



## 103rd Plenary Meeting of the Company Law Review Group

**Date:** Wednesday 6 March 2024

**Time:** 3 p.m. to 4:35 p.m.

**Venue:** Mason Hayes & Curran LLP, Barrow Street, Dublin 4  
and via Zoom videoconference

### Draft Minutes

<b>Present in Room</b>	Paul Egan SC (Chair), Alan Carey, Tanya Holly, Neil Keenan, Eamonn Kennedy, Prof Irene Lynch Fannon, David McFadden, Susan Monaghan, Salvador Nash, Maureen O'Sullivan, Eadaoin Rock, Doug Smith
<b>Present via Zoom</b>	Deirdre Ahern, Barry Conway, Margaret Cullen, Richard Curran, Emma Doherty, Bernice Evoy, James Finn, David Hegarty, Gillian Leeson, Kathryn Maybury, Gillian O'Shaughnessy, Cathy Smith SC
<b>In Attendance</b>	Deirdre Morgan, Paul Thompson, Dan O'Neill ( <b>Secretariat</b> ), Katie Nagle (Legal Researcher)
<b>Apologies</b>	Ian Drennan, Michael Halpenny, Neil McDonnell

#### 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 102nd Review Group meeting

The minutes of the 102nd Plenary were approved with no amendments.

#### 4. CLRG Annual Report for 2023

The Chair referenced his letter in the Report, which indicated the substantial amount of committee activity in 2023. The Report was approved and it was resolved that it be sent to the Minister subject to a final check and correction of any obvious errors.

#### 5. Updates on EU and Irish company law legislation

Deirdre Morgan updated the group on legislative developments in the Department.

## **National**

### **General Scheme of Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2023**

This General Scheme 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 Industrial & Provident societies to hold meetings by electronic means on a permanent basis, following its introduction as a temporary measure during the Covid-19 pandemic. The temporary measure was extended a number of times, the most recent and final extension to expire on 31 December 2024. To avoid any gap in legislation and the uncertainty this may lead to, the Government approved on 5<sup>th</sup> March the priority drafting of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill.

On a query raised by the Chair regarding the potential for further submissions to be made on the Bill, Ms Morgan noted that a full public consultation was launched in May 2023 with a deadline for receipt of submissions of June 2023. Stakeholders had been invited to respond to 69 individual questions were also encouraged to submit their own proposals for amendment. It was unlikely that any further matters could be accommodated unless falling under the headings of the General Scheme.

### **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 also provides for the establishment of the Employment Law Review Group on a statutory basis. The Bill completed all stages in the Dáil in March and is due to commence Second Stage in the Seanad on 10 April.

### **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 envisaged that the Bill will be brought to Government for publication in Q2 2024 at the earliest.

### **Limited Partnerships Act, 1907 and Registration of Business Names Act 1963**

Despite competing pressures, a General Scheme to replace the 1907 and 1963 Acts is now at an advanced stage, with a view to seeking Government approval for publication of the General Scheme and drafting of the bill in the coming weeks. The Chair expressed disappointment with the time taken to progress.

## **EU**

### **Proposal for a Directive on Corporate Sustainability Due Diligence (CSDD)**

A proposal for a Directive on CSDD was published by the European Commission in February 2022. The proposal seeks to create legally binding obligations on companies to address the adverse environmental and human rights impacts arising from their own operations, their subsidiaries' operations and their chain of activities.

A provisional agreement was reached at trilogues on 14 December 2023, with technical meetings occurring over January. However, Member States have not been in a position to agree on a final text and we await clarification from the BE Presidency on next steps [a draft agreement was subsequently reached on March 15].

### **Directive on Corporate Sustainability Reporting (CSRD)**

The Directive on CSRD to replace the Non-Financial Reporting Directive entered into force in January 2023.

CSRD has an accelerated timeline and draft Regulations under the European Communities Act 1972 were submitted to the Office of Parliamentary Council in August 2023. The Department must transpose the Directive before 6th July 2024, but it is seeking to do so as soon as possible, in time for financial years commencing in January 2024, i.e. when the first companies in scope are impacted, to provide clarity for business and other stakeholders.

The Department is consulting with the Irish Auditing and Accounting Supervisory Authority (IAASA), the Central Bank of Ireland and the other regulatory bodies under the Companies Act 2014 on the transposition. The Department also has ongoing engagement with key stakeholders such as the professional accounting bodies and the enterprise agencies and has given presentations on the CSRD to members of the Enterprise Forum, Responsible Business Forum and other key stakeholders.

It is envisaged that there will be a presentation for CLRG members on the CSRD in the coming weeks.

