1

CHAPTER 1

Introduction

one

1.1 The establishment of the Company Law Review Group

1.1.1 On 9 March 1999, the Government approved the implementation of the recommendations in the report of the Working Group on Company Law Compliance & Enforcement (the McDowell Report).[1] That report concluded that in the interests of competitiveness "Ireland must combine modernisation and codification of its company law in a period of major company law reform". The terms of reference of the McDowell Group were to:[2]

(i) review the compliance arrangements and enforcement regimes for company law;
(ii) consider the respective roles for the parties responsible for compliance and enforcement, particularly the courts, the Minister for Enterprise, Trade and Employment, the Director of Public Prosecutions and the Registrar of Companies;
(iii) identify and evaluate the legislative, organisational and resource issues affecting compliance and enforcement;
(iv) make appropriate recommendations to address these issues;
(v) examine and identify the resources and structures necessary to achieve a more frequent updating of companies legislation;
(vi) identify the costs and benefits involved in implementing its recommendations;
(vii) report to the Tánaiste and Minister for Enterprise, Trade and Employment and to the Minister for Science, Technology and Commerce by 30 November 1998.

1.1.2 The establishment of the Company Law Review Group and the consolidation of the companies code were included among the recommendations in the report of the McDowell Group, as follows:[3]

(i) There is a vital urgency in ensuring that Ireland, as a potential place in which to do business and from which to do business, has a first class system of company law which places Ireland in the forefront as a contender for the location of international commerce.
(ii) Amending legislation to reform company law should be regarded as a constant feature on the agenda of the Department of Enterprise, Trade and Employment. A reforming Bill should be laid before the Oireachtas at least every two years.
(iii) A Company Law Review Group composed along similar lines to the Company Law Review Group[4] should be established on a statutory basis as soon as possible which would develop proposals which would form the basis – but not exclusively – for this legislative programme.
(iv) The Company Law Review Group should, in consultation with the Minister, adopt a two yearly work programme, which would coincide with the proposed biennial Companies Bill. An annual report of its (the Group's) proceedings would be made to the Minister and be appended to the annual Companies Report, prepared by the Minister.
(v) The composition of the Company Law Review Group should be a matter of some flexibility. The emphasis of the Minister, in constituting the Group, should be on combining expertise with a broadly representative membership.
(vi) To support the work of the Company Law Review Group, a budget of £50,000 should be included in the Department's 1999 allocation to cover research, consultancy and other expenses with a full year cost of £100,000 in subsequent years.
(vii) Some issues which the Company Law Review Group could examine which arose during the course of the review include: (a) the introduction of a simpler regime for smaller companies; (b) the establishment of a statutory licensing or qualification regime for insolvency practitioners; and (c) the provision of proof of identity by all directors on initial appointment.
(viii) A programme should be undertaken to codify/consolidate company law. The object of the process would be to incorporate the provisions of the existing Companies Acts and the substantive company law now set

1 Government Publications (Pn. 6697), 30 November 1998.
2 McDowell Report, p 1, para. 1.3.
3 McDowell Report, pp ix – x Paras. 63 – 7.
4 This reference was to the earlier ad hoc review group, which reported to the Minister for Enterprise and Employment in December 1994.

out in Regulations made under the European Communities Acts into one single comprehensible companies code.

1.1.3 The Report further recommended that the Company Law Review Group (the Review Group) be set up on an administrative footing pending enactment of the necessary legislation to establish it on a statutory basis. Consistent with the Government decision of 9 March 1999, Mary Harney TD, Tánaiste and Minister for Enterprise, Trade and Employment announced the setting up, on an administrative basis, of the Review Group on 8 December 1999. The Review Group held its first meeting on 7 February 2000.

1.1.4 The 2001 Act, enacted on 9 July 2001, gives effect to the recommendations of the McDowell Group. Part 7 of the 2001 Act provides for the establishment of the Review Group. Part 7 of the 2001 Act was commenced on 1 October 2001, from which date the Review Group has had a statutory existence and role.

