

102nd Plenary Meeting of the Company Law Review Group

Date: Wednesday 6th December 2023

Time: 3.30 p.m. to 5:30 p.m.

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

Present

Paul Egan (Chairperson), Alan Carey, Richard Curran, Emma Doherty, Ian Drennan, Rosemary Hickey, Tanya Holly, Neil Keenan, Eamonn Kennedy, Irene Lynch-Fannon, Kathryn Maybury, Neil McDonnell, Salvador Nash, Gillian O'Shaughnessy, Doug Smith, Fiona O'Dea, Niamh Ryan, Doug Smith, Tracey Sullivan

In Attendance

Deirdre Morgan, Dan O'Neill (**Secretariat**)
David Allen (Legal Researcher), Katie Nagle (Legal Researcher)

Apologies

Deirdre Ahern, Margaret Cullen, Bernice Evoy, James Finn, Michael Halpenny, David J Hegarty, Gillian Leeson, Susan Monaghan, Maureen O'Sullivan, Eadaoin Rock, Cathy Smith

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 101st Review Group meeting (for approval)

The minutes of the 101st Plenary were approved with no amendments.

4. Report on Meeting with Minister Calleary

The Chairperson reported that he, Prof. Lynch Fannon, Mr Nash and the Secretary had met Minister Calleary on 30 November 2023. The meeting had lasted an hour and the Chairperson, Prof Lynch Fannon and Mr Nash and presented on key issues arising from their respective Committees and generally. They summarised their presentations:

- Mr Nash, Chairperson of the Corporate Governance Committee, gave an overview of the pending Report on the Directors' Compliance Statement, Trademark Squatting, and upcoming AI developments.
- The CLRG Chairperson highlighted what he viewed as two potential issues that could cause reputational damage to Ireland, the delay in updating limited partnerships legislation and the attack on corporate transparency from the Court of Justice of the EU. He noted a recent Transparency International report on Ireland and tax evasion and criminal proceeds, which had noted that a Statutory Instrument from June 2023 renders it impossible for journalists to get access to information on the Central Register of Beneficial Ownership.
- Professor Lynch-Fannon, Chairperson of the Corporate Insolvency Committee, briefed the Minister on the Small Companies Administrative Rescue Process (SCARP) which the CLRG fed into its creation; 50 cases were being dealt with and there were more to come. Prof. Lynch-Fannon also spoke on the INSOL III Directive, and a shift in European Commission policy towards insolvency harmonisation, and how this Directive does not fit in with the Preventive Restructuring Directive. She highlighted the need for Ireland to have a restructuring process that is present in other common law countries.

The Chairperson reported the Minister's request to meet the CLRG twice-yearly.

5. Upcoming EU and Irish company law

Fiona O'Dea updated the group on legislative developments in the Department.

National

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

Draft heads are being prepared taking account of feedback from the public consultation. It is expected that the general scheme will go to the Minister for approval by the end of Q4 2023.

General Scheme of a Co-operative Societies Bill -

Work on the Bill is progressing, however, given the size and complexity of the proposals, a draft Bill is now expected in Q1 2024.

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, with a view to seeking Government approval for drafting in Q1 2024.

EU

A proposal for a Directive on Corporate Sustainability Due Diligence (CSDD) - Trilogue negotiations are ongoing at EU level between the Council Presidency, Commission and Parliament. Much work remains to be done to reach a compromise text and a final Directive is not expected before year end.

Directive on Corporate Sustainability Reporting (CSRD) to replace the Non-financial Reporting Directive) entered into force in January 2023.

The Department must transpose the Directive before the 6th of 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.

A proposal for a Directive on Upgrading Digital Company Law (UDCL) was published by the European Commission on 29th March 2023. The first working party meeting under the Spanish Presidency took place in October and discussions are unlikely to conclude before year end.

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

A Proposal for a directive on Multi-vote Share Structures

The first trialogue occurred on 23 November 2023 with much work remaining to be done for text of any Directive to be agreed. Ireland's aim is to maintain a position of maximum flexibility.

A proposal for a Directive harmonising certain aspects of insolvency law (Insol III) Ireland has engaged bilaterally with the Commission on some fundamental aspects of the Proposal which have potential to negatively interfere with our common law jurisdiction and our sophisticated insolvency regime. The EU Working Party has completed first round of negotiations of the text, with the exception of Title VI which will be considered during Belgium's Presidency in Q1 2024.

