



99th Plenary Meeting of the Company Law Review Group

Date: 21st March 2023

Time: 11:00am – 12:30pm

Venue: Virtual by MS Teams

Present: Paul Egan (Chairperson), Deirdre Ahern, Barry Conway, Richard Curran, Emma Doherty, Ian Drennan, Bernice Evoy, Jim Finn, Michael Halpenny, Rosemary Hickey, Tanya Holly, Neil Keenan, Eamonn Kennedy, Gillian Leeson, Irene Lynch Fannon, Kathryn Maybury, Neil McDonnell, Salvador Nash, Fiona O’Dea, Gillian O’Shaughnessy, Maureen O’Sullivan, Eadaoin Rock, Cathy Smith, Tracy Sullivan

Alternates: Paddy Purtill for Alan Carey (Revenue), Susan Monaghan for Kevin Prendergast (IAASA)

In attendance: Deirdre Morgan, Dan O’Neill (**Secretariat**)
David Allen, Katie Nagle (Legal Researchers)

Apologies: Dr Margaret Cullen, Gillian Leeson, Dr David McFadden, Doug Smith

Agenda

1. Welcome and Introduction by Chair

The Chairperson welcomed everyone to the meeting and noted apologies. The Chairperson welcomed Dr Margaret Cullen from the Institute of Directors in Ireland who replaces Thora Mackey. He thanked Ms Mackey for her contribution to the work of the CLRG.

2. Declarations of Interest under the CLRG’s Code of Practice

There were no declarations of interest.

3. Minutes of the 98th Review Group Meeting (for approval)

The minutes of the 98th Plenary were approved with no further amendments.

4. Draft 2022 Annual Report (for approval)

The 2022 CLRG Annual Report was approved subject to minor amendments. In relation to the report on certain corporate governance issues under company law which is appended to the Annual Report, Michael Halpenny expressed a concern that any law concerning mergers should not adversely affect the position of employees under Transfer of Undertakings regulations SI 131/2003 which is governed by other legislation.

5. Upcoming EU and Irish Company Law Legislation

Fiona O'Dea (DETE) updated the following:

National

Scheme of Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2023 - the areas of reform broadly relate to four distinct areas of company law:

- 1)** Company law administration - It is proposed to enhance certain administrative processes carried out by the Registrar of Companies.
- 2)** Corporate Governance - The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 will lapse at year end. Informed by feedback from stakeholders the Department considers there is merit in providing companies and Industrial and Provident Societies with the option to hold virtual AGMs and general meetings on a permanent basis. However, the Department is also mindful that it can be important for shareholders of publicly listed companies to have an opportunity to attend in person at AGMs. It is also proposed to give effect to CLRG recommendations from its *Report on company law issues arising under Directive (EU) 2017/828 of 17 May 2017 (SRD II), Central Securities Depositories Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014*", as well as its *Report On Certain Company Law Issues Under the Companies Acts 2014 relating to Corporate Governance*.
- 3)** Corporate Insolvency - Amendments are proposed to various insolvency related processes across the Act. The Department intends to deliver on Programme for Government commitments in relation to enhanced regulation of receivers. It would also provide for the inclusion of technical amendments to the Companies (Rescue Process for Small and Micro Companies) Act 2021.
- 4)** Company Law Enforcement and Supervision -The proposed amendments would aim to enhance the power of the CEA, IAASA and the CRO, streamline procedures, deliver administrative efficiencies and strengthen reporting requirements.

There is no definite timeframe for the public consultation for the General Scheme (Miscellaneous Bill), but Q2 2023 is a possible date.

Plan of Action on Collective Redundancies Following Insolvency Bill 2023 - A general scheme is proposed to implement the outstanding company law and employment law commitments set out in the Plan of Action on Collective Redundancies following Insolvency.

General Scheme of a Co-operative Societies Bill - Following the publication of the General Scheme of the Co-operative Societies Bill 2022 in November 2022, pre-legislative scrutiny of the General Scheme by the Joint Oireachtas Committee on Enterprise, Trade and Employment (JCETE) commenced in December 2022, with Departmental officials attending a public meeting of the JCETE. The JCETE held a second public session in February. The Department is awaiting the assignment of a drafter.

Limited Partnerships Act, 1907 and Registration of Business Names Act 1963 - A General Scheme to replace the 1907 and 1963 Acts is at an advanced stage.

EU

Transposition of Cross Border Mergers, Conversions and Divisions Directive (2019/2121) – The Department developed draft regulations to repeal and replace the Cross Border Merger Regulations 2008 (S.I. 157 of 2008); instructions issued to the OPC on 21st December 2021 for settlement. While the 31st January 2023 transposition deadline has not been achieved; it is expected that transposition will be achieved by 30th April 2023.

Transposition of Public Country by Country Reporting Directive (2021/2101) – It is expected that the transposition deadline of 22nd June 2023 will be achieved.

A proposal for a Directive on Corporate Sustainability Due Diligence (CSDD) – Following intensive negotiations at EU working party level, political agreement (general approach) was then agreed at Competitiveness Council on 1st December 2022. The CSDD file is now with the European Parliament for consideration and their final report is expected in May. Trilogue negotiations between the European Parliament, Council and the European Commission will then commence and a final Directive is not expected to emerge until the end of the year.

Directive on Corporate Sustainability Reporting (CSRD) to replace the Non-Financial Reporting Directive) entered into force in January 2023. Ireland and other Member States now have 18 months to transpose the Directive i.e., mid 2024.

