

09<sup>th</sup> June 2023

**RE: Public consultation on proposals to enhance the Companies Act 2014**

To whom it concerns,

Cork Chamber represents 1,200 members employing over 100,000 people throughout the city, metropolitan area and county. Our vision is to be a world-leading Chamber of Commerce, delivering on a progressive economic, social and sustainability agenda at the heart of a vibrant business community. Our direction is guided by our formal pledge to uphold the United Nations Sustainable Development Goals.

On behalf of our membership, Cork Chamber welcomes this opportunity to contribute to the public consultation on proposals to enhance the Companies Act 2014. We have consulted with our members and based on their feedback we have provided comments in respect of the proposals listed.

I hope these observations will aid in enhancing the Companies Act 2014.

Yours sincerely,



Conor Healy

CEO

**Submissions or comments are invited in respect of the proposals listed below:**

CORPORATE GOVERNANCE			
Virtual Meetings			
No.	The Department welcomes feedback from stakeholders on the operation of the temporary provisions, not limited to the following questions:	Y/N	Feedback
1	Is the virtual meeting format a fair and effective method for conducting general meetings?	Yes	Allows for great number of those entitled to attend to attend, as lower time or cost requirement to attend.
2	Are the legal entitlements of shareholders, creditors and members adequately protected by the virtual meeting format?	No	Those that may not be technically able to attend would be excluded from participation if virtual only.
3	Should the holding of virtual meetings be subject to advance approval from shareholders?	Yes	This is fair as it gives them an opportunity to decide. How is this weighted would be important i.e., by simple majority in number only?
4	Have any issues of concern arisen with respect to the operation of voting mechanisms in virtual meetings?	No	

5. Additional comments on the above points.

A blanket virtual option only not favoured with hybrid being the preference.

## CORPORATE GOVERNANCE

### Transactional matters

No.	Section	Proposal	Feedback
6	471	In the case of mergers by absorption, to provide an exemption from the 30-day display and inspection period required by section 471, provided all member(s), (voting and non-voting) of the successor company so consent in writing.	
7	471	To allow a merging company, which does not have audited financial statements for the last year of the preceding three years, to permit unaudited financial statements for that year to be made available for inspection where the resolution to approve the merger is passed in the first six months of the year.	
8	461-494	To provide that Designated Activity Companies (DACs) are no longer required to re-register as a limited private company prior to a domestic merger.	
9	463, 1129	To provide that a group of subsidiary companies, wholly owned by the same parent company taking part in a merger by absorption, be facilitated in one transaction rather than several	

		transactions for private and public companies.	
10	88	<p>It has been recommended that class rights be varied with the consent of 75% of the class – even if those rights were originally entrenched in a Memorandum or Articles of a pre-2014 Act company.</p> <p>Are there any potential issues regarding the property rights of shareholders who may be dissenting from the proposed variation and rely on the supposed non-alterability of the rights?</p>	
11	82	<p>It has been recommended that</p> <ul style="list-style-type: none"> <li>- financial assistance by an Irish subsidiary company of a “parent public company” incorporated in another Member State be prohibited, save to the extent that that laws of that public company’s state of registration permits it;</li> <li>- to the extent possible, that financial assistance of the acquisition of shares in an Irish PLC by a non-Irish subsidiary, is unlawful.</li> </ul>	
12. Additional comments on the above points.			

## 1. Company Law Enforcement and Supervision

Enhancing our business regulatory environment and Ireland's attractiveness as a place to do business is one of five strategic goals of the Department of Enterprise, Trade and Employment. This is done by ensuring that corporate and regulatory policy and legislation is responsive and reflects international best practice to facilitate entrepreneurship, while also protecting employees, members, creditors and consumers with appropriate safeguards.

Under the Companies Act 2014 a range of independent bodies have important roles in respect of company oversight, supervision, regulation, protection and enforcement. The Department is committed to ensuring that the statutory authorities established under the Act have appropriate legislative tools to effectively undertake their statutory functions.

