

Company Law for the 21st Century – The Company Law Review Group’s Proposals for the *Companies Consolidation and Reform Bill*

**Paper presented on 8th November 2007
by Dr Thomas B Courtney, Partner, Arthur Cox
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by the Irish Charities Tax Reform Group**

Introduction

On 10th May 2007, the Company Law Review Group’s *Report on General Scheme of Companies Consolidation and Reform Bill* was presented to the Minister for Enterprise, Trade and Employment, Micheál Martin, and the Minister for Trade and Commerce, Michael Ahern. The Report was accompanied by a draft of the Bill, or ‘General Scheme’, which runs to nearly 1,300 sections, one of the largest pieces of proposed legislation in the history of the State. In July 2007, the General Scheme was approved by Government and is now with the Parliamentary Draftsman’s Office.

In this paper I shall sketch the origins of the modern Irish company law reform before going on to outline the principles behind the reform programme as described in the CLRG’s First Report which are the blueprint for the General Scheme. I will then describe the architecture and contents of the General Scheme with particular reference to guarantee companies.

The McDowell Group on Company Law Compliance and Enforcement

It was in August of 1998 that the Tanaiste and then Minister for Enterprise, Trade and Employment, Ms Mary Harney TD, established the *Working Group on Compliance and Enforcement* under the Chairmanship of Michael McDowell SC. The McDowell Group

first met in September 1998 and completed its report on 30th November 1998. The McDowell Group report highlighted what had been suspected for years – compliance with basic Companies Registration Office requirements was at an unacceptably low level. One of the statistics which is constantly rolled out to exemplify the situation identified by the McDowell Group is that in 1997 only 13% of companies complied with their obligations to file their annual returns on time (compared with 73% of companies in 2006). The recommendations made to improve compliance with (and enforcement of) Irish company laws – particularly, the establishment of the Office of the Director of Corporate Enforcement and Companies Registration Office policy – have been well publicised. It is, I believe, very interesting that the quid pro quo to a seriously improved compliance and enforcement regime was recognised to be a strong, statutory Company Law Review Group. The McDowell Group considered that the start-stop approach to company law reform, seen in the legislative response to the Gallagher Group’s report was “entirely unacceptable”.

In addition to recommending that the Company Law Review Group be established on a statutory basis, the McDowell Group also recommended that the Companies Acts be consolidated into one comprehensive and comprehensible company law code.

As had been pointed out by the McDowell Group, there was no need to delay the establishment of a Company Law Review Group pending enabling legislation and the Tanaiste and Minister for Enterprise Trade and Employment Mary Harney announced the setting up of our Group on an administrative basis on 8 December 1999.

The Company Law Enforcement Act 2001 – The CLRG on a Statutory Basis

Section 67 in Part 7 of the Company Law Enforcement Act 2001 (“CLEA 2001”) established the Company Law Review Group (“CLRG”) on a statutory basis. Section

68(1) directs that the CLRG shall:

...monitor, review and advise the Minister on matters concerning-

- (a) the implementation of the Companies Acts,
- (b) the amendment of the Companies Acts,
- (c) the consolidation of the Companies Acts,
- (d) the introduction of new legislation relating to the operation of companies and commercial practices in Ireland,
- (e) the Rules of the Superior Courts and case law judgements insofar as they relate to the Companies Acts,
- (f) the approach to issues arising from the State's membership of the European Union, insofar as they affect the operation of the Companies Acts,
- (g) international developments in company law, insofar as they may provide lessons for improved State practice, and
- (h) other related matters or issues, including issues submitted by the Minister to the Review Group for consideration."

It is particularly significant that section 68(2) contains the following injunction as to the manner in which the CLRG advises the Minister:

"In advising the Minister the Review Group shall seek to promote enterprise, facilitate commerce, simplify the operation of the Companies Acts, enhance corporate governance and encourage commercial probity."

Section 69 concerns the membership of the CLRG and I have attached a list of the current members of the CLRG in Appendix 1 to this paper. The Chairperson of the CLRG is appointed by the Minister.

