



## 95th Plenary Meeting of the Company Law Review Group

- Date:** Wednesday, 15<sup>th</sup> December 2021
- Time:** 10.00 a.m. to 12.30 p.m.
- Venue:** via MS Teams
- Present:** Paul Egan (Chair), Alan Carey, Barry Conway, Máire Cunningham, Richard Curran, Marie Daly, Emma Doherty, Bernice Evoy, James Finn, Michael Halpenny, David Hegarty, Tanya Holly, Irene Lynch Fannon, Rosemary Hickey, Vincent Madigan, Neil McDonnell, Salvador Nash, Fiona O’Dea, Conor O’Mahony, Grace O’Mahony, Gillian O’Shaughnessy, Kevin Prendergast, Maura Quinn, Doug Smith
- In attendance:** Bernard O’Connor (Secretariat), Matthew Brady B.L (Legal Researcher)
- Apologies:** David Mc Fadden, Kathryn Maybury, Ian Drennan, Eadaoin Rock, Maureen O’ Sullivan, Ian Drennan.

### 1. Attendance and apologies

The Chairperson noted apologies and welcomed Conor O’Mahony and David Hegarty who are attending on behalf of Ian Drennan. Grace O’ Mahony was attending on behalf of Eadaoin Rock. Kathryn Marbury, David Mc Fadden and Maureen O’Sullivan sent their apologies.

### 2. Declarations of interest under the CLRG’s Code of Practice

As per the Code of Practice, members are obliged to notify either the Secretariat or Chairperson should they have a conflict of interest in relation to any agenda item at Plenary or Committee meetings. No such interests were disclosed to the Chairperson or Secretariat.

### **3. Minutes of the Review Group meeting held on 03 March 2021**

The minutes of the 94th Plenary meeting were approved.

### **4. Report from the Corporate Insolvency Committee**

Committee Chairperson, Professor Irene Lynch Fannon, provided an overview of the Corporate Insolvency Committee Report on the consequences of certain corporate liquidation and restructuring practices including the splitting of corporate operations from asset holding entities in group structures to the meeting.

In particular, she outlined the proposals in the Report around a proposed Section 224A of the Companies Act 2014, considerations around Sections 599 and 600, the 'Interests of Justice' exception and transactional avoidance provisions.

Furthermore, she discussed proposed amendments to Section 610, disqualification provisions under S.842, funded litigation in the specific context of insolvency law, security for costs and who can bring the relevant actions.

Professor Lynch Fannon indicated that the Report combines a review, from a company law and insolvency law perspective, of issues raised by the various workstreams.

The Committee approved the Report.

### **5 Report from the PLC Committee**

Committee Chairperson, Paul Egan S.C, provided an overview of the Report of the CLRG Public Committee on Company Law Issues arising under Directive (EU) 2017/828 of 17 May 2017 (SRD II) and the Central Securities Depositories Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014.

In particular, he detailed how the Report considered company law issues arising from the implementation of Directive (EU) 2017/828 OF 17 May 2017 on shareholder rights (SRD II) and Company law issues arising from the implementation of the Central Securities Depositories Regulation (EU) 909/2014 (CSDR)

The Chair acknowledged the work of the Legal Researcher and thanked members of the Committee, particularly the Registrars.

The Chair acknowledged that some of the issues are complicated as they come under policy responsibility of the Department of Finance.

The Committee approved the Report.

### **6 Update on the work of the CLRG Corporate Governance Committee.**

The Chair of the Corporate Governance Committee confirmed to the Meeting that the current objective of the Committee was to progress work in relation to the Report that was expected to be finalised in the new year. A number of miscellaneous corporate governance proposals are being reviewed in detail.

## **7 Update by David Hegarty of the Office of the Director of Corporate Enforcement.**

David Hegarty confirmed that the Corporate Enforcement Bill was before the Seanad and was expected to be passed without amendment. In relation to the Hamilton Review Group Report, on foot of its recommendations, an Economic Crime Corruption Forum was to be formed, which would include representatives from An Garda Síochána, Revenue, the Office of the Director of Corporate Enforcement and the Competition and Consumer Protection Commission. This forum would facilitate knowledge training and capacity building. There will be an Advisory Council, which will deal with strategic policy and co-ordinate policy and analysis.

## **8 Update by Ms. Fiona O’Dea, Principal, Company Law Unit, DETE on recent legislative developments in Company Law.**

Ms Fiona O’Dea from DETE presented an update on upcoming company law legislation.