Such bodies include the Corporate Enforcement Authority (CEA), the Irish Auditing and Accounting Supervisory Authority (IAASA) and the Companies Registration Office (CRO). These bodies provide the framework on which businesses operate and can rely upon to ensure a level playing field for all, and the registration and governance requirements which provide transparency for stakeholders including investors and employees. A well-stocked enforcement toolbox is vital to ensuring the Corporate Enforcement Authority can meet the challenges it faces in its investigation and prosecution of alleged breaches of company law.

On foot of recommendations in the Report of the Hamilton Review Group which was published in December 2020<sup>1</sup>, the Advisory Council on Economic Crime and Corruption,

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<sup>1</sup> [gov.ie - Hamilton Review Group Implementation Plan \(www.gov.ie\)](http://www.gov.ie)

and the Economic Crime and Corruption Forum have been established. These initiatives will, in addition to facilitating closer co-operation amongst specialist enforcement and regulatory bodies charged with tackling white-collar crime, result in a national multi-annual strategy for combating economic crime and corruption. An accompanying action plan will be developed for consideration and approval by Government.

Several proposals aimed at enhancing the power of the bodies, streamlining procedures, delivering efficiencies, and strengthening oversight are being considered.

**Submissions or comments are invited in respect of the proposals listed below:**

<b>COMPANY LAW ENFORCEMENT AND SUPERVISION</b>				
<b>Obligation on Examiners and Interim Examiners</b>				
<b>No.</b>	<b>Section</b>	<b>Proposal</b>	<b>Y/N</b>	<b>Feedback</b>
13	393	Should an obligation be placed on examiners and interim examiners to report to the CEA should they come into possession of information leading them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of the company has committed a category 1 or 2 offence?	<b>Yes</b>	If examiner came into possession of such information, he/she is also very likely to seek to take over the powers of the director(s) concerned and making the notification to the CEA would help with such an application.  Whether or not the CEA would have sufficient resources to respond to such a notification would be very important as if the examinership fails and therefore the examiner no longer has his/her formal role as examiner, it may make dealing with follow up questions or requests for further information from the CEA challenging.

				While in theory it sounds like a reasonable request, how effective it will be or how well it would work in practice is questionable.
14	534	Should section 534 be amended to confer a power on the CEA to seek further information from an examiner	No	As once the examiner has concluded his/her role, they will not have access to the books and records of the company in way a liquidator would, thereby making it extremely onerous on the (former) examiner to deal with the queries raised by the CEA.



		following receipt of the examiner's report and following completion of an examinership, similar to the obligation on liquidators under section 682?		
15	723	Should the obligation in section 723 on liquidators to report to the CEA where it appears that any past or present officer, or any member of the company has been guilty of an offence in relation to the company, be extended to examiners, interim examiners and process advisers?	No	The examiner will not have the time necessary to dedicate to fulfilling the obligation imposed by Section 723 and therefore it should not be introduced in the first instance. The examiner will be so focused on his/her key role of formulating a rescue plan for the company for the benefit of its key stakeholders.
<p>16. Additional comments on the above points.</p> <p>As the time pressure on an examiner to formulate a rescue plan will be so immense, he/she will not have sufficient time to make conduct the investigation that will be required to pursue the matters raised at 13 to 15 above.</p> <p>There is also a strong possibility that if the matters that would fall under 13 to 15 did arise, the examinership would not be successful in any event and most likely the company would fall into liquidation and the liquidator's obligations would capture the offences envisaged.</p>				

