



101st Plenary Meeting of the Company Law Review Group

Date: Wednesday 25th October 2023

Time: 10.30am to 12:30 p.m.

Venue: Alex Hotel, 41-47 Fenian St, Dublin, D02 H678 and remote via 'Zoom'

Present: Paul Egan (Chairperson), Alan Carey, Barry Conway, Margaret Cullen, Richard Curran, Emma Doherty, Ian Drennan, Tanya Holly, Neil Keenan, Eamonn Kennedy, David Hegarty, Gillian Leeson, Irene Lynch Fannon, Neil Donnell, Kathryn Maybury, David McFadden, Salvador Nash, Fiona O'Dea, Gillian O'Shaughnessy, Maureen O'Sullivan, Eadaoin Rock, Niamh Ryan, Doug Smith, Cathy Smith

Alternates: Susan Monaghan for Kevin Prendergast (IAASA)

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

Apologies: Deirdre Ahern, Richard Curran, Bernice Evoy, Michael Halpenny, Rosemary Hickey, Tracey Sullivan

Agenda

1. Welcome and Introduction by Chair

The Chairperson welcomed everyone to the meeting and noted apologies.

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

There were no declarations of interest.

3. Minutes of the 100th Review Group Meeting (for approval)

The minutes of the 100th Plenary were approved with no amendments.

4. Report from the Corporate Governance Committee

The Chairperson of the Corporate Governance Committee, Salvador Nash, spoke on the Report on the Review of Directors' Compliance Statements under the Companies Act 2014.

The Corporate Governance Committee examined the directors' compliance statement under section 225 of the Companies Act 2014 in the interest of good corporate governance.

The Committee concluded that, overall, the DCS appeared to fulfil the intention of the Oireachtas. The low response to the survey, the lack of any suggestions for improvements or amendments, the absence of any complaints in respect of the DCS and no evidence or suggestions being presented to the Committee that the DCS should be enhanced in any way supported the Committee's conclusion that the DCS was operating for its intended purpose.

The ICTU provided written observations on the draft report and two other members offered observations at the meeting. The Report was approved subject to the amendments agreed at the meeting. It was agreed to report back on the finalised report to the Review Group at the next Plenary Meeting.

5. Consideration of the Report of the Public Company Committee

The Chairperson of the Public Company Group, Paul Egan, provided an overview of the draft Report on the Review of Parts 17, 23, and 24 of the Companies Act.

The purpose of the review was to review the appropriateness of these provisions in company law in the context of how the financial markets and their regulation have evolved and developed. In advance of the meeting, the Chairperson circulated some observations made by Tanya Holly relating to sections 5.3, 5.5., 6.5.3, and 7.5.

At the request of the Chairperson, the draft report was approved in substance subject to the amendments agreed at the meeting based on Tanya Holly's observations.

6. Upcoming EU and Irish Company Law Legislation

Fiona O'Dea (DETE) provided the following updates:

National

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

A public consultation was launched on 8th May with a deadline for receipt of submissions of 9th June. The consultation document was circulated to members of the CLRG. Draft heads are being prepared, taking account of feedback from the public consultation.

The 2023 Bill will include CLRG recommendations from the following reports:

- *Report on certain company law issues under the companies act 2014 relating to corporate governance* (May 2022)
- *Report on certain company law matters arising for public limited companies* (Dec 2021)
- *Report on the Regulation of Receivers* (2019)

Companies Act 2014 (Section 682) Regulations 2023 - A new form is to be used by liquidators when making reports to the Corporate Enforcement Authority pursuant to Section 682 of the Companies Act 2014 has been introduced. The Regulations came into operation on 1 October 2023 and provide a form that must be completed by liquidators. The updated form includes a section on directors' regard for the interest of employees of the insolvent company and additional questions on information provided to directors who may be subject to a restriction or disqualification application. The link has been distributed to the CLRG by the Secretariat.

Plan of Action on Collective Redundancies Following Insolvency Bill 2023 – Following the drafting of a general scheme, which was published on the Department website in May, the Bill underwent pre-legislative scrutiny before the Joint Oireachtas Committee on 31 May. The final stamped copy of the Bill has now been received and will go forward for Government approval on 24 October after which it will be published and go through second stage in the Dáil.

General Scheme of a Co-operative Societies Bill 2022 – Following examination of the issues raised in the pre-legislative scrutiny report of the General Scheme and issues raised bilaterally by stakeholders, the Unit has submitted a comprehensive policy document addressing the issues, where appropriate, for the Minister's consideration. Work on the Bill is progressing. However, given the size and complexity of the proposals, a draft Bill is now not expected until 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 by year end 2023. Policy formulation and consultation with the Company Law legal advisor and relevant Departments and agencies is ongoing.

EU

Transposition of Cross Border Mergers, Conversions and Divisions Directive (2019/2121) – The Cross-Border Conversions, Mergers and Divisions Regulations 2023 (SI 233 of 2023) were signed by the Minister on 24 May 2023. The Cross Border Conversions, Mergers and Divisions (Amendment) Regulations 2023 (SI 469 of 2023) were signed by the Minister on 22 September 2023 to align penalties with penalties permissible under the European Communities Act 1972.

Transposition of public Country by Country Reporting Directive (2021/2101) – The Disclosure of Income Tax Information by Certain Undertakings and Branches Regulations 2023 (SI 322 of 2023) were signed by the Minister on 21 June 2023.

