



## 83rd Plenary Meeting of the Company Law Review Group

Date: 17th September 2018  
Time: 09:30am – 11:30am  
Venue: National Emergency Coordination Centre (NECC),  
Agriculture House, Kildare Street, Dublin 2.

**Present:** Mr. Paul Egan (Chairperson)  
Sinead Boyle, Barry Cahir, Barry Conway, Máire Cunningham,  
Helen Curley, Richard Curran, Marie Daly, Emma Doherty,  
Jeanette Doonan, Ian Drennan, Bernice Evoy, Tanya Holly, Shelley  
Horan, Gillian Leeson, John Loughlin, Irene Lynch Fannon, Ralph  
MacDarby, Vincent Madigan, Kathryn Maybury, Neil McDonnell,  
Salvador Nash, Kevin O'Neill, Gillian O'Shaughnessy, Eadaoin  
Rock.

**In attendance:** Síona Ryan (Secretary)  
Tara Keane (Incoming Secretary)  
David Hegarty, Chris Short (DBEI)

**Apologies:** Michael Halpenny, Rosemary Hickey, Maureen O'Sullivan.

### 1. Welcome and Introduction of new Group members

The Chair welcomed all present and in particular the new members to the Group:

|                              |  |
|------------------------------|--|
| <b>Barry Conway</b>          | Ministerial Nominee (William Fry)                    |
| <b>Máire Cunningham</b>      | The Law Society (Beauchamps)                         |
| <b>Richard Curran</b>        | Ministerial Nominee (LK Shields)                     |
| <b>Emma Doherty</b>          | Ministerial Nominee (Matheson)                       |
| <b>Rosemary Hickey</b>       | Office of the Attorney General                       |
| <b>Shelley Horan</b>         | The Bar Council of Ireland                           |
| <b>Ciara O'Leary</b>         | Irish Funds Industry Association (Maples and Calder) |
| <b>Kevin O'Neill</b>         | The Courts Service                                   |
| <b>Gillian O'Shaughnessy</b> | Ministerial Nominee (Byrne Wallace)                  |

The Chair recorded his and the Group's appreciation for the work of the outgoing Chair, Dr Tom Courtney. His vision, as set out in the CLRG's first report, finalised in March 2002, laid out the design of what eventually emerged as the Companies Act 2014. Under his leadership as chair of the CLRG, the Group had produced 16 Annual Reports, 8 special reports and the General Scheme of the Companies Bill.

The Chair referred to the Group's tasks, in particular to monitor, review and advise the Minister on matters concerning the Companies Act, amendments, restatements, new primary and secondary legislation, Rules of Court, court judgments and EU-related matters. The Chair emphasised that the Group is an activist body, not a passive body. Although particular items would be remitted to the Group, the Group must monitor the Act generally. In practical terms, it means that all members can and must bring to the Group's attention any issues arising from present legislation. Many nominating bodies would do that in any event members must do so too.

The Chair warmly thanked Ms. Síona Ryan, the outgoing Secretary to the group for her sterling support over the previous 3 years and welcomed incoming Secretary Ms. Tara Keane.

## **2. Minutes & Matters arising**

### **Minutes:**

The minutes of the Group's meeting held on 30<sup>th</sup> November 2017 were adopted.

### **Matters Arising:**

#### **Ad-Hoc Working Group Submission on the Transposition of Directive EU-2017-828**

A submission was made by an Ad-Hoc working group to the public consultation on the Transposition of Directive (EU) 2017/828. The Chair outlined that the submission had not been approved by the CLRG due to the consultation deadline and proposed that it should now be adopted as a CLRG submission.

The submission was adopted.

#### ***The Transposition of the 4<sup>th</sup> Money Laundering Directive (The European Union (Anti-Money Laundering: Central Register for Beneficial Ownership of Companies and Industrial and Provident Societies) Regulations 2017)***

The Chair informed the group that the Department of Finance had advised that the drafting of legislation to establish a central register of beneficial ownership is at an advanced stage and is expected to be concluded soon. It is intended that these transposing measures will be in place before year end.

This legislation is expected to assign separate legal responsibility to the Registrar of Companies for the establishment and maintenance of the central register of beneficial ownership of companies and industrial and provident societies (I&Ps).

### **3. Code of Conduct**

Ms. Ryan gave an overview of the proposed Code of Conduct.

Certain concerns were raised by some members in relation to CLRG members representing the views of their respective nominating bodies. It was noted that members to the Group were there to provide their expertise and specialist knowledge, meaning they would at times need to bring forward the views of these bodies. All queries were noted and the Secretariat agreed to re-examine the document in advance of the next plenary meeting. The Secretariat also agreed to seek further submissions to ensure all members of the group have an opportunity to comment.

### **4. CLRG work programme 2018-2020**

The Chair noted that the Minister for Business, Enterprise & Innovation approves a work programme in consultation with the CLRG at least once every 2 years under section 961 of the Companies Act 2014.

The Chair then gave an overview of the work programme and it was subsequently adopted.

### **5. Future Legislation**

The following updates were provided:

#### **Companies (Corporate Enforcement Authority) Bill (working title) - Publication of the General Scheme**

Preparation of the General Scheme of this Bill is advanced and the Department hopes to submit it to Government in the coming weeks. Subject to the Government's approval, the General Scheme will be published shortly afterwards. The main objective of the Bill is to establish the Office of the Director for Corporate Enforcement as an agency. It will also propose the implementation of recommendations included in the CLRG reports on shares and share capital and on corporate governance.

#### **Companies (Amendment) Bill – Publication of Bill**

The Department is working on the preparation of a Bill to complete the implementation of the Government's policy to streamline the annual filing procedures for companies in the Companies Registration Office.