COMPANY LAW ENFORCEMENT AND SUPERVISION				
Corporate Enforcement Authority				
17	795	<p style="text-align: center;"><b>Saving for privileged information</b></p> <p>Under Part 13 of the Companies Act 2014, an automatic mechanism of court-supervision is engaged in circumstances in which the CEA apprehends that it has come into possession of legal professional privileged material.</p> <p>Section 795 is an important protection for legally professionally privileged material seized during the currency of searches under section 787 of the Companies Act.</p> <p>Consideration is being given to streamlining the processes and timelines within section 795 to ensure that such processes, while vindicating the protection of this right, do not delay the efficient and timely progress of investigation.</p>		
No	Section	Proposal	Y/N	Feedback
17a	795	Should the section 795 procedure relating to legal professional privilege be streamlined?	Yes	As it will give the process more credibility and credence if it more streamlined and time specific and it will be more outcome focused.
17b	795 (7)	To prevent the possible loss/destruction of evidence due to “tipping off”, should applications to the court be on an <i>ex parte</i> basis rather than on notice?	Yes	Absolutely as the risk of loss or destruction of evidence is reduced greatly.
17c	795 (6)	Should the Court have the power to appoint more than one suitably qualified and independent person to examine the information and prepare a report?	Yes	With the option for that person to obtain legal input if they deem it appropriate.

17d	795(4)	Should the time period within which the CEA can make an application to the court for a determination as to whether the information is privileged legal material be extended from 7 days to 14 days or more?	No	7 days will keep it focused and in exceptional circumstances make provision for application to court for extension if deemed necessary.
No	Section	Proposal	Y/N	Feedback
18	132	Should the CEA be a notice party where a person, being an undischarged bankrupt, makes an application to the court to act as director of a company?	Yes	Yes, as it should be aware of persons who "may" fall into a higher risk category.
19	883	Related to the above, should section 883 be amended to provide that a certificate signed by a court registrar stating that no application was made for leave to act as a director while bankrupt is proof, in the absence of evidence to the contrary, that no such application was brought?		
20	216	Should the CEA have access to inspect the directors' and secretaries' registers of disclosable interest and members' registers which are required to be held under section 216 of the Act, without payment of a fee to the company?	Yes	As a statutory body it should have access to this information without a charge.
21	393(2)	Under section 393 reporting auditors are required to provide additional		

		<p>information to the CEA. They may grant access or give access to facilities for the taking of copies.</p> <p>To assist in the formulation and compliance with statutory demands under section 393 should the furnishing of attested or stamped copies of extracts from these books and documents as the CEA may require be permitted?</p>		
22	683	<p>To amend section 683 to clarify that the obligation on liquidators under this section endures until the conclusion of proceedings, which includes appeals, unless the Authority has relieved the liquidator of this obligation.</p>	Yes	Makes logical sense if not relieved.
23	723	<p>To streamline the procedures whereby liquidators report offences committed by officers and members of the company; to provide for simultaneous reporting to the DPP and the CEA.</p> <p>[Feedback on proposals to extend this obligation to process advisers and examiners is also requested]</p>	Yes	Streamlines the process and brings clarity.
24	944Q	<p>To expand the list of competent authorities to which information relating to a company that has been obtained under certain listed sections may be published or</p>	Yes	The list should regularly be refreshed, and such disclosure may assist these authorities with carrying out their obligations.

		disclosed without the consent of the company, if in the opinion of the CEA publication or disclosure is required under specific circumstances. It is proposed to include the Charities Regulator, the Department of Social Protection, the Pensions Authority, the Financial Services and Pensions Ombudsman, the Data Protection Commissioner and the Protected Disclosures Commissioner.		
25	823	To provide that the CEA will receive restriction and disqualification orders directly from an officer of the court at the same time as they are issued to the Registrar.	Yes	Makes logical sense.
26	863	To avoid any undue delays and to ensure the efficient investigation and prosecution of directors that breach relevant orders, to provide that a prescribed officer of the court would send prescribed particulars of any disqualification order, any grant or variation of relief under section 848 or any conviction under section 855(1) or 856 (1) to the CEA, at the same time as they are being sent to the Registrar.	Yes	Makes logical sense.
27		To provide for the introduction of a system of late filing penalties to	Yes	To ensure greater level of compliance.

