

DÁIL ÉIREANN

AN ROGHCHOISTE UM POIST, FIONTAIR AGUS NUÁLAÍOCHT

SELECT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

Dé Máirt, 5 Samhain 2013

Tuesday, 5 November 2013

The Select Committee met at 10 a.m.

MEMBERS PRESENT:

Deputy Dara Calleary,	Deputy Sean Sherlock (Minister of State at the Department of Jobs, Enterprise and Innovation),
Deputy Michael Conaghan,	Deputy Mick Wallace.
Deputy Seán Kyne,	
Deputy Anthony Lawlor,	
Deputy John Lyons,	
Deputy Jonathan O'Brien,	

DEPUTY DAMIEN ENGLISH IN THE CHAIR.

Companies Bill 2012: Committee Stage

Chairman: This meeting has been convened for the purpose of consideration by this committee of the Companies Bill 2012, which was referred to the select committee by order of the Dáil on 25 April 2013. I welcome Deputy Sean Sherlock, Minister of State at the Department of Jobs, Enterprise and Innovation with responsibility for research and innovation, and all his officials. I thank them for all the co-operation in recent months, especially through Ms Elaine Cassidy, to get to this stage.

As this is one of the largest Bills in the history of the State, with the prior agreement of members we have set aside four days this week and the same next week for its consideration. In addition, we have booked Friday, 22 November and Friday, 29 November to conclude our consideration of the Bill if necessary. Is that agreed? Agreed. Should our consideration of the Bill on Thursday 14 November progress well, it would be proposed to sit later that night to conclude our consideration. Is that agreed? Agreed.

As discussed in our private session the following arrangements will apply. Sections grouped in accordance with the list circulated to members will be disposed of by one question. I refer members to the grouping of amendments for the purpose of debate. We will now proceed to our consideration of the Bill.

Section 1 agreed to.

SECTION 2

Chairman: Amendments Nos. 1 and 54 in the name of the Minister are related and will be discussed together.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Sean Sherlock): I move amendment No. 1:

In page 74, between lines 33 and 34, to insert the following:

“ “electronic means” or “electronic communications” includes the use of electronic mail;”.

I thank the Chairman for hosting this meeting today. I will be advised by him on whether I should explain this amendment.

Chairman: Some of these amendments are very technical while others are simple corrections. The Minister of State does not propose to go into detail on each one unless members specifically want him to. If members want more detail they can ask for it.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 2:

In page 74, to delete line 46 and substitute “Consumer Credit Act 1995;”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 3:

In page 77, between lines 7 and 8, to insert the following:

“ “sealed”, other than in provisions governing the use of a company’s common seal or of any official seal of it, means executed in the manner specified in section 64 of the Land and Conveyancing Law Reform Act 2009 (but only to the extent that that section 64 obviates the need for a seal);”.

Amendment agreed to.

Question proposed “That section 2, as amended, stand part of the Bill”.

Deputy Sean Sherlock: I am considering introducing amendments to section 2, as amended, on Report Stage. These amendments will tidy up the language used in the definition of “statutory auditor” by removing the incorrect reference at the beginning which states “(within the meaning of those Regulations)” and purport to clarify further how sole directors are treated within a company’s constitution. I am aware that there is a need to define a system for the interconnection of registers which is provided for in Directive 2012/17/EU.

Question put and agreed to.

Sections 3 to 14, inclusive, agreed to.

SECTION 15

Deputy Sean Sherlock: I move amendment No. 4:

In page 85, line 21, to delete “NACE Rev. 1” and substitute “NACE Rev. 2”.

Amendment agreed to

Section 15, as amended, agreed to.

Sections 16 and 17 agreed to.

NEW SECTION

Chairman: Amendment No. 5 in the name of the Minister and amendments Nos. 6, 7 and 33 to 35, inclusive, in the name of Deputy Jonathan O’Brien are related and will be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 5:

In page 86, between lines 25 and 26, to insert the following:

“Company to carry on activity in the State and prohibition of certain activities

18. (1) A company shall not be formed or registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State.

(2) A company shall not carry on the activity of a licensed bank or an insurance undertaking.”.

I propose this amendment to give further clarification to the existing law.

Chairman: If amendment No. 5 is accepted, amendment No. 6 in the name of Deputy O’Brien cannot be moved.

Deputy Jonathan O'Brien: Why not?

Chairman: If we accept amendment No. 5, the section will be deleted, and because the Deputy's amendment is related to the section, it will not apply. If the Deputy wishes to discuss it, he can do so before we vote on the Minister's amendment.

Deputy Jonathan O'Brien: I would like to get some background information from the Minister of State. My amendment relates to Irish-registered non-resident companies. A report published in 1998, which tackled this problem, stated that a company must carry out some activity but did not state that the company should be managed or controlled within the State. A report by the Department of Finance in 1998 recommended that this be addressed in some way. My amendment, with amendment No. 7, tries to do that. We say that not only should the company carry out some activity within the State but that it must also be managed and controlled within the State, particularly for tax purposes. We would like some feedback from the Minister of State on this amendment.

Deputy Sean Sherlock: This series of amendments inserts the words "managed and controlled" into sections of the Bill. The objective appears to be to cause all companies registered in Ireland to be tax resident in Ireland. As Minister of State with responsibility for jobs, enterprise and innovation, I am not in a position to consider the full impact or consequences of any change to tax law. Such an exercise is within the functions of the Minister for Finance.

The proposed amendments are illegal under EU law and international law. The provisions would fall foul of the EU law of freedom of establishment, a core aspect of EU law. The European Commission closely monitors compliance with this law. The Commission has recently required Ireland to change a provision of Irish law which required that at least one director of an Irish company be resident in Ireland. This provision would go much further, effectively requiring all management activities to occur within the State. This is clearly a hindrance to cross-border trade within the European Union and significantly trammels the ability of a company from another EU member state to establish in Ireland. This proposal would put Ireland in breach of obligations under double taxation agreements with other countries. This is unprecedented and would be highly prejudicial to Irish commerce and to Ireland's reputation internationally. Therefore, I am not in favour of adopting these amendments.

Deputy Jonathan O'Brien: That is fair enough. Do we know how many Irish registered non-resident companies exist within the State?

Deputy Sean Sherlock: The Companies Registration Office, CRO, does not record that. I can try to ascertain some figures and respond to the Deputy at a later stage.

Deputy Jonathan O'Brien: Is there a particular reason not to record those numbers? Is it for administrative purposes or is it too difficult to get that information?

Deputy Sean Sherlock: I do not have that information to hand and I am not in a position to answer that question but I am happy to try to facilitate the Deputy. If he tables a parliamentary question to the Minister for Finance, I am sure that information would be forthcoming.

Deputy Jonathan O'Brien: I am happy enough to withdraw the amendments and revisit them on Report Stage once I receive that information.

Amendment agreed to.

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Amendment No. 6 not moved.

Section 18 deleted.

Sections 19 to 21, inclusive, agreed to.

SECTION 22

Amendment No. 7 not moved.

Chairman: Amendments Nos. 8 to 10, inclusive, are related and may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 8:

In page 89, line 11, after “company” to insert “or be authenticated in the manner referred to in *section 889*”.

Deputy Jonathan O’Brien: I presume the amendment relates to company seals and authenticating them in the manner referred to in section 889.

Deputy Sean Sherlock: It refers to the statement to be delivered with the constitution. The amendment will provide for certain uses of electronic seals.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 9:

In page 89, to delete lines 12 to 15 and substitute the following:

“(b) be accompanied by a consent that is either—

(i) signed by each of the persons named in the statement as a director, secretary or joint secretary or assistant or deputy secretary to act in that capacity, or

(ii) authenticated in the manner referred to in *section 889*.”.

Amendment agreed to.

Section 22, as amended, agreed to.

SECTION 23

Deputy Sean Sherlock: I move amendment No. 10:

In page 89, line 27, after “her” to insert “, or authenticated in the manner referred to in *section 889*,”.

Amendment agreed to.

Section 23, as amended, agreed to.

Sections 24 to 27, inclusive, agreed to.

SECTION 28

Question proposed: “That section 28 stand part of the Bill”.

Deputy Sean Sherlock: I am considering tabling an amendment to the section on Report Stage to correct the incorrect cross-reference in subsection (3) from (b) to (a).

Question put and agreed to.

Sections 29 to 38, inclusive, agreed to.

SECTION 39

Chairman: Amendments Nos. 11 and 12 are related and may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 11:

In page 97, to delete lines 30 to 45 and in page 98, to delete lines 1 and 2 and substitute the following:

“**39.** (1) Where a company authorises any person as being a person entitled to bind the company (not being an entitlement to bind that is, expressly or impliedly, restricted to a particular transaction or class of transactions), it shall notify the Registrar in the prescribed form of the authorisation and the Registrar shall register the authorisation.

(2) A person so authorised, where his or her authorisation is registered in the foregoing manner, is referred to in this Act as a “registered person”; where, in a provision of this Act, that expression appears without qualification, it shall be taken as a reference to a registered person authorised by the company to which the provision falls to be applied.

(3) Where a company revokes an authorisation of a person as a person entitled to bind the company (being an authorisation notified to the Registrar in the prescribed form), the person shall, notwithstanding that revocation, continue to be regarded for the purposes of this Act as a registered person unless and until the company notifies the Registrar in the prescribed form of that revocation.”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 12:

In page 98, to delete lines 12 and 13 and substitute the following:

“(6) For the avoidance of doubt, for the purposes of this section the provisions of a company’s constitution with regard to a person’s office or powers shall not, in themselves, be taken as an authorisation by the company of the person as a person entitled to bind the company.”.

Amendment agreed to.

Section 39, as amended, agreed to.

Sections 40 to 42, inclusive, agreed to.

SECTION 43

Question proposed: “That section 43 stand part of the Bill”.

Deputy Sean Sherlock: I am considering tabling an amendment to the section on Report

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Stage, the purpose of which is to clarify that only one signature is required to provide for single director companies. Furthermore, I am considering adding the words “committee of the directors” to subsection (3) to correct an omission.

Question put and agreed to.

Section 44 agreed to.

SECTION 45

Question proposed: “That section 45 stand part of the Bill”.

Deputy Sean Sherlock: I am considering tabling an amendment to the section on Report Stage to change the section back to the existing law as was intended by the CLRG.

Question put and agreed to.

Sections 46 to 49, inclusive, agreed to.

SECTION 50

Deputy Sean Sherlock: I move amendment No. 13:

In page 103, lines 16 to 18, to delete all words from and including “on” in line 16 down to and including “office” in line 18 and substitute “, outside every office or place in which its business is carried on and at its registered office”.

Amendment agreed to.

Chairman: Amendments Nos. 14 and 15 are related and may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 14:

In page 103, to delete line 21.

Deputy Jonathan O’Brien: Why is the reference to the publication of company names on all business letters sent by the company being taken out? Is there a reason they do not have to put publish company names and addresses on business letters?

Deputy Sean Sherlock: The amendment proposes to avoid duplication with section 152(4), which requires a company to display its name in a prominent and easily accessible place on its website and addresses the scenario whereby a company carries on its business away from its registered office.