Section 70 deals with the meetings and the business of the CLRG. Every two years, the Minister, in consultation with the CLRG, is required to determine the programme of work to be undertaken over the ensuing specified period. The current work programme is detailed in Appendix 2 to this Paper. This is the CLRG's fourth work programme and I have included the first, second and third work programmes in Appendix 3.

The CLRG is required to hold such and so many meetings as may be necessary for the performance of its functions and is entitled to establish such sub-committees as it thinks appropriate. This is exactly how we have chosen to operate – shortly after the establishment of the CLRG we established a number of committees. The hub of our

meetings is the plenary session, which is held monthly. Since our establishment there have been approximately 400 meetings of various committees, many of these outside of normal office hours and at weekends reflecting the commitment, energy and self-sacrifice of the CLRG's members and Secretariat.

The CLRG's First Report - A Unanimous Blueprint for a New Model Company

The CLRG's first Report published in February 2002 recommended the most sweeping changes, in the history of the State, to Irish Company Law. In tackling the difficult subject of simplification of company law, the CLRG advocated the complete re-focusing of company law so that the private company limited by shares will become *the new model company*. It is of the utmost importance that such far-reaching recommendations enjoy broad support and it is particularly significant that the 195 recommendations were the unanimous, consensus view of the then members of the CLRG, who were the representatives of:

- the **main social partners** (e.g. ICTU and IBEC);
- the **users of company law** (e.g. CCABI, IBF, Bar Council, Law Society, Courts Service, Revenue Commissioners, the Stock Exchange and the Institute of Directors and Institute of Chartered Secretaries);
- and those who **regulate and administer** company law (the registrar of companies, the Director of Corporate Enforcement, the AG's office and of course the Department of Enterprise, Trade and Employment).

It was gratifying that, in July 2002, the Government approved the recommendations in the First Report in their totality and directed that the General Scheme of a Bill should be drafted to give effect to these. This has proven to be a mammoth task and one which could only be brought to conclusion earlier this year.

Simplification and the "New Model Company"

The CLRG's First Report made it clear that only a radical refocusing can achieve the simplification that our company laws require. There are thirteen Companies Acts that together contain about 1,200 sections of primary legislation and probably another 400 individual provisions in myriad statutory instruments that are required to be "read as one" with the Companies Acts. At present, it is this same body of law that appears to apply to all companies – whether they are one of the few hundred Public Limited

Companies (PLCs) that are listed on the Stock Exchange, one of the 13,700 guarantee companies or one of the 148,650 private limited companies, many of which have a husband and wife as the only directors and shareholders. The CLRG accepts that many users, whether they are small businesses or indeed charities, Company Law is impenetrable and excessively bureaucratic and we do not believe that this is an appropriate basis for any modern Company Law code.

The main plank of the First Report is the notion that the law must clearly distinguish between two such fundamentally different models (i.e. the public company and the private company). The other forms of company too must be clearly identified and the Company Laws applicable to them tailored to their needs. Unlimited companies, guarantee companies, investment companies, external companies and unregistered companies all play an important part in their own right in Irish corporate and social society and deserve to be recognised as having different needs.

It is, however, the private company limited by shares that is the corporate form of choice for the greatest number and Irish Company Law must be restructured in such a manner as to make applicable law more accessible and intelligible to those who choose the private company which we are proposing should be the *new model company*.

Almost nine in ten of all companies on the Irish register are private companies limited by shares. The CLRG concluded that Irish Company Law must be re-written from the perspective of the private company limited by shares and the CLRG's First Report recommends accordingly. Since its creation, the private company has been an after-thought. Section 37(1) of the Companies Act 1907 – the Act that gave birth to the private company – located the provisions on this most common of companies under the heading 'miscellaneous'. This notion was perpetuated in 1963 in, for example, Table A which sets out model *articles of association*, the internal rules by which a company is governed. So, although most companies limited by shares are private companies, Part II of Table A *applies* Part I of Table A to private companies limited by shares: the tail is wagging the Irish wolfhound, the private company limited by shares. The effect of the CLRG's proposed change will mean that the *private company limited by shares* will cease to be a legislative after-thought and will be moved to centre stage.

The CLRG's recommendations here are very far-reaching. The Companies Acts as we know them are being re-written from the perspective of the private company limited by

shares. The CLRG's working model for the new Companies Acts is as follows. As seen in the Report on the General Scheme, the new legislation will be sub-divided into two groups of provisions.