		discourage late filing of certain reports (E3 and E4) by liquidators in relation to meetings to be held at the end of each year and information about the progress of the liquidation.		
28		To provide that an authorised CEA Officer may be permitted to attend interviews alongside members of An Garda Síochána.		
29		To provide for the offences of obstruction and intimidation of CEA officials similar to those provided in Criminal Justice legislation for members of An Garda Síochána and the Criminal Assets Bureau, to prevent attempts to influence or obstruct the course of an investigation.	Yes	Provide protection of CEA employees and aide them in robustly carrying out their roles.
30		To extend the Criminal Justice (Surveillance) Act 2009 to the CEA to give the Authority the power to apply to court for permission to conduct covert surveillance where certain offences are being investigated.	Yes	Makes logical sense.
31		To include a provision in the Act that would amend the Communications (Retention of Data) Act 2011 bringing the CEA and company law offences within its scope. This would allow officers of the CEA to apply to an	Yes	Allow them to robustly carry out their function.

		authorising judge for authorisation to require disclosure of data where it relates to a person who it is suspected, on reasonable grounds, has committed certain company law offences.		
32	<b>Powers of Search and Entry</b>			
	Section 787 of the Companies Act governs CEA search warrants and permits entry and search of premises and the seizure of material, including an extended power of seizure.			
	Section 788 makes supplemental provisions on the extended powers of seizure.			
	Proposals are being considered to facilitate the gathering of evidence in a more efficient and targeted manner befitting of digital technologies.			
No	Section	Proposal	Y/N	Feedback
32a	787	To allow an officer to bring onto the premises the subject of the warrant, electronic and other equipment reasonably necessary for the examination of a computer found at the premises, and to allow for the operation of such equipment, (or equipment already on the premises) to examine a computer found at the premises to determine whether it is or contains material information that may be seized under the warrant.	Yes	Allow for quicker and robust collection of data for interrogation and investigation.
32b		To allow for the search of remote items such as email addresses and cloud storage	Yes	Allow for quicker and robust collection of data for interrogation and investigation.

		<p>devices from locations other than a physical search site.</p> <p>Where devices such as computers or mobile phones have been removed from the site (perhaps by a liquidator or during a previous search operation) and are found to contain links to remote locations such as cloud storage or email accounts, to include a provision whereby investigators could apply to the Court for a separate/distinct warrant to allow the information found in the devices to be used to access data located at remote locations.</p>		
32c		<p>To facilitate an extended power of search, similar to provisions already contained in section 788 for paper/physical documents, but for electronic/remote data.</p> <p>This would allow for a warrant holder to designate another location to be used for the offsite sifting of data and for the data to be secured and sifted using whatever equipment necessary at the new location.</p>	Yes	Allow for quicker and robust collection of data for interrogation and investigation.
32d		<p>To provide for a longer period for the conducting of a separation exercise between in and out of scope material from the current</p>	Yes	To facilitate larger, more complex investigations and reduces the risk of something fundamental being missed.



		period of three months to a longer period of 12 months to reflect large, complex investigations concerning large amounts of material.		
32e		To extend the definition of computer to include mobile devices.	Yes	To coincide with advances in use of technologies.
<p>33. Additional comments on the above points.</p> <p>To better aide more thorough collection of relevant data.</p>				

## COMPANY LAW ENFORCEMENT AND SUPERVISION

### Irish Auditing and Accounting Supervisory Authority

No	Section	Proposal	Y/N	Feedback
34		<p>IAASA has responsibility for approving the constitutional documents and byelaws of Prescribed Accountancy Bodies, including but not limited to their investigation and disciplinary procedures and standards. Many of these documents fall outside IAASA's general remit. Additionally, several Prescribed Accountancy Bodies are global bodies, with rules relating to members in many jurisdictions. IAASA's approval therefore can only relate to a very limited set of criteria, as the Authority has neither the expertise nor the capacity to carry out a full legal proofing of such documents.</p> <p>The Authority has and is continuing to issue guidelines related to its areas of regulation which are mandatory for</p>		

		<p>Prescribed Accountancy Bodies and Recognised Accountancy Bodies. This appears to be a more effective method of regulation and it is therefore considered that the requirement for IAASA to approve all constitutional documents could be amended.</p>		
35	934B	<p>To include the possibility of imposing restrictions, other than absolute prohibition, to protect the public where it may be appropriate to issue such lesser sanctions. Situations where it may be appropriate include repeated deficiencies in audit work, serious allegations of fraud or other criminal activity or loss of client money.</p>		
<p>36. Additional comments on the above points.</p>				