Deputy Jonathan O’Brien: When a company sends a business letter, it will not be under an obligation to include the company name and address. The section states: “A company—(a) shall display its name in a conspicuous position, in letters easily legible” and then refers to “all business letters of the company”, which is the line the Minister of State proposes to delete.

Deputy Sean Sherlock: The explanatory memorandum refers to the particulars to be shown on all business letters of a company. Section 152 states: “Subject to subsection (4), a company shall, in all business letters on or in which the company’s name appears and which are sent by the company to any person, state in legible characters in relation to every director of the company” a list of particulars, which are outlined. That should avoid duplication. I hope that

answers the question.

Deputy Jonathan O'Brien: Yes.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 15:

In page 103, between lines 34 and 35, to insert the following:

“(4) This section is without prejudice to section 152.”.

Amendment agreed to.

Section 50, as amended, agreed to.

Section 51 agreed to.

SECTION 52

Deputy Sean Sherlock: I move amendment No. 16:

In page 104, to delete lines 19 to 25 and substitute the following:

“(b) if the company has not given notice to the Registrar of the situation of its registered office, by delivering it to the Registrar.”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 17:

In page 104, between lines 31 and 32, to insert the following:

“(3) It shall be the duty of the Registrar to enter on the register a document that has, by the means referred to in *subsection (1)(b)*, been served on a company.”.

Amendment agreed to.

Section 52, as amended, agreed to.

Sections 53 to 55, inclusive, agreed to.

SECTION 56

Chairman: Amendments Nos. 18 to 22, inclusive, are related and may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 18:

In page 105, line 36, after “articles” to insert “and subject to *subsection (3)* of that section”.

Amendment agreed to.

Section 56, as amended, agreed to.

Sections 57 and 58 agreed to.

SECTION 59

Question proposed: "That section 59 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 59 in order to clarify whether Parts 1 to 15, inclusive, of the Bill apply to an existing company upon delivery of its constitution or following the registration of the constitution by the registrar.

Deputy Anthony Lawlor: Why are so many amendments proposed to be introduced on Report Stage? Could they not have been tabled on Committee Stage? Is it the case that they were only devised in the past few days?

Deputy Sean Sherlock: They have not been devised in the past few days. The sheer volume of amendments meant there were certain pressures in regard to the drafting of the Bill. I have given some latitude to the drafters in terms of the pressures they faced. I hope members, likewise, will make allowances for that and engage with the proposals on Report Stage.

Chairman: To clarify, we decided last May or June that these meetings would take place this week, and it was anticipated that a large number of amendments would be submitted in the course of the summer. That proved to be the case, and we have more than 150 proposals to work through. We want to get through Committee Stage, but it is important that members are aware that they can discuss any issue that arises. In fact, a proposal can only go forward on Report Stage if it has been discussed here. If members have any concerns about anything the Minister of State has raised, I urge them to address it today. There is plenty of opportunity to debate any such issues.

Deputy Anthony Lawlor: Will the Minister of State give some indication of the number of amendments he proposes to bring forward on Report Stage, or is he just going to pull something out of the hat on each section?

Deputy Sean Sherlock: The objective here is to consolidate an item of legislation that is the size of a telephone book.

Deputy Anthony Lawlor: I understand that. I am concerned that a principle might be at play here whereby new proposals would be pulled out of the hat on Report Stage.

Deputy Sean Sherlock: I do not accept that there is any sense of pulling anything out of the hat in terms of the substance of the legislation. Section 59 is effectively a new section which stipulates that during the transition period, the law applicable to an existing private company limited by shares will be contained in Part 16. There is still some work to be done on that. I ask members for some latitude in terms of the sheer volume of the legislation. I am proceeding in accordance with the protocol that we notify the committee of our intent to introduce amendments on Report Stage. There is no attempt to pull anything out of the hat at the last minute in terms of the entirety of the procedure. However, there are issues that will arise between now and Report Stage.

Chairman: To reiterate, members are free to ask questions relating to any issue which the Minister of State has indicated will be brought forward on Report Stage. I assure members that any outstanding concerns they might have will be dealt with by way of a briefing session after Committee Stage and before Report Stage. We have had very useful briefings from the Department on numerous occasions in the past. If there is a list of new amendments on Report Stage, we can have a briefing session, as we have done before. Report Stage will take place on the

floor of the Dáil and there will be unlimited time at that stage to discuss any issue. There is no agenda here to slip proposals through without debate.

Deputy Dara Calleary: The process today has been fairly open and we have had several briefings. I am not concerned that anything will be pulled out of the hat.

Deputy Sean Sherlock: To clarify, there is no intention to make substantive changes to the law itself in terms of its qualitative aspect. However, there has been some engagement since Second Stage with practitioners, in the light of which several amendments will be introduced on Report Stage. The word “technical” is not quite correct, but their purpose will essentially be to make the law more efficient in the longer term. That is the main reason I expect to bring forward further amendments on Report Stage.

Chairman: Members are reminded that there is also the option on the floor of the Dáil to recommit amendments to Committee Stage.

Question put and agreed to.

SECTION 60

Deputy Sean Sherlock: I move amendment No. 19:

In page 108, line 24, to delete “regulations.” and substitute the following:

“regulations; for the avoidance of doubt, the requirements of *sections 19* and *26(1)* relating to a company’s name shall apply despite any exemption of the kind referred to in *section 62(3)* that had been enjoyed by the company under the prior Companies Acts.”.

Amendment agreed to.

Section 60, as amended, agreed to.

SECTION 61

Deputy Sean Sherlock: I move amendment No. 20:

In page 109, to delete line 19 and substitute the following:

“(b) the provisions of its existing articles,

but, despite any exemption of the kind referred to in *section 62(3)* that had been enjoyed by the company under the prior Companies Acts, nothing in this subsection shall be read as overriding the requirements of *sections 19* and *26(1)* relating to a company’s name.”.

I am considering introducing an amendments to sections 61 and 62 on Report Stage to insert a caveat in the interests of clarity.

Amendment agreed to.

Section 61, as amended, agreed to.

SECTION 62

Deputy Sean Sherlock: I move amendment No. 21:

In page 110, between lines 25 and 26, to insert the following:

“(3) Notwithstanding—

(a) section 24, as originally enacted, of the Act of 1963; or

(b) section 24, inserted in the Act of 1963 by section 88(1) of the Company Law Enforcement Act 2001, in place of the first-mentioned section,

and the continuing effect, for certain other types of company, provided elsewhere by this Act of an exemption conferred by or under either such section, any such exemption (whatever its basis) enjoyed, immediately before the expiry of the transition period, by an existing private company to which *subsection (1)* applies shall cease on that expiry; accordingly *subsection (1)(a)* shall be read as requiring such a company’s name to end with “limited” or “teoranta”, as appropriate, and *subsection (2)* shall have effect subject to this subsection.”.

Amendment agreed to.

Section 62, as amended, agreed to.

Section 63 agreed to.

SECTION 64

Deputy Sean Sherlock: I move amendment No. 22:

In page 112, line 17, after “shall” to insert the following:

“, unless this Act provides that on re-registration the company shall continue to enjoy an exemption conferred by or under either of the sections referred to in *section 62(3)*,”.

The amendment proposes, unless the Bill otherwise prohibits, to allow an existing private company which re-registers as a designated activity company to continue to enjoy an exemption conferred by section 62(3).

Amendment agreed to.

Section 64, as amended, agreed to.

SECTION 65

Question proposed: “That section 65 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing amendments to Part 3 on Report Stage to harmonise advertising requirements for notifying creditors of a proposed reduction in capital and to ensure the requirement to advertise in one daily newspaper only is consistently applied within the provisions of the Bill. In regard to section 65, I am considering Report Stage amendments to insert a cross-reference to section 70 and to clarify that the payment to a third party is the discharge of a liability owed by the company to that third party or otherwise adds value to the company. Otherwise the manner in which the section is worded may be interpreted as allowing, in effect, for shares to be allotted at a discount.

Question put and agreed to.

Section 66 agreed to.

SECTION 67

Deputy Sean Sherlock: I move amendment No. 23:

In page 116, line 33, to delete “redeemable shares” and substitute the following:

“shares that are redeemable (which shall be known, and are referred to in this Act, as “redeemable shares”)”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 24:

In page 117, between lines 3 and 4, to insert the following:

“(8) In *subsections (9) and (10)* “bearer instrument” means an instrument, in relation to shares of a company, which entitles or purports to entitle the bearer thereof to transfer the shares that are specified in the instrument by delivery of the instrument.

(9) A company shall not have power to issue any bearer instrument.

(10) If a company purports to issue a bearer instrument, the shares that are specified in the instrument shall be deemed not to have been allotted or issued, and the amount subscribed therefor (and in the case of a non-cash asset subscribed therefor, the cash value of that asset) shall be due as a debt of the company to the purported subscriber thereof.”.

This amendment proposes to provide for the abolition of bearer shares in line with the Company Law Review Group, CLRG, recommendation in its 2011 report. The review group recommended that the general provision for bearer shares should be abolished by way of an express prohibition and that transitional arrangements should be provided to take account of companies that may have legitimately issued bearer shares in the past. This prohibition should not affect the position governing renounceable letters of allotment of fully or partly paid-up bonus shares or beneficial interests in shares, and arrangements should be put in place to take account of the specific regulatory regime for collective investment funds.

Amendment agreed to.

Section 67, as amended, agreed to.

Section 68 agreed to.

SECTION 69

Question proposed: “That section 69 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 69(3) on Report Stage. The purpose of this amendment is to use the words “securities” instead of “debentures”. Further, the purpose of this amendment is to bring the language used in the Bill in line with European Regulation 2003/71 EC.

Question put and agreed to.

SECTION 70

Question proposed: "That section 70 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing amendments to section 70 on Report Stage to clarify which shareholders may participate in a pre-emptive offer, correct an error on pre-emptive offers of shares, clarify whether the holders of preference shares are excluded from pre-emption rights in the issue of new shares, ensure no loophole exists in the statutory pre-emption rights of shareholders, insert a cross-reference to section 65, set out the consequences for allotting shares in a manner contrary to the requirements of the Bill to reflect the existing law in section 27 of the Companies (Amendment) Act 1983 and provide that any pre-commencement share allotment authorities must elapse no later than five years after commencement.

Question put and agreed to.

SECTION 71

Deputy Sean Sherlock: I move amendment No. 25:

In page 122, to delete lines 5 to 15 and substitute the following:

"(7) Where a company allots shares, it shall, within 30 days after the date of allotment, deliver particulars of the allotment in the prescribed form to the Registrar."

Deputy Jonathan O'Brien: While I am not trying to be awkward and it is obvious we are consolidating legislation, from my reading of this, it is about the stamp duty that will be liable. By proposing to take out the wording, are we saying the Revenue will no longer adjudicate on any stamp duty liable? Is that what is being proposed?

