

**85th Plenary Meeting of the Company Law Review Group**

|  |  |
| --- | --- |
| **Date:**  | 13th May 2019 |
| **Time:**  | 10:00am – 12:00pm |
| **Venue:**  | Buswells Hotel, Kildare Street, Dublin 2. |

|  |  |
| --- | --- |
| **Present:** | Paul Egan (Chairperson), Tom Blake, Barry Cahir, Barry Conway, Máire Cunningham, Helen Curley, Richard Curran, Michael Halpenny, Tanya Holly, Gillian Leeson, John Loughlin, Ralph McDarby, Vincent Madigan, Kathryn Maybury, Neil McDonnell, David McFadden, Salvador Nash, Maureen O’Sullivan, Eadaoin Rock. |
| **In attendance:** | Tara Keane (Secretariat) Emma Geraghty (DBEI) and Anne Conlon. |
| **Apologies:** | Irene Lynch-Fannon, Marie Daly, Jeanette Doonan, Bernice Evoy, Rosemary Hickey, Shelley Horan. |

**Agenda**

1. **Minutes & Matters arising**

**Minutes:**

The minutes of the meeting of 10th December 2018 were adopted.

**Matters arising:**

There were no matters arising from the minutes.

1. **Annual Report 2018**

The Group was informed that the Annual Report for 2018 was submitted to Minister Humphreys on 31March 2019. Following noting by Government the Report will be laid before the Houses of the Oireachtas and published on the CLRG website.

1. **Report on the Regulation of Receivers**

Mr. Barry Cahir, Chairperson of the Corporate Insolvency Committee, gave an overview of the Report as follows:

The issue of the governance and regulation of receivers has been highlighted by Oireachtas members over the last number of years. In October 2018, officials from the Department of Business, Enterprise and Innovation and the Department of Justice and Equality appeared before the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach on the matter.

The Committee raised concerns around the lack of supervision of receivers; their costs; qualifications as well as the level of information they provide to stakeholders throughout a receivership.

While the concerns extend beyond receivers appointed to the property of a company and relate to receivers in general, it was determined that certain of the issues raised by the Joint Oireachtas Committee particularly in relation to the qualification and supervision of receivers; and the provision of information to companies on the progress and cost of receiverships, would benefit from an examination by the Company Law Review Group.

In December Minister Humphreys requested that the Group conduct a review of the regulation of receivers as an additional item to the work programme for 2018-2020.

The review was assigned to the Corporate Insolvency Committee who completed their report in March 2019, making the following general recommendations:

* There should be a minimum qualification required for appointment as a receiver to the property of a company;
* Receivers should be subject to ongoing supervision;
* Receivers should be obliged to provide information to a company and to creditors on the management of the business and progress of the receivership, particularly where they have been appointed over all or substantially all of the property of the company;
* There should be greater transparency in relation to receiver’s fees for the information of stakeholders affected thereby;
* Where relevant, factors that a court must consider when fixing a receiver’s fee should be set out in the Act such as are set out in relation to liquidator’s fees at Section 648(9);
* A system of recording and reporting statistics on receivership and other insolvency cases would be beneficial so that future legislative decisions can be aided by statistical analysis of the different types of cases.

The Chairperson thanked the Secretariat and Committee members for their contribution.

The report was adopted.

1. **Part 23 Committee Agenda**

The Chairperson provided an update on the Part 23 Committee as follows:

The Part 23 Committee was convened in January 2019 to consider proposals in the area of share transfer that will affect public companies. Following Brexit, the CREST system of facilitating the recording of ownership and effecting transfers of shares will become unavailable to Irish companies.  A Commission Decision of 19 December 2018 has preserved CREST subject to conditions for a period of two years.

The ultimate post-Brexit solution that appears to have favour by the Central Bank and Department of Finance is to move to the continental structure of immobilisation – i.e. that quoted shares will be held legally by a securities depositary, with transactions being not in the shares themselves but in the derivative legal rights arising from that structure.  This gives rise to complex matters under the Companies Act centred around company membership and rights of company members.

The release of Euroclear’s most recent ‘White Paper’ was noted and the Committee will consider its content, providing observations to the Minister as appropriate. It is intended that the Committee will generate feedback on the alternative system being proposed, highlighting the issues arising.

1. **Corporate Governance Committee Agenda**

The Chairperson advised the Group that the Corporate Governance Committee will be conducting a review of the operation of the ‘Summary Approval Procedure’ (SAP) as part of the work programme for 2018-2020.