1. **Group of Parts A** (or Pillar A) will be concerned exclusively with the private company limited by shares.
2. **Group of Parts B** (or Pillar B) will be concerned with the PLC, designated activity companies (i.e. private companies that continue to have objects clauses), guarantee companies, unlimited companies, external companies, investment companies, unregistered companies and the law applicable to re-registration as a different type of company.

The primary company law framework will be contained in Pillar A. In Pillar B, the provisions relating to each type of other company will be clustered, each in their distinct Part of Pillar B. Each such Part will then apply or disapply the laws set out in Pillar A to the particular company type in question and each Part will also contain additional provisions, only relevant to that company type.

Specific Proposals to Simplify the Law for Private Companies

Some examples of the CLRG's specific recommendations designed to achieve simplification and specifically targeted at the private company are the following.

Allowing All Private Companies Dispense with the AGM

It is proposed **that private companies should be permitted to dispense with the need to hold an AGM**. This is already permitted for single-member companies but the CLRG would extend this to multi-member companies where the members unanimously agree to the proposal. In companies where the directors and shareholders are one and the same persons, the need for a formal AGM is very dubious. In many such companies AGMs happen only 'on paper'. Where all members are agreeable to this there is no loss suffered by the company, its creditors or the general public. The only victim of that crime is company law itself, which is brought into disrepute. In a zero-tolerance environment, it is only right and proper that the laws on the statute book should be reasonable and that unnecessarily bureaucratic laws should be repealed.

Private Companies should be permitted to have only One Director

The CLRG proposed that **the minimum number of directors for a private company should be reduced from two to one**. It is considered that there is no good reason why we should continue to insist that all private companies should have two directors – we know that in many cases one spouse will simply prevail upon the other spouse to sign the form agreeing to be that second, statutory director. It makes no sense to force people to assume duties and responsibilities for the sake of a numeric statutory requirement. Token directors are anathema to modern corporate governance. In this regard the views of Miss Justice Carroll in *Re Hunting Lodges Ltd*¹ are salutary. In that case she said of the wife of one of the directors concerned, who was a “token” director, that in the context of fraudulent trading she could not:

“...evade liability by claiming that she was only concerned with minding her house and looking after the children. If that was the limit of the responsibilities she wanted, she should not have become a director of the company, or having become one she should have resigned. Any person who becomes a director takes on the responsibilities and duties, *particularly where there are only two*...A director who continues as a director but abdicates all responsibility is not lightly to be excused.”²

The spouses of directors who are put forward to satisfy a numeric requirement will frequently play no active role in the company and yet may face legal action for breaches of the Companies Acts or, indeed, proceedings may be taken to have them made personally responsible for their companies’ debts. In Australia, in the context of married directors, this has been referred to as ‘sexually transmitted debt’ – a phenomenon that has been recognised by the courts in other common law jurisdictions: see, for example, the decision of the Supreme Court of New South Wales decision in *Southern Cross Interiors Pty Ltd and another v Deputy Commissioner of Taxation et al.*³

In relation to directors, generally, the CLRG proposes to make their duties clearer by codifying in statute the duties of directors as determined by the Courts. It is simply unacceptable that the law on directors’ duties is only discoverable through consulting legal textbooks which describe the evolution of the Common Law and so the Review Group has distilled the leading decisions of the courts into a series of statutory principles.

¹ [1985] ILRM 75..

² See, however, *Re Lynrowan Enterprises Limited*, (31 July 2002, unreported) High Court where O’Neill J declined to make a restriction order against a director who had taken no part in the company’s affairs.

³ [2001] NSWSC 621 (31 August 2001).

Ultra Vires should be abolished

The CLRG has also recommended the **abolition of the doctrine of ultra vires in private companies**. The present law requires all companies to state the *objects* for which they are formed. Contracts or other transactions, entered into by companies that are *ultra vires* (or beyond their powers) can be unenforceable – to the obvious detriment of creditors. In 1958 the Arthur Cox Report acknowledged that “the purpose of the doctrine of ultra vires has been largely defeated. It does not now give any protection to the shareholders or the creditors of the company and becomes a waste of time and paper”. Notwithstanding this, that group stopped short of recommending its abolition. The CLRG believes that the abolition of the doctrine of *ultra vires* is long overdue and our proposal that private companies should have the same legal capacity as a natural person will be given effect in the new legislation.

