



# Annual Report of the Company Law Review Group 2008



An Roinn Fiontar, Trádála agus Fostaíochta  
Department of Enterprise, Trade & Employment

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**Chairperson's Letter to the Tánaiste and Minister for  
Enterprise, Trade and Employment, Ms. Mary Coughlan, T.D.**

Dear Tánaiste,

In accordance with Section 71 of the Company Law Enforcement Act 2001, I have pleasure in enclosing for your consideration the annual report of the Company Law Review Group for the calendar year 2008.

In the course of 2008 we presented to you our report on the 2007 work programme and it was very gratifying for the Review Group to learn that with your support the recommendations made by the Review Group have been accepted by the Government and shall find form in the Companies Consolidation and Reform Bill which is in the course of being drafted.

Since then we have commenced our consideration of the 2008/ 2009 work programme which you have set for us.

In recent months Company Law has featured prominently in the media. Unfortunately, it is the suspected or alleged non-compliance of a small number of provisions which are the reason for this attention. It is all too easy to overlook the fact that company Law is essentially a facilitative code which allows people to organise their business (and social) affairs through a corporate entity. Developments at home and developments in the European Union will ensure that there will always be sufficient issues in the area of Company Law that require the considered and measured review by an expert body charged with producing balanced and proportionate recommendations for reform.

On behalf of the membership of the Review Group I would like to welcome our new Secretary, Mr John P Kelly who took over this position from Mr Eugene Forde. It was a pleasure to work with Eugene who was a real asset to the Review Group throughout his tenure and I wish him the very best in his career in the diplomatic service. I very much look forward to working with John and acknowledge his ongoing support to me as chairperson in helping me progress our work programme.

Yours sincerely,

Dr Thomas B Courtney  
Chairperson

## Members of the Company Law Review Group 2008/2009

<b>Dr. Thomas B. Courtney (Chairperson)</b>	<b>Arthur Cox</b>
<b>Paul Appleby</b>	<b>Director of Corporate Enforcement</b>
<b>Deirdre-Ann Barr</b>	<b>Matheson Ormsby Prentice</b>
<b>Jonathan Buttimore</b>	<b>Office of the Attorney General</b>
<b>Daryl Byrne</b>	<b>Irish Stock Exchange</b>
<b>Jim Byrne</b>	<b>Revenue Commissioners</b>
<b>Marie Daly</b>	<b>Irish Business and Employers Confederation (IBEC)</b>
<b>Ian Drennan</b>	<b>Irish Auditing and Accounting Supervisory Authority (IAASA)</b>
<b>Paul Egan</b>	<b>Mason Hayes + Curran</b>
<b>Paul Farrell</b>	<b>Registrar of Companies</b>
<b>Mark Fielding</b>	<b>Irish Small and Medium Enterprises Association Ltd. (ISME)</b>
<b>Michael Halpenny</b>	<b>The Services, Industrial, Professional and Technical Union (SIPTU)</b>
<b>Tanya Holly</b>	<b>Department of Enterprise, Trade and Employment</b>
<b>William Johnston</b>	<b>Arthur Cox</b>
<b>Lyndon MacCann S.C.</b>	<b>Bar Council of Ireland</b>
<b>Ralph MacDarby</b>	<b>Institute of Directors</b>
<b>Vincent Madigan</b>	<b>Department of Enterprise, Trade and Employment</b>
<b>Conall O'Halloran</b>	<b>Consultative Committee of Accountancy Bodies – Ireland (CCAB-I)</b>
<b>Brian O'Kane</b>	<b>Small Firms Association (SFA)</b>
<b>Mike Percival</b>	<b>Irish Banking Federation (IBF)</b>
<b>Mark Pery-Knox-Gore</b>	<b>Law Society of Ireland</b>
<b>Nora Rice</b>	<b>Companies Registration Office (CRO)</b>