The Department has continued to engage with key stakeholders, including the standing CLRG Insolvency Sub-Committee which has since met twice to consider specific Titles.

The Department is leading on negotiations for this Proposal which covers areas of competency from the Department of Finance, Department of Justice and the Courts Service, and established an interdepartmental working group to ensure timely sharing of views and information, and a cohesive national position on the file during negotiations.

6. Update of the CLRG Committees on work in progress

i Corporate Insolvency Committee

The Committee Chair said that there would be a meeting on 7th December to discuss Insol III Title VI, Winding-Up of Insolvent Microenterprises. The Committee would also consider Title IV, prepack proceedings and Title V, Directors duties.

ii **Corporate Governance Committee**

The Chairperson, Salvador Nash, said that the Report on the Directors' Compliance Statement, approved at the 101st Plenary meeting, was now ready for submission. No further amendments were proposed.

On the subject of trademark squatting, Mr Nash thanked Cathy Smith & Jim Finn for offering to look at this topic. He asked if members in practice could send him any information on actual trademark squatting that they might have come across.

iii **Public Company Committee**

The Chairperson enumerated the minor amendments and additions made to the Report on Parts 17, 23, and 24 of the Companies Act approved at the 101st Plenary meeting. No further amendments were proposed.

SRD: The Chairperson reported on the European Commission investigation into the operation of the Shareholders Rights Directive. A working group of members of the PLC Committee had conferred and then had a one-hour interview with the consultancy conducting the investigation. Among the suggestions made to the consultant researcher was a proposal to include register of participants by Euroclear Bank to help disclosure of the beneficial owners of shares in publicly quoted companies.

7. Matters arising from practice

CRO – Dr McFadden provided an update on issues arising in practice.

- The Annual Return filing peak was on 27th November. Over 107,000 companies were due to file and by midnight on that date over 103,000 companies had filed their returns.
- Enforcement, which had been suspended during the pandemic, recommenced in late July with the issue of the first batch of warning letters to around 1,000 companies. Warning letters continue to issue on a weekly basis to batches of 1,000 companies. The next stage, which is the issuing of strike off letters, started in October and it is expected that the first strike offs will start in the coming weeks. Overall, there are about 30,000 companies in breach of their obligation to file annual returns.
- New company incorporations are currently 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.
- 20,642 new companies were incorporated to end November 2023, compared to a total of 21,434 for the whole of 2022.
- The RBO continues to enforce the filing obligations of companies by prosecuting companies who fail to file. The most recent prosecutions took place on 20th of November when three companies pleaded guilty and the Probation Act was applied.
- If a filing is made but the PPS Number 'bounces back', there is a 14-day period where a non-compliant document will be sent back to fix and if resolved, the filing stands. Directors should be automatically informed regarding any PPS issue. The CRO is assisting with issues such as death/resignation of directors where PPNs cannot be accessed and there is a proposal that companies don't lose audit exemption in such instances.

CEA - Ian Drennan (CEA CEO) provided an update on issues arising in practice.

- There are 46 SCARP processes (up from 41) currently in process; 10 did not result in a rescue plan. 4 are ongoing. Emerging trends arising from these processes were these:
 - Unsecured creditors are getting 3-5% on average.
 - PA costs range from 10-70k costs (there is one outlier where there is substantial investment).
 - 29 previous cases where a plan was implemented and money invested.
- Auditors are obliged to report when certain offences have been committed and the numbers of such reports are up;
- There are two cases before courts where applicants are requesting the appointment of inspectors. In the WFS Forestry case, an inspector has been appointed. Under the Companies Act 2014, the Minister for Department of Justice covers the costs in the first instance. In the matter of EFW Renewable Energy, this has been listed for hearing in December 2023. The DoJ has indicated they are going to apply ss4, 747, where court may order security of costs against applicant before departure.

The Chairperson and Mr Drennan agreed that this was a suitable time for the Corporate Enforcement Committee of the CLRG to be reactivated, and that steps to reconvene would be taken in 2024.

8. AOB & Conclusion

The Chairperson thanked the following for their work on the committee:

- The CLRG Secretariat
- Rosemary Hickey who was attending her last meeting

He wished all attending and absent a Happy Christmas.