At present, a company has up to 28 days after its annual return date to file its annual return with the CRO. It then has a further 28 days to submit the accompanying financial statements. This Bill will introduce a technical change to the Companies Act 2014 that will amalgamate those 2 steps into a single step procedure that can be done any time within the full 56 days. Publication of the Bill is expected before the end of this year with a view to enactment as soon as possible after that, subject to Government approval.

### **Commencement arrangements for Companies (Statutory Audits) Act 2018**

The Department is working towards commencement of almost all sections of this Act on 21 September 2018. The following sections will not be commenced on that date: 3(1)(a); 3(1)(h); 3(1)(i); 3(1)(j); and 9. These will be commenced following the enactment of the forthcoming Companies (Amendment) Bill.

### **Regulations to amend the 2017 Regulations transposing the EU Directive on disclosure of non-financial and diversity information**

The EU Directive on disclosure of non-financial and diversity information was transposed into Irish law by S.I. No. 360 of 2017. Draft Regulations to address some technical issues with those Regulations will be submitted to the Minister in the next 2/3 weeks for her consideration and, if approved, signature into law. The technical issues include: Clarifying the obligations on auditors with respect to checking that the information has been disclosed; and clarifying that the scope of the obligation to disclose non-financial information applies to 'large' ineligible entities.

### **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**

This Shareholders Rights Directive must be transposed into Irish law by 10 June 2019. The Department conducted a public consultation on the use of Member State options contained in the Directive in December 2017 and closed in February 2018. Preparations are underway and the transposition deadline is expected to be met.

### **Regulations to apply the EU Accounting Directive to certain partnerships**

Drafting is at an advanced stage and the Department will submit draft Regulations to the Minister for her consideration and, if approved, signature into law at the earliest opportunity.

## **6. Brexit**

The Chair outlined to the Group that the Department of Business, Enterprise and Innovation has engaged in the wide-ranging cross governmental response to the challenges that Ireland and Irish companies will face arising from Brexit that is underway. The Chair sought submissions and general views from members as to possible consequences for Irish company law resulting from Brexit, and advised that these should be directed to the Secretary.

## **7. EU measures and European Commission proposals with relevance to company law**

Ms. Helen Curley gave the Group an update on the following:

## **'Company Law Package'**

On April 25th the European Commission published two Proposals as part of the EU Company Law Package: making the best of digital solutions and providing efficient rules for cross-border operations.

The first proposal is for a Directive regarding the use of digital tools and processes in company law. The Proposal aims to make the procedure of establishing a company more flexible across the European Union, and more generally to promote the use of digital technologies throughout the company's life-cycle.

The second Proposal is for a Directive regarding cross-border conversions, mergers and divisions. The main purpose 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. Negotiations commenced on 23 May 2018 on the Proposals.

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

The EU Commission proposal seeks to harmonise aspects of national insolvency laws – both for companies and for individuals. It is focused on specific areas of insolvency law – 'early restructuring' opportunities (for businesses in financial difficulties which may not, or not yet, be insolvent), and ensuring a 'second chance' for 'honest entrepreneurs' who become insolvent without any fraud or malpractice.

Negotiations on the dossier have been ongoing since January 2017 and amendments have been introduced to provide more flexibility for Member States. The Justice Council reached a partial general approach on certain Titles at its meeting in June 2018. Negotiations on remaining Titles are continuing and the Austrian Presidency is aiming for agreement on a general approach at the October Justice Council.

Group members noted the importance of retention of the Irish examinership model, which has served the country well, compared with models in force in other jurisdictions.

### **Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches**

Negotiations on the Directive are stalled. While the Parliament has adopted its position, the Council has yet to agree its own General Approach.

## **8. Overview of recent CLRG publications and recommendations**

The Chair gave an overview of the following CLRG publications and recommendations:

*-Report on corporate governance (November 2017)*

*-Report on the protection of employees and unsecured creditors (June 2017)*

*-Report on shares and share capital (March 2017)*

*-Report on the representation of companies in court (March 2016)*

The Chair encouraged new members to familiarise themselves with the reports and recommendations contained therein.

#### **9. Update from CLRG Subcommittees on work in progress**

An update was given to the Group from the following sub committees:

##### **Statutory Committee**

The Chairperson advised that the Committee will continue to review the legislation as required.

##### **Compliance and Enforcement**

The Committee Chair, Ian Drennan, outlined developments in the area of compliance and enforcement generally including the ODCE Bill and the potential establishment of a working group with the DPP to facilitate discussion between enforcement bodies. An update was also given on a 'White Collar Crime' initiative, which is a recently established working group looking at anti-fraud and anti-corruption measures.

##### **Corporate Insolvency**

The Committee Chair, Barry Cahir outlined that he expects that the sub-committee's report on UNCITRAL Model Law will be finalised in the coming weeks and presented to a plenary meeting thereafter.

#### **CLRG Committees and Committee Panels**

The Chair set out the role and function of CLRG committees. CLRG committees are tasked with an item of work from the CLRG work programme with a view to bringing a detailed draft report, including any recommendations, for consideration and deliberation by the CLRG at its plenary meetings. The Chair requested that members indicate their areas of interest with a view to serving on committees.

#### **10. AOB**

##### **Reception for former CLRG Chairperson**

The Chair reminded CLRG Members of the Reception in honour of Dr. Tom Courtney, former CLRG Chairperson, to be held on 16<sup>th</sup> October 2018.

The Chair concluded by thanking Ms Ryan again and making a small presentation to her as a token of the Group's appreciation for her work.

The meeting then closed.