Deputy Sean Sherlock: I will read out the explanation. This amendment deletes section 71(7)(b). This amendment is proposed on foot of a recommendation from the Revenue Commissioners who advised that recent developments in the direction of self-assessment make reference to adjudications by Revenue obsolete. Does that explain it?

Deputy Jonathan O'Brien: Does this mean Revenue no longer adjudicates on stamp duty liability because we are moving to a self-assessment model?

Deputy Sean Sherlock: The information from my colleagues is that it is obsolete in existing law.

Amendment agreed to.

Section 71, as amended, agreed to.

Sections 72 to 82, inclusive, agreed to.

SECTION 83

Deputy Sean Sherlock: I move amendment No. 26:

In page 131, to delete line 46 and in page 132, to delete lines 1 and 2 and substitute the following:

"security or otherwise to discharge the liability under, or effect that which is commonly known as a refinancing of, any arrangement or transaction that gave rise to the provision of financial assistance, being financial assistance referred to in *subsection (2)*

that has already been”.

Amendment agreed to.

Chairman: Amendments Nos. 27 and 28 are related and may be discussed together.

Deputy Sean Sherlock: I move amendment No. 27:

In page 133, line 27, to delete “actual or imputed”.

Amendment agreed to.

Question proposed: “That section 83, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am also considering introducing an amendment to section 83 on Report Stage to take into account transactions involving financial assistance that has taken place pursuant to existing law and to insert a reference to indirect subsidiaries.

Question put and agreed to.

SECTION 84

Question proposed: “That section 84 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 84 on Report Stage for clarification purposes.

Question put and agreed to.

SECTION 85

Question proposed: “That section 85 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 85 on Report Stage to clarify whether reserves resulting from a reduction of capital will be treated as realised profits.

Question put and agreed to.

Sections 86 to 91, inclusive, agreed to.

SECTION 92

Deputy Sean Sherlock: I move amendment No. 28:

In page 142, line 14, to delete “actual”.

Amendment agreed to.

Question proposed: “That section 92, as amended, stand part of the Bill.”

Deputy Sean Sherlock: Again, I am considering introducing an amendment to section 92 on Report Stage to clarify that companies may lawfully transfer or dispose of assets and-or undertakings, or parts thereof, where the reorganisation of company capital is not the purpose of the transaction.

Question put and agreed to.

Sections 93 and 94 agreed to.

SECTION 95

Question proposed: "That section 95 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 95 on Report Stage to remove the words "Where the company's constitution so states or where the share is partly paid" from the start of section 95(3) and to provide that in the case of shares that are only partially paid or where the constitution of a company requires the signature of both the transferee and the transferor, liability will not pass until the instrument of transfer has been signed by both parties.

Question put and agreed to.

Sections 96 to 101, inclusive, agreed to.

SECTION 102

Question proposed: "That section 102 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 102 on Report Stage. The purpose of the amendment is to make provision for share warrants for investment companies.

Question put and agreed to.

SECTION 103

Question proposed: "That section 103 stand part of the Bill."

Deputy Sean Sherlock: Again, I am considering introducing an amendment to section 103 on Report Stage to clarify whether a cancellation of shares pursuant to a reduction of company capital is an "acquisition" of shares, to remove overlap between any subsections in section 103 and clarify whether a company other than a private company limited by shares may acquire its own shares pursuant to an order of the court. This might involve an amendment to Parts 16 to 25, inclusive, of the Bill.

Question put and agreed to.

Sections 104 and 105 agreed to.

SECTION 106

Question proposed: "That section 106 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 106 on Report Stage to refer to shares being fully paid, permit the unanimous written resolution procedure, ensure that any member demanding a poll must have voting rights, modify the requirement to specify the terms upon which redemption of shares will be effected in the company's constitution - special resolution or rights attaching to the shares - and reduce the 30 day period within which the proposed contract or memorandum relating to the purchase of shares by majority written resolution must be made available to 21 days.

Question put and agreed to.

Sections 107 and 108 agreed to.

SECTION 109

Chairman: Amendments Nos. 29, 80, 81, 88 to 91, inclusive, 97, 99 and 101 are related and may be discussed together.

Deputy Sean Sherlock: I move amendment No. 29:

In page 154, line 46, to delete “the CRO Gazette” and substitute “*Iris Oifigiúil*”.

The purpose of the amendment is to replace the CRO Gazette as the required method of publication with publication in *Iris Oifigiúil*. The item to be published is under the control of a third party and it involves free text. This is not suitable for exclusive publication in the CRO Gazette and is to remain in the *Iris Oifigiúil*.

Amendment agreed to.

Section 109, as amended, agreed to.

SECTION 110

Question proposed: “That section 110 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 110 on Report Stage to make certain that a resolution to determine the re-allotment price range in respect of treasury shares or to vary or renew such a determination has immediate effect.

Question put and agreed to.

Sections 111 to 113, inclusive, agreed to.

SECTION 114

Question proposed: “That section 114 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 114 on Report Stage to reflect existing law by specifying that, subject to other provisions of the Bill, a body corporate cannot be a member of a company which is its holding company.

Question put and agreed to.

SECTION 115

Question proposed: “That section 115 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 115 on Report Stage. The purpose of the amendment is to ensure that the section cannot be construed as having extra-territorial effect.

Question put and agreed to.

Sections 116 and 117 agreed to.

SECTION 118

Question proposed: "That section 118 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 118 on Report Stage to remove a superfluous word and to clarify whether reserves resulting from a reduction of capital will be treated as realised profits.

Question put and agreed to.

SECTION 119

Deputy Sean Sherlock: I move amendment No. 30:

In page 162, line 44, to delete "*section 76*" and substitute "*section 73, 74 or 76*".

Amendment agreed to.

Section 119, as amended, agreed to.

SECTION 120

Question proposed: "That section 120 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 120 on Report Stage to dis-apply certain common law rules relating to capital maintenance.

Question put and agreed to.

Section 121 agreed to.

SECTION 122

Question proposed: "That section 122 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 122 on Report Stage. The purpose of the amendment is to clarify better the definition of reserves by deleting the reference to "other than one contained in this Part".

Deputy Anthony Lawlor: What subsection is that?

Deputy Sean Sherlock: It is subsection (7).

Question put and agreed to.

Section 123 agreed to.

SECTION 124

Question proposed: "That section 124 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing amendments to section 124 on Report Stage to expressly cover dispositions of non-cash assets by transfer sales and to resolve whether the provisions contained in subsection (6) are surplus to requirements as section 127 amends existing law and, therefore, the subsection may be deleted.

Deputy Anthony Lawlor: Is the Minister proposing to delete subsection (6)?

Deputy Sean Sherlock: Section 127 amends existing law and therefore the subsection may be deleted. It is already covered.

Question put and agreed to.

Sections 125 and 126 agreed to.

SECTION 127

Question proposed: "That section 127 stand part of the Bill."

Deputy Anthony Lawlor: To what relevant subsection is the Minister referring that may supersede section 124(6)?

Deputy Sean Sherlock: I ask the Chairman to bear with me while I get that explanation. If Deputy Lawlor reads section 127 in its totality, he will note that it may mean that section 124(6) is no longer required, but that has to be examined. Effectively, further consideration must be given to that section.

Deputy Dara Calleary: Is there a contradiction in section 127(9)(3) between the approach being taken in this Bill and the approach taken in the UK Companies Act with regard to the treatment of reserves and undenominated capital?

Deputy Sean Sherlock: The information I have is that there is no conflict with UK law.

Deputy Dara Calleary: I draw the Minister of State's attention to section 8(4)(9) of the UK Companies Act 2006. I am happy to return to this later but I wanted to indicate that point. If we do not get clarification on this before Report Stage I indicate that we may table an amendment on Report Stage.

Deputy Sean Sherlock: The information required-----

Deputy Dara Calleary: It relates to section 8(4)(9) of the UK Companies Act 2006.

Deputy Sean Sherlock: Is it okay with the Deputy if we return to that?

Deputy Dara Calleary: Yes.

Deputy Sean Sherlock: I am considering introducing an amendment to section 127 on Report Stage to clarify that debentures or unpaid amounts on existing issued shares may be paid up only out of distributable profits and to correct an error which could result from the current interpretation. The proposed amendment would be to address other reserves that now exist as a result of recent developments in accounting and company law. That should cover the basis of Deputy Calleary's query-----

Deputy Dara Calleary: Yes.

Deputy Sean Sherlock: -----but we will revert to that.

Question put and agreed to.

Sections 128 to 130, inclusive, agreed to.

SECTION 131

Chairman: Amendments Nos. 31 and 32 are related and may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 31:

In page 171, line 24, after “corporate” to insert “or an unincorporated body of persons”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 32:

In page 171, line 25, after “corporate” to insert “or an unincorporated body of persons”.

Amendment agreed to.

Section 131, as amended, agreed to.

Sections 132 to 137, inclusive, agreed to.

SECTION 138

Chairman: Amendment No. 33 in the name of Deputy O’Brien has been discussed with amendment No. 5. Is the Deputy withdrawing his amendment?

Deputy Jonathan O’Brien: I move amendment No. 33:

In page 173, line 23, to delete “one, at least,” and substitute “a majority”.

We will withdraw it and see if we can get the information. We do not know how many companies are registered and how many are non-resident. I presume the Minister of State does not have information on the number of companies that have only one director. Once I get that information I may return to this point on Report Stage.

Deputy Dara Calleary: When the Bill is finally printed it would be helpful to provide guidelines on what residency EEA is involved for the information of those who will read it to ensure there is no confusion about EEA or about guidelines in this respect.

Amendment, by leave, withdrawn.

Section 138 agreed to.

Sections 139 and 140 agreed to.

Amendments Nos. 34 and 35 not moved.

Section 141 agreed to.

SECTION 142

Deputy Sean Sherlock: I move amendment No. 36:

In page 177, lines 43 and 44, to delete “at the end of the day” and substitute “at any time during that day”.

Amendment agreed to.

Section 142, as amended, agreed to.

SECTION 143

Deputy Sean Sherlock: I move amendment No. 37:

In page 178, lines 44 and 45, to delete “statutory”.

Deputy Dara Calleary: On the total number of directorships, does that only apply to Irish registered companies? One could be a director of any number of companies around the world and I take it that the limit indicated would not apply in that case and that it only applies to Irish registered companies?

Deputy Sean Sherlock: The answer is “Yes”.

Amendment agreed to.

Section 143, as amended, agreed to.

Section 144 agreed to.

SECTION 145

Question proposed: “That section 145 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 145 on Report Stage to provide that subsection (5) is subject to subsection (1).

Question put and agreed to.

Sections 146 to 149, inclusive, agreed to.

SECTION 150

Question proposed: “That section 150 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 150 on Report Stage. The purpose of the amendment is to ensure that officers of companies may, in exceptional circumstances, apply for the Companies Registration Office to retract directors’ residential addresses from the public register and to provide a legal basis for the appropriate authorities to access them. A further amendment may be required to ensure that a legal basis is provided for such addresses to be available for appropriate authorities who have legitimate reasons to request this information. I intend to amend the section further by making provision in subsection (12) for “married person or civil partner” and by making the section gender neutral by providing “his/her”.