A proposal for a Directive on Corporate Sustainability Due Diligence (CSDD) – Triologue 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) - Work is underway on the draft Regulations to transpose the new rules and the Department also held a further stakeholder event in July on the on the decisions made and published in the policy paper.

A proposal for a Directive on Upgrading Digital Company Law (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. Discussions are at a preliminary stage with the first working party meeting under the Spanish Presidency scheduled for end October.

A Proposal for a Directive on Multi-vote Share Structures - The final Proposal maintains sufficient flexibility, so if implemented it will not negatively impact on systems where multi-vote share structures already exist in Ireland. There was general support for the Proposal at EU working party level. On 19 April COREPER endorsed the Presidency compromise text and granted a mandate to the Presidency to commence negotiations with the European Parliament. The trilogue negotiations will commence in Oct 2023 and the Member States expect to re-engage with the process once agreement has been reached.

Proposal for a Directive harmonising certain aspects of insolvency law (Insol III) - Consideration of the proposal is still at an early stage at EU working party level, negotiations have taken place on Titles I - V to date and are continuing on Title VII – skipping Title VI which will be considered in the new year.

Negotiations on the Simplified Winding-Up Proceedings will not be complete by the end of the year. Ireland has some difficulty regarding Director's duties for filing within 3 months. There are concerns regarding moves away from some Common Law practices to judicial procedures. To note, the Department is leading on negotiations for the overall Proposal which covers areas of competency from the Department of Finance, Department of Justice and the Courts Service.

Neil McDonnell asked about the proposed regulation on prompt payments where payment terms in excess of 30 days could be written out of contracts as unlawful. Professor Lynch said that prompt payments not discussed at EU Insolvency Directive discussions undertaken by DETE.

7. Update from the Committees

i) Corporate Insolvency Committee

The Committee Chairperson, Prof Irene Lynch Fannon, advised that the work of the group is proceeding title by title which assists DETE in their negotiations at EU level. It was stated that the EU is currently avoiding an EU-wide definition of insolvency. The committee has considered asset-tracing and is looking at directors' duties. The Committee will revisit pre-pack proceedings. The Department had formed a technical group to advise on certain aspects but this technical group was recently merged with the CLRG Insolvency Committee who have since met twice to consider specific Titles.

ii) Corporate Governance Committee –

The Committee Chairperson, Sal Nash, said that the Committee had completed its review of the Directors Compliance Statement which was discussed under item 4. The Committee is also examining an issue raised by the Law Society's Intellectual Property and Data Protection Law Committee concerning trademark squatting. The Committee is expected to meet once more before bringing a draft report to the Review Group for the next plenary meeting.

8. Matters arising from practice

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

PPSN – The PPSN requirement went live on 11th June last for the A1, B1, B10, B69, and B72 Forms. The PPSN is not required when a director is resigning. Solutions have been put in place for certain situations where a PPSN is not available. The PPSN is used to validate identity and is used purely for matching with Social Protection records and is not retained by the CRO or made available to the public. Where a director does not have a PPSN, their RBO number or an Identified Person Number (IPN) can be used. In light of the upcoming peak filing period, the Registrar encouraged members to ensure that applications for IPNs are filed early in order to ensure that they are processed as soon as possible.

- **Enforcement** – Enforcement, which has been suspended during the pandemic, recommenced in late July with the issue of the first batch of warning letters to around 1000 companies per week. The issuing of strike-off letters started in October, and it is expected that the first strike-offs will take place in December. Overall, there are about 30,000 companies in breach of their obligation to file annual returns, up from pre-pandemic levels.
- **Cross Border Mobility Directive** – The Directive was implemented in Ireland in May 2023. It is now possible to file Cross Border Mergers, Divisions and Conversions online.
- **Document Processing** – 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. There are 11,000 Annual Returns awaiting processing.
- **RBO** – The RBO continues to enforce the filing obligations of companies by prosecuting companies who fail to file. Two convictions were secured on 9 October and 1 company pleaded guilty and the Probation Act was applied.
- It was stated that 'DocuSign' was not allowed for e signatures, that it had not been considered in detail yet, but ROS electronic signatures were accepted.

ii) Ian Drennan CEA updated the members on the following:

- A new form is to be used by liquidators when making reports to the Corporate Enforcement Authority (as detailed above under item 6).
- The following information was provided on SCARP reports received up to 30 September 2023:
 - 41 SCARP reports have been received to date. 8 did not result in a rescue plan. 1 is ongoing.
 - 18 reports were received Jan -September 2023, compared with 11 received in the same period in 2022.
 - Emerging trends
 - i. Unsecured creditors are typically getting 3-5%.
 - ii. PA costs range from €10k to €70k;
 - iii. 6 cases involved a change in management;
 - iv. Reasons where no rescue plan was implemented included no external investment could be sourced/ directors disagreed with the conditions for external investment/ creditor threshold for voting in favour was not met;
 - v. In 27 of the 32 cases where the plan was implemented, new funding was introduced.
 - vi. In 4 instances, cost reductions including redundancies were introduced.
- Ian Drennan reported that the CEA's Inaugural Conference on 19 October was a success and thanked the Chairperson and Professor Lynch Fannon for their participation.

9. AOB

There was no other business.

10. Date of 2023 plenary meetings

The next Plenary meeting will be held in December 2023, on a Wednesday afternoon, date to be confirmed.