### **European Proposals with relevance to company law**

Preventative Restructuring Directive (EU) 2019/1023:

Preparatory work was ongoing in relation to the PRD Directive, so as to allow the Directive to be transposed on the 17<sup>th</sup> of July 2021.

### ***Company law digitalisation Directive (EU) 2019/1151***

The Directive on Digital Tools and Processes in Company Law was published in the Official Journal on 11 July 2019 and entered into force on 31 July 2019. The provisions of this Directive were implemented by the 1<sup>st</sup> of August deadline. (This information supplied by Jane Dollard, seems to be last years, Fiona changed it)

### **Directive (EU) 2021/2101**

As regards disclosure of income tax information by certain undertakings and branches. The Directive has an accelerated transposition deadline of 22<sup>nd</sup> June 2023. A public consultation on the two-member state options will commence in mid-December 2021.

### **Directive (EU) 2019/2121**

As regards cross-border conversions, mergers and divisions. The Directive has a transposition deadline of 31<sup>st</sup> January 2021. Draft Regulations were submitted to the OPC for legal scrutiny and settlement on the 10<sup>th</sup> of December 2021

## **Department Legislation**

### ***General Scheme of Companies (Rescue Process for Small and Micro Companies) Bill 2021***

- The Companies (Rescue Process for Small and Micro Companies) Act 2021 inserts a new Part 10A into the Companies Act 2014 to provide for a dedicated rescue process for small and micro companies, the “Small Companies Administrative Rescue Process”.
- While examinership is internationally recognised and successful in its own right, the associated costs mean it may be beyond the reach of small and micro enterprises. This new rescue process is designed to make rescue and restructuring more accessible and affordable to fundamentally viable companies experiencing temporary difficulties. These companies will now have access to an alternative framework which incorporates key elements of the existing examinership model in an administrative context, demonstrating Government’s commitment to providing a sustainable regulatory response to the challenges facing small and micro companies across the country.
- The Act came into effect on 7 December 2021

### ***Extension of Companies (Miscellaneous Provisions) (Covid-19) Act 2020***

The interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 has been extended to 30 April 2022. The Act makes temporary amendments to the Companies Act 2014 and the Industrial and Provident Societies Act 1893 to address issues arising as a result of COVID-19.

The Act ensures that 240,000 companies and 950 industrial and provident societies in Ireland can hold their Annual General Meetings (AGMs) and general meetings online.

It also provides for additional breathing space for struggling businesses by increasing the period of examinership to 150 days and increasing the threshold at which a company is deemed unable to pay its debts to €50,000.

### **Companies (Corporate Enforcement Authority) Bill 2021**

Completed all stages of the Dáil by the end of November and is expected to complete Seanad Stages in week ending 17th December. The signature of the President is required before commencement of provisions including those arising from CLRG recommendations, preparations for which will be initiated from January 2021.

### **Review of Limited Partnership Legislation 2022**

This file will be progressed in the first half of 2022 following completion of legislative priorities on hand.

### **Register of Business Names Legislation**

This file will be progressed in 2022 as other priorities and resources allow.

### **General Scheme of Co-operative Societies Bill**

This Bill is being worked on, but due to competing priorities, it will be ready early next year rather than at the end of this year as we had previously indicated.

**9. Presentation on the Legislative Process. Presentation by Ms. Fiona O’Dea, Principal, Company Law Review Unit, DETE on the legislative process: From CLRG Report to Enactment.**

Ms. O’Dea gave an overview of the lifecycle of a Bill, through the steps of:

Policy Development, Key Players in the legislative process, The General Scheme of the Bill, Pre-legislative Scrutiny, Drafting the Bill, Explanatory Memorandum, Stages of Enactment, Committee Stage and Final Stage.

**10. Work Programme for the period 2018-2022 - for noting.**

**11. Next Meeting Date.**

**9. AOB**

Ms. Fiona O’Dea thanked the Chair of the Company Law Review Group, and the various sub-committees for their prodigious work over the last year, which has resulted in the production of the various Reports during a difficult year.

The Chair echoed Ms. O’Dea’s thanks to the Committee, and in particular he wanted to thank Professor Irene Lynch Fannon for her work on the Insolvency Report.

**10. Date of next meeting**

The next Plenary meeting of the Review Group will take place once the next Report is ready for consideration.

The meeting then ended.