Question put and agreed to.

SECTION 151

Question proposed: “That section 151 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 151 on

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Report Stage to require directors who have become subject to disqualification under the law of another state to declare that fact to the Companies Registration Office within a prescribed period of time of the commencement of the relevant provisions of the Bill. Failure to comply with the disclosure requirement will constitute an offence.

Question put and agreed to.

SECTION 152

Deputy Sean Sherlock: I move amendment No. 38:

In page 187, line 15, to delete “*subsection (4)*” and substitute “*subsection (5)*”.

Amendment agreed to.

Section 152, as amended, agreed to.

Sections 153 to 156, inclusive, agreed to.

SECTION 157

Question proposed: “That section 157 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 157 on Report Stage to insert a reference to the universal social charge.

Question put and agreed to.

Section 158 agreed to.

SECTION 159

Question proposed: That section 159 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 159 on Report Stage. The purpose of this amendment is to ensure that directors are granted powers to borrow money and create charges.

Question put and agreed to.

Sections 160 and 161 agreed to.

SECTION 162

Question proposed: “That section 162 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 162 on Report Stage. The purpose of this amendment is to clarify subsection (1) as it relates to sub-committees of the board.

Question put and agreed to.

Sections 163 to 173, inclusive, agreed to.

SECTION 174

Deputy Sean Sherlock: I move amendment No. 39:

In page 201, line 17, after “notice” to insert “, in the prescribed form,”.

Amendment agreed to.

Question proposed: “That section 174, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 174 on Report Stage to remove two cross-referencing errors that relate to section 170.

Question put and agreed to.

Section 175 agreed to.

SECTION 176

Deputy Sean Sherlock: I move amendment No. 40:

In page 202, to delete lines 21 and 22 and substitute the following:

“supplementing the operation of the company’s constitution in relation to the calling, holding and conducting of the meeting.”.

Amendment agreed to.

Section 176, as amended, agreed to.

Sections 177 to 179, inclusive, agreed to.

SECTION 180

Deputy Sean Sherlock: I move amendment No. 41:

In page 204, line 39, after “company” to insert “, which member would be entitled to vote at such a meeting”.

Amendment agreed to.

Section 180, as amended, agreed to.

SECTION 181

Question proposed: “That section 181 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 181 on Report Stage to remove the requirement that the deceased member, but for his or her death, would be entitled to vote.

Question put and agreed to.

SECTION 182

Question proposed: “That section 182 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 182 on Report Stage to clarify the requirements in respect of notice provision.

Question put and agreed to.

SECTION 183

Deputy Sean Sherlock: I move amendment No. 42:

In page 207, line 6, to delete “If” and substitute “Save to the extent that the company’s constitution provides otherwise, if”.

Amendment agreed to.

Question proposed: “That section 183, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 183 on Report Stage to determine the period of time which must elapse before a meeting must be adjourned due to a lack of quorum.

Question put and agreed to.

Sections 184 to 193, inclusive, agreed to.

SECTION 194

Question proposed: “That section 194 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 194 on Report Stage to include language which ensures that section 194 can be disapplied by the Constitution and to clarify the signing requirements relating to written resolutions.

Question put and agreed to.

Sections 195 to 201, inclusive, agreed to.

SECTION 202

Chairman: As amendments Nos. 43, 44, 46, 48 and 50 are related they may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 43:

In page 222, to delete lines 21 to 27 and substitute the following:

“(3) The provisions of this Chapter shall be read and shall operate so that a restricted activity may be carried on at a time falling before compliance with the requirement (arising under *section 204, 205, 206, 207 or 208* as the case may be) that a copy of the appropriate declaration be delivered to the Registrar; however - should a failure to comply with that requirement occur - that failure then invalidates the carrying on of the activity, but this is without prejudice to the power of validation conferred subsequently by this Chapter on the court.”

Amendment agreed to.

Question proposed: “That section 202, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I intend to introduce amendments to sections 202 to 209 on Report

Stage to further clarify the operation of the new summary approval procedure, in particular to consistently use the phrase “in full as they fall due” rather than the phrase “in full”; to insert language, where appropriate, to clarify that the company must be able to discharge its debts as they fall due rather than at the time of the declaration in question; and to cross-reference “debts and liabilities” as at a particular date.

Question put and agreed to.

Section 203 agreed to.

SECTION 204

Deputy Sean Sherlock: I move amendment No. 44:

In page 224, to delete lines 27 to 29 and substitute the following:

“the transaction or arrangement (the “relevant act”), will be able to pay or discharge its debts and other liabilities in full as they fall due during the period of 12 months after the date of the relevant act.”.

Amendment agreed to.

Chairman: As amendments Nos. 45, 47, 49, 51 and 52 are related they may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 45:

In page 224, between lines 39 and 40, to insert the following:

“(4) On application to it by any interested party, the court may, in any case where there has been a failure to comply with *subsection (3)*, declare that the carrying on of the restricted activity concerned shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so.”.

Amendment agreed to.

Section 204, as amended, agreed to.

SECTION 205

Deputy Sean Sherlock: I move amendment No. 46:

In page 225, lines 12 and 13, to delete “is able to pay or discharge its debts and other liabilities in full; and” and substitute the following:

“, after the restricted activity has taken place, will be able to pay or discharge its debts and other liabilities in full as they fall due during the period of 12 months after the date of that event; and”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 47:

In page 225, line 20, to delete “commenced” and substitute the following:

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“commenced; if a failure to comply with this subsection occurs, a like power to that under *section 204(4)* is available to the court to declare valid for all purposes the carrying on of the activity”.

Amendment agreed to.

Section 205, as amended, agreed to.

SECTION 206

Deputy Sean Sherlock: I move amendment No. 48:

In page 225, line 44, after “due” to insert “during the period of 12 months after the date of that distribution”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 49:

In page 226, line 6, to delete “commenced” and substitute the following:

“commenced; if a failure to comply with this subsection occurs, a like power to that under *section 204(4)* is available to the court to declare valid for all purposes the carrying on of the activity”.

Amendment agreed to.

Section 206, as amended, agreed to.

SECTION 207

Deputy Sean Sherlock: I move amendment No. 50:

In page 226, line 21, after “due” to insert “during the period of 12 months after the date on which the merger takes effect”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 51:

In page 226, line 24, to delete “commenced” and substitute the following:

“commenced; if a failure to comply with this subsection occurs, a like power to that under *section 204(4)* is available to the court to declare valid for all purposes the carrying on of the activity”.

Amendment agreed to.

Section 207, as amended, agreed to.

SECTION 208

Deputy Sean Sherlock: I move amendment No. 52:

In page 226, line 40, to delete “commenced” and substitute the following:

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“commenced; if a failure to comply with this subsection occurs, a like power to that under *section 204(4)* is available to the court to declare valid for all purposes the carrying on of the activity”.

Amendment agreed to.

Section 208, as amended, agreed to.

Sections 209 to 214, inclusive, agreed to.

SECTION 215

Question proposed: “That section 215 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 215 on Report Stage to widen its scope in order to provide for different methods of storing virtual information.

Question put and agreed to.

SECTION 216

Deputy Sean Sherlock: I move amendment No. 53:

In page 231, lines 33 to 35 to delete all words from and including “and” in line 33 down to and including “maintaining.” in line 35 and substitute the following:

“(c) this section and *section 217* a reference to keeping includes a reference to maintaining; and

(d) *section 217(3)* the requirement thereunder to keep a register or other document at a place shall be deemed to be complied with if, by means of any computer, the register or document is (at that place) capable of being reproduced in legible form and inspected in that form, and references elsewhere in *section 217* and this Chapter to the keeping of a register or other document, and the inspection of it, shall be read accordingly.”.

Amendment agreed to.

Section 216, as amended, agreed to.

Sections 217 and 218 agreed to.

SECTION 219

Deputy Sean Sherlock: I move amendment No. 54:

In page 234, to delete lines 42 to 45 and substitute the following:

“(3) In this section “registered address”, in relation to a member, means the address of the member as entered in the register of members.”.

Amendment agreed to.

Question proposed: “That section 219, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing a further amendment to this section

on Report Stage to further improve the ability of companies to serve notice in a modern and effective manner.

Question put and agreed to.

SECTION 220

Deputy Sean Sherlock: I move amendment No. 55:

In page 235, line 7, to delete “and a warranty”.

Amendment agreed to.

Section 220, as amended, agreed to.

Section 221 agreed to.

SECTION 222

Deputy Mick Wallace: I move amendment No. 56:

In page 238, line 14, before “A body corporate” to insert the following:

“A body corporate may be a shadow director.”.

The explanatory memorandum sets out that this section as drafted changes the definition of shadow director, implicitly acknowledges that a body corporate may be a shadow director but expressly provides that a body corporate is not to be regarded as a shadow director of subsidiary companies. This amendment aims to clarify this intention by expressly providing that a body corporate may be a shadow director. It is hoped that this restriction may curtail Ireland’s reputation as a tax haven.

What we are trying to do is bring more clarity. We have individuals or companies, be they limited or otherwise, advising companies without being directors of those companies. This amendment gives the courts an opportunity to attach liability to where the advice is coming from and to attach responsibility on the part of the individual concerned. By inserting this amendment, we are making it clearer to ensure there is more light and transparency.

Deputy Sean Sherlock: I understand the Deputy’s proposal. I am advised that his suggestion is part of the law as it stands and that, therefore, no amendment is required. Under section 18 of the Interpretation Act, a person includes a body corporate. This is why the definition is not explained specifically in this section. It has been upheld in the High Court in *Fyffes plc v DCC plc & ors*, IEHC 477, and in the Supreme Court in respect of the liquidation of *Worldport Ireland Limited* in 2008. Therefore, the law is sufficient as it stands and I am not in favour of adopting this amendment.

Deputy Mick Wallace: I did not think the Minister of State would. Forgive my ignorance. I do not understand procedure as well as I should.

Chairman: Deputy Wallace has the option of leaving the amendment in and opting for a vote or checking out the answer he received and pressing the amendment on Report Stage.

Deputy Sean Sherlock: The courts effectively agree with the view proffered by the Deputy. The law is sufficient as it stands.

Deputy Mick Wallace: For any of us to say the law is sufficient as it stands is usually down to interpretation. Obviously, I would like to find out more about it and check what the Minister of State has told me. Can I come back on Report Stage and address the issue again if I find good cause to do so?

Chairman: The best way to approach it is for Deputy Wallace to withdraw the amendment formally and table it again for discussion on Report Stage.

Deputy Mick Wallace: I will take the Chairman's advice.

Amendment, by leave, withdrawn.

Section 222 agreed to.

Sections 223 and 224 agreed to.

SECTION 225

Chairman: Amendments Nos. 57 and 58 are related and may be discussed together.

Deputy Mick Wallace: I move amendment No. 57:

In page 239, line 25, after "members." to insert the following:

"In addition to the primary duty owed to the company under *section 224*, the directors shall owe a general duty to its employees and to its members."