**COMPANY LAW ENFORCEMENT AND SUPERVISION**

**Companies Registration Office**

No	Section	Proposal	Y/N	Feedback
37	363	<p>Should the audit exemption regime for small and micro companies be amended to provide for a two-step graduated regime to deal with late filing, rather than automatic loss of audit exemption for two years?</p> <p>The two-step regime would operate as follows:</p> <p>-On the occasion of the first instance of late filing, filing fees would be incurred and there would be no loss of audit exemption;</p> <p>-If there was a further instance of late filing within the following five- year period, late filing fees would be incurred and the entitlement to audit exemption would be lost for the following two financial years,</p>	Yes	Reasonable and proportionate

		with the company required to file audited financial statements for these years.		
38	343	To enhance the deterrent effect where failure to deliver an annual return in the prescribed form and containing the prescribed information is an offence, it is proposed to disapply section1(1) of the Probation of Offenders Act 1907 in prosecutions for non-filing. This amendment would remove the possibility where, in lieu of being convicted of an offence, the Court can instead request that a contribution to a charity be made.	Yes	Reasonable and proportionate
39	726	To include a provision allowing for the strike-off of a company for failure to file details of a Company Secretary with the Registrar.	Yes	Reasonable
40		To provide additional grounds for involuntary strike-off of companies by permitting the Registrar of Beneficial Ownership to request	Yes	Reasonable

		that the Registrar of Companies strike-off a company for its failure to comply with the obligation to provide a statement detailing the beneficial owners.		
41. Additional comments on the above points.				

## COMPANY LAW ENFORCEMENT AND SUPERVISION

### Section 747 – Investigation of company’s affairs by court appointed inspector on application of company etc.

42. Section 747 of the 2014 Act deals with applications for investigations of a company’s affairs by court appointed inspectors on the application of

- any of the company,
- not less than 10 members of the company,
- a member or members holding not less than 10% of the paid-up share capital,
- a director of the company or a creditor of the company.

Unlike Section 748 which deals with applications by the Corporate Enforcement Authority for the appointment of inspectors to investigate the affairs of a company, section 747 does not set out criteria or scenarios that must be established or satisfied in order for the court to exercise its discretion to appoint an inspector.

The court may make an order as it deems fit in relation to matters arising from the report including the winding up of a company.

The Department would welcome observations on the below questions.

No	Section	Proposal	Y/N	Feedback
42a	747	The introduction of threshold criteria, similar to those provided under section 748. For example, in considering whether to appoint inspectors under section 747, the court would have to be satisfied that there are circumstances	Yes	For there to be real benefit.

		suggesting suspected fraudulent or unlawful activities or purposes.		
42b		The insertion of a list of mandatory considerations that a court must consider before exercising its discretion to appoint an inspector. For example, this may include public interest and proportionality of the investigation sought, and/or the prospects of recovery of the inspector's expenses.	Yes	Brings clarity and less ambiguity to minimise risk of challenge.
42c		Should the power of appointment of inspectors continue to be available where the company is insolvent or is close to insolvency?	No	If insolvent, obligations of liquidator should deal with what would be envisaged would be covered by investors so therefore no requirement for investigator to be appointed.  If close to insolvency, petition to wind up as opposed to appointment of investigator should be provided for.
42d	762	Who is the appropriate party to bear the costs of the inspector in the first instance?		Not a black and white question but on balance, the company, and the directors personally if on application to court the court is satisfied that should be borne by directors personally.



