



## 98th Plenary Meeting of the Company Law Review Group

**Date:** 29<sup>th</sup> September 2022

**Time:** 10:00am – 11:15am

**Venue:** Virtual by Webex

**Present:** Paul Egan (Chairperson), Deirdre Ahern, Alan Carey, Barry Conway, Richard Curran, Emma Doherty, Ian Drennan, Bernice Evoy, Jim Finn, Michael Halpenny, Tanya Holly, Eamonn Kennedy, Gillian Leeson, Irene Lynch Fannon, Thora Mackey, Kathryn Maybury, Neil McDonnell, David McFadden, Salvador Nash, Gillian O'Shaughnessy, Maureen O'Sullivan, Niamh Ryan, Cathy Smith, Doug Smith.

**In attendance:** Deirdre Morgan, Dan O'Neill (**Secretariat**)  
Susan Monaghan (IAASA), Grace O'Mahony (Central Bank)

**Apologies:** Rosemary Hickey, Neil Keenan, Fiona O'Dea, Tracey Sullivan,

### Agenda

#### 1. Welcome and Introduction of new Group Members

The Chairperson welcomed everyone to the meeting and noted apologies. The Chairperson advised that item 6 would be deferred to a future meeting and proposed to take updates from the Companies Registration Office (CRO), the Corporate Enforcement Authority (CEA) and Irish Auditing and Accounting Supervisory Authority (IAASA) in place of the presentation.

There was a tour-de-table where members and the secretariat introduced themselves.

The Chairperson and members acknowledged the contribution of outgoing members.

#### 2. Minutes and Matters arising

The minutes of the 97<sup>th</sup> Plenary were approved with no further amendments.

### 3. Code of Practice

Deirdre Morgan, CLRG Secretariat, gave a quick overview of the draft Terms of Reference and Code of Practice, noting in particular that members should be aware of their obligations under the Regulation of Lobbying Act 2015. The Code of Practice was adopted subject to typos being corrected. Deirdre Morgan will circulate final version and requested that members sign and return the declaration in the Code of Practice .

### 4. CLRG Work Programme (2022-2024 for information)

The Chairperson outlined the topical and standing items on the draft 2022-2024 Work Programme, noting the order reflected the priorities of the Minister. Deirdre Morgan advised that it will be submitted to the Minister for his approval shortly.

### 5. Upcoming EU and Irish Company Law Legislation (Deirdre Morgan)

In Fiona O’Dea’s absence, Deirdre Morgan provided the following updates on upcoming EU and Irish Company Law legislation:

- The **Companies (Corporate Enforcement Authority) Act 2021** has been enacted and the new CEA was established on 7th July, with much the same functions and powers that the Director of Corporate Enforcement had.
- A General Scheme to replace the **Limited Partnerships Act, 1907 and Registration of Business Names Act 1963** is at an advanced stage, with a view to seeking Government approval for drafting at the end of Q4 2022.
- An amendment is being made to **s459(7)(c)** at the request of DPER (which is being carried by the Consumer Rights Bill which has gone through the Dáil and is due to commence in the Seanad shortly) to provide for a clear process for dealing with the unclaimed consideration payable to former dissenting shareholders in a takeover and which:
  - Removes any potential exposure of the State to financial risks arising from an indemnity currently provided to the offeree company by the Minister of Public Expenditure & Reform;
  - Provides for adequate legal examination and oversight of unclaimed consideration; and
  - Provides for an efficient operation of unclaimed consideration and ensures a person so entitled can make a claim at any time.
- The Miscellaneous Provisions Bill has been renamed as the **Scheme of Companies (Administration, Governance & Insolvency) Bill 2023**. Scoping is ongoing, with the Bill likely to include but not limited to:
  - Programme for Government commitments on rights of workers as creditors and corporate restructuring.
  - Providing shareholders with the right to attend a general or creditors’ meeting virtually.
  - Technical amendments to the Companies (Rescue Process for Small and Micro Companies) Act 2021 that may arise.

- Regulation of receivers.
- Enhancing the powers of the Corporate Enforcement Authority (CEA) streamline procedures, deliver administrative efficiencies, and strengthen reporting requirements.
- Amendments relevant to IAASA activities
- Providing for recommendations from the CLRG's Public Companies' report which the Department is in a position to bring forward at this time

It was confirmed that the Bill intended to provide for a permanent basis for the option of remote shareholder meetings introduced by the Companies (Miscellaneous Provisions) (Covid-19) Act 2020, but issues in relation to other measures under that Act are still being worked through.