The CLRG believes that anomalous and unnecessary laws should be repealed. Generally, the Review Group believes that the law should – where possible – adopt a ‘light-touch’ and facilitate the use of “validation procedures” whereby otherwise prohibited activity can be engaged-in, provided that the interests of shareholders and creditors (the two major constituencies in Company Law) are safeguarded.

Replacing the Memorandum and Articles with a One-Document Constitution

For the new model private company, the memorandum and articles of association will be replaced by a one-document constitution. Just as at present, a company’s articles of association may make provision for whatever people want, so too can the new constitution contain any provisions people want. The one difference, however, is that whereas at the present time companies need to adopt articles of association, in the new model company virtually all of the provisions commonly found in companies’ articles of association will be contained in statute and will apply to all companies unless the constitution otherwise provides.

The Importance of the PLC

Of course, the CLRG is acutely aware of the importance of the PLC and in recommending that the more plentiful private company be elevated to centre stage this should not in any way be taken as disrespect for the PLC. Of the 170,719 companies registered with the Companies Registration Office as at 31 December 2006, a mere 1%, or 1,561 companies, were PLCs limited by shares: see the *Companies Registration Office Report 2006*, at p 7. The advent of the use of private companies in debt issuances,

which has been possible since 24th December 2006, is likely to reduce further the number of PLCs. Though numerically few, the PLC is economically very significant. PLCs generate much of the wealth in Ireland and employ tens of thousands of people. Care must, however, be taken when legislating for companies not to generalise for all companies from issues specific to a numerically small, albeit economically important type of company. The CLRG believes that the segregation of the law applicable to private companies from that applicable to PLCs will enhance the intelligibility of the laws applicable to both types of company. The opportunity is being taken, however, to introduce very many simplifications to the law applicable to the PLC too and so, to take just one small example, whilst EU law requires a PLC to have an objects clause, the *Companies Bill* will mitigate the effects for third parties where PLCs act ultra vires.

Consolidation

In addition to simplification the CLRG was asked to oversee the consolidation of Irish company law so as to move from (now) having thirteen Companies Acts to having one Companies Act. There is, however, little point in consolidating that which is out-dated and out of alignment with the realities of business life.

At the time of writing the CLRG's First Report it was envisaged that consolidation would proceed in the normal way – a Pre-Consolidation Bill followed by a Consolidation Bill. On getting down to work on the implementation of the Report it was decided that this was not a practical or desirable way to proceed. So radical and fundamental were the changes proposed in the Report, that the Pre-Consolidation Bill would have resulted in several hundred sections of barely intelligible provisions. This is because in elevating the private company limited by shares to centre-stage, and eschewing all references to other types of company, existing provisions which make reference to several types of company need to be broken-out and divided up to permit discrete categorisation. This would have made for turgid and complicated drafting (and reading) under the existing model for consolidation and particularly pre-consolidation. The CLRG rejected this model for drafting new legislation and instead drafted a General Scheme for a Companies Consolidation and Reform Bill *de novo* which will replace all existing thirteen Companies Acts in one fell swoop.

The Report on the General Scheme for the Heads of the New Companies Consolidation and Reform Bill, 2007

The CLRG's most recent report is the *Report on General Scheme of Companies Consolidation and Reform Bill 2007*, published in May 2007. This Report accompanies the two-volume Heads, which are currently being transformed into a Bill by the parliamentary draftsman's office. The Report consists of seven chapters:

1. Commendation of General Scheme to the Minister.
2. The CLRG and its Work to Date;
3. The Principles Applied to Simplification, Modernisation and Consolidation of Company Law;
4. Regulatory Impact Analysis of the Proposed Bill;
5. The Architecture of the General Scheme;
6. Exposition of Pillar A;
7. Exposition of Pillar B.

