integrated Companies Act that would *combine* the reform and consolidation of company law rather than the two-stage procedure envisaged in the *First Report*. In effect this would achieve a new principal Companies Act rather than a consolidated Companies Act.
- 3.14.** A new principal Act structured on the basis set out at *para 3.7.3* of the *First Report* and combining existing provisions of the Companies Acts with the substantive reforms in the *First Report* offers an approach which: is clearer to the general public, politicians and users of company law; affords more scope in updating the law in line with practice; is arguably easier, and certainly more interesting, to draft particularly where an existing section requires both substantive change and restructuring; and offers a quicker time for enactment from the simple reason of being a single Bill.
- 3.15.** This '*single Bill*' approach was submitted to the Government and received approval on 26 July 2002, in a decision that also approved implementation of the totality of recommendations in the Review Group's *First Report*. The core principle on which the General Scheme of a Bill (legislative proposals or 'Heads' of a Bill) is being drafted is the simplification of company law. Consolidation in a single statute is itself a simplification measure, and the additional objectives of the initiative are that the reformed and streamlined companies code should be effective, intelligible to company law directors and shareholders, and that the law should reflect how business is actually transacted.
- 3.16.** In consequence, work is proceeding on a project to achieve both objectives: reform and consolidation, with the objective of obtaining Government approval late in 2003 to draft the new Companies Bill. It is also the intention to incorporate in the General Scheme which will go to the Government at that stage the recommendations to emerge from the second work programme of the Review Group later in 2003.
- 3.17.** In drafting the General Scheme the Department of Enterprise, Trade and Employment draws extensively on the expertise of the Review Group and there is close liaison on the development of the legislative proposals. As already referred to above the Review Group has established a dedicated drafting group specifically to assist with this task.

3.18. *The structure of the new Companies Bill will be as follows:*

<b>Group A</b>	<b>Private company limited by shares</b>
Part 1	Preliminary and Definitions
Part 2	Incorporation and Consequential Matters
Part 3	Shares and Share Capital
Part 4	Corporate Governance
Part 5	Duties of Directors and other Officers
Part 6	Accounts, Audit and Annual Return
Part 7	Debentures and Registration of Charges
Part 8	Receivers
Part 9	Reconstructions
Part 10	Examinerships
Part 11	Winding-Up
Part 12	Dissolution and Reinstatement
Part 13	Compliance, Investigation and Enforcement
<b>Group B</b>	<b>Companies and bodies corporate other than the private company limited by shares</b>
Part 1	Definitions
Part 2	Public Offers and Listing of Securities
Part 3	Share Capital
Part 4	Takeovers of Public Limited Companies
Part 5	Guarantee Companies
Part 6	Unlimited Companies
Part 7	Overseas Companies
Part 8	Unregistered Companies
Part 9	Conversion and Re-registration
Part 10	Miscellaneous Bodies Corporate
Part 11	Miscellaneous
Part 12	Collective Investment Schemes
Part 13	Special Accounting Requirements

# 4

## Company Law Review Group Website www.clrg.org

- 4.1.** The Company Law Review Group website, *www.clrg.org*, has been developed with the dual purpose of functioning as a working tool for the Review Group and as a means of disseminating information to and consultation with the public and interested parties.
- 4.2.** The website gives access to the report(s) of the Review Group, details the follow up, and sets out the current work programme.
- 4.3.** The website was launched in tandem with the *First Report* of the Company Law Review Group on 28 February 2002. Online comments and submissions on the recommendations and work of the Company Law Review Group are invited. The website also keeps members of the public informed as to the ongoing progress on the Review Group's second work programme and invites submissions and comments on the programme.
- 4.4.** For the general public the website thus:
- Provides opportunities for everyone with an interest to express their views, so as to enable and inform the further development of the policy
  - Enables informed expertise and experience to play a part in policy-making and decision-making
- 4.5.** The website has been a great success averaging 517 Hits (A single action on the Web server as it appears in the log file) per day and 207,321 Hits in total since its inception. The statistics regarding traffic on the website are set out above.
- 4.6.** For members of the Review Group, a private secure intranet has been developed on the website to inform them of upcoming events and meetings and includes an archive of all issues papers, submissions received and records of committee meetings. A discussion form has been created for each Review Group's committees to facilitate discussion of the issues.