### **Directive on Upgrading Digital Company Law (UDCL)**

A proposal for a Directive on 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. The UDCL reached a General Approach within the Council on 14<sup>th</sup> February 2024. The Belgian Presidency are ambitious for this file and held the first trilogue meeting on 15<sup>th</sup> February 2024. The second and final trilogue was scheduled for 13<sup>th</sup> March 2024. The Presidency may seek to agree this file before the end of the current European Parliament term.

### **Proposal for a Directive on Multi-Vote Share Structures (MVSS)**

This Proposal is part of the Commission's Listing Act package and is designed to allow companies to use multiple-vote shares when listing for the first time on SME Growth Markets (a type of multilateral trading facility) allowing owners to keep control of their vision for their company while it transitions into publicly listed status.

Ireland does not prohibit MVSS and our position on the draft Directive was supportive as it provided sufficient flexibility in its general approach to avoid interference with well-functioning systems.

Following negotiations between the Council and European Parliament, the proposal agreed has maintained the maximum flexibility that Ireland sought. It is anticipated the proposal will be published in the Official Journal within a couple of months and preparations will then begin for transposition.

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 considered likely.

### **Proposal for a Directive harmonising certain aspects of insolvency law (Insol III)**

The aim of this Proposal is to harmonise insolvency rules, with the primary objective of making them more efficient and effective with a view to facilitating more cross border investment. While DETE is the lead for this Proposal, the Department of Justice, the Courts Service and Department of Finance are also involved and to that end DETE has established an Inter-Departmental Group (IDG).

The EU Working Party has completed the first round of negotiations of the text, with the exception of Title VI on simplified winding up procedures for micro-enterprises.

Title VI 'simplified winding up procedures for microenterprises' has been flagged from the publication of the Proposal as the most contentious provision and having been intentionally skipped over during the Spanish Presidency is now being taken by the Belgian Presidency. This Title holds significant fundamental concerns for DETE and Department of Justice.

The Department has continued to engage key stakeholders, including the standing CLRG Insolvency Sub-Committee who have since met thrice to consider specific Titles.

## **6. Update of the CLRG Committees on work in progress**

### **i Corporate Insolvency Committee**

Committee Chair, Professor Irene Lynch Fannon, outlined the Committee's work on Insol III, noting the following issues:

- transactional avoidance and the issue of intent to prefer;
- directors' duties. The draft reflects the European early warning regime, which doesn't sit well with Preventive Restructuring Directive regime. A draft alternative text has been provided to DETE to propose to the Commission;
- pre-pack rescue process. This requires a formal declaration of insolvency during the process and reflects German concerns around the preventive restructuring regime. However, once a formal declaration of insolvency is made, the Transfer of Undertakings Regulation does not apply to employees and this has given rise to some disquiet in some member states.
- simplified winding up procedure. This is contentious for many reasons. CLRG has previously looked at self-administered liquidation which turned out to be more complex than at first appeared and which did not seem to be a feature of any developed common law system that was considered in the research conducted at that time. Germany and France believe the proposal or possibly some titles will be passed in 2024.

The upcoming Insolvency Committee meeting will discuss the proposed Late Payments Regulation; this has provisions that further tighten payment periods as set out in the current Late Payments Directive and sets out consequences if payments are not made within the prescribed periods.

### **ii Corporate Governance Committee**

Committee Chair, Salvador Nash, outlined the issue raised by Law Society regarding trademark squatting and company names. The Committee reviewed four options initially, and none were deemed suitable. Three further options were examined. An amended version of one option was agreed in principle, and the draft report will be circulated to the committee for their agreement.

### **iii Public Company Committee**

Committee Chair, Paul Egan SC noted that there was no current issue to address, and noted that the Committee had recently been furnished with the finalised MVSS Directive text, which had not followed the EU's Data Protection Supervisor's recommendation to conceal the identity of major shareholders from the public.

#### iv **Corporate Enforcement Committee**

It was noted that the Corporate Enforcement Committee would be reactivated to review developments since the establishment of the Corporate Enforcement Authority. The Secretariat will issue an email to all CLRG members looking for members to nominate themselves or alternates to the Committee, as well as suggested topics for consideration.

### **7. Matters arising from practice**

**CRO** - Maureen O'Sullivan, Registrar of Companies, provided an update on issues arising in practice.

Enforcement, which had been suspended during the pandemic, recommenced in late July. Due to a series of technical and administrative errors, purported notice of strike off of a number of companies was mistakenly published in the CRO Gazette and mistakenly reflected on the CRO Register. None of these companies were struck off or dissolved and their status has been returned to normal on the Register, and each company is being contacted individually by the CRO. Enforcement is currently suspended pending an examination of the technical and administrative issues that arose.