Pillar A – The Private Company as the New Model Company

Pillar A is concerned exclusively with the private company limited by shares, referred to in the Review Group's First Report as the company limited by shares or CLS but which is now referred to by its more long-standing and simpler name of the "private company". The General Scheme will give effect to the primacy of the private company as the preferred corporate entity of choice and it will be moved to centre stage and be the new model company in Irish company law.

In this respect the simplification of Irish company law is being achieved in part through structural changes to the legislation. The self-contained approach proposed for the private company is comprised of 14 separate Parts and every provision of company law that is or may be applicable to the private company is to be found in Pillar A, *viz.*:

1 – Definitions and Interpretation

2 – Incorporation and Registration

- 3 – Shares and Share Capital
- 4 – Corporate Governance
- 5 – Duties of Directors and Others
- 6 – Accounts, Audit and Annual Return
- 7 – Debentures and Charges
- 8 – Receivers
- 9 – Reconstructions and Arrangements
- 10 – Examinership
- 11 – Winding-Up
- 12 – Strike-Off and Restoration
- 13– Compliance, Investigation and Enforcement
- 14 – Powers and Duties of the Minister and Regulatory and Advisory Bodies

The result of this re-structuring is a unified body of legislation, comprised of some 750 sections of law (or just about 60% of the proposed new Bill) being the only provisions of primary legislation in company law with which a private company need be concerned. Pillar A represents both a consolidation and a simplification of existing legislative provisions.

Distilled into its 14 Parts are all provisions in the Companies Acts and significant statutory instruments that are relevant to private companies limited by shares. In so providing the Review Group is following the “thinking small first” principle enunciated in its First Report and believes it has ensured that (a) the law is clear and accessible; (b) accuracy and certainty have not been sacrificed in an attempt to make the law merely superficially more accessible and (c) the legislation has been structured in such a way that the provisions that apply to the private company are easily identifiable.

The key features of the private company provided for in Pillar A are:

- It is to be limited by shares and must have a share capital.
- It is to have the same capacity as a natural person i.e. the doctrine of *ultra vires* will have no application to the private company.
- It is to have a one-document constitution, which will replace the current two-document constitution that is the Memorandum and Articles of Association.
- It is to have a limit of 99 members, provided that there will be a carve-out from this for property management companies that are formed as private companies so that they may have an unlimited number of members provided that they are all co-owners in the same development.
- It cannot publish a prospectus or list its shares or debenture.
- It can have just one director and a company secretary (who may not be the same persons);
- It can have just one member.
- Its member (or members) can waive the requirement to hold an AGM.
- Its members can pass a majority written resolution.
- It will be eligible for audit exemption, provided it meets the requirements for availing of the exemption.

An elective conversion of existing private companies limited by shares to the new model private company is proposed and it is thought that the advantages are such as to mean that most companies that will be eligible to participate in the new model company regime will do so.

Pillar B – Other Corporate Forms and Miscellaneous Provisions

The General Scheme envisages that, in addition to the private company, there will be ten other types of company, *viz.* –

1. The public limited company, or PLC – limited by shares⁴

⁴ Pillar B, Part 2 which provides for the PLC makes provision for existing PLCs that are limited by guarantee but will not allow the creation of any new PLC.

2. The designated activity company or DAC
 - 2.1 – limited by shares or
 - 2.2 – limited by guarantee having a share capital
3. The Guarantee Company – limited by shares without a share capital
4. The Unlimited Company
 - 4.1 – private unlimited company with a share capital (ULC); or
 - 4.2 – public unlimited company with a share capital (PUC); or
 - 4.3 – public unlimited company without a share capital (PULC).
5. External Companies⁵
6. Unregistered Companies⁶
7. Investment Companies⁷

Leaving to one side external, unregistered and investment companies, the General Scheme provides for five generic types of company: (1) the new model company (i.e. the private company limited by shares); (2) the public limited company; (3) the designated activity company; (4) the guarantee company and (5) the unlimited company.

The Review Group believes that there are legitimate users of each type of company and that Irish company law should be facilitative of business and the wider community by making appropriate provision for different types of companies. In such a corporate universe, what is fundamental is that there is clear delineation and demarcation between the various types of company and the facilitative and regulatory regime applicable to them. The Review Group believes that the structure proposed in the General Scheme achieves the necessary demarcation between possible corporate types and has ensured a

⁵ These are all foreign companies; because it is necessary for the State to regulate these companies where they have a defined connection with the State, these are separately dealt with in the General Scheme.