1.1.5 Section 67 of the 2001 Act succinctly provides: There is hereby established a body to be known as the Company Law Review Group. Section 69 of the 2001 Act prescribes the membership of the Review Group.[5] The Review Group brings together the expertise of company law practitioners, Government departments and agencies, recognised professional bodies, regulatory bodies and the social partners. It is chaired by Thomas B Courtney, solicitor. The following were appointed members of the Group in February 2000:

Chair	
Thomas B Courtney	Solicitor, Secretary, ICS Building Society
Members	
Alacoque Condon	High Court Examiner's Office
Frank Cunneen[6]	IBEC
David Devlin	Consultative Committee of Accountancy Bodies - Ireland
Paul Egan	The Law Society of Ireland
Paul Farrell	Registrar of Companies
Michael Halpenny	ICTU
Muriel Hinch	Revenue Commissioners
William Johnston	Arthur Cox
Gerardine Jones[7]	Irish Stock Exchange
Roger Kenny	Office of the Attorney General
Ralph MacDarby	Institute of Directors
Vincent Madigan	Department of Enterprise, Trade and Employment
Maire O'Connor	Ernst & Young
John O'Donnell SC[8]	The Bar Council
Tony O'Dwyer[9]	Institute of Chartered Secretaries and Administrators
Nora Rice	Companies Registration Office
Enda Twomey	Irish Bankers' Federation
Secretary	
Pat Nolan	Department of Enterprise, Trade and Employment

5 Section 69 provides: (1) The Review Group shall consist of such and so many persons as the Minister from time to time appoints to be members of the Review Group. (2) The Minister shall from time to time appoint a member of the Review Group to be its chairperson. (3) Members of the Review Group shall be paid such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine. (4) A member of the Review Group may at any time resign his or her membership of the Review Group by letter addressed to the Minister. (5) The Minister may at any time, for stated reasons, terminate a person's membership of the Review Group.

6 In June 2001, Marie Daly, IBEC, replaced Frank Cunneen as a member.

7 In March 2001, Deirdre Somers, Irish Stock Exchange, replaced Gerardine Jones as a member.

8 In October 2001, John O'Donnell became a senior counsel.

9 From January 2002, for the Review Group's second programme, the nominee of the Institute of Chartered Secretaries and Administrators is Martin Jacob.

1.2 Context of company law review in modern Ireland

1.2.1 There have been a number of dramatic changes in the Irish economy over the past decade. The indicators of economic wellbeing such as per capita income, employment and unemployment rates have all improved at unprecedented levels. The educational and skills basis for building a buoyant economy had already been laid in place by massive and targeted investment. The physical infrastructure deficit is being addressed, notably through the national development programme. With its highly skilled workforce and rapidly improving physical infrastructure Ireland now finds itself ready and able to compete in the global marketplace. These strengths will undoubtedly assist in the continued generation of wealth for Irish society. Even in the context of the economic slowdown in the United States, aggravated by the consequences of the terrorist attack of 11 September 2001, the prognosis for continued economic growth in Ireland is positive, albeit reduced. Both the ESRI's and the Central Bank of Ireland's projections (October 2001) suggest modest growth in 2002 with recovery to relatively higher levels of growth in the medium term.

1.2.2 There is, however, at least one area of our business environment which has not kept pace with developments. This is the legal and regulatory framework in which Irish companies operate and which is intended to provide the legal context for investment, for risk-taking, for profit-making, for corporate governance and for compliance with public policy objectives and ethical standards; in short, our companies code.

1.2.3 It would be neither fair nor accurate to say that there has been no activity in the area of company law over the last few decades. Quite the contrary: reform has been driven because of the need to comply with EU Directives and Regulations; because of crises in particular industrial sectors; because of important innovations in peer jurisdiction company law regimes; and because of lacunae identified by the findings of company investigations and tribunals of inquiry (and by the ad hoc company law review group which reported in 1994). The establishment of the Company Law Review Group, however, marks a very significant innovation. The desirability (if not, even, the necessity) of proactively reviewing our companies code on an ongoing basis has now been accepted. It has been established that company law reform is an ongoing aim of government policy, and the Review Group has been charged with the responsibility of drawing up policy proposals for change. In its commitment to fulfilment of that task, the Review Group is aiming to simplify the Companies Acts to bring greater clarity and transparency to the companies code and to increase its intelligibility to the business person.

