

93rd Plenary Meeting of the Company Law Review Group

Date:	Wednesday, 3 March, 2021
Time:	09:30 am to 11 am
Venue:	Zoom
Present:	Paul Egan SC (in the Chair), Alan Carey, Barry Conway, Máire Cunningham, Richard Curran, Marie Daly, Emma Doherty, Bernice Evoy, James Finn, Michael Halpenny, David Hegarty, Tanya Holly, Prof. Irene Lynch-Fannon, Vincent Madigan, Kathryn Maybury, Neil McDonnell, Dr David McFadden, Therese Moore, Salvador Nash, Fiona O’Dea, Conor O’Mahony, Grace O’Mahony Gillian O’Shaughnessy, Maureen O’Sullivan, Kevin Prendergast, Maura Quinn, Doug Smith.
In attendance:	Stephen Walsh (Secretariat)
Apologies:	Rosemary Hickey and Ian Drennan

1. Attendance and apologies

The Chairperson noted the apologies and welcomed Conor O’Mahony and David Hegarty who are attending on behalf of Director of Corporate Enforcement Ian Drennan.

The Chair also welcomed Grace O’Mahony attending on behalf of Eadaoin Rock and Therese Moore attending 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 21 December 2020

The minutes of the 92nd Plenary meeting were approved subject to minor amendments regarding the recording of the attendance of Marie Daly and the non-attendance of, and apologies received from Maura Quinn and Therese Moore.

4. Report from the Corporate Insolvency Committee

Corporate Insolvency Committee Chairperson, Prof. Irene Lynch Fannon, provided an overview of the Report of the Committee dealing with Work Stream 1 of Work Programme Item 1 of the CLRG Work Programme. The Committee Chairperson acknowledged the work of the Committee and the level of interaction with all members of the Committee.

The Committee Chairperson reviewed the recommendations contained within the Report and some of the Committee discussions on these recommendations.

Minority Report of nominee of Irish Congress of Trade Unions

The Chair invited Mr Michael Halpenny, ICTU, to speak on the minority report. Mr Halpenny expressed appreciation for the work of the Chairperson and members of the Corporate Insolvency Subcommittee and the Chair of the Company Law Review Group.

He stated that ICTU agreed with a number of recommendations that are made in the Report of the Committee but there were other recommendations that ICTU did not agree on, taking CLRG members through the contents of the minority report.

Approval of the Report (and inclusion of the Minority Report)

The Review Group resolved:

- to approve the Committee Report in principle, subject to further non-material revision by the Chair, which will acknowledge the content of the ICTU minority report and a number of discrete points on the powers of the provisional liquidator and the contents of the statement of affairs;
- to authorise the Chair of the Company Law Review Group, the Chair of the Corporate Insolvency Committee, Michael Halpenny and the Secretariat to finalise the report, following which it was to be submitted to the Minister.

5. Upcoming EU and Irish company law

Ms Fiona O’Dea from DETE presented an update on upcoming law and proposed law.

European Proposals with relevance to company law

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

- The Directive was published on 20 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.

- Given the disruption and additional legislative requirements arising as a result of COVID-19, Ireland sought and was granted a year-long extension (17 July 2022) as provided for under Article 34 paragraph 2.

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.

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.

Department Legislation

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 Spring 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. The Director attended the Committee on 22nd January and the Tánaiste and Minister Troy attended the Joint Oireachtas Committee on 29th January. Publication of the Bill will depend on the report of the Committee which we hope to receive in the coming weeks.

General Scheme of the Companies (Amendment) (Small Company Rescue Process) Bill 2021

- Following receipt of the CLRG's Report, the Department began to consider the recommendations contained in the report and begin the necessary work to develop the proposals.
- The timeline for delivery of legislation is ambitious with a General Scheme due to be completed by end March with a view to submitting it to Government shortly thereafter and the delivery of legislation by the summer recess (this timeline will be subject to the legislature).
- A public consultation seeking views on the proposed Small Company Rescue Process to inform the development of the General Scheme of the Bill is nearing completion.

Extension of Companies (Miscellaneous Provisions) (Covid-19) Act 2020

- In December, the Government approved the extension of the interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 to 9 June 2021. The Act makes temporary amendments to the Companies Act 2014 and the Industrial and Provident Societies Act 1893 to address issues arising as a result of Covid-19.
- The Act ensures that 240,000 companies and 950 industrial and provident societies in Ireland can hold their AGMs and general meetings by electronic means. It also makes provision in respect of business solvency by increasing the period of examinership to 150 days and increasing the threshold at which a company is deemed unable to pay its debts to €50,000.
- Consideration will need to be given to a further extension post 9 June 2021.

