

79th Plenary Meeting of the Company Law Review Group

Date: Thursday 1st December 2016

Time: 9:30am – 11:30am

Venue: National Emergency Coordination Centre (NECC),
Agriculture House, Kildare Street, Dublin 2.

Chairperson: Dr Thomas B Courtney.

Attendance: Deirdre-Ann Barr, Sinead Boyle, Jonathan Buttimore, Barry Cahir, Eleanor Daly, Jeanette Doonan, Paul Egan, Mark Fielding, Michael Halpenny, Brian Kelliher, John Loughlin, Ralph MacDarby, David McFadden, Vincent Madigan, Salvador Nash, Deirdre O’Higgins, Kevin O’Connell, Theresa O’Connor, Lynn O’Sullivan, Maureen O’Sullivan.

Secretary: Síona Ryan.

In attendance: Tara Coogan, Helen Curley, Sabha Greene, Breda Power.

Observers: Simon Halpin, Darren Lynch, Lisa Maher.

Apologies: Marie Daly, Ian Drennan, Gráinne Duggan, Bernice Evoy, Brian Hutchinson, William Johnston, Irene Lynch Fannon, Gillian Leeson, Kathryn Maybury, Eadaoin Rock and Noel Rubotham.

The Chair welcomed Theresa O’Connor who attended from the Central Bank on behalf of Eadaoin Rock and Kevin O’Connell from the ODCE on behalf of Ian Drennan.

1. Minutes & Matters arising

The minutes of the meeting of 14th September 2016 were circulated on 26th September 2016 and again on 10th October 2016. There were no substantive changes and the minutes were adopted.

2. Companies (Accounting) Bill 2016

- Update from Ms. Sabha Greene, Department of Jobs, Enterprise & Innovation

Companies (Accounting) Bill 2016

The Companies (Accounting) Bill 2016 went through Second Stage in Dáil Éireann on the 3rd and 15th of November 2016. The Select Committee on Jobs, Enterprise and Innovation held the Committee Stage debate on the 22nd of November. Ms. Greene reported that the Bill

was generally welcomed by Deputies, in particular the benefits for small and micro companies and the transparency requirements for the extractive industry and certain registered unlimited companies. There was some criticism of the delay in transposing, which puts Irish SMEs at a disadvantage vis-à-vis their UK counterparts. There was also some criticism of going to the top thresholds for small companies in the measures adopted in the Bill.

A number of amendments were made at Committee Stage. Ms Greene gave an update on the 41 amendments tabled, and subsequently agreed, including:

- amendment to the definition of credit institution;
- implementation of the CLRG's recommendation regarding floating charges;
- a few reinstatements from Companies Acts 1963-2013 that had not been carried over into the 2014 Act;
- some technical amendments arising from issues identified since the Bill was published in August.

The revised Bill was published on the 24th of November and is now available on the Oireachtas website. Ms Greene confirmed that the Bill is due to progress to Report stage and while a date has not as yet been set for this, it is the assumption that this will happen during the week commencing 12th December 2016. It is therefore likely that enactment will be in January 2017 at the earliest.

Ms Greene also took the opportunity to inform the meeting of upcoming relevant matters that could be of interest to the CLRG.

Statutory Audits Bill

It is intended that the General Scheme of a Statutory Audits Bill will be submitted to Government for approval in the coming weeks to publish the Heads of the Bill. If this is agreed, it is likely that the Heads will be available early in the new year.

Transposition of the Directive on disclosure of non-financial and diversity information (NFI)

The deadline for the transposition of the Directive¹ is 6 December 2016. Drafting of the Regulations is ongoing by the Office of the Parliamentary Counsel. As the NFI Directive amends the Accounting Directive, and the Accounting Directive is not yet transposed, it is the intention to await the enactment of the Accounting Bill prior to submission of the draft Regulations to the Minister for her consideration and signature.

A query was raised regarding the commencement date for the Companies (Accounting) Bill 2016, once enacted. Ms. Greene confirmed, and further clarified to the Secretary after the meeting, that the Minister's intention is to have a two-step approach. For those companies

¹ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

that will have new filing obligations, the Minister intends that the first financial statements to be filed will be in respect of years beginning in 2017. For those companies that file financial statements already, the Minister's intention is that the Bill will apply to financial statements for years that begin in 2016.

3. Discussion Document on the Enforcement of Company Law (Item 3 of the Work Programme)

- Second presentation for discussion

The Chair gave the background to the discussion document on the enforcement of company law. This was compiled by the secretariat with a view to presenting an overview of issues related to the compliance with and enforcement of company law in Ireland for discussion by the Company Law Review Group. It was presented at the last Plenary meeting of the CLRG and was well received by the Members. Members were then requested to send submissions in response to the questions contained in the Discussion Document to the secretariat by 5th October 2016.

A revised document was circulated on 24th November 2016 (one version in clean copy and one version with changes tracked). The revised document incorporates observations on the content of the discussion document, as well as the observations received from CLRG members in relation to the specific questions posed in Chapters 3-7. The Chair confirmed that the inclusion of these observations was with a view to assist the CLRG in its deliberations. It is not intended to set out the views of individual members in the final report. The Discussion Document remains a working document solely for the use of CLRG members.

The Chair then asked the meeting to discuss the specific questions posed in Chapters 3-7 in turn, with the benefit of the submissions received from CLRG members, to determine whether there is general consensus or whether further exploration of the issues is merited. A general discussion ensued in relation to the 'officer in default' provisions in Irish law, the merits of a criminal offence for reckless trading, the potential for greater use of conspiracy charges, the relevance of administrative sanctions and other alternatives to prosecution.