A stakeholder webinar was held on 26th January with nearly 500 relevant stakeholders in attendance. A Public Consultation seeking the views of stakeholders and interested parties on the Member State options contained within the Directive closed on 9th March. DETE is also planning further stakeholder events for 2023.

European Union (Dematerialised Securities) Regulations 2023 will provide for dematerialisation of securities under the Central Securities Depository Regulations. Settlement of the draft regulations by the OPC is expected to be completed shortly.

Two proposals for directives were published in December last and are part of the Commission's priority to advance the Capital Markets Union (CMU):

- **Multi-vote Share Structures** - 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.

- **Harmonising certain aspects of insolvency law** – This proposal aims to address obstacles to freedom of movement and of capital and cross-border investment within the EU through harmonisation of corporate insolvency regimes – particularly relating to avoidance actions. Consideration of the proposal is still at an early stage at EU working party level. Ireland has engaged bilaterally with the Commission on some fundamental aspects of the Proposal.

A public consultation on the Proposal took place in February. The Department has begun a process of engagement with key stakeholders and has formed a technical group to advise on certain aspects – which includes members of the CLRG Insolvency Committee. The Department is leading on negotiations for this Proposal which also covers areas of competency from the Department of Finance, Department of Justice and the Courts Service.

6. DETE Presentation on the Legislative Process

Fiona O’Dea outlined the steps and stages involved in company law policy development, the legislative process generally, and the context in which CLRG reports are submitted and considered.

7. Update from the Committees

a) Corporate Governance Committee

The Committee Chair, Salvador Nash, updated the group on its work to date in reviewing the Directors’ Compliance Statement. A survey had been disseminated to Directors and Practitioners requesting their opinions and the results are currently being analysed. The next meeting of this committee is expected to be held in April.

b) Corporate Insolvency Committee (work suspended)

The Committee Chair, Prof Irene Lynch Fannon, reported that the committee met in response to Item 1 on the Work Programme on self-administered liquidation but its work was overtaken by developments at EU level with the proposal for a Directive on harmonising aspects of insolvency law. She explained that the committee will not commence substantive work until requirements for Item 1 are specified. Prof Lynch Fannon also confirmed that DETE had reviewed departmental requirements and reverted to the Committee on Item 5 of the work programme on examinership law.

c) Standing Committee (Technical Group on Insol III)

The Committee Chair, Professor Lynch Fannon, reported on the formation of this standing committee which is a technical group whose technical insights will assist the Department in

its understanding of the issues in this proposal to enable Ireland to arrive at an informed negotiation position.

d) Public Company Committee

The Committee Chair, Mr Paul Egan, said that there had been one meeting of this committee to discuss the proposal regarding multiple-vote share structures.

The second issue this Committee will consider is the appropriateness of retaining Parts 23 and Parts 24 of the Companies Act in that act. To that end, a legal researcher is to undertake a mapping exercise on general financial services law and to conduct a comparative analysis with other jurisdictions.

8. Matters arising from practice

The Chairperson confirmed there were no updates from the CEA.

Maureen O'Sullivan CRO updated the members on the following:

- Companies Registration Office (CRO) – commencement order expected to be signed shortly commencing Section 35 of the CEA Act and introducing the PPSN requirement for directors. The CRO aim to go live at the end of April. The CRO will require a director to provide a PPS number when filing certain forms with CRO. Where a director does not have a PPSN a system similar to that currently in use in the RBO will be used. Over 30,000 RBO numbers were issued in the previous 3 years and those numbers may also be used when filing with CRO for those who do not have a PPSN. There was a connected need to update the relevant forms, and there have been extensive consultations with software vendors & subgroup of stakeholders on this. The B69 form must now be submitted electronically. There is a compliance rate of 85% compliance for RBOs, in line with European comparators. The form to request a new ID number will be available from the end of this week.
- The CRO is making it mandatory to file certain forms online with effect from late April. The B7, B69 and B77 are among the forms that it will now be mandatory to file electronically.
- Enforcement of Companies Act – Involuntary strike offs would commence shortly regarding the Enforcement of the Companies Act. Due to the suspension of involuntary strike off since 2020, numbers are expected to be high in the initial period after the recommencement of enforcement.
- The RBO had to briefly shut down public access to adhere to the recent CJEU ruling. The Designated Persons search is up and running again and has 581 users and 1682 sub-users. It was reported that less than 5% of the searches carried out on the RBO register before access was withdrawn last November were carried out by the general public.
- RBO prosecutions continue with further court dates in the coming weeks. Notification of these has a strong deterrent effect leading to increased compliance.

9. AOB

- Deirdre Morgan requested that any outstanding Members' Declarations under the Code of Practice be returned to the Secretariat.
- Ms Morgan outlined the recent tender for legal research services.
- The Chairperson discussed the CLRG's recent invite from and appearance in front of the Joint Oireachtas Committee on Enterprise, Trade and Employment to discuss detailed scrutiny of the Private Member's Bill, the *Companies (Protection of Employees' Rights in Liquidations) Bill 2021*. He noted that the inputs at the Oireachtas committee from both Professor Lynch Fannon and the Chairperson himself were well received.
- The Chairperson mentioned the Law Reform Commission consultation on unincorporated associations which members might be interested in in their personal capacity. This will review aspects of the governance of charities and sporting associations.
- Members were given the opportunity to raise any matters arising in practice that merit the Review Group's consideration. No issues were raised.

10. Date of 2023 plenary meetings

The Chairperson expressed a preference for three more meetings in 2023. The next meeting – the 100th Plenary – will be held in the afternoon of Tuesday 23rd May in person, venue to be determined.

[this date has since been updated to Wednesday 24th May @16:00]