⁶ In reality, there is only one active “unregistered company”, the Governor and Company of the Bank of Ireland and the General Scheme makes provision for its conversion to a PLC.

deliberate and purposeful application of facilitative and regulatory scheme of provisions applied to each; moreover, the structure as proposed will discipline future thinking on the appropriateness of particular provisions to the different types of company.

The law applicable to each of these types of company is provided for in Pillar B of the General Scheme, which is comprised of 10 Parts, *viz.*:

- 1 – Definitions
- 2 – Public Limited Companies
- 3 – Designated Activity Companies
- 4 – Guarantee Companies
- 5 – Unlimited Companies
- 6 – Re-registration and Conversion
- 7 – External Companies
- 8 – Unregistered Companies
- 9 – Investment Companies
- 10 – Miscellaneous

The architecture of Parts 2, 3, 4, 5, 7, 8 and 9 of Pillar B (each of which concerns a particular type or generic categorisation of company) follows a uniform path. First, in each such Part in Pillar B, the law that applies to the private company, as set out in Pillar A is expressly applied to the Pillar B type company, subject to the disapplication of certain provisions that are not relevant or otherwise inappropriate to the Pillar B-type company. Secondly, additional provisions that are not contained in Pillar A (because they are of no relevance to private companies) are set out where they are applicable to a particular Pillar B-type company.

⁷ These are a variant mutation of the PLC, used by the very important funds industry which require separate treatment in the General Scheme.

The Guarantee Company

The specific law that will be applicable to Guarantee Companies is set out in Pillar B, Part 4 of the General Scheme, which contains 85 Heads of law. In Head 2, the law as set out to private companies is applied to the guarantee company with the necessary modifications. The remaining Heads then go on to address matters that are specific to companies limited by guarantee that do not have a share capital. The specific chapters in B4 are:

1. Preliminary and Interpretation.
2. Incorporation and Consequential Matters.
3. Capital.
4. Corporate Governance.
5. Duties of Directors and other Officers.
6. Financial Statements.
7. Debentures and Registration of Charges
8. Receivers.
9. Re-organisations.
10. Examinerships.
11. Winding-Up
12. Strike-Off and Restoration.
13. Compliance Investigation and Enforcement.
14. Regulatory and Advisory Bodies.
15. Market Abuse.
16. Public Offers of Securities.

We believe that we have set out a robust and comprehensive regime what will serve the needs of all users of guarantee companies, be they charities, management companies or

indeed other commercial interests who devise a future use for the form of guarantee company.

It is my own belief that the Companies Acts provide the most suitable corporate framework for the incorporation of charities. I remain to be convinced that there is any case to be made for the legislature to spawn a new form of corporate life. Discrete legislation creating a new type of legal entity carries inherent risks; first, there is tremendous effort required on the part of the sponsoring Department if the provisions applicable to governance or whatever is the current concern are to be kept up to date with current thinking in Company Law. Secondly, by leaving the Companies Acts' model, the jurisprudence and interpretation placed on particular provisions in articles of association in a Company Law context is jettisoned in favour of an untried and untested model which may turn out to have gaping lacunae. Thirdly, given the myriad types of company that the Companies Acts permit, there must be a presumption that the needs of charitable companies can be accommodated within the Companies Acts framework.

Charities could, however, benefit from a Charities Regulator fixing upon a standard or model form of articles of association, or objects clause, or name clause, or membership requirements or board of director requirements which the Regulator could require be adopted by every registered corporate charity.

There will be no charity-specific provisions in the new legislation; neither will there be any management company-specific provisions or any other activity-specific provision in the Companies Acts. We believe that Company Law should be concerned with the formation, management, membership and other matters integral to the legal entity which is the company and should not dabble in activity-specific law. Those who legislate and regulate activities such as charity must be competent in that area and neither the CLRG

not, I believe, the Department of Enterprise Trade and Employment has any obvious knowledge or skills regarding charity. This is not to say that we cannot help the appropriate person or body who is responsible for the regulation of particular activities, but I do believe that it is they, and not Company Law, that should be the driver.