### Website Statistics

<b>Hits</b>	<b>Entire Site (Successful)</b>	<b>207,321</b>
	<b>Average Per Day</b>	<b>517</b>
	<b>Home Page</b>	<b>16,488</b>
<b>Page Views</b>	<b>Page Views</b>	<b>88,560</b>
	<b>Average Per Day</b>	<b>220</b>
	<b>Document Views</b>	<b>62,877</b>
<b>Visits</b>	<b>Visits</b>	<b>19,974</b>
	<b>Average Per Day</b>	<b>49</b>
	<b>Average Visit Length</b>	<b>00:16:44</b>
	<b>Median Visit Length</b>	<b>00:04:34</b>
<b>Visitors</b>	<b>Unique Visitors</b>	<b>5,002</b>
	<b>Visitors Who Visited Once</b>	<b>3,972</b>
	<b>Visitors Who Visited More Than Once</b>	<b>1,030</b>

- 4.7.** To further aid the work of the members of the Review Group, an electronic Company Law Archive has been designed and set up on the intranet area of the website. The Archive consists of:
- All Company Law Acts and Statutory Instruments from the Companies Act 1963 onwards
  - The briefing notes for the Minister of the day on each section of each Bill
  - Each stage of the Oireachtas debate on each Bill
- 4.8.** Because it enables access to the underlying rationale of provisions of the Companies Acts and to the circumstances to which those provisions were intended to apply the Company Law Archive serves as an invaluable tool for the review and reform of the Companies Acts.



## 5

## Company Law Review Group: Second Work Programme 2002–2003

- 5.1.** In addition to the substantial programme of work arising from assisting and advising on the drafting of the General Scheme of the Bill, as described above, the Review Group is actively pursuing its second work programme.
- 5.2.** In carrying out its work the Review Group functions as a plenary body that meets at bimonthly intervals. Much of the preparatory work, information gathering and report drafting are done in committees that meet much more frequently. The Review Group has set up dedicated committees to consider the issues that the Tánaiste and Minister for Enterprise, Trade and Employment has assigned to it for review. A schema of the membership of each committee is attached as Appendix 2.
- 5.3.** For its second work programme the Tánaiste and Minister for Enterprise, Trade and Employment has asked the Review Group to consider reform of company law with regard to the following issues:

1. **Windings up/liquidations**
2. **Shares and shareholders**
3. **Debentures and registration of charges**
4. **Company Management Regulations (Table A)**
5. **Proposed EU developments in company law**
6. **Audit and accounting**

- 5.4.** It is intended to complete this task ahead of the due date of end-2003 so that the recommendations emerging can be included in the General Scheme of the new Companies Bill.
- 5.5.** An outline of the issues being considered in each area is set out below. It must be stressed that the Review Group has not yet adopted recommendations in any of these areas.

- 5.6.** In 2002, the Review Group in both Plenary and its constituent committee form held a total of 51 meetings. A breakdown by committee is as follows:

- Plenary Group – **6 meetings**
- Steering committee – **1 meeting**
- Consolidation Drafting – **11 meetings**
- Windings up/Liquidations committee – **10 meetings**
- Shares and Shareholders committee – **9 meetings**
- Debentures & Registration of Charges committee – **4 meetings**
- Company Management Regulations (Table A) committee – **3 meetings**
- Accounting and Audit committee – **5 meetings**
- EU Developments committee – **2 meetings**

Total meetings for 2002 – **51**

### *Windings up/Liquidations Committee*

- 5.7.** In the course of preparing the *First Report* of the Company Law Review Group it became clear that a number of problems had occurred which required complex solutions or responses to be devised in Irish company law but which might otherwise have been dealt with by an official liquidations service. Accordingly, the Review Group recommended that the case for and against a State-funded public interest liquidation service should be considered in the Review Group's second work programme (see Para 15.6.13 Chapter 15 of the *First Report*).
- 5.8.** In the context of considering the case for a liquidation service the committee is considering the problems caused both by insolvent dissolved companies and companies which are insolvent but have not been wound up or gone into liquidation.