We would not have companies if they did not accept that their primary duty is to make money because they would not survive if they did not. At the moment, saying that the directors shall have regard to employees is not a duty. While acknowledging that the primary duty of a company is to its members and to ensuring they are sustainable from a financial point of view, there should be more protection for employees and there should be a duty to them in the interests of corporate responsibility. Stipulating that the directors shall have regard to their employees has no strength because it does not represent a duty and is just a token gesture. If we were to include the employees, it would not mean that the employees would always be seen to be in the right in a dispute but it would give the courts an opportunity to interpret it as they saw fit depending on the information put before them.

Deputy Sean Sherlock: Under existing law, directors are required to have regard to the interests of employees. This amendment would change it to a duty to employees. This may mean that members and employees would have a directly enforceable right against directors where they act contrary to their respective interests. This would compromise the fundamental structure of the directors' relationship with the company, which is described to be fiduciary, that is to say it requires directors to prefer the interests of the company over their interests or those of others, even where those others include some members of the company.

The amendment puts into question the status of the law of oppression, which is the principal protection of minority shareholders under the current law and much of the employment law. Such a vague and general declaration of a duty without any explanation as to how it interacts with existing law would serve to create great uncertainty in company law. This is directly contrary to one of the key objectives of the Bill, which is to clarify directors' duties. The amendment may also breach constitutional property rights.

Ultimately, bolstering protections for employees should be done using employment law. These provisions only serve to complicate company law and do nothing to protect employees of partnerships and sole traders and public employees. Therefore, I am not in favour of adopting this amendment.

Deputy Mick Wallace: I disagree with the Minister of State. Can I examine the matter further and bring it back at a later stage?

Chairman: The Deputy certainly can do so. Are there any other comments about these amendments?

Deputy Jonathan O'Brien: I understand where Deputy Wallace is coming from but I also understand where the Minister of State is coming from. It is probably better addressed within employment law but perhaps the Government needs to look at that because there is no indication that we will address the area of employees under company law. The Minister of State comes from a county where we saw a pretty high-profile dispute last year about employees in a company that was going into liquidation, so there is certainly room for improvement in respect of employees' rights and conditions. While this may not be the legislation to deal with it, I understand where Deputy Wallace is coming from. It is something that must be dealt with and if it is not going to be dealt with in this legislation for the reasons outlined by the Minister of State, it probably needs to be dealt with by another committee in respect of employment legislation.

Deputy Mick Wallace: I would also argue that employment law is a different area. Employment law does not have the capacity to cover all situations where employees' interests are not being catered for by the company in a fair manner. Including this amendment, which puts an obligation on companies to behave with a greater sense of responsibility to their employees, might be different. It would not be the way things happen in most of the developed world. That is because of the privileges given to companies. While I understand that we would not have them if they did not have certain privileges, I believe that the protection of employees' interests in certain situations should be strengthened. For example, employment law is not much good to one when companies are going out of business. This amendment would give greater protection to employees.

Chairman: Does the Minister of State wish to add anything?

Deputy Sean Sherlock: No.

Chairman: Does Deputy Wallace wish to withdraw the amendment and reintroduce it on Report Stage or is he pressing it?

Deputy Mick Wallace: Will I be able to reintroduce the amendment if it is defeated on Committee Stage?

Chairman: He can reintroduce it on Report Stage. He can press the amendment now and we can deal with it and then he can still table it on Report Stage even if it is lost.

Deputy Mick Wallace: I will press it in that case.

Chairman: As the full membership of the committee is not present, under Standing Orders we are obliged to wait eight minutes or until full membership is present before proceeding to take the division. When eight minutes have lapsed or the full membership is present, we will take the vote.

Amendment put.

The Committee divided: Tá;, 2 Níl, 7.	
Tá	Níl
O'Brien, Jonathan.	Calleary, Dara.
Wallace, Mick.	Conaghan, Michael.
	English, Damien.
	Kyne, Seán.
	Lawlor, Anthony.
	Lyons, John.
	Sherlock, Sean.

Amendment declared lost.

Amendment No. 58 not moved.

Section 225 agreed to.

SECTION 226

Deputy Mick Wallace: I move amendment No. 59:

In page 240, between lines 2 and 3, to insert the following:

- “(c) environmental law;
- (d) health and safety law;
- (e) employment law,

and relevant obligations relating to *paragraphs (c), (d) and (e)* shall be interpreted in accordance with both national and European Communities law;”.

This amendment is a bit more self-explanatory. It extends the obligations on directors in respect of their compliance statements to cover not only tax and company law, but also public interest considerations such as environmental, health and safety and employment law. It is hoped that this will encourage a wider sense of corporate responsibility towards society and shared natural resources rather than just towards a company itself.

In today's language, these amount to externalities and are not considered as being costs to the company. Externalities are unintended side effects of the market economy and are the impact of commercial transactions that fall outside the two parties to that transaction. For example, when a consumer buys gardening tools and materials, a positive externality is experienced by others in the community, as the consumer uses those materials to make an attractive garden from which everyone in the community can gain enjoyment and benefit. On the other hand, if a consumer hires a contractor to cut down the trees on his or her property in order to park an extra car, the community experiences a negative externality, as the scenic beauty, shade, animal habitat and fresh air provided by the trees are lost.

Externalities can be positive or negative. For the companies that organise the production of

goods and services in the professional economy, however, they are to be ignored. Since externalities do not directly affect the responsible parties, profitability is not harmed by them. This principle has led to significant economic impacts. For example, the large-scale outsourcing of America's mass production has had considerable effect, including the decline of large urban regions due to depressed demand, resulting in increased rates of crime, family strain and domestic abuse. These are external side effects of corporate investment strategies, as they do not directly hurt earnings. Too often, capital is pushed forward despite these side effects. The world would be a better place if companies had a responsibility to consider externalities.

Deputy Sean Sherlock: Notwithstanding the fact that the Deputy has been brushing up on his neo-Marxist economic theory - it sounds vaguely familiar from my college days - this question was dealt with comprehensively by the Company Law Review Group, CLRG, in its 2005 report on directors' compliance statements. If members will pardon my use of acronyms, the CLRG decided that such extra duties would do little to increase compliance and would merely result in an increase in red tape at significant cost to business. The set-up cost for a business was an estimated €90,000 and its ongoing annual cost was estimated at €40,000. A streamlined version of the director's compliance statement proposed by the CLRG, which is a statutory body, removed the requirement that the statement should include a declaration that the company had complied with all other enactments that could affect its financial performance. This was found to be the most burdensome aspect of the statement and also the least relevant, as companies were already legally obliged to comply with all Acts of the Oireachtas. Their inclusion in the compliance statement did not add substantive duties.

More than 80% of the CLRG's members, including members representing the Financial Regulator and other public bodies, agreed to a more balanced version of the director's compliance statement. There is a strong EU impetus towards less unnecessary regulation to make EU businesses more competitive. This amendment would create unjustifiable and disproportionate costs on Irish businesses and disadvantage Ireland competitively, as we would have gone beyond other countries. The current compliance statement has received support from industry and regulators alike. For these reasons, it is intended to preserve it in the Bill. Therefore, I am not in favour of adopting the amendment.

Deputy Mick Wallace: One of the reasons that we are in this situation is that so much bureaucracy and red tape was stripped away. While there is such a thing as red tape that has no benefit for anyone, much of it was designed to ensure that companies behaved in a certain manner, even in their own best interests. In the past 20 years, companies have made many decisions that were not in their best long-term interests. For example, some companies are making decisions based on three-month thinking because everything is driven by the markets and what they can sell. The companies are not concerned about where they will be in five years' time. There is nothing to stop them from making decisions that are not in the interests of their long-term health. Claiming that companies that have regard to the environment and take a more direct duty towards health and safety and employment law will not be able to compete amounts to a race to the bottom. That is where we are heading in a canoe without a paddle.

Chairman: How stands the amendment?

Deputy Sean Sherlock: I beg the Chairman's indulgence. To a certain extent, I understand the motive behind the amendment, but one must factor into the equation a corpus of environmental, health and safety and employment law. The issue of negative or positive externalities does not arise. We must ensure that there is robust legislation. Every citizen is subject to the existing corpus of law and companies are legally obliged to comply with all Acts of the Oireach-

tas. That is already inherent, thereby rendering the amendment unsupportable in that sense.

Deputy Mick Wallace: One cannot deny the fact that companies all over the developed world are doing things that are not in the interests of society at large. They have too much of a free rein. I am completely pro business and have been in business all my life. However, one of these days people will wake up and demand greater corporate responsibility. Obviously, it is not going to be today.

Chairman: How stands the amendment?

Deputy Mick Wallace: Given that committee members have just had coffee, I had better not force them to have another one. I do not know how many coffees per day they are allowed. I will not push it to a vote.

Deputy Anthony Lawlor: If Deputy Wallace really feels seriously about his amendment, he should press it.

Chairman: He can still press the amendment without having a vote.

Deputy Mick Wallace: No. I will bring it up again on Report Stage. I will consider the Minister of State's arguments and I will come back to it.

Amendment, by leave, withdrawn.

Chairman: I wish to clarify that members can press amendments without having to have a vote. They should feel free to press any amendment.

Section 226 agreed to.

SECTION 227

Question proposed: "That section 227 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 227 on Report Stage. The purpose of this amendment is to provide an exemption for USIT's companies as regulated by 2011 EU regulations.

Question put and agreed to.

Sections 228 agreed to.

SECTION 229

Deputy Sean Sherlock: I move amendment No. 60:

In page 243, to delete lines 25 and 26 and substitute the following:

"(h) in addition to the duty under *section 225* (duty to have regard to the interests of its employees in general), have regard to the interests of its members."

Chairman: Is the amendment agreed to?

Deputy Dara Calleary: Subsection (3) states:

Without prejudice to the director's duty under *subsection (1)(a)* to act in good faith in

what the director considers to be the interests of the company, a director of a company may have regard to the interests of a particular member of the company in the following circumstances.

Subsection (4) states:

Those circumstances are where the director has been appointed or nominated for appointment by that member, being a member who has an entitlement to so appoint or nominate under the company's constitution or a shareholders' agreement.

Is there a vagueness around that knowledge that could be used to defend inappropriate behaviour on the part of a director in the interests of a friend or family member?

Deputy Sean Sherlock: The purpose of this amendment is clarificatory in nature. The current text refers to the directors having a duty to have regard to the interests of members in addition to the general duty owed to employees under section 225. However, section 225 does not impose such a duty on directors to their employees. Section 225 provides that the matters to which the directors are to have regard in the performance of their functions shall include the interests of the company's employees in general. I hope that clarifies the matter further for the Deputy.

Deputy Dara Calleary: I am concerned that there is a vagueness in that section, between lines 30 and 35. There is a vagueness in the language that may allow for a director to justify inappropriate behaviour. Perhaps the Minister of State could examine the possibility of tightening up that language on Report Stage.

Deputy Sean Sherlock: I beg the Chair's indulgence, but can the Deputy please explain that again?