I believe that the proposed new legislation will facilitate a competent regulator by allowing them to impose their own additional requirements on those guarantee companies that they are responsible for. With regard to those provisions of Company Law which a Charities Regulator might wish to disapply, I personally would see great merit in a Regulator working with the Department of Enterprise Trade and Employment to find common ground on carve-out legislation which would allow the Regulator of Charities to disapply certain law to his or her charges. The only caveat I would have is that in the interests of transparency, the office of public record would have to remain the Companies Registration Office and the record should show that particular provisions of the Companies Acts do not apply to charitable guarantee companies.

There are many other innovations proposed in the General Scheme. There has, for example, been a complete root and branch review of all criminal offences arising under the Companies Acts. All but a handful of the most serious offences (circa three offences) have been identified as being either a Category 1, 2, 3 or 4 offence, where a Category 1 offence is the most serious.

The Time Frame...

The General Scheme is currently with the office of the parliamentary draftsman. It is the largest piece of legislation in the history of the State. It is hoped that the Bill will be drafted by mid 2008. It will then commence its passage through the houses of the Oireachtas and again its size has the potential to cause delays. Best case scenario is that

it would be enacted in 2009. It introduces radical changes and cannot (and should not) be commenced without a proper lead-in time. Most likely commencement would be 12 months following enactment.

Company Law Reform Goes On...

The CLRG is still working. Having concluded its work on the General Scheme the Minister has set a fourth work programme for the CLRG on matters of great importance such as auditors' liability, limited liability partnerships, Part III of the Companies Act 1990 and revenue preference in insolvencies, to name but a few!

Earlier this year five Sub-Committees were established and it is hoped that they will be in a position to report back in November to the full Plenary group with a view to issuing a report to the Minister by year's end. Any proposed changes recommended, which are accepted by the Minister and the Government, will then be passed on to the parliamentary draftsman to ensure that the Bill produced reflects state-of-the-art thinking in company law.

The CLRG is not infallible and there will be gaps in the heads of the new Companies Bill. The time for the users of company law to point these out is not in press releases or academic articles after the Bill has passed all stages and has been enacted into law, rather the time is when the Bill is in preparation i.e. the time is *now*. The prize we are playing for is a state of the art Company Law Code which will promote Irish enterprise, facilitate commerce, simplify the operation of the Companies Acts, enhance corporate governance and encourage commercial probity. We all have a part to play in securing that prize and I am very pleased to have had the opportunity to share the plans of this great project with you today.

Appendix 1

Chair:

Dr. Thomas B Courtney Arthur Cox

Members:

Paul Appleby	Director of Corporate Enforcement
Marie Daly	IBEC
Conall O'Halloran	Consultative Committee of Accountancy Bodies - Ireland
Mark Pery-Knox-Gore	The Law Society of Ireland
Paul Farrell	Registrar of Companies
Michael Halpenny	ICTU
Muriel Hinch	Revenue Commissioners
William Johnston	Arthur Cox
Paul Egan	Mason Hayes + Curran
Deirdre Somers	Irish Stock Exchange
Jonathan Buttimore	Office of the Attorney General
Ralph MacDarby	Institute of Directors
Vincent Madigan	Department of Enterprise, Trade and Employment
Tanya Holly	Department of Enterprise, Trade and Employment
Maire O'Connor	McCann Fitzgerald
Lyndon MacCann S.C.	The Bar Council
Jon Rock	Institute of Chartered Secretaries and Administrators
Nora Rice	Companies Registration Office
Mike Percival	Irish Bankers' Federation
Noel Rubotham	Courts Service
Ian Drennan	Irish Auditing and Accounting Supervisory Authority
Dr. Martin Moloney	Irish Financial Services Regulatory Authority

Alternate members:

Brian Binchy
Kevin O'Connell
Monica Robertson
Adrian Brennan
Eamonn McHale
Marie Hurley
Aidan Lambe
Ambrose Loughlin
Donncha Connolly
Des Fullam

Secretary to the Review Group:

Eugene Forde Principal Officer, Department of Enterprise,
Trade and Employment

Secretariat:

