

**Minutes of the 89th Plenary Meeting
of the Company Law Review Group**

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|  **Date:**  | 20th April 2020 |
|  **Time:**  | 10:00am – 12:00pm |
|  **Venue:** | Zoom |

**Present:** Paul Egan, Barry Conway, Máire Cunningham, Richard Curran, Marie Daly, Emma Doherty, Jeanette Doonan, Bernice Evoy, James Finn, Michael Halpenny, David Hegarty, Rosemary Hickey, Tanya Holly, Gillian Leeson, John Loughlin, Irene Lynch-Fannon, Ralph MacDarby, Vincent Madigan, John Maher, Kathryn Maybury, Neil McDonnell, David McFadden, Salvador Nash, Gillian O’Shaughnessy, Maureen O’Sullivan, Kevin Prendergast, Doug Smith.

 **In attendance:** Tara Keane (Secretariat), Emma Roche-Cagney (Attorney General’s Office)

 **Apologies:** Shelley Horan, John Loughlin

1. **Minutes & Matters arising**

The minutes of the 88th Plenary were adopted and there were no matters arising.

1. **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**.**

1. **Covid-19-related company law issues**

a. **CLRG communications to the Minister – Chairperson, Paul Egan**

The Chairperson outlined that in line with the CLRG’s mandate to monitor, report and advise the Minister on matters pertaining to company law, communication was issued to the Minister and Department in late March outlining concerns about the operation of the Companies Act 2014 in light of the outbreak of Covid-19. Given the timeframe within which communication was sent to the Minister, it was not possible for the full Review Group to thoroughly consider the proposals contained therein. Following discussion, it was decided that the proposals would be remitted to the Corporate Insolvency and Governance Committees for a more thorough examination before reverting to the full Review Group for final deliberation and potential adoption.

b. **Insolvency law – Committee Chair, Professor Irene Lynch-Fannon** The Committee Chairperson gave an overview of the proposals which would be considered by the Corporate Insolvency Committee which included; an extension to the examinership process, rescue for the SME sector and potential amendment to reckless trading and restriction provisions. It was noted that the Secretariat would prepare a work programme for the Committee on the basis of submissions received by the Department.

c. **Companies Registration Office update**

An update was provided by the Registrar on the operation of the Companies Registration Office. It was outlined that all documents were being accepted via post and processed in the usual fashion. Members noted their appreciation of the pragmatic approach taken by the CRO in respect of the crisis.

d. **Court procedures**

The Chairperson sought the views of members as to whether there were any issues arising in terms of court procedures as a result of Covid-19.

e. **Time limits for CRO and Court filings**

The Chairperson sought the views of members as to where there were issues arising in relation to the time limits for CRO or Court filings. None were reported.

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

a. *Insolvency Directive (EU) 2019/1023 on preventive restructuring frameworks (second-chance Directive)*

The Directive was published on 20th June 2019 following its adoption by the European Council and European Parliament. The Department launched a public consultation on the transposition of the Directive at [dbei.gov.ie/en/Consultations/Public-Consultation-on-Directive-EU-2019-1023.html](https://dbei.gov.ie/en/Consultations/Public-Consultation-on-Directive-EU-2019-1023.html) which closed on 6 March 2020. The consultation was sent to the CLRG upon release. The Corporate Insolvency sub-group is finalising a response to the consultation.

b. *Company law digitalisation Directive (EU) 2019/1151*

The Directive on digital tools was published in the Official Journal on 11 July 2019 and entered into force on 31 July 2019. Under Article 2 of the Directive, Member States must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 August 2021. The CRO new ICT system is expected to meet the requirements

c. *Transposition of second Shareholders Rights Directive (Directive*

*(EU)2017/828)*

Regulations transposing the Directive came into effect on 30th March 2020.

d. *Directive of 18 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions*

On 27 November 2019, the Directive on cross-border conversions, mergers and divisions was adopted by the European Parliament and the Council (Directive (EU) 2019/2121) This Directive clarifies the existing rules on cross-border mergers in the EU and, for the first time, has introduced rules on cross-border conversion and division for all Member States.

The Directive entered into force on 1 January 2020 and amended the so-called Codification Directive 2017/1132. The Department is currently considering the Directive and intends to run a public consultation focused on the Member State options in the coming weeks. Member States must transpose the Directive by 31 January 2023.

1. **Pending Bills**

a. **General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018**

The General Scheme of this Bill was approved by Government and published on 4 December 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 establishes the Office of the Director of Corporate Enforcement (ODCE) as an agency, in the form of a Commission, to be called the Corporate Enforcement Authority.

The Joint Oireachtas Committee on Business, Enterprise and Innovation was undertaking Pre-Legislative Scrutiny on the Bill at the time of the dissolution of Dáil Éireann and officials from the Department briefed the Committee on 5 February 2019. The Director of Corporate Enforcement appeared before the Committee on 19 February 2019. The Chair of the CLRG and Vincent Madigan appeared before the Committee on 2 April 2019 as did representatives from the Law Reform Commission. At the date of dissolution a date for the Minister’s appearance had still to be confirmed.

A drafter from the Office of the Parliamentary Counsel worked with the Department to complete a draft of the Bill for publication. Publication of which will depend on the outcome of pre-legislative scrutiny.

Any queries on upcoming legislation can be directed to the Secretariat at clrg@dbei.gov.ie

1. **CLRG 2020-2022**

a. **Noting of 2019 Annual Report**

It was noted that the 2019 Annual Report was submitted to the Minister. The Chairperson recorded his thanks to members for their contribution.

b. **2020-22 work programme**

The Chairperson outlined that the 2020 – 2022 work programme would be set in the coming months. Members were invited to provide any views they have on items which should potentially be included.

1. **Committee updates**

Given the impact of Covid-19, there were minimal updates from the Committees since the last plenary meeting. However, the following updates were provided by the various Committee Chairs.

a. **Corporate Governance Committee**

The Corporate Governance Committee will begin its programme of work in respect of potential amendments required to mitigate the impact Covid-19 continues to have on the normal operation of the Companies Act. Of particular relevance are issues in respect of holding annual general meetings.

b. **Insolvency Committee**

The Insolvency Committee will begin its programme of work in respect of potential amendments required to mitigate the impact of Covid-19. The Committee will focus itself on matters required in the immediate term before considering more long term, stabilisation measures.

c. **Part 23 Committee**

The Part 23 Committee continues its work in respect of amendments required to facilitate the new intermediated system. Now that the Shareholders’ Rights Directive has been transposed there may be a requirement to consider its interaction with the system as well as whether there any changes required in respect of the Central Securities Depository Regulations.

1. **Practice updates**

The Chairperson invited members to outline any practice updates or issues arising in practice as a result of Covid-19.

1. **Next meeting date**

The Chairperson outlined that the Group would hold its next Plenary session once the deliberations of the respective Committees drew to a close.

1. **AOB**

The Review Group noted the retirement of Helen Curley, Principal Officer, Company Law Development & EU in DBEI and Breda Power, Assistant Secretary, DBEI. The Group highlighted its appreciation to both Helen and Breda for their contribution to and support of the CLRG.

The Review Group noted with sadness the death of Tom McGovern, who worked in the Companies Registration Office. Members shared their appreciation for the excellent work Tom did, in particular his helpfulness when dealing with issues. The CLRG offer their condolences to Tom’s family, friends and colleagues.