<b>Noel Rubotham</b>	<b>Courts Service</b>
<b>Jon Rock</b>	<b>Institute of Chartered Secretaries and Administrators (ICSA)</b>
<b>Patricia Taylor</b>	<b>Funds Industry</b>
<b>George Treacy</b>	<b>Irish Financial Services Regulatory Authority</b>

**Secretariat:**

**John P Kelly: Department of Enterprise, Trade and Employment**

**Eric Giguère: Department of Enterprise, Trade and Employment**

**Jane Dollard: Department of Enterprise, Trade and Employment**

## **Overview and Update on the Companies Consolidation and Reform Bill**

Arising from its reports in 2001/2/3 the CLRG submitted the General Scheme of the Companies Consolidation and Reform Bill to the Minister for Enterprise, Trade and Employment in March 2007. On 25<sup>th</sup> of July 2007 the Government approved the General Scheme of the Companies Consolidation and Reform Bill, as prepared by the CLRG, for drafting by the Office of Parliamentary Counsel.

- Parts 1 to 10 of the Bill (which correspond to Parts A1 to A10 of the General Scheme) have been drafted by the Office of the Parliamentary Counsel [OPC] and received by the Department.
- It is expected that the remaining parts of Pillar A of the General Scheme, will be drafted by June 2009.
- The drafting of the Parts of the Bill that correspond to Pillar B of the General Scheme is expected to be substantially completed by the end of 2009.

The Review Group understands that in order to accelerate the drafting process, two legal researchers were recruited by the Department of Enterprise, Trade and Employment and began work in January 2009. In addition, the Attorney General's Office has assigned two parliamentary counsels within the Office of the Parliamentary Counsel to work on the project.

The Companies Consolidation and Reform Bill will consolidate the existing 13 Companies Acts, as well as other regulations relating to the incorporation and operation of companies, into a single Act, comprising in the region of 1,263 sections. In summary, the provisions cover the incorporation of companies, corporate governance, duties of directors and secretaries, financial statements and auditors, receivers, reorganisations and examinerships, windings-up and compliance and enforcement. The provisions are brought together in a coherent manner that will facilitate business people in incorporating and operating companies on a day-to-day basis.

## **Follow up from the 2007 Work Programme**

There was a total of twenty-five items on the CLRG 2007 Work Programme. The issues were grouped into five categories that were examined by separate committees formed for that purpose. Each committee researched and discussed the assigned issues and reported to the Plenary group, the conclusions of which were included in the 2007 Annual Report.

In May 2008 the Government noted the contents of the 2007 Report and in December 2008, approved the Report and recommendations contained therein. The recommendations can be grouped into three categories:

1. Issues that will be considered in the 2008/2009 Work Programme of the CLRG;
2. Recommendations relating to the Companies Consolidation and Reform Bill; and
3. Recommendations where legislative change is not recommended.

## **Issues to be considered further in the 2008/2009 Work Programme**

The six issues below were considered by the CLRG and it was decided that additional data and/or analysis was required before final recommendations could be made. The Minister agreed that the issues below should be considered further in the 2008/2009 Work Programme.

1. Power of the Registrar to rectify entries made in the Register of Companies and the re-use of CRO information;
2. Review of measures relating to Irish registered non-resident companies;
3. Limited liability partnerships;
4. Removal of the limit restricting size of partnerships to twenty members;
5. Provisions regarding distributions and share capital; and
6. Extension of the audit exemption regime to small companies limited by guarantee and to dormant subsidiaries.