1.2.4 In the last few years, compliance with the companies code as regards registration and filing requirements has been significantly increased due to policy decisions and improved resourcing of the Companies Registration Office "CRO". On foot of this there has been a dramatic improvement in the proportion of companies filing their annual returns – up from 44% (of those due to file) in 1998 to 98% in 2000. The Companies Report 2000[10] (published September 2001) documents this improvement. Similarly, the establishment of the Office of the Director of Corporate Enforcement with its powers to investigate and prosecute breaches of the Companies Acts and the provision of dedicated staff to that Office is likely to be an influential force that will increase compliance with the companies code. The Review Group believes that its report, similarly, will foster a culture of compliance, brought about not only through specific changes we recommend, such as those in the area of criminal acts, omissions and sanctions but also because of the general approach to simplification. The more intelligible and reasonable is the law, the more likely it is to be respected and the greater the moral justification for "zero-tolerance" for non-compliance.

1.2.5 Bringing greater clarification and simplification to the companies code is an imperative. Despite Ireland's economic advances, and indeed our state of the art profile in some areas of business there has not been an equal emphasis to date on bringing the *regulatory* company laws, and perhaps more importantly, *facilitatory* company laws, to a similar world class level. The importance of having an efficient and effective regulatory environment is set out cogently in the OECD review of regulatory reform in Ireland, published in 2001. That review notes:

10 Government Publications (Pn. 10423).

> "Regulatory reform is helping Ireland to manage the consequences of fast growth and to build new capacities to sustain growth into the future..... Regulatory reform is seen as a way to open up important infrastructure and policy bottlenecks to further growth and to attain efficiency improvements that can help manage inflationary pressures... The Irish government is…using reform to establish a more competitive and flexible economy that can innovate, adapt and prosper even as the sources of its current prosperity change. The challenge is to move from growth based on using more resources (mostly more labour) to growth based on using resources better, that is, on productivity improvements. This shift in sources of growth requires a more nimble and dynamic economy rooted in a modern regulatory environment that is consistent with market forces, rewards productivity and innovation, and responds to consumer needs and changing market opportunities, domestic and international."[11]

By facilitatory company law is meant the legal code that permits business to be conducted through the registered company, for example, the law relating to corporate governance (e.g. the holding of meetings, whether of members or of directors) and the law relating to the rights of shareholders and creditors.

1.2.6 The Review Group considers that it is necessary to create a new structure for Ireland's company laws which will provide the wherewithal for innovation and capacity building. Whilst it is believed that the recommendations in this first report will provide the cornerstone for the new companies code, maximum benefit will come only over time. The Review Group's aspiration is, through a series of reports, to establish a company law framework perceived as among the world's best; a framework with a degree of efficiency and effectiveness in legislation and indeed in the administration of justice such that Ireland becomes a forum of choice for dispute resolution by corporate litigants. In this respect the Review Group is ever mindful of the statutory injunction contained in s 68(2) of the 2001 Act, viz.:

> In advising the Minister the Review Group shall seek to promote enterprise, facilitate commerce, simplify the operation of the Companies Acts, enhance corporate governance and encourage commercial probity.

The Review Group cherishes this imperative as being the very essence of its brief.

1.3 The Review Group's functions

1.3.1 The statutory functions of the Review Group are set out in s 68(1) of the 2001 Act, which provides:

> **The Review Group shall monitor, review and advise the Minister on matters concerning—**
> (a) the implementation of the Companies Acts,
> (b) the amendment of the Companies Acts,
> (c) the consolidation of the Companies Acts,
> (d) the introduction of new legislation relating to the operation of companies and commercial practices in Ireland,
> (e) the Rules of the Superior Courts and case law judgements insofar as they relate to the Companies Acts,
> (f) the approach to issues arising from the State's membership of the European Union, insofar as they affect the operation of the Companies Acts,
> (g) international developments in company law, insofar as they may provide lessons for improved State practice, and
> (h) other related matters or issues, including issues submitted by the Minister to the Review Group for consideration.

1.3.2 Section 70(1) of the 2001 Act obliges the Minister to determine the Review Group's work programme at least once in every two years, and in fulfilment of that task the Group works in two yearly calendar year cycles.[12] This is notwithstanding the Review Group's obligation to make an annual report to the Minister.[13] The first such cycle runs to year-end 2001.

11 OECD, Regulatory Reform in Ireland. April 2001.

12 Section 70(1) of the 2001 Act provides that: The Minister shall, at least once in every 2 years, after consultation with the Review Group, determine the programme of work to be undertaken by the Review Group over the ensuing specified period.

13 Section 71(1) of the 2001 Act. See 1.10.2, below.

1.4 The Review Group's first work programme

1.4.1 The Minister assigned to the Review Group a very challenging and far-reaching work programme for the period 2000 to 2001. What follows here is a summary of the assigned work programme.