Document Processing: New company incorporations are being processed well within the published target times of 5 working days for the Fe Phrainn scheme and 10 working days for the ordinary scheme. A total of 22,384 new companies were incorporated in 2023, compared to a total of 21,434 for the whole of 2022. Incorporations for the first two months of 2024 are running at over 2000 per month.

RBO: The RBO continues to enforce the filing obligations by prosecuting companies who fail to file. The most recent prosecutions took place on 29<sup>th</sup> January last when 5 cases were prosecuted. There were two convictions, one case was dismissed by the Judge. The RBO was granted permission in another case to reissue a summons, and one case was adjourned. Since the beginning of 2023, the RBO has prosecuted 27 companies, with 17 convictions, 9 companies pleading guilty, and 1 case struck out. It was stated that 90% of companies file after the initial enforcement step.

In response to questions posed, it was confirmed that:

- It is possible to make an appointment to attend in person in the Public Office. Some filings/documents have to be filed and registered on same day, so that is by appointment.
- Regarding the provision of a residential address on filings: the CRO operate legislation as drafted, and any review of this legislation is a matter for the Department. Salvador Nash added that the Corporate Governance Committee had looked at this issue previously and it could be a matter for the next Work Programme.

**CEA** – David Hegarty (in place of CEA CEO Ian Drennan) provided an update on issues arising in practice.

The CEA updated the Plenary on the recent FAI case, concluding with the Supreme Court determination delivered - leave to appeal refused.

The CEA mentioned two Inspectorship proceedings under section 747 of the Companies Act 2014. One case proceeds towards delivery of the Inspector's Final Report and the second

application was withdrawn before Christmas. That latter case likely previews the Department of Justice position re future cases where security for costs had been sought. The CEA noted ongoing criminal proceedings involving a jury trial, and a recent Circuit Criminal Court plea of guilty, resulting in conviction, consequential disqualification, and the imposition of a monetary penalty.

Separately the CEA noted the disqualification programme under section 842(h) is to recommence once strike off matters are addressed.

Finally, regarding SCARP, the CEA noted that across 2022, 2023 and so far in 2024, the CEA is aware of 60 uses of SCARP. Twelve did not result in a rescue plan. Of those 12, 11 companies were placed into liquidation. The CEA has been notified of 42 rescue plans. In one instance where a rescue plan was formed, the company was placed into liquidation. Six notifications are pending.

- 25% of rescue plans have involved changes in management
- 70% of rescue plans involved a loan being provided to the company
- 50% of rescue plans involved equity investment

The Process Advisor costs typically range from €10,000 to €74,000. The average cost has increased from by about 33% between 2022 and 2023 (with one notable cost in 2023 well above this range).

## **8. Report from Amsterdam Workshop on corporate transparency**

The Chair outlined discussions at a recent workshop he attended in a personal capacity where 33 people with interest in corporate transparency and civil liberties groups had been invited by Amsterdam University to design a system for disclosure of beneficial ownership, in light of the controversial CJEU W.M. / Sovim ruling of November 2022. The following themes had emerged:

- a general consensus on the benefit of a layered set of corporate data and layers of disclosures of that data;
- disclosure of beneficial ownership was not just a matter for anti-money laundering law, it is relevant for sanctions, environmental issues, and corporate probity generally; accordingly it should be integrated into company law, with the focus being on disclosure of actual economic control in companies;
- all commercial entities should be covered by the disclosure law, including partnerships, at present outside the law in Ireland because they are not legal entities.
- a working group will be put together (including Mr Egan) in due course to identify ways to navigate the Sovim decision.

## **9. CLRG 2024-2026**

### **i New CLRG Secretary**

The Chair introduced Mr Paul Thompson as the new incoming Secretary of the CLRG. Ms Deirdre Morgan was attending her last meeting in the role prior to taking a career break and Mr Egan and the members paid tribute to her, thanking her sincerely for her dedication and work over the preceding two years and wished her all the best for her leave of absence.

### **ii Work Programme**

Ms Morgan stated that the secretariat would be in touch with members seeking their suggestions on potential items for the Minister's 2024-2026 Work Programme.

#### **10. AOB**

No matters were raised for AOB.

#### **11. Date of next meeting**

The Chair indicated that the next meeting was likely to be held in May (via Zoom), to consider the Corporate Governance Committee's ultimate report on the trademark issue.

#### **12. Conclusion**

There being no further business, the meeting concluded at 4:35 pm.