Niamh King
 Laura Dollard
 Eileen Bolger

Administrative Officer
 Executive Officer
 Staff Officer

Appendix 2**Current (fourth) work programme 2006-2007**

Consistent with Section 70 of the Company Law Enforcement Act 2001, the Minister for Trade and Commerce, Michael Ahern TD will consult the Company Law Review Group on the determination of its work programme for the two-year period 2006-7. It is anticipated that there will be two strands in that work programme, viz:

First, the continued engagement with the Department of Enterprise, Trade and Employment to produce the General Scheme of the Company Law Reform and Consolidation Bill, and on foot of Government approval of the General Scheme, sustained and structured dialogue with the Department as the General Scheme moves towards actual provisions; and

Secondly, consideration of the introduction of a form of Limited Liability Partnership in Ireland and a review of such other issues in Partnership law where reform would be appropriate. The CLRG has recently (January 2007) been asked to consider auditors' liability by Minister Ahern and in March 2007 was asked to consider the following issues:

<u>Registration & Incorporation</u>
Power of Registrar to rectify incorrect entries made to register of companies
Amendment of Section 99 of Companies Act 1963 and consequent amendments (sections 102 and 291) regarding judgment mortgages
Use of CRO information by other websites (e.g. credit check sites) – data protection and privacy issues
Removal of the requirement for companies to have a common seal
Section 195 of 1963 – Register of directors and especially the non-publication of directors' addresses by company itself and by CRO in cases involving animal rights protests
IRNR Measures 1999 – Review in light of EU mobility initiatives (consider removing entirely, or replacing “Ireland” with “EU/EEA”)
Limitation on number of directorships held in Section 45(1) of Companies (Amendment) (No2) Act, 1999. (Securitisation)
<u>Partnership Law</u>
Introduction of limited liability partnerships

Removal of limit restricting size of partnership to 20 members
<u>Auditors and Financial Statements</u>
Examine issue of auditors' liability
Proposed power to ODCE to require evidence of entitlement of companies to avail of audit exemption. Proposed amendment of s 33 C(A)(No2) A, 1999
Whether the term "accountant" should be given statutory recognition and protection
IAASA request for consideration of amendments to 2003 and 2001 Acts (Sections 23, 27, 31, 33, 26 and 15 of 2003, Section 110A of 2001)
Extension of audit exemption regime to small groups of companies which in aggregate meet exemption criteria, and to dormant subsidiaries regardless of size of group of which they are part
Requirement pursuant to Section 205B of Companies Act 1990 for PLCs to establish audit committee – should this be removed or altered to operate on comply or explain basis also having regard to the Directive 2006/43/EC
Review of thresholds for defining small and medium sized companies
<u>Criminal & Enforcement</u>
Consent procedures in lieu of restriction and disqualification
Proposal to allow ODCE put directors on notice of a contravention and then use that notice to create a presumption of knowledge for prosecution
Proposal to permit multiple prosecutions on same facts within a single set of summary proceedings
Good-faith reporting of breaches of certain company law provisions by companies and agencies governed by the Companies Acts
<u>Modernisation for Competition</u>
Relaxation of restrictions in Part III of the 1990 Act (transactions with directors) as proposed in the UK's Companies Bill
Removal of prohibition on financial assistance in connection with purchase of own shares for private companies as proposed in the UK's Companies Bill
Relaxation on capital maintenance rules in the context of PLCs as proposed by Directive 2006/68/EC
Abolition of Revenue Preference – as already effected in the UK

Review of whether Ireland's approach could be made consistent with the UK regarding the application of examinership to securitisation vehicles.

Appendix 3

First work programme 2001-2002

Simplification

Corporate capacity and authority

Company directors and other officers

Corporate litigation

Regulation of insolvency practitioners

Auditors

Mitigating the effects of strike-off for creditors

Second work programme 2003-2004

Implementation of recommendations of First Report

Company management regulations (Table A)

Liquidators and liquidation service

Winding up of companies

Shares and share capital

Charges and security

Accounting and audit

EU developments

Third work programme 2004-2005

Drafting the Heads of the General Scheme of the Bill to implement the recommendations in the First and Second Report of the CLRG. Planning the implementation in Irish law of legislation arising from the EU Financial Services Action Programme.