Deputy Dara Calleary: Subsection (3) provides "that a director of a company may have regard to the interests of a particular member of the company". However, that may be contradictory to the obligation on directors to act in the best interests of the company. Therefore, this could offer somebody a way out of acting in the best interests of the company if this language is not tightened up to clarify exactly what it means by stating "that a director of a company may have regard to the interests of a particular member of the company".

Deputy Sean Sherlock: We can look at that again on Report Stage for Deputy Calleary.

Amendment agreed to.

Section 229, as amended, agreed to.

Sections 230 to 236, inclusive, agreed to.

NEW SECTION

Deputy Mick Wallace: I move amendment No. 61:

In page 248, between lines 35 and 36, to insert the following:

"237. Upon incorporation of a company, the Companies Registration Office shall issue to all listed directors a document setting out a summary of this Chapter in plain language, to include the duties provided for and the consequences for breach of such duties.

This allows for the dissemination of a director's duties as set out in Part 5. The purpose of this codified version of the duties, which currently exists in a combination of common law and statutory provisions, is to act as a signpost as to the standard of conduct expected of directors.

This amendment will facilitate the wider dissemination of these duties to all new directors upon the incorporation of a company. This would educate them fully on their responsibilities and, in a broader sense, promote a culture of corporate responsibility. Currently, this role is fulfilled by a solicitor at the expense of the company and many start-up companies do not have the means for such legal advice. Also, where there are volunteer directors, for example, in the property management sector - there are many of them around Dublin city at the moment - who are also subject to additional requirements under the Multi Unit Developments Act 2011, they may not have the means to seek legal advice regarding the legal duties owed by them.

People take too much for granted concerning what directors know about their responsibilities. We could address this matter in this manner and it would be positive to do so.

Deputy Sean Sherlock: Such documents are already in circulation and are available free from the Office of the Director of Corporate Enforcement's website. The Companies Registration Office already sends these documents to directors of newly formed companies. However, because most companies are formed by company formation's businesses, the documents generally do not get to the directors at all.

More important in this respect is that people applying to be registered as directors must acknowledge that they understand and accept their responsibilities as directors when completing form A1 or form B10, that is to say, before they receive the paper copy. Therefore, I am not in favour of adopting this amendment. However, even though this is not a matter for primary legislation, I acknowledge that the idea is a good one. For this reason, I will consider introducing a live link to the relevant ODCE documents so that directors can read and understand their duties online before completing the electronic form when it becomes available.

Deputy Mick Wallace: Will they have an obligation to do so or will they have the option of doing so? The Minister of State is not really in a position to oblige them with this idea, is he?

Deputy Sean Sherlock: When people sign up as directors they have obligations. As I said earlier, more important in this respect, is that people applying to be registered as directors must acknowledge that they understand and accept their responsibilities as directors when completing form A1 or form B10. Therefore, that obligation is already there.

Deputy Mick Wallace: They are signing on the dotted line but they are not actually learning what responsibilities go with it.

Deputy Jonathan O'Brien: Is the Minister of State saying that on the online form a link will be provided to the duties? I agree with Deputy Wallace that it is important. Even the issue of voluntary directors is becoming more prevalent. Particularly in an area in which both myself and Deputy Wallace would have an interest such as the League of Ireland, we are seeing a lot more companies being run by supporters who are taking over football clubs and appointing directors. It happened in my own case. It would be useful, therefore, to have that live link. There is obviously an obligation on a director to get that information and to understand his or her duties, but we should make the information as accessible as possible.

Deputy John Lyons: There is an onus on anybody who becomes a director - in whatever

capacity, be it voluntary or otherwise - to read the material. I recently joined the board of a crèche and have not yet got around to reading a large amount of documents. There is only so far one can go. If there is an issue with the access of the language that is a different issue altogether. The Minister of State has made it clear that there is no shortage of material available in regard to the obligations on people who set up companies of which they become directors. The problem is getting people to read it. It is up to the individuals concerned to do so. As I said earlier, I accept that if the language is not accessible for some people that might be an issue. However, there is no shortage of ways of accessing the particular information.

Deputy Mick Wallace: When we were building apartment complexes we set up management companies. The idea was to operate them for as long as we could following which the owners of the apartments would take them over. That has been the practice for a number of years. The level of trouble coming down the tracks in regard to management companies in Dublin is frightening. There are huge problems with them. People who have become voluntary directors on these management companies do not know what they signed up for but will find out when they end up in court.

Would it be possible to provide that people intending to take up positions as voluntary directors on management companies attend, perhaps, a one-day course in regard to the responsibilities involved and the pitfalls in that regard? I do not believe the people signing up to these management companies fully understand what they are letting themselves in for.

Chairman: I will allow a question from Deputy Lawlor before calling the Minister of State to respond.

Deputy Anthony Lawlor: I agree with Deputy Lyons in regard to the language used. I am a voluntary director. One of the key issues is the volume of material which people must read. Most do not do so and simply take on board what they believe are the responsibilities of a director. A key issue is to ensure use of simple and understandable language rather than legal jargon of the type we have to put up with on a daily basis.

Deputy Sean Sherlock: I do not think anybody would disagree with the sentiments expressed. This is not a matter for primary legislation. It could be dealt with through the ODCE and CRO simplifying the language or ensuring that people are made aware in the starkest terms of their obligations in relation to any legal entity of which they become part. That is perhaps all one can do. If somebody decides to become part of a community-voluntary body or legal entity, there is only so much that the State or Government can do to legislate in respect of that decision. One would expect that people when signing up to such bodies are fully aware of their obligations. People have a personal responsibility to find out their obligations. If it is possible to simplify the language around those obligations the matter should be taken up by the ODCE and CRO.

Chairman: Will the Minister of State raise that issue on Members' behalf?

Deputy Sean Sherlock: Yes.

Deputy Mick Wallace: I realise that the State cannot force people to eat their breakfasts. At the same time, acceptance of this amendment would go a small way towards helping to address the situation.

Chairman: Perhaps the Minister of State will liaise with Deputy Wallace on the matter.

Deputy Sean Sherlock: I will ensure officials from my Department liaise with him on the issue.

Amendment, by leave, withdrawn.

Sections 237 and 238 agreed to.

SECTION 239

Question proposed: "That section 239 stand part of the Bill."

Deputy Sean Sherlock: I am considering the introduction on Report Stage of an amendment to section 239 to clarify whether companies other than private companies limited by shares are required to give approval in relation to substantial transactions on loans to directors or other particular transactions involving a conflict of interest.

Question put and agreed to.

Section 240 agreed to.

SECTION 241

Question proposed: "That section 241 stand part of the Bill."

Deputy Sean Sherlock: Again, I am considering the introduction on Report Stage of an amendment to 241 to provide exemptions in regard to certain arrangements.

Question put and agreed to.

Sections 242 to 245, inclusive, agreed to.

SECTION 246

Deputy Sean Sherlock: I move amendment No. 62:

In page 256, line 5, to delete "*subsection (2) of*".

Amendment agreed to.

Section 246, as amended, agreed to.

Sections 247 to 251, inclusive, agreed to.

SECTION 252

Question proposed: "That section 252 stand part of the Bill."

Deputy Sean Sherlock: I am considering the introduction on Report Stage of an amendment to section 252, the purpose of which is to include missing references to a director's widow, widower, civil partner and dependants.

Question put and agreed to.

Sections 253 to 273, inclusive, agreed to.

NEW SECTION

Deputy Sean Sherlock: I move amendment No. 63:

In page 276, between lines 34 and 35, to insert the following:

“Overall limitation on discretions with respect to length of financial year and annual return date

274. (1) The discretions of a company under this Part with respect to the length of its financial year or to its annual return date are subject to the overall limitation that those discretions must be exercised in a manner that results in compliance by the company with the following requirement.

(2) That requirement is that which arises under *section 348(4)* relating to the earliest date to which the documents annexed to an annual return must be made up.”.

Amendment agreed to.

Section 274 deleted.

SECTION 275

Deputy Jonathan O’Brien: I move amendment No. 64:

In page 277, between lines 40 and 41, to insert the following:

“(d) certificate of tax compliance,”.

Why is a certificate of tax compliance not included as one of the documents required to be submitted? The Bill provides that balance sheets, profit and loss accounts and other statements and notes be submitted. What is the reason a certificate of tax compliance is not included? Is there an issue around synching of annual returns and tax clearance certificates?

Deputy Sean Sherlock: This is not a logical inclusion in a company’s financial statements. Financial statements relate to the company’s financial performance and not its tax obligations. Fiscal accounting addresses tax obligations. If the Government were to require businesses to obtain and publish a certificate of tax compliance it would do so in tax law to catch both company and all non-company businesses that also pay taxes. The introduction of this requirement would be entirely without precedent in Europe. I am not, therefore, in favour of accepting the amendment.

Amendment, by leave, withdrawn.

Section 275 agreed to.

SECTION 276

Deputy Sean Sherlock: I move amendment No. 65:

In page 281, line 29, to delete “*section section 8*” and substitute “*section 8*”.

Amendment agreed to.

Section 276, as amended, agreed to.

SECTION 277

Question proposed: "That section 277 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 277 on Report Stage, the purpose of which is to include reference to "entity, financial statements" in section 277(1).

Question put and agreed to.

Sections 278 to 282, inclusive, agreed to.

SECTION 283

Question proposed: "That section 283 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 283 on Report Stage, the purpose of which is to ensure all transactions must be recorded in writing, especially in cash businesses.

Question put and agreed to.

SECTION 284

Deputy Jonathan O'Brien: I move amendment No. 66:

In page 288, lines 20 and 21, to delete "or at such other place as the directors think fit".

On rereading it I believe subsection (2) of this section covers what I have proposed. We wanted to avoid information being held outside the State. I believe section 284(2) addresses that in stating that, "If accounting records are kept at a place outside the State, there shall be sent to and kept at a place in the State such information and returns relating to the business". That covers it and I am quite content with it.

Amendment, by leave, withdrawn.

Section 284 agreed to.

Sections 285 and 286 agreed to.

SECTION 287

Question proposed: "That section 287 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 287 on Report Stage to clarify the threshold in section 287(5).

Question put and agreed to.

Section 288 agreed to.

SECTION 289

Question proposed: "That section 289 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 289 on Report Stage. Section 289(3) needs clarification regarding its application to foreign subsidiaries not otherwise subject to Irish company law.

Question put and agreed to.

SECTION 290

Question proposed: "That section 290 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 290 on Report Stage to clarify the period to which it refers and thus make it more accurate.

Question put and agreed to.

SECTION 291

Question proposed: "That section 291 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing amendments to sections 291 and 294 on Report Stage to incorporate SI 510 of 2012. This statutory instrument gives companies a chance to revert from Companies Act financial statements to IFRS financial statements once in every five years.

Question put and agreed to.

Sections 292 to 300, inclusive, agreed to.

SECTION 301

Question proposed: "That section 301 stand part of the Bill."

Deputy Jonathan O'Brien: While obviously the expertise lies on the other side of the table, from my reading of the Bill it suggests that an Irish-registered company that is a holding company or a subsidiary of a company registered outside the State would be exempt from making returns. Is that the case?