43. Additional comments on the points above.

## 2. Company Law Administration

The Department proposes amending the Companies Act 2014 to enhance the administrative processes carried out by the Registrar of Companies to ensure that the Register provides transparency and is accurate, up to date, and fit for purpose. Amendments are proposed aimed at modernising certain administrative requirements for companies as recommended by the CLRG in its Report on Company Law Issues Arising Under Directive (EU) 2017/828 of 17 May 2017 (*SRD II*), Central Securities Depositories Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014 .<sup>2</sup>

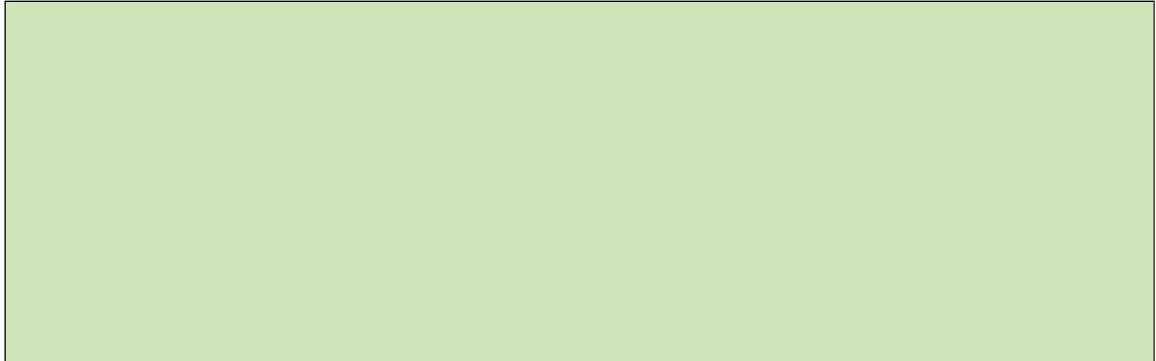
**Submissions or comments are invited in respect of the proposals listed below:**

COMPANY LAW ADMINISTRATION				
Companies Registration Office				
No	Section	Proposal	Y/N	Feedback
44	50	To give the Registrar power to request evidence in support of a company's application to change its registered office address, thereby providing greater assurance as to the accuracy of the Register	Yes	Improve accuracy of the register and accountability on the part of the company/its directors.

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<sup>2</sup> [2021-12-21-clrg-report-on-public-company-issues.pdf](#)

45	21/22	To give the Registrar power to request additional information in support of a company's application to incorporate in order to satisfy the Registrar that all of the information supplied can be verified as to its accuracy.	Yes	Improve accuracy of the register and accountability on the part of the company/its directors.
46	50	To allow a Registered Office Agent (ROA) to notify the Registrar that the registered office of a company is no longer in the care of that ROA and to provide documentary proof of the fact. On foot of this a notice shall be sent to the officers of the company requiring notification of the new registered office within 14 days. Failure to comply may result in strike-off proceedings.	Yes	Improve accuracy of the register and accountability on the part of the company/its directors.
47		To require companies to confirm annually the gender balance of its directors. This is in order to provide more granular data concerning gender at director level to assist in analysis and policy development.	Yes	Improve accuracy and in support of greater focus on gender balance.
48. Additional comments on the above points.				



COMPANY LAW ADMINISTRATION				
No	Section	Proposal	Y/N	Feedback
49	1551	Should section 1551(13) of the Companies Act 2014 be amended to permit captive insurers, where applicable, to disclose <i>either</i> on its website <i>or another suitable website</i> which body carries out the functions of the audit committee.	Yes	Improved disclosure
50. Additional comments on the above point.				

**COMPANY LAW ADMINISTRATION**

**Recommendations of the Company Law Review Group**

No	Section	Proposal	Y/N	Feedback
51	183	To clarify that for the purpose of voting at general meetings of publicly traded companies, weekends and bank holidays should be excluded from the calculation of days passed. This will afford companies greater flexibility when scheduling AGMs.	Yes	On balance of fairness to all entitled to attend.
52	1087G	To amend section 1087G with respect to the record date of adjourned general meetings to facilitate the smooth operation of the central securities depository for shareholding and settlement which is associated with the Irish Stock Exchange.	Yes	Assist operational matters.
53	459	To align the treatment and process for listed companies in line with unlisted companies with respect to the unclaimed consideration of dissenting shareholders in a compulsory takeover.	Yes	Reduce ambiguity and bring uniformity to the process.