The committee is also reviewing a number of issues that arise with regard to the winding up of companies.

**5.9.** The committee is examining the following specific issues:

- Companies who cease to trade without liquidating
- Funding of insolvent liquidations
- Costs of Court applications in winding up/liquidating a company
- Powers of the Director of Corporate Enforcement as they apply to liquidations/windings up
- Sanctions against abuse of the winding up/liquidations procedure
- The operation of State-funded liquidation services in similar jurisdictions
- Role of State bodies/agencies as they apply to liquidations/windings up
- Role of Court officers in supervision of liquidations
- Efficacy of the CRO Strike-off procedure

### *Shares and Shareholders Committee*

**5.10.** The areas under consideration by the Shares and Shareholders committee address the requirement for the orderly administration of company law in relation to transactions involving stocks and shares. The main focus of the committee is simplification, particularly in regard to how tradable paper is offered to the public. The committee is also examining the duties and rights applicable to shareholders and company officers in share dealings.

The main issues being dealt with are:

- The concept of nominal or par value of shares
- Variation of par value of issued shares
- Issue of new shares
- Transfer of existing shares
- Reduction of share capital
- Disclosure of ownership of share and loan capital and other matters
- Maintenance of capital in corporate reorganisations
- Insider dealing
- Creditor protection in merger transactions
- Beneficial ownership

### *Debentures and Registration of Charges Committee*

**5.11.** The Committee is reviewing sections 91-112 of the 1963 Companies Act with a view to achieving the simplification of the law on debentures and registration of charges.

**5.12.** The Committee is analysing the issues concerning debentures and registration of charges under the following headings:

- The definition of a 'charge' under the Companies Acts
- Categories of charges created by a company
- Registration of judgement mortgages
- Content and form of the Certificate of Registration
- Negative Pledges
- Charges over property outside of the State

- Satisfaction of Charges
- Priority of charges
- Time limits in the registration process
- Debentures
- Sanctions against abuse of the registration process

### *Company Management Regulations Committee*

- 5.13.** Table A (First Schedule) of the Companies Act 1963 relates to internal corporate governance and sets out what is in effect the standard articles of association adopted by companies. In its *First Report* the Company Law Review Group concluded that the provisions of Table A should be set out in the new main statute.
- 5.14.** The Company Management Regulations committee is examining each provision of Table A, Parts I and II with the intention of either migrating the provisions logically and sequentially into the main statute or repealing them. The committee will assist the Department of Enterprise, Trade and Employment on the translation of these recommendations and a number of other recommendations in the *First Report* which relate to Table A into legislative proposals.

### *EU Developments Committee*

- 5.15.** EU company law has recently entered a new phase of activism, driven by proposals on the Regulation of European Securities Markets, on Takeovers and on Prospectuses.

**5.16.** The Department of Enterprise, Trade and Employment contributes to the development of such proposals and ensures that any recommendation it makes for the review of Irish Company Law is in accordance with the agreed direction of EU company Law. For example, the Review Group, on the basis of examination by this committee, advised the Department on its response to the EU High Level Group of Company Law Experts Consultative Document (April 2002). The detailed response took account of the Company Law Review Groups' *First Report* and also reflected the general principle of simplification. Corporate governance. The final report of the High Level Group - a Modern Regulatory Framework for Company Law in Europe - was published on 4 November 2003 and its thrust is very much in alignment with the Review Group's vision of the development of company law.

**5.17.** The EU Commission is due to publish proposals on corporate governance in mid-2003 which this committee will then give its consideration to.