Deputy Sean Sherlock: Since group financial statements relate to a corporate group, the group financial statements of a subsidiary, which is also a parent company, would not give any more information than the group accounts of the company at the top of the corporate group. Therefore deletion of this exemption would benefit no one other than the lawyers and accountants who would have to prepare and file thousands more group financial statements than they do at present.

Many foreign direct investment companies rely on this exemption to avoid having to prepare intermediate level group accounts that simply replicate a part of their general top level group accounts. The economic benefit of investing in Ireland would be substantially eroded by requiring these companies to prepare many different sets of group accounts. This would also be a departure from established international practice. Most notably this exemption exists in the United Kingdom. This deletion might constitute a breach of articles 7, 8 and 11 of the seventh accounting directive. For those reasons I am not in favour of changing the section.

Deputy Jonathan O'Brien: I keep returning to Irish-registered but non-resident companies. In the case of an Irish-registered but non-resident company which is a holding company or

a subsidiary company, and which is just based on activity and is managed and controlled outside the State, are we saying that the group accounts would cover the activities of the particular company that is registered within the State? Could any company registered in the State be exempt from making returns under the group financial returns the Minister of State mentioned?

Deputy Sean Sherlock: I am not sure I understand the question. This is effectively avoiding a duplication or proliferation of reporting mechanisms. The Deputy seems to seek greater clarity on those companies that are Irish-registered but non-resident companies. Section 301 reads: "Subject to its not having elected to prepare IFRS group financial statements and to *subsection (4)*, a holding company is exempt from the requirement to prepare group financial statements if the holding company (the "lower holding company") is itself a subsidiary undertaking and its holding undertaking is not established under the laws of an EEA state and one or other of the following cases applies." It continues to list exemptions and so on. I am trying to get to the nub of the question.

Deputy Jonathan O'Brien: Is every company registered in the State obliged to make returns regardless of whether it is a holding company or a subsidiary of a larger company that is non-resident?

Deputy Anthony Lawlor: Is the Deputy concerned about shelf companies?

Deputy Jonathan O'Brien: Basically, yes.

Deputy Anthony Lawlor: I believe we are dealing with that under the Finance Bill. During his Budget Statement, the Minister for Finance mentioned shelf companies that are using Ireland as a means of not paying tax - not all here but also elsewhere. I believe this is addressed under the Finance Bill to be discussed in the Dáil this week.

Deputy Sean Sherlock: I can get the Deputy a more comprehensive answer on the issue. It follows on, in effect, the theme of the other amendments on management and control. The Deputy earlier asked for the number of companies that are registered. We will come back to the Deputy with a more complete reply based on the questions he has asked.

Deputy Jonathan O'Brien: I would like to sit down with the Minister of State or someone from the Department in order that they could explain exactly the position about the information I am looking for.

Deputy Sean Sherlock: Every company or entity is required to make a return. The entirety of the operations are covered under the group financial statement. I gather that what Deputy O'Brien is getting at-----

Deputy Jonathan O'Brien: Are they exempt from scrutiny?

Deputy Sean Sherlock: Every company operating in Ireland has to be tax compliant in Ireland; there is no ambiguity about that. They have to provide a report. We can delve a little deeper into it.

Deputy Jonathan O'Brien: I am willing to leave it. This relates to the area of Irish-registered non-resident companies and I have a particular concern in several areas, not only in this area. Perhaps I will sit down with someone from the Department before Report Stage and explain exactly the issues I have.

Deputy Sean Sherlock: That is no problem.

Question put and agreed to.

Sections 302 to 305, inclusive, agreed to.

SECTION 306

Question proposed: “That section 306 stand part of the Bill.”

Deputy Dara Calleary: I have a quick question on the definition of shares. My understanding is that the definition of shares in section 306(5) applies to shares quoted on any securities or other markets referred to in section 1071. Under my reading, that would exclude shares quoted on the Nasdaq or the SEC. Therefore, if a director was to make gains on a company based on the Nasdaq or the SEC, those gains could be exempted from being disclosed. Is that the case?

Deputy Sean Sherlock: There is no proposed amendment here. The issue Deputy Calleary raises has been referred to the Company Law Review Group.

Deputy Dara Calleary: Will we have it by Report Stage or will this be in the son of the Bill?

Deputy Sean Sherlock: Truthfully, I do not anticipate that we will have it by Report Stage.

Deputy Dara Calleary: We may look at something ourselves.

Question put and agreed to.

Sections 307 to 320, inclusive, agreed to.

SECTION 321

Question proposed: “That section 321 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 321 on Report Stage. The purpose of the amendment is to limit its application to accounting standards.

Question put and agreed to.

Section 322 agreed to.

SECTION 323

Question proposed: “That section 323 stand part of the Bill.”

Deputy Dara Calleary: Section 323(1) is important because it relates to remuneration. Should we look for disclosure of audit fees? There is a vagueness relating to fees charged. Does the Minister of State believe company law should be consistent with the 2006 directive on statutory audits?

Deputy Sean Sherlock: The 2006 directive is not a maximum harmonisation directive and therefore there is no obligation under European Union law not to gold plate its provisions. The suggestion is, therefore, inessential given that the Bill’s provisions are drawn from existing law and that the proposed change would facilitate concealment of fees by falsely categorising them as expenses.

Question put and agreed to.

Sections 324 to 336, inclusive, agreed to.

SECTION 337

Question proposed: “That section 337 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 337 on Report Stage. The cross-referencing in the section is incorrect.

Question put and agreed to.

Sections 338 to 343, inclusive, agreed to.

SECTION 344

Deputy Sean Sherlock: I move amendment No. 67:

In page 348, to delete lines 34 and 35 and substitute the following:

“*sections 732 to 734* but—

(a) *subsection (10)* has effect as regards the interpretation of this subsection; and

(b) in addition to the foregoing, the exemption conferred by this subsection shall cease to apply where the company is not ultimately dissolved on foot of that procedure or, if it is dissolved on foot thereof, where it is subsequently restored to the register.

(10) For the purposes of *subsection (9)*, the period when the company is in the course of being voluntarily struck off the register by the Registrar pursuant to *sections 732 to 734* shall only be regarded as having commenced on the publication by the Registrar of a notice under *section 733* in relation to that application.”.

Amendment agreed to.

Section 344, as amended, agreed to.

Sections 345 agreed to.

SECTION 346

Question proposed: “That section 346 stand part of the Bill.”

Deputy Anthony Lawlor: The annual return is becoming something of an issue. Does the Minister of State have any views on this? It might not be a part of this because there are related proposals in the new Finance Bill. What are the implications with regard to bringing forward the tax year? Are there any related implications for this?

Deputy Sean Sherlock: It falls to a company to decide its own dates in that sense.

Question put and agreed to.

SECTION 347

Deputy Sean Sherlock: I move amendment No. 68:

SELECT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

In page 349, to delete lines 44 to 47 and in page 350, to delete lines 1 and 2 and substitute the following:

“(2) Save in the case of a company delivering its first annual return and subject to *subsections (3) and (4)*, a company may establish a new annual return date by delivering an annual return to the Registrar made up to its existing annual return date in accordance with *section 344(2)*, being an annual return—

(a) that is so delivered not later than 28 days after its existing annual return date; and

(b) to which there is annexed a notification in the prescribed form nominating the new annual return date, but, notwithstanding anything to the contrary in this Act, the company shall not be required to annex statutory financial statements, or the other documents referred to in *section 348(1)*, to such a return.”.

Amendment agreed to.

Question proposed: “That section 347, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am also considering introducing an amendment to section 347 on Report Stage to clarify the period during which a company may file a request to change the annual return date.

Question put and agreed to.

SECTION 348

Deputy Sean Sherlock: I move amendment No. 69:

In page 350, to delete lines 25 to 33 and substitute the following:

“annexed to the annual return a copy of the following documents that have been, or are to be, laid before the relevant general meeting—

(a) the statutory financial statements of the company;

(b) the directors’ report, including any group directors’ report; and

(c) the statutory auditors’ report on those financial statements and that directors’ report,

and “relevant general meeting” in this subsection means the general meeting of the company held during the period to which the annual return relates or, if the most recent statutory financial statements of the company and the other foregoing documents have not been required to be laid before such a meeting, the next general meeting held after the returns delivery to the Registrar before which those statements and other documents are required to be laid.”.

Amendment agreed to.

Section 348, as amended, agreed to.

Sections 349 and 350 agreed to.

SECTION 351

Question proposed: "That section 351 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment on Report Stage. The amendment relates to the incorrect cross-referencing in section 351(8).

Chairman: It is great to know that you are all awake.

Question put and agreed to.

Sections 352 to 356, inclusive, agreed to.

SECTION 357

Question proposed: "That section 357 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment on Report Stage. The purpose of the amendment is to clarify that in section 357(1)(a) the original statement of the auditors is required to be filed with the Companies Registration Office rather than a copy.

Question put and agreed to.

Sections 358 and 359 agreed to.

SECTION 360

Question proposed: "That section 360 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment on Report Stage to ensure that this exemption, which aims to provide small indigenous Irish companies with an audit exemption, is not inadvertently given to a small Irish parent company with substantial non-Irish subsidiaries.

Question put and agreed to.

Sections 361 to 365, inclusive, agreed to.

SECTION 366

Question proposed: "That section 366 stand part of the Bill."

Deputy Anthony Lawlor: I have a question for the Minister of State about the auditing of audit companies and auditors. Most of us here would have problems with auditing companies, especially the big four. Is what is being done here sufficiently strong to ensure the auditors themselves are being audited properly?

Chairman: Does this question pertain to section 366?

Deputy Anthony Lawlor: No, it is a general question on the previous chapter.

Chairman: The Minister of State might revert to members afterwards.

Deputy Sean Sherlock: The Irish Auditing and Accounting Supervisory Authority, which is a statutory body, is the umbrella organisation that has charge of or would monitor or audit the auditors in that sense. However, given the question has been raised, I am minded to revert

to the Deputy with a more complete answer on the exact question he asked, if that is all right.

Chairman: The Minister of State might also examine the presentation that same body made to the committee a number of weeks ago.

Deputy Sean Sherlock: Okay.

Chairman: He might so do in respect of the feedback to the Deputy on the issue.

Deputy Sean Sherlock: Did that body answer that question?

Chairman: It was more a case of it raising the question, as its representatives raised some concerns on that subject pertaining to Ireland's reputation abroad.

Deputy Sean Sherlock: Okay. It is proposed to strengthen that aspect and to change it to reflect the concerns.

Question put and agreed to.

Sections 367 to 370, inclusive, agreed to.

SECTION 371

Question proposed: "That section 371 stand part of the Bill."

Deputy Dara Calleary: The language in section 371 is quite vague in comparison with the language in sections 367 to 369, inclusive, as to what are the limitations of an audit opinion. My worry is that the section would be used to dilute the requirements of sections 367 to 369, inclusive. Does the Minister of State have thoughts on this with regard to Report Stage?

Deputy Sean Sherlock: I can take a look at that before Report Stage. Is there particular language that must be built into it?