Simplification

1.4.2 The requirement of the Review Group was to make recommendations that will have the objective of simplifying company law for all companies, but in particular for small and medium-sized private companies. The Group has approached simplification from a number of perspectives. Lengthy consideration has been given to restructuring company law with a view to segregating provisions applying only to private companies limited by shares, which account for 88.8% of all companies registered as at 31 December 2000.[14] In addition, the simplification agenda is examined from the perspective of the main principles in company law, namely: corporate governance; creditor protection; shareholder protection; incorporation and registration; and criminal acts and omissions and the penalties relating to these. The Group also wishes to simplify the law with regard to the issuing of prospectuses for public companies: to clarify what is and is not a public offer; and to clarify filing requirements.

1.4.3 Recommendations directed towards the achievement of simplification are set out in Chapter 3, which deals with the philosophical and organisational approach taken to simplification, and in Chapters 4 to 10, which deal with the simplification agenda and initiatives from the aspect of a number of different themes and perspectives. Simplification is not confined to these chapters. It informs the whole ethos and content of the report. The biggest single innovation envisaged in the area of simplification is the differentiation and segregation of provisions applying to private companies limited by shares from those applicable to all other companies and bodies corporate. The approach proposed on this is set out in Chapter 3. The practical consequence in differentiating these provisions will mean that directors and other users of private companies would no longer have to trawl through substantial parts of the Companies Acts to establish which sections do or do not apply to them.

Corporate capacity and authority

1.4.4 In its review of *corporate capacity* the Review Group has examined the current, highly unsatisfactory, doctrine of *ultra vires*. At present, the extent to which a company can act outside its objects as stated in its memorandum and articles of association is far from clear. The Group recognises that the law in relation to *corporate authority* (i.e. the authority of corporate agents, such as directors) requires to be reviewed contemporaneously. The Group has examined these areas and makes recommendations for a major reform.

Company directors and other officers

1.4.5 The Review Group aims to review and then set out in a clear and accessible form the powers and duties of company directors and of company secretaries. The Group believes it is also important to codify important aspects of directors' obligations, which have to date existed in common law rather than in the companies code.

Corporate litigation

1.4.6 The Review Group assesses the case for the dedicated treatment of company and commercial law cases in the Irish courts and makes recommendations accordingly.

Regulation of insolvency practitioners

1.4.7 The Review Group examines the case for the regulation of liquidators, receivers and examiners and, on balance, proposes a requirement for an appropriate professional qualification along with a devolved basis for regulation via recognised professional bodies.

14 See p 34 of the Companies Report 2000.

Auditors

1.4.8 When the Minister set up the Company Law Review Group in February 2000 the regulation of auditors was among the issues, which the Review Group was asked to consider in its work programme. However, in parallel, a dedicated Review Group on Auditing (RGA) was constituted with a specific mandate to consider matters which had arisen on foot of examination by the Dáil's Public Accounts Committee of the evasion of Deposit Income Retention Tax and other issues related to the regulation of auditing. The RGA reported in July 2000. Consistent with the time window set for consultation on that report the Company Law Review Group gave its comments on the recommendations in the RGA report to the Minister on 3 November 2000. In considering the RGA report the Review Group concentrated on recommendations in Chapters 11 to 14 of that report, as these are the issues of relevance to company law. The Review Group focused on implementation rather than policy issues, as it did not see its role as producing an alternative to the RGA report.

Mitigating the effects of strike-off for creditors

1.4.9 Representations were made to the Minister by members of the public concerning the difficulties facing creditors where companies have been struck off the Companies Register for failure to file the appropriate details with the CRO. The Minister referred[15] this issue to the Review Group, which makes a number of recommendations on improving the remedies for such creditors.

1.5 Consolidation

1.5.1 As noted above, the report of the McDowell Group recommended the consolidation of the companies code in addition to setting up the Office of the Director of Corporate Enforcement and the establishment of the Company Law Review Group. The Review Group agrees on the importance of consolidating the companies code and is keen to ensure convergence between the review and consolidation initiatives. To that end the Group considered the appropriate sequencing of the consolidation and review projects. Because the substantial restructuring of the companies code and its principal Act, the Act of 1963, is recommended in this first report, the Group came to the considered opinion that it would be best to implement the first major review of company law, i.e. the restructuring undertaken on foot of this report, *before* consolidating the companies code.