## **Recommendations relating to the Companies Consolidation and Reform Bill**

Fifteen recommendations relate to the proposed Companies Consolidation and Reform Bill as follow:-

1. Registration of judgment mortgages;
2. Register of directors and the non-publication of directors' addresses by the company and by the Companies Registration Office; and
3. The location and cost of inspecting the registers;
4. Review of the thresholds for defining small and medium sized enterprises;
5. Limitation on the Number of Directorships;
6. Removal of ban on incorporation by auditors' and setting of statutory cap on auditors' liability;
7. Audit Committees in PLCs;
8. Increase in Audit Exemption Thresholds to the EU Maximum;
9. Amendments Proposed by the Irish Auditing and Accounting Supervisory Authority;
10. Statutory recognition and protection of the term "Accountant";
11. Consent Proceedings in lieu of Restriction and Disqualification of Directors;
12. Proposal to Permit Multiple Proceedings on the Same Facts Within a Single Set of Summary Proceedings;
13. Prohibition on company transactions with directors and connected persons;
14. Financial assistance by a company in connection with the acquisition of shares; and
15. Review of preferential payments in a winding-up or receivership situation.

**Other recommendations where legislative change is not recommended**

1. Removal of requirement for companies to have a common seal;
2. ODCE powers to require evidence of companies' entitlement to audit exemption;
3. Proposal to allow ODCE to put directors on notice of a contravention; and
4. Good faith reporting ["whistleblowing"] of breaches of company law.

## Review Group's Work Programme 2008/2009

The Minister for Trade and Commerce approved the new work programme of the Company Law Review Group in August 2008. In accordance with Section 70(1) of the Company Law Enforcement Act 2001, the work Programme is assigned by the Minister at least once every two years.

The content of this period's work programme, can be divided into three parts, as follows: (i) provision of ongoing advice to the Department, (ii) further consideration of issues outstanding from the 2007 work programme, and (iii) consideration of new issues.

The Work Programme for 2008/2009 contains a challenging set of tasks:

<b>Ongoing advice to the Department</b>	
1	Provide ongoing advice to the Department of Enterprise, Trade and Employment on EU proposals relating to the European Private Company (EPC).
2	Generally advise the Department of Enterprise, Trade and Employment on queries raised by the Parliamentary Draftsman arising from the drafting of the new Companies Bill, as requested by the Department.
<b>Issues outstanding from the 2007 Work Programme</b>	
3	Examine the need for powers to permit the Registrar of Companies to rectify entries made in the register of companies.
4	Examine the need for provisions regarding the re-use of CRO information.
5	Consider the need for limited liability partnerships (LLPs).
6	Re-examine the provisions regarding distributions and share capital.
7	Consider extension of the audit exemption regime to small companies limited by guarantee, which are formed, for example, to run clubs/community organisations etc.
8	Further consider the extension of the audit exemption regime to dormant subsidiaries

<b>New Issues</b>	
9	Consider the need to include provisions like those found in sections 116 and 117 of the UK Companies Act 2006 into Head 38 of Chapter 5, Part A4 of the General Scheme of the Companies Consolidation and Reform Bill.
10	Examine section 376 of the Companies Act 1963 as amended by section 13 of the Companies (Amendment) Act 1982, and in particular, examine the removal of the limit restricting size of partnerships to twenty members.
11	Review the optional elements under the Second Directive 2006/68/EC (Capital Maintenance).
12	Rented accommodation used as registered offices causing problems for landlords
13	<p>Advise the Department of Enterprise, Trade and Employment on the various requirements on auditors to report under criminal justice legislation, under company law and, in particular, Recommendations arising out of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.</p> <p>Advise the Department on the possibility of streamlining the various obligations.</p>
14	Consideration of the adoption, in Irish company law, of the UNCITRAL Model Law on Cross-Border Insolvency.
15	<p>To examine specific provisions under the Companies Acts and to review if, in practice, their application is consistent with the underlying policy objectives of the legislation, including improved compliance. Namely:</p> <ul style="list-style-type: none"> <li>• Abuse of Strike-off provisions;</li> <li>• Late-filing penalties, and, in particular, the loss of exemption from the need to conduct a statutory audit;</li> <li>• With reference to a small, select number of offences, consider whether there is proportionality between the seriousness of the offence (and the likelihood of malpractice) and its enforcement and whether offences under the Companies Acts should be subject to civil or criminal action, or both.</li> </ul>

Work is progressing on all of the items and a number of discussion papers have been produced and have been considered by the Review Group.