Deputy Dara Calleary: The provisions of section 371 refer to how an audit opinion is valid "from the date of signature" and I believe there is a lack of clarity in section 37(5) as to the meaning of what is "a true and fair view as at the date [of] the original ... financial statements", whereas section 367 is quite precise regarding dates in respect of the original statutory statement. The worry is that section 371 allows for a material event to be missed or to be excluded from the final revised accounts, whereas sections 367 to 369, inclusive, are quite specific.

Deputy Sean Sherlock: While this matter has been referred to the company law review group, I will give the Deputy some thoughts on it here. The question effectively pertains to the requirement that an audit give a true and fair view sufficiently robust to ensure accurate accounting. That is the aspect.

Deputy Dara Calleary: I also have concerns that a revised order not miss some material event that happened when the original financial statements were prepared.

Deputy Sean Sherlock: Fair enough. As EU law requires that statutory audits give a true and fair view, this already is inherent within EU law. While I will not go into the particulars of the directive, Article 35 states "an audit opinion, which shall be either unqualified, qualified or an adverse opinion and shall state clearly the opinion of the statutory auditor ... as to whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework". Thus, any change to the current phrasing in section 337 could con-

travene EU law. On the question of the revised audit and begging the committee's indulgence, I propose to revert to it on Report Stage with a fuller response.

Question put and agreed to.

Sections 372 to 376, inclusive, agreed to.

SECTION 377

Deputy Sean Sherlock: I move amendment No. 70:

In page 376, between lines 40 and 41, to insert the following:

“(6) If the original statutory financial statements or directors’ report in respect of the company have been registered by the Registrar prior to the date of receipt by the Registrar of the revised financial statements or (as the case may be) the revised directors’ report, then, despite anything in *section 374(2)*, this section shall operate so as to require—

(a) that the revised financial statements or (as the case may be) the revised directors’ report be placed on the register; and

(b) notwithstanding the taking of such action, that the original statutory financial statements or directors’ report continue to remain on the register.”.

Amendment agreed to.

Section 377, as amended, agreed to.

Sections 378 to 403, inclusive, agreed to.

SECTION 404

Chairman: Amendments Nos. 71, 72, 93 to 96, inclusive, 98, 100, 122, 149 and 150 are related and may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 71:

In page 393, line 13, to delete “1 month” and substitute “30 days”.

Amendment agreed to.

Section 404, as amended, agreed to.

SECTION 405

Deputy Sean Sherlock: I move amendment No. 72:

In page 394, line 3, to delete “1 month” and substitute “30 days”.

Amendment agreed to.

Section 405, as amended, agreed to.

Sections 406 to 408, inclusive, agreed to.

NEW SECTION

Chairman: Amendment No. 73 involves a new section and acceptance of it involves the deletion of section 409 of the Bill. Amendments Nos. 74 to 79, inclusive, are related to amendment No. 73 and will be discussed together.

Deputy Sean Sherlock: I move amendment No. 73:

In page 396, between lines 4 and 5, to insert the following:

“Definitions (Part 7)

409. In this Part—

“charge”, in relation to a company, means a mortgage or a charge, in an agreement (written or oral), that is created over an interest in any property of the company (and in *section 410(8)* and *sections 415 to 422* includes a judgment mortgage) but does not include a mortgage or a charge, in an agreement (written or oral), that is created over an interest in—

(a) cash;

(b) money credited to an account of a financial institution, or any other deposits, shares, bonds or debt instruments;

(c) units in collective investment undertakings or money market instruments; or

(d) claims and rights (such as dividends or interest) in respect of any thing referred to in any of the foregoing paragraphs;

“property”, in relation to a company, includes any assets or undertaking of the company.”.

I also am considering the introduction of an amendment to section 409 on Report Stage to address any ambiguity as regards the definition of a charge.

Amendment agreed to.

Section 409 deleted.

SECTION 410

Question proposed: “That section 410 stand part of the Bill.”

Deputy Sean Sherlock: I propose to table another amendment on Report Stage to section 410 on the issue of charges that comprise property outside of the State.

Question put and agreed to.

Sections 411 and 412 agreed to.

SECTION 413

Deputy Sean Sherlock: I move amendment No. 74:

In page 399, line 13, to delete “or undertaking”.

Amendment agreed to.

Question proposed: “That section 413, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I propose to make another amendment to section 413 on Report Stage to include requirements regarding floating charges and the crystallisation of charges, deal with the payment of proceeds to be made into a special designated account, modify the definition of negative pledges, deal with issues relating to the priority of charges and clarify how priority of charges will be provided for.

Question put and agreed to.

SECTION 414

Question proposed: “That section 414 stand part of the Bill.”

Deputy Sean Sherlock: We are proposing further amendments on Report Stage to section 414 to allow the Minister to prescribe forms from time to time and to delete subsection (6) with a view to clarifying that the priority of judgment mortgage is governed by the Land and Conveyancing Law Reform Act 2009.

Question put and agreed to.

Section 415 agreed to.

SECTION 416

Deputy Sean Sherlock: I move amendment No. 75:

In page 401, line 29, to delete “In *subsection (3)*” and substitute the following:

“Without prejudice to the generality of the definition, in *section 409*, of that expression, in *subsection (3)*”.

Amendment agreed to.

Section 416, as amended, agreed to.

SECTION 417

Deputy Sean Sherlock: I move amendment No. 76:

In page 401, line 36, to delete “or undertaking”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 77:

In page 401, line 38, to delete “or undertaking”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 78:

In page 402, line 1, to delete “or undertaking”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 79:

In page 402, line 3, to delete “or undertaking”.

Amendment agreed to.

Question proposed: “That section 417, as amended, stand part of the Bill.”

Deputy Sean Sherlock: We are considering introducing an amendment to section 417, as amended, on Report Stage to allow notice of satisfaction of a charge to be served upon the person registered as entitled to the charge where the Companies Registration Office has been statutorily notified there has been a change of lender.

Deputy Dara Calleary: We are looking to amend section 417, as amended, on Report Stage as well.

Question put and agreed to.

Sections 418 to 420, inclusive, agreed to.

SECTION 421

Question proposed: “That section 421 stand part of the Bill.”

Deputy Sean Sherlock: We are considering introducing an amendment to section 421 on Report Stage to clarify the wording as regards charges created and-or registered before the commencement of the relevant provisions of the Bill.

Question put and agreed to.

Section 422 agreed to.

SECTION 423

Question proposed: “That section 423 stand part of the Bill.”

Deputy Dara Calleary: We propose to table amendments to all the sections in this chapter.

Chairman: Will the Deputy give a brief indication of the content of the amendments?

Deputy Dara Calleary: Our proposed amendments will address property charges generally.

Question put and agreed to.

Sections 424 to 431, inclusive, agreed to.

SECTION 432

Question proposed: “That section 432 stand part of the Bill.”

Deputy Sean Sherlock: We are considering introducing an amendment to section 432 on Report Stage to remove the mandatory requirement for the secretary to sign the statement of affairs.

Deputy Dara Calleary: Why?

Deputy Sean Sherlock: The secretary is not mandated to be qualified, if I understand that correctly, before the law to sign the statement of affairs. If members bear with me, I will get an explanation.

Deputy Dara Calleary: We can come back to this point.

Chairman: Should members wish, we can go into private session to discuss the matter.

Deputy Dara Calleary: No.

Deputy Sean Sherlock: There should be no mandatory requirement on a person, being the secretary, in the absence of such knowledge to sign a statement of affairs. The secretary may not have the qualifications to have a mandatory obligation to sign a statement of affairs.

Deputy Dara Calleary: If the Minister of State is referring to the post of company secretary, surely the person should have the qualifications to serve as company secretary, given that he or she will be responsible for compliance with the legislation.

Deputy Sean Sherlock: I will arrange a briefing on this before Report Stage.

Deputy Dara Calleary: I do not wish to delay the meeting, but it seems that an important check is being dropped. I would appreciate a briefing before Report Stage.

Deputy Anthony Lawlor: This legislation may apply to the voluntary sector which may have a volunteer working as company secretary. That may be a reason to cover that sphere. I share Deputy Calleary's concerns. I can see the reason this would apply to voluntary companies but not to professional companies.

Deputy Sean Sherlock: The duty to sign the statement of affairs falls to the director and not the secretary.

Deputy Dara Calleary: The company secretary is often a director.

Deputy Sean Sherlock: In that case he or she can sign the statement of affairs as a director and not as secretary.

Deputy Dara Calleary: I think we need to discuss the issue before Report Stage.

Deputy Sean Sherlock: I agree. Chairman, we will have a further discussion on this before Report Stage.

Chairman: I would be happy to adjourn for a few minutes to discuss it now.

Deputy Dara Calleary: No.

Chairman: As the members are happy enough, we will proceed.

Question put and agreed to.

Sections 433 to 436, inclusive, agreed to.

SECTION 437

Deputy Sean Sherlock: I move amendment No. 80:

In page 412, line 34, to delete “the CRO Gazette” and substitute “*Iris Oifigiúil*”.

Amendment agreed to.

Section 437, as amended, agreed to.

SECTION 438

Question proposed: “That section 438 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 438 on Report Stage. The purpose of the amendment is to provide precision in relation to a receiver’s statutory power to borrow money only on the security of the company over which he or she has been appointed.

Question put and agreed to.

Sections 439 to 450, inclusive, agreed to.

SECTION 451

Question proposed: “That section 451 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 451 on Report Stage, the purpose of which is to clarify in subsection (3) that a court may on application and at any time order a scheme of meetings of the creditors or members to be summonsed in such a manner as the court directs.

Question put and agreed to.

Sections 452 to 455, inclusive, agreed to.

SECTION 456

Question proposed: “That section 456 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 456 on Report Stage to reflect existing law regarding the undertaking, assets and liabilities of a company in the reconstruction and amalgamation of a company.

Question put and agreed to.

SECTION 457

Question proposed: “That section 457 stand part of the Bill.”

Deputy Sean Sherlock: Again, I am considering the introduction of an amendment to section 457 on Report Stage to remove the specific cross-reference to Chapter 15 of Part 11.

Question put and agreed to.

Sections 458 and 459 agreed to.

SECTION 460

Deputy Sean Sherlock: I move amendment No. 81:

In page 432, line 8, to delete “the CRO Gazette” and substitute “*Iris Oifigiúil*”.

Amendment agreed to.

Question proposed: “That section 460, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 460 on Report Stage to provide for electronic communications and signatures, specify a time period within which subsection (5) must be complied with, and revise any cross-reference to instances in which a call notice has been served.

Question put and agreed to.

Sections 461 and 462 agreed to.

SECTION 463

Question proposed: “That section 463 stand part of the Bill.”

Deputy Sean Sherlock: I intend to propose an amendment to sections 463 and 487 on Report Stage. This may also involve amendments to Parts 16 and 19 as the purpose of the amendment is to clarify that the provisions relating to mergers may apply to unlimited companies and-or designated activity companies.

Question put and agreed to.

Sections 464 to 468, inclusive, agreed to.

SECTION 469

Question proposed: “That section 469 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to sections 469 and 493 on Report Stage. The