1.5.2 Consolidation as an aspect of simplification is considered in Chapter 3 and is addressed in detail in Chapter 17. Chapter 17 sets out how the restructuring of the companies code should be achieved in the process of consolidation:

- to give primacy to the private company limited by shares as the model company; and
- to segregate provisions of the companies code, distinguishing provisions applying to private companies limited by shares from those applicable to all other companies and other bodies corporate.

The Review Group also considered the possibility of recommending the restatement[16] of the companies code as an alternative to consolidation but decided against this option. The rationale for the Group's decision that consolidation was the preferable option is set out in Chapter 3 and amplified in Chapter 17.

1.6 Other laws reviewed during the first work programme

1.6.1 During the process of deliberations on the Review Group's work programme and the formulation of its recommendations, the Company Law Enforcement Bill was progressing from initiation in the Oireachtas through to enactment as the Company Law Enforcement Act 2001. The Group made a limited number of proposals that resulted in the following additional sections being included in the 2001 Act:

15 Section 70(2) of the 2001 Act provides: Notwithstanding subsection (1), the Minister may, from time to time, amend the Review Group's work programme, including the period to which it relates.

16 Restatement is conceived as a procedure whereby the Attorney General makes available the text of Acts that have been amended in an annotated form. A restatement is not submitted to the Houses of the Oireachtas but will be certified by the Attorney General as prima facie evidence of the law set out in the restatement. A Bill to facilitate such restatement is before the Oireachtas at present.

(i) Section 42. The changes insert additional paragraphs (h) and (i) in s 160 of the 1990 Act and provide for the court to make an order against a person disqualifying him from acting as a company director or auditor or from managing a company if he was a director of a company struck off the Companies Register for failing to file returns or if a person has been disqualified in another jurisdiction from being appointed a company director or secretary.

(ii) Section 60. Substitution of s 127 in the 1963 Act. Subsection 3 provides for the court to make an order extending the filing time for a company where it feels it would be just to do so.

(iii) Section 89. Amendment to s 60 of the 1963 Act to allow for the use of the unanimous written resolution procedure in the validation procedure where companies provide financial assistance in connection with the purchase of shares. The amendment also extends the deadline for filing a copy of the company directors' statutory declaration with the CRO.

1.6.2 The Review Group also deals in this report with a number of regulatory issues for the funds industry. While funds are regulated prudentially by the Central Bank of Ireland they are regulated as regards corporate governance by the companies code. Because funds generally have very distinct forms of company organisation it is often inappropriate to treat them as is done with the generality of companies. Accordingly, sections of the Companies Acts are often disapplied from funds. Other sections pertain only to funds. In January 2001 the Review Group established a mechanism for considering proposals coming forward for changes in the companies code as applying to funds. Under this process the Funds Group Legislation Subcommittee[17] brings forward proposals in relation to investment funds and refines and agrees these as much as possible, prior to reporting to the Review Group. Proposals initiated by the Funds Group Legislation Subcommittee, having gone through this process, are then scrutinised by the Review Group. As a consequence of this process, the Review Group agreed a number of recommendations applying to Investment Funds and these are set out in Chapter 16.

1.6.3 As the Review Group analysed the issues arising and considered the recommendations it should make it was clear that a number of issues were major in themselves but also somewhat outside the immediate parameters of the issues in the Group's programme. Accordingly, issues have been identified that the Group considered to be more appropriate for assignment in its second work programme 2002 to 2003. These are identified in the chapters as they occur naturally in the context of the issues under discussion.

1.7 The Review Group's approach

1.7.1 In reaching the conclusions in this report and setting out the recommendations to give them effect, the Review Group has sought to inform its decision-making processes with a consciousness of competition issues and of the need for the Irish economy to remain competitive. The Group has sought to transcend a "command and control" mindset. Indeed, our whole emphasis in bringing the framework on company law in Ireland into the 21st century is to ensure that economic activity is enhanced by both the efficiency and effectiveness of the company law regime. We have also been informed in our deliberations by a concern for where the balance of the public interest lies. The Group believes that, in general terms, less law is best and where possible has recommended the repeal of anachronistic provisions. In some instances there is a case for removing or lessening red tape; in others, the public interest requires the introduction of additional regulation. On balance, the Group came, notably, to this latter conclusion with regard to the regulation of insolvency practitioners. Chapter 13, which deals with this issue, sets out in detail the nature of the concerns that guided our conclusions.