54	1062	To require that information sought by a PLC or its agent, related to the identity of the final owner of their issued shares should, as a matter of law, be made available within a defined timeframe.	Yes	In support of transparency and disclosure.
55	1087D	To amend section 1087D with respect to the special majority and quorum requirements to approve schemes of arrangement for PLCs in the Central Securities Depository settlement system and which better accommodates its intermediated model.	Yes	To facilitate fairness and alignment.
56. Additional comments on the above points.				

### **3. Corporate Insolvency including the Regulation of Receivers**

The governance and regulation of receivers was considered by the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach on 18 October 2018. The Joint Committee raised concerns in relation to the regulation and activities of receivers which are broadly summarised below:

- Receivers are not required to have any qualifications,
- There is no supervision of receivers and nobody to complain to about their actions,
- Receivers are not accountable in terms of fees (fees charged must be met by the borrower's assets),
- Receivers are not required to provide information to the company or borrower.

The Joint Committee's concerns were primarily directed to receivers appointed to residential properties and which fall within the remit of the Department of Justice. However, the Department of Enterprise, Trade and Employment undertook to review company law provisions to ensure that corporate receivers are subject to appropriate regulation.

To address the concerns raised by the Joint Committee and deliver on Programme for Government commitments in this area, the Department is considering amending the 2014 Act to align provisions for receivers with the equivalent provisions in the Act in

respect of liquidators and as recommended by the CLRG in its report *“The Regulation of Receivers”*.<sup>3</sup>

The Department considers there is merit in amending the Act to provide that receivers are subject to minimum qualifications along the lines of the qualification requirements for liquidators as set out in sections 633 and 634 of the 2014 Act.

The Department is also considering introducing provisions to provide that receivers deliver periodical updates to the company to which he or she is appointed and to its preferential creditors in relation to the progress of the receivership.

In terms of section 444 of the 2014 Act and the power of court to fix remuneration of receiver, the Department is also considering setting criteria to which the court shall have regard when fixing a receiver’s remuneration along the lines of the criteria for liquidators.

Such an approach would provide that a receiver has an entitlement to remuneration upon the terms set out in the instrument under which he or she is appointed or otherwise agreed or fixed and such an entitlement may be expressed to be-

- By way of a relevant percentage,
- By reference to time expended in the conduct of the receivership, or
- Otherwise by reference to any method or thing.

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<sup>3</sup>[report-of-the-company-law-review-group-on-the-regulation-of-receivers.pdf \(clrg.org\)](#)



The Department is also considering setting out provisions in respect of information on receivers' fees.

With regard to the Small Companies Administrative Rescue Process (SCARP), which is a dedicated, expeditious and cost-effective restructuring process for viable small and micro companies the Department is examining proposals to provide that:

- where the process adviser does not make use of the company's existing staff and facilities to assist him/her carry out his/her functions, that the process adviser explains to the court in writing why this was the case in the event the court considers any matter relating to the costs, expenses and remuneration of a process adviser;
- the existing restriction and disqualification regime for directors in respect of insolvent liquidations apply to SCARP.

The Department also considers there is merit in providing for various amendments concerning technical matters to improve the operation of SCARP.

**Submissions or comments are invited in respect of the proposals listed below:**

CORPORATE INSOLVENCY INCLUDING THE REGULATION OF RECEIVERS				
Recommendations of the Company Law Review Group				
No	Section	Proposal	Y/N	Feedback
57		To provide that receivers deliver periodical updates to the company to which he or she is appointed and to its creditors	Yes	This can be done via amending Form E9 to include details of work carried out by the Receiver(s) in each period. The information included should be sufficient for the company, the preferential creditors and indeed the

