



84th Plenary Meeting of the Company Law Review Group

Date: 10th December 2018

Time: 10:00am – 11:30am

Venue: National Emergency Coordination Centre (NECC),
Agriculture House, Kildare Street, Dublin 2.

Present:

Paul Egan (Chairperson), Sinead Boyle, Barry Cahir, Barry Conway, Máire Cunningham, Helen Curley, Richard Curran, Jeanette Doonan, Bernice Evoy, Michael Halpenny, Rosemary Hickey, Tanya Holly, Gillian Leeson, John Loughlin, Irene Lynch Fannon, Ralph McDarby, Vincent Madigan, Kathryn Maybury, Neil McDonnell, David McFadden, Salvador Nash, Kevin O'Neill, Maureen O'Sullivan, Eadaoin Rock.

In attendance:

Tara Keane (Secretariat), Emma Geraghty (DBEI), Breda Power, Chris Short, David Hegarty.

Apologies:

Emma Doherty, Ian Drennan, Shelley Horan, Gillian O'Shaughnessy, Marie Daly

Agenda

1. Minutes & Matters arising

Minutes:

The minutes of the meeting of 17th September 2018 were adopted.

Matters arising:

Committee membership

The Chairperson indicated the members who had volunteered for the various sub-committees and called for further expressions of interest.

2. Code of Practice

Ms. Tara Keane, Secretariat, gave the group an overview of the amendments to the Code of Practice as follows;

- 1) Nominating Bodies
- 2) Declarations of Interest

The Code was amended to reflect concerns raised in relation to members bringing forward the views of their nominating bodies and the way declarations of interest and conflict of interest are to be declared. The amendments are reflected in Section 2.3 (a) and 2.3 (b).

The revised Code of Practice was adopted.

3. Future Legislation

Ms. Helen Curley provided the following update:

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

The General Scheme of this Bill was approved by Government, and was published on the 4th December 2018. The main features of the Bill are –

- Build on existing expertise and structural changes
- Establish ODCE as an agency

Apart from establishing the ODCE as an agency, the General Scheme is implementing another measure in the Government's "white collar crime" package. That is to give effect to recommendations of the CLRG on corporate governance (Part 4). These are largely technical in nature.

The General Scheme, in Parts 3, 4 and 5, also makes 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 respectively. Part 6 provides for further miscellaneous amendments to the Companies Act 2014.

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 Shareholders Rights Directive must be transposed into Irish law by 10 June 2019. A draft S.I. has been sent to the Office of Parliamentary Counsel to transpose the mandatory elements of the Directive and the transposition deadline is expected to be met.

'Company Law Package'

Negotiations are ongoing on two proposals forming 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.

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 General Approach on the proposal in October this year. The dossier is now in the inter-institutional phase with the European Parliament and intensive negotiations are underway to agree a compromise between the Council's General approach and the Parliament's

position. (The Council (Member States) is represented in these negotiations by the Austrian Presidency). An ambitious timescale has been set for their conclusion by the Parliament and Presidency.

Central Register of Beneficial Ownership

Ms. Maureen O'Sullivan indicated that The Department of Finance have outlined their intention to have an S.I. signed by year end. It is envisaged that the Register will open 3 months later with companies being given a 6 month lead in period to file the information required. The CRO are satisfied that their IT system is ready and there will be an information campaign undertaken to highlight the new requirements.

Central Bank Regulations

The Chairperson informed the group that the Part 23 Committee did not make a submission to the Central Bank's consultation on the Market Abuse and Transparency Rules under Part 23 of the 2014 Act. There was a consensus that their observations were captured in the submissions of other parties. The Central Bank will be issuing a response to the consultation in the coming months.

Brexit

The Chairperson outlined that there are 30 European Economic Interest Grouping's currently within Ireland, with the vast majority having cross border operations. He raised his concerns about the ability of corporations in Ireland and Northern Ireland to liaise and create economic groupings. It was suggested that in order to protect their ability to do this post-Brexit, there would be a need for primary legislation.

The Chairperson asked the Department as to whether there were currently plans to look at this issue. In response, the Group were informed that the Attorney General's Office were responsible for considering all Brexit related legislation, and, that it is the responsibility of each Department to raise with them the legislation they think may be required as a priority. The issue of EEIG's has not been raised.

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

4. UNCITRAL 'Model Law on Cross Border Insolvency' report

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

The purpose of the report is to examine and make recommendations as to whether or not it is desirable in Irish company law to adopt the Model Law. The Model Law consists of 32 articles and provides a procedural structure for recognising foreign insolvency proceedings with an emphasis on co-operation between jurisdictions.

The committee consider that the adoption of the Model Law would be desirable given the certainty it would provide companies to which EU Regulation does not apply-this would also be regarded as positive for FDI. Furthermore, in a post-Brexit context it is desirable for Ireland to have a cross-border insolvency administration which is functional and adaptable given the hugely significant trading relationship we have with the United Kingdom.

The Chair thanked committee members for their contribution.

The report was adopted.

5. AOB

Examination of the Regulation of Receivers

The Chairperson informed the Group that the Minister for Business, Enterprise & Innovation had written to him requesting that an examination of the regulation of receivers be undertaken by the CLRG.

Ms. Helen Curley gave some background to the Minister's request and stressed that it related to Part 8 of the Companies Act 2014 rather than the broader area of receivership.

The request was acknowledged, and the Corporate Insolvency subcommittee will examine the matter in January 2019.

Law Reform Commission

The Chairperson proposed writing to the Law Reform Commission's Revised Acts team on behalf of the Group to express thanks for their ongoing work in keeping the Companies Act 2014 up to date.

The proposal was accepted.

Certificate of Attendance

The Chairperson outlined that a 'Certificate of Attendance' would be provided to members for the purpose of CPD points.

Any requests for a 'Certificate of Attendance' can be made directly to the Secretariat at clrg@dbei.gov.ie

The meeting then ended.

Tara Keane, Secretary to the Group.