1.7.2 For many years, from the perspective of consumer or customer protection the emphasis was on the legislative enactment of regulatory rules. The concern of the Review Group has been to shift that focus with a view to achieving best practice through compliance with balanced regulatory rules. Until recently, where compliance was not evident there was little concentration on enforcement. This general climate is changing. Certainly, the area

17 The Funds Group Legislation Subcommittee is a subcommittee of the IFSC Funds Group, an advisory group which brings together State and industry experts to advise the Government on policy and technical (legal/regulatory/tax) matters designed to ensure the continuing competitiveness of Ireland as an international centre for financial services. The IFSC Funds Group operates under the aegis of the Department of the Taoiseach .

of company law enforcement has been given a new emphasis by the 2001 Act and by the compliance policies being applied by the CRO.

1.7.3 From the inception of the Review Group, we recognised the importance of consultation with the business and individual users of company law. We outlined our role and task and sought submissions on our work programme in an advertisement in the national press on 17 February 2000. On 17 January 2001 the Group advertised again for submissions, this time specifically inviting proposals in the area of simplification. The list of individuals and bodies who made written submissions is set out at 1.12.1. The Group acknowledges these with gratitude. In addition to written submissions the Group has had the benefit of much information and proposals for change which have been made through its different committees and the wide array of expert contacts available through its membership. The work programme of the Review Group has also been displayed on the website of the Department of Enterprise, Trade and Employment throughout 2000 and 2001. Once the Group was constituted on a statutory basis we set about establishing our own website – www.clrg.org which we expect to be online early in 2002. The site will contain up-to-date information on the Group's activities, as well as links to the website of the Department, the CRO and ODCE.

1.7.4 In carrying out its work the Review Group functioned as a plenary body which met at monthly intervals.[18] Much of the preparatory work, information gathering and report drafting was done in committees. The Group set up dedicated committees for virtually all of the chapters. The Group was also mindful of the need to be aware of and to contribute to the development of company law issues at EU level. Two issues arising from the EU Financial Services Action Plan, the draft regulation on International Accounting Standards and the draft directive on European Public Offers are of particular interest and we have set up a standing committee on each of these to liaise with the Department of Enterprise, Trade and Employment.

1.7.5 In preparing the report the Group had available to it a budget of £88,000 (€111,736.95) in 2000 and £91,000 (€115,546.17) in 2001. Actual expenditure was considerably less than the financial provision, especially in 2000, the first year of the Group's existence. The budget was used for the purpose of information gathering, for augmenting, editing and refining the contents of a number of chapters, for setting up the Group's website and for general support activities. In addition to the amounts specified, the Department provided the Group with the resource of the secretary to the Group and a small support staff. In the period from inception to the final meeting in 2001 a total of 83 meetings were held, composed of plenary and committee meetings.

1.8 Taking cognisance of reforms in other common law jurisdictions

1.8.1 In approaching its task the Review Group was conscious that it was working in a world where the globalisation of capital, investment and business activity is an increasing fact of life. Company law blossomed in the 19th Century. While the basic principles of sound corporate governance remain as valid as ever, the Group considers that the law undoubtedly needs substantial updating and reform. To date, the degree of convergence internationally in commercial law has been less in the area of company law than, for example, in the regulation of capital markets. There is, nonetheless, significant cross-fertilisation internationally in company law. Developments in different common law jurisdictions offer a range of models not only for specific legislative changes but also for changes in the framework of company law, most usually differentiated by the public or private status of a company or by its size.

1.8.2 In its analysis, the Review Group has considered the most influential models and changes in company law in order to draw on the best elements of practice and regulation elsewhere with a view to shaping a state of the art company law regime for Ireland. The Group, for example, looked at the changes brought about by the Canada Business Corporations Act 1975. This drew substantially on the Model Business Corporations Act in the United

18 Section 70(3) of the 2001 Act provides: The Review Group shall hold such and so many meetings as may be necessary for the performance of its functions and the achievement of its work programme and may make such arrangements for the conduct of its meetings and business (including by the establishment of sub-committees and the fixing of a quorum for a meeting) as it considers appropriate.