- The Department has submitted new draft regulations for the transposition of the **Cross Border Mergers, Conversions and Divisions Directive** which will repeal and replace the 2008 Regulations. While progress has been slow to date on finalisation and settlement, it is expected the deadline of 31 January 2023 will be achieved.
- A revised submission for the transposition of **Public Country by Country Reporting Directive** will now be submitted to Minister Calleary for consideration. It is expected that the transposition deadline of 22 June 2023 will be achieved.
- Political agreement was reached between the European Parliament and the Council **on the Corporate Sustainability Reporting Directive (CSRD)** at end June. Formal adoption is expected in November 2022.
- Consideration of the proposals for a **Directive on Corporate Sustainability Due Diligence (CSDD)** is still an early stage at EU working party level and discussions have not advanced significantly. The Department has been engaging at working party level to clarify the practical implications for stakeholders. Given the complexity of the issues being addressed, negotiations at EU level may well continue through the remainder of this year and into 2023.

The Chairperson asked that any queries on the above legislation be directed to the CLRG Secretariat.

## 6. Matters arising from practice

The Chairperson proposed that there would be updates from the CRO, the CEA, and IAASA in lieu of item 6 on the agenda which was deferred.

Maureen O'Sullivan, CRO Registrar, updated the group on a number of issues:

- Updates are being made to the CRO IT System to implement changes required by recent Directives, with work on the Insolvency Register complete and the interconnection of Beneficial Owner Registers proceeding well.
- The Cross-Border Merger Directive has resulted in new processes and forms, and changes are needed to the Business Registers Interconnection System (BRIS) system to facilitate reporting requirements.
- The CRO is working with the Department in relation to the implications of the implementation of the Preventive Restructuring Directive for the CRO.

- The CRO is consulting with stakeholders on the requirement to obtain PPSNs for Directors, which should be operative from end Q1 2023.
- An internal integrity group has been established to identify and monitor Register Integrity issues such as bogus companies and unauthorised trust and company service providers. No further instances have come to light recently.
- There have been five convictions for failure to file with the Register of Beneficial Ownership. Each of the convicted companies was fined €3,000. Further summonses issued in recent weeks and there will also be a number of prosecutions in the coming weeks. The CRO is preparing to recommence Strike-Offs for companies who have failed to file their annual returns.
- There have been over 14,000 new company incorporations in 2022 so far, and 11 SCARP applications to date.

Ian Drennan spoke on the following:

- the CEA was established on 7<sup>th</sup> July 2022 following a protracted legislative journey,
- the CEA has launched a new website ([cea.gov.ie](http://cea.gov.ie)), which features, amongst other material, the CEA's Strategy of Strategy for 2022-2025,
- in the first three months since its establishment, the CEA has brought charges for the company law offences of fraudulent trading, failure to maintain accounting records, fraudulently removing the property of a company and providing false information to the Registrar, as well as for the criminal justice offences of theft and deception, and
- the CEA is a member of the newly established Advisory Council against Economic Crime and Corruption, as well as the Forum of Senior Regulators and the Anti-money Laundering Steering Committee.

Susan Monaghan (Senior Enforcement Counsel, IAASA) spoke on the following:

- IAASA will host its annual audit committee briefing on 26 October 2022. Topics for the current year include sustainability reporting, digitalisation as well as regulatory updates from IAASA. Venue is the Guinness Storehouse, tickets are available on Eventbrite. It is a hybrid event.

#### **7. Update form CLRG (2018-2022) committees work in progress AND Formation of new CLRG Committees**

The Chairperson propose to combine items 7 & 8 from the agenda. He outlined the 5 committees: Corporate Insolvency, Corporate Governance, Corporate Enforcement, Public Company, and Standing.

The Chairperson invited members to nominate themselves for committee membership in the coming days. Committee membership is assumed to continue from 2018-2022 to the new committee unless the contrary was communicated. The Chairperson advised that external participants could be invited to join a Committee.

Irene Lynch Fannon, Chair of the Corporate Insolvency Committee, gave an update on the work to date on Item 1 of the Work Programme and what work she envisaged coming down the line:

- The committee had begun scoping work based on recommendations from the 2017 report on self-administered liquidation, including the legal researchers surveying other jurisdictions.
- A review of Examinership law including the regulations implementing the Preventive Restructuring Directive and SCARP.
- Some compliance interface issues may arise.

Salvador Nash, Chair of the Corporate Governance Committee, spoke on the following:

- Preliminary research on Directors Compliance statements, Item 2 of Work Programme
- Protection of company names (following a submission from the Law Society)
- A review of exemptions by officers from disclosing their residential addresses.

#### **8. A.O.B.**

- The Secretariat requested any outstanding contact details to be forwarded to them.
- The provisional date in October for a Plenary meeting will not go ahead.
- The Chairperson enquired about 'An Evening of Appreciation' for the CLRG and was informed that the Secretariat were reviewing venue options.
- Kathryn Maybury welcomed all new and thanked all those who had previously served on the CLRG.
- The Chairperson outlined that a 'Certificate of Attendance' would be provided to members for the purpose of CPD points. Any requests for a copy should be made directly to the Secretariat at [clrg@dbei.gov.ie](mailto:clrg@dbei.gov.ie)