Given that the SAP has been in operation for a relatively short period of time, members were requested to signal any technical issues they may be aware of to the Secretariat for inclusion in the review.

The Chairperson stated that there may be further technical issues which merit consideration by the Committee. It was agreed that these would be circulated in advance of the Committee’s next meeting.

1. **Future Legislation**

Ms. Helen Curley provided the following update:

**Companies (Corporate Enforcement Authority) Bill**

The General Scheme of this Bill was approved by Government and published on 4December 2018. The main features of the Bill were agreed as part of the Government’s decision to adopt its package of ‘Measures to Enhance Ireland’s Corporate, Economic and Regulatory Framework’ (subtitled ‘Ireland combating “white collar crime”) (published November 2017).

The General Scheme provides for the establishment of The Corporate Enforcement Authority with all the same functions and powers that the Director of Corporate Enforcement has with some modifications to reflect a new commission structure. Head 9 (Membership of the Authority) provides for up to 3 full time Commissioners and is designed to give the Authority the flexibility to structure itself to meet the differing demands of its remit, which includes investigation, prosecution, supervision, and advocacy, and along clear lines of responsibility. Head 11 (Staff of the Authority) gives the Authority the ability to appoint its own staff. The General Scheme also provides for new investigative tools, notably new search and entry powers to enhance the Authority’s ability to gather evidence that is help electronically.  Parts 3, 4 and 5 make amendments to the Companies Act 2014 to give effect to certain recommendations of the CLRG in relation to share capital, corporate governance and unsecured creditors.

A drafter from the Office of the Parliamentary Counsel has been assigned and is working with the Department on drafting the Bill.

The Joint Oireachtas Committee on Business, Enterprise and Innovation is currently undertaking Pre-Legislative Scrutiny on the Bill and officials from the Department briefed the Committee on the 5th February 2019. The Director of Corporate Enforcement appeared before the Committee on the 19th February 2019. The Chair of the CLRG and Vincent Madigan appeared before the Committee on the 2nd April 2019 as did representatives from the Law Reform Commission.

1. **EU Measures and European Commission Proposals with relevance to company law**

Ms. Helen Curley provided the following update:

**Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement**

The deadline for transposition of Directive (EU) 2017/828 (Shareholders’ Rights’ Directive) is 10 June 2019.  The mandatory elements of the Directive will be transposed by way of Statutory Instrument under the European Communities Act 1972 and a draft is with Parliamentary Counsel for settlement. Member State options would require primary legislation. The Department is currently considering the options in the Directive with a view to making a recommendation to the Minister in relation to them.

**Proposal for an EU Directive on preventive restructuring and second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures**

Following an intensive series of trilogues with the European Parliament, COREPER 2 approved the compromise text on 18 December 2018 and this was subsequently approved by the Juris Committee of the European Parliament.

The translations into the Member State languages were considered by lawyer/linguists. The file was formally adopted by the European Parliament on 28 March and is awaiting formal adoption by Council, which is expected to happen shortly.

**Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions**

In April 2018, the Commission published its Proposal for a Directive on various issues of cross-border mobility, namely by introducing rules for cross-border conversions and divisions and modifying the legislative framework for cross-border mergers.

The objective of the Proposal is to make it easier for companies to merge, divide or move within the Single Market and to safeguard employees, creditors and minority shareholders rights.  The Proposal introduces a new legal framework for a procedure of cross-border conversions and divisions of limited liability companies and seeks to harmonise the approach for conversions and divisions with the existing rules pertaining to cross-border mergers. It also provides new harmonised rules for the protection of creditors, members and employees in respect of these transformations.

The Proposal was approved by the European Parliament on 18 April. The provisionally agreed text has yet to be approved by the Council.

Any questions or queries in relation to proposed legislation or European proposals can be emailed to clrg@dbei.gov.ie.

1. **AOB**

**Work Programme**

The Chairperson provided an outline of the progression of the Work Programme 2018-2020. Outstanding items of work were signalled to Committee Chairs.

**Law Reform Commission**

The Chairperson noted that the Law Reform Commission had updated their revised Companies Act to March 2019, noting also that he had previously written to the Commission in late 2018 thanking them for their work in keeping the Companies Act 2014 up to date. Their acknowledgement and appreciation of this correspondence was highlighted to the Committee.

**Brexit**

A number of issues pertaining to Brexit were mentioned including:

* The need for companies whose sole Director is from the United Kingdom to comply with section 137 of the Companies Act 2014; and
* The status of EEIGs operating between Northern Ireland and the Republic of Ireland.

The meeting then ended.

Tara Keane, Secretary to the Group.