States while retaining elements of United Kingdom company law. The Australian Corporations Act 2001 includes a highly developed and detailed securities law regime. We have had regard also to other jurisdictions which have modernised company law such as the State of Delaware, Singapore, Malaysia and Hong Kong. The New Zealand Companies Act 1993 broadly adopted a North American/Canadian model of corporate law and an entirely new framework for company law has developed there. Closer to home there are models and specific sections of legislation in England and Wales, in Scotland and in Northern Ireland which we feel could usefully be emulated. It is instructive to note that in every peer jurisdiction we looked at there was a concern both to simplify the content of the company law regime and to improve the intelligibility of company law for both lawyer and non-lawyer. It is important to note that on foot of its analysis the Group decided it was appropriate to retain an omnibus companies code for Ireland and not to go the route of establishing a separate legal framework for small and closely held companies, e.g. on the analogy of the 1984 South Africa Close Corporations Act. Rather, the Group thought the most constructive approach was to differentiate, clarify and disapply existing provisions in the companies code as much as possible within a single legal framework.

1.9 The effects of membership of the European Union

1.9.1 Since joining the European Communities in 1973, Ireland's company law regime has been substantially influenced by Community Directives, with our companies code being amended to give effect to European law. Through this route Ireland has been influenced by the commercial law traditions of Continental Europe. The intensive phase of incorporating company law Directives in Irish law has been completed. However, the indications are that we are entering a new phase of activity as Europe as a whole seeks to modernise and streamline commercial law. Notable among these are the February 2001 final report of the Committee of Wise Men on the Regulation of European Securities Markets (the Lamfalussy Report). That report advocates the need to profoundly change and reform the regulation of EU financial markets in order to assist the creation of an integrated financial services market. The European Summit in Stockholm in March 2001 broadly endorsed the Lamfalussy approach; discussions are continuing between the Commission and the European Parliament on the application of the approach. The Commission has already proposed two draft framework Directives based on Lamfalussy – the Prospectuses Directive and the Market Abuse Directive. It is also noted that the Council has approved the statute for the European Company, which must become operable no later than 2004.

1.9.2 A High Level Group of Company Law Experts has also been set up by the European Commission to define new priorities for a modern regulatory European company law framework. The final report of that Group is due in mid-2002.

1.10 The Review Group's reporting obligations

1.10.1 The Review Group has a statutory obligation to make an annual report. Section 71(1) of the 2001 Act provides:

> No later than 3 months after the end of each calendar year, the Review Group shall make a report to the Minister on its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within a period of 2 months from the receipt of the report.[19]

1.10.2 This report is the Review Group's annual report for the year ending 31 December 2001.

1.11 Recommendations on the matters to be included in the Review Group's second work programme

1.11.1 In addressing its first work programme, the Review Group formed the opinion that certain areas of company law were in need of review. The Group recommends to the Minister that the following areas and topics be referred to the Review Group for consideration and review in its second work programme:

19 Section 71(2) provides: A report under subsection (1) shall include information in such form and regarding such matters as the Minister may direct.

(i) The preparation of heads of a Bill in respect of the recommendations in this Report. The Review Group would wish to assist in facilitating the translation of its recommendations into the Heads of a Bill in a timely manner.
(ii) The determination, in the early part of 2002, of the structure of the consolidated Companies Act.
(iii) Consideration of those Regulations in Table A of the First Schedule to the 1963 Act that were not considered in the Group's first work programme, with the intention of migrating them to the primary legislation or repealing them, thus facilitating a one document company constitution.
(iv) Whether Ireland should have a State-funded public interest liquidation service.
(v) The law relating to the winding-up of companies.
(vi) Shares and share capital.
(vii) Charges and other forms of security.
(viii) Accounting, audit and related matters.

Without prejudice to the breadth of the Group's review of the foregoing areas of company law, each area must be considered from the perspective of simplification.

1.12 Submissions

1.12.1 The Review Group received submissions from the following parties:

Arthur Cox, Solicitors

Consultancy Committee of Accountancy Bodies – Ireland

Dublin Solicitors Bar Association (Taxation and Commercial Committee)

Eircom plc

A &L Goodbody, Solicitors

Institute of Chartered Secretaries and Administrators (Irish Region)

Irish Institute of Credit Management

Jefferson Smurfit Group

Law Society of Ireland (Business Law Committee)

Alan J. Mitchell, Chartered Accountant

Sean M Nolan, McCann FitzGerald, Solicitors

Barry O'Neill, Eugene F. Collins, Solicitors

PriceWaterhouseCoopers

These submissions were of considerable assistance to the Group in analysing issues and identifying remedies for problems. The Group would like to express its gratitude to all those who contributed.