### *Accounting and Audit Committee*

**5.18.** The **Accounting and Audit** committee is reviewing company law applicable to accounting and audit concerns in Ireland. In its work the committee aims to complement the work of the *Irish Accounting and Audit Standards Authority (IAASA)* which has been set up to advise the Minister for Enterprise Trade and Employment on technical accounting and audit issues. The committee has received a number of submissions to assist in its deliberation. These can be viewed in the Submissions Received section of our website.

**5.19.** The Accounting and Audit committee is considering many important accounting issues including:

- Introduction of International Accounting Standards by 2005
- EU Accounting Directives
- Merger relief
- Proper Books of Account
- Content of Small Company Accounts
- Content of Abbreviated Accounts/Summary Financial Statements
- Publication of Annual Reports and other information on the web
- Increasing use of 'Proforma Statements'

**5.20.** The Accounting and Audit committee is also reviewing significant audit issues including:

- Auditor liability
- Harmonisation of 'whistle blowing' provisions and other reporting responsibilities
- Section 34 of Companies Act, 1990 – *Inter-company loans in the same group*



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## Appendix 1

*Part 7, Company Law Enforcement Act, 2001*

Company Law Review Group

*Section 67 Establishment of Company Law Review Group*

There is hereby established a body to be known as the Company Law Review Group.

*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 Minister to the Review Group for consideration.

- (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.

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## Appendix 2

*Schema of Company Law Committees***ACCOUNTING AND AUDIT**

**Chair** David Devlin  
**Deputy** Máire O'Connor  
**Secretary** Pat Nolan  
**Members**  
 Paul Appleby  
 Muriel Hinch  
 Enda Twomey

**LIQUIDATORS AND LIQUIDATION SERVICE**

**Chair** Marie Daly  
**Deputy** Paul Appleby  
**Secretary** Paul Shortt  
**Members**  
 Alacoque Condon  
 Michael Halpenny  
 Muriel Hinch  
 Roger Kenny  
 John O'Donnell  
 Nora Rice

**EU DEVELOPMENTS**

**Chair** Vincent Madigan  
**Deputy** Enda Twomey  
**Secretary** Pat Nolan  
**Members**  
 David Devlin  
 Paul Egan  
 Martin Jacob  
 Máire O'Connor

**DEBENTURES AND REGISTRATION OF CHARGES**

**Chair** William Johnston  
**Deputy** Muriel Hinch  
**Secretary** Paul Shortt  
**Members**  
 Paul Farrell  
 Nora Rice  
 Enda Twomey

**STEERING**

**Chair** Thomas B. Courtney  
**Members**  
 Paul Egan  
 Paul Farrell  
 William Johnston  
 Ralph MacDarby  
 Vincent Madigan  
 Máire O'Connor  
**Secretariat**  
 Pat Nolan  
 Paul Shortt  
 Jason Rehill

**CONSOLIDATION**

**Chair** Thomas B. Courtney  
**Deputy** Paul Egan  
**Secretariat**  
 Pat Nolan  
 Paul Shortt  
 Jason Rehill  
**Advisors**  
 Tanya Holly  
 Declan Murphy  
 Kevin O'Connell  
 Aillil O'Reilly

**COMPANY MANAGEMENT REGULATIONS**

**Chair** Paul Egan  
**Deputy** Nora Rice  
**Secretary** Paul Shortt  
**Members**  
 Marie Daly  
 Martin Jacob  
 Ralph MacDarby

**ALTERNATE MEMBERS**

Brian Binchy  
 Adrian Brennan  
 Jonathan Buttimore  
 Louise Campbell  
 Fiona Delahunty  
 Marie Hurley  
 Aidan Lambe  
 Dermot Madden

**SHARES AND SHAREHOLDERS**

**Chair** Ralph MacDarby  
**Deputy** Martin Jacob  
**Secretary** Pat Nolan  
**Members**  
 Paul Egan  
 Paul Farrell  
 Deirdre Somers



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