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.
- Part 4 is due to be commenced on 15 March 2021 – no change to the live date for migration indicated and the Commencement Order is being drafted.

Co-operative Societies Bill 2021

- The Industrial and Provident Societies Acts 1893-2018 provide the statutory regulatory basis for the formation and general operation of industrial and provident societies (primarily co-operatives) in Ireland. The current legislative framework is a largely Victorian statutory code incorporating a number of antiquated provisions.
- The purpose of the Bill is to consolidate and modernise the existing Industrial and Provident Societies legislation and to ensure that an effective legislative framework suitable for the diverse range of organisations using the co-operative model in

Ireland is in place. The Bill is very substantial and complex in nature and will, among other things, provide co-operative societies with a distinct legislative identity reflecting the co-operative ethos; reduce the number of members required to form a co-operative; revise the provisions on debentures; introduce audit exemptions in line with the approach taken in the Companies Act 2014; strengthen the governance provisions and revise the powers of the Registrar of Friendly Societies. It is expected that a General Scheme will be brought to Government by mid-year.

Registration of Business Names Act 1963

- Draft Heads for the review of the Registration of Business Names Act are currently with the CRO for their consideration and it is expected that this work will not progress until later in 2021 due to current demands on our resources.

Limited Partnership Bill

- Heads of a General Scheme of a Limited Partnership Bill are at an advanced stage of preparation in the Department. It is intended to submit a General Scheme for approval by Government by end Q 2 2021.

Discussion

In response to a question from Doug Smith (nominee of Restructuring and Insolvency Ireland) Ms O’Dea stated, given the volume of urgent priorities, the UNICITRAL and Cross Border Insolvency would be considered by the Department in 2022.

In response to a question from the Chair, Ms O’Dea stated that DETE would check on DETE consideration of the CLRG’s submissions on the Registration of Business Names Act and the Limited Partnerships Act.

In response to a question from the Chair, Ms Tanya Holly of DETE confirmed that the Co-operative Societies Bill would be dropping the expression ‘Industrial and Provident Societies’.

6. Matters arising from practice

The Registrar of Companies Ms Maureen O’Sullivan mentioned a number of areas where some problems have arisen for practitioners in terms of accessing CRO online services. The CRO has put more staff into certain areas and have addressed some of the I.T. problems that have occurred on the new CRO online system.

7. AOB

Meeting with Minister Troy

The Chair informed the meeting that some members of the CLRG will attend a meeting with Minister Troy later in the day (Chair of CLRG, Chair of Corporate Insolvency Committee, Chair of Corporate Governance Committee.) The Chair indicated that he would raise the issue of a feedback loop being developed between the Department and the CLRG.

Public Companies

The Chair noted that under the Migration of Participating Securities Act 2019 that all eligible companies had taken advantage of the relevant provisions of this Act and had been able to successfully migrate.

The Chair also mentioned the work of the Part 23 Committee, particularly on shareholders rights. Ms O'Dea informed the meeting that the Department is currently reviewing the complexity of the issue and working on a draft Terms of Reference which will be shared with the Chair. The Department hopes to have something ready very shortly. The date of the next meeting of the Part 23 Committee will be confirmed shortly.

Public consultation on Small Company Rescue Procedure

The Chair also referred to the public consultation on the Small Company Rescue Procedure. Ms O'Dea confirmed that in line with established and accepted better regulation protocol, a legislative project with potentially far reaching impact is subject to a public consultation process. In developing the Heads and Scheme of the Bill the Department has maintained engagement with CLRG members. Some CLRG members confirmed that they would be responding separately to the public consultation. The Department advised that it would be happy to share the inputs received with the CLRG and that the results of the public consultation will be made public in due course

Corporate Governance Committee

Mr Salvador Nash, Chair of the Corporate Governance Committee also informed the meeting that the Corporate Governance Committee will be meeting shortly, once the work areas of priority are confirmed.

Corporate Insolvency Committee

Prof. Irene Lynch Fannon confirmed that the next meeting of the Corporate Insolvency Committee is scheduled for 25th March where Work Stream Items 2 and 3 of Work Programme Item 1 will be discussed.

8. Date of next meeting

The Chair indicated the next Plenary meeting of the Review Group would most probably take place once the next Report is ready for consideration.

The meeting then concluded at 11:00.