				company's general body of creditors and other stakeholders including employees.
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		in relation to progress of the receivership.		
58	430	To provide that receivers must file their final “receivers abstract” form E9 within a 7-day period. As there is now a change proposed to the timeframe in which the E11 must be filed there is a need to ensure that the filing of the final E9 form coincides with the filing of the Form E11, as in practice both forms are filed together.	No	Should be 10 or 14 days. 7-day period can be tight if date falls on a Friday as effectively lose two working days being Saturday and Sunday.
59	430 & 441	To provide that receivers shall provide information on fees sufficient so that the overall structure and amount of fees are substantiated and that their apportionment between assets realised is explained.	Yes	Yes, provided that where the fees being charged on certain asset disposals exceed the net sales proceeds of sale for that asset that the Receiver(s) be entitled to deduct any shortfall from the process of sale of other assets subject to appointment by the same charge holder.
60	444	To set out the criteria to which the court shall have regard when fixing a receiver’s remuneration, along the lines of the criteria for liquidators.	Yes	This is reasonable and in alignment with requirement for liquidators.
61	436	To provide that certain information be included in the notice to the Registrar of the receiver’s appointment, the assets over which they are appointed and information on future trading by the company.	Yes	Yes, provided that the period of filing be extended from 7 to 14 days and to allow for a supplement form to be filed should if be required if assets come to light or matters arise that alter the information disclosed in the initial form filed.
62		To provide that within a 7-day period, the receiver must file a notice advising the Registrar that they have ceased to act	Yes	This is sufficient as the Receiver will have completed his/her/their work and received the deed of discharge.

		and file the final Receiver's Abstract to the Register.		
63	216	Under section 216 creditors of a company can access without charge the copies of instruments creating charges. What is the effectiveness of the operation of this process during a receivership?	Yes	Provide for transparency and clarify as to what assets of the company are covered by the charge(s)
<p>64. Additional comments on the above points.</p> <p>Above will provide for great transparency and accountability to the work undertaken by receivers.</p> <p>Suggested approval to determining remuneration by a % should have regard to a minimum fee level as in certain receiverships you could have situations where certain assets are of nominal value or for certain case specific reasons the assets are determined not saleable, yet extensive work will likely have been carried out by the receiver(s).</p>				

**CORPORATE INSOLVENCY INCLUDING THE REGULATION OF RECEIVERS**

**Small Companies Administrative Rescue Process (SCARP)**

No	Section	Proposal	Y/N	Feedback
65		<p>The focus of SCARP is on company survival. Should the process adviser be subject to the same reporting requirements to the CEA as a liquidator?</p> <p>See 66 below.</p>	No	<p>The process adviser will be carrying out his/her work under a very tight timeframe with the key aim of formulating a scheme of arrangement to ensure the company's survival and therefore he/she will not have the benefit of time in so doing and therefore will be under a different type of time pressure than would be the case in a liquidation.</p>
66		<p>The focus of SCARP is on company survival. Should the existing restriction and disqualification regime for directors in respect of insolvent liquidations be extended to apply to SCARP? What impact might such an amendment have on the take up or operation of SCARP?</p> <p>See 65 above</p>	No	<p>As the time pressure will be so tight and focused, the process advisor would be distracted greatly from the overall aim of formulating a rescue plan. If SCARP fails, it is highly likely that liquidation will follow, and restriction/disqualification can be examined at that time.</p> <p>Perhaps a requirement in this instance would be for the liquidator to ask the process advisor if there are matters that came to the attention of the process advisor that the liquidator would investigate.</p>

67	558ZY	To provide that where the process adviser does not make use of the company's existing staff and facilities to assist him/her carry out his/her functions, that the process adviser explains to the court in writing why this was the case in the event the court considers any matter	Yes	This is reasonable and will add to the transparency and accountability that is expected of a process advisor.
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		relating to the costs, expenses and remuneration of a process adviser.		
68	Various	Technical matters to improve the operation of SCARP.	Yes	Yes, matter to improve the process are always welcome.
<p>69. Additional comments on the above points.</p> <p>More government centralised promotion of SCARP should be undertaken so that SMEs know it is there and will also add to the process being examined at a much earlier stage to avoid liquidations that do have the process of survival.</p>				