The secretariat gave an overview of the main themes of the Law Reform Commission annual conference on 3rd November 2016 and confirmed that the Law Reform Commission is continuing its consideration of the submissions from interested parties to its Issues Paper '*Regulatory Enforcement and Corporate Offences*'. The Law Reform Commission stated that it remains open to receipt of further submissions before the publication of its final report. No indication of the timeline for this was given.

The Chair then indicated the proposed general approach to progressing the deliberations of the CLRG on the Discussion Document. The Chair had consulted with Ian Drennan, Chair of the sub-committee on Compliance and Enforcement, prior to the Plenary meeting. Mr. Drennan agreed to look at any remaining or contentious issues and to further develop the

report with the sub-committee and to revert to Plenary in due course. Members of the CLRG were asked to advise the secretariat if they wish to be added to the membership of this sub-committee.

It is intended that the Discussion Document will be amended to form a report and presented for formal adoption by the CLRG, then presented to the Minister for consideration and subsequently published. The Chair thanked members for their interventions and the secretariat for its preparation of the document.

4. Ad-Hoc Committee on Protections for employees and unsecured creditors (Item 2 of the Work Programme)

- Update by Ad-hoc Committee Chair Mr. Vincent Madigan

Mr. Madigan gave an update on the Ad-hoc Committee, which has met twelve times to date. The committee has conducted an in-depth review of the provisions contained in the Companies Act 2014 to establish whether there should be any recommendations for change, or indeed, if the provisions continue to be fit for purpose. Extensive discussion and debate has taken place on the provisions of the Companies Act 2014. Intentionally, there was no deadline set by Minister Bruton in his request to the Company Law Review Group in order to facilitate a full and through review and, in due course, it will report to the Minister on the matters set out in the Minister's request.

Work has now begun on the draft report to address the matters raised in the Minister's request to the CLRG and to give an overview of the work of the committee on this matter. The draft report will be brought to Plenary when it is finalised by the Ad-hoc Committee for discussion by the CLRG.

5. Sub-committee on Shares and Share Capital

- Update from Sub-committee Chair Mr. Paul Egan

Mr. Egan gave an update on the work of the sub-committee on Shares and Share Capital which held its first meeting on 21st September 2016 and has met three times to date. He provided a detailed overview of the 22 separate issues which are under consideration by the sub-committee. These matters have come from submissions from the Law Society Business Committee, from issues raised by individual members, as well as general submissions received by the Department of Jobs, Enterprise and Innovation and referred to the sub-committee.

Mr. Egan reported that he had been approached by the Department and asked for an indication of proposals for future potential amendments to the Companies Act 2014, which had been provisionally supplied. Arising from a question from the Chair, Mr. Egan confirmed that it was intended to provide draft heads for any proposed amendment in the report from

the sub-committee, which was indicated for early 2017. He confirmed that the next meeting of the sub-committee on Shares and Share Capital is scheduled for 7th December 2016 and thanked the secretariat and specifically Mr. Halpin for the research supporting the sub-committee in its deliberations.

6. AOB

Ms. O'Higgins informed the CLRG that the European Commission had recently published a new proposal² for a directive on business insolvency and preventive restructuring frameworks. This proposal marks a new departure for EU insolvency law, which up till now had not attempted to harmonise the substantive provisions of Member States' insolvency laws and instead was confined to "softer" cross border cooperation issues. The incoming Maltese presidency of the EU has indicated this will be a priority issue for them and has signalled its intention to hold 7 meetings on this dossier during its presidency. Ireland's participation at these negotiations will be handled jointly by the Department of Jobs, Enterprise and Innovation (company insolvency law) and the Department of Justice and Equality (personal insolvency among non-company entrepreneurs). The two Departments would be launching a public consultation on their websites shortly (since done) to seek the views of interested parties. They would also engage with the CLRG Corporate Insolvency sub-committee on this matter.

Mr. Cahir, Chair of the Corporate Insolvency sub-committee confirmed that the EU proposals would be part of the work programme of that sub-committee as well as a focus on UNCITRAL Model law on insolvency given recent events regarding the proposed BREXIT. The secretariat agreed to circulate an updated version of a previous CLRG paper on UNCITRAL prepared by Mr. Rubotham and Mr. Cahir confirmed that he has recently held a conversation with Mr. Rubotham regarding UNCITRAL.

The recently published [European Union \(Anti-Money Laundering: Beneficial Ownership of Corporate Entities\) Regulations 2016](#) by the Department of Finance were raised and the potential for a link with the disclosure of beneficial interests in companies was discussed. The lack of a lead-in time for companies to allow for awareness in advance of the publication of the Regulations was criticised. Ms M. O'Sullivan confirmed that the CRO had emailed every company on the Register for which email addresses were available to make them aware of its obligations under these Regulations.

The Department informed the CLRG that it has launched a consultation on the Industrial and Provident Societies legislation which it intends to modernise and consolidate.

The Ms M. O'Sullivan noted the end of the transition period under the Companies Act 2014 for the reregistration of companies on 30th November 2016 (the previous day) and gave an

² [European Commission proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU](#)

overview of the extremely onerous level of applications for conversion received in the days before the deadline. It was confirmed that every effort was made to ensure that new certs would be issued for companies who submitted an application to convert before 1st December 2016. The Chair commended the CRO and its staff on their efforts.

The Chair thanked the Members for their contribution to the work of the Company Law Review Group in 2016 and wished all present a merry Christmas and every good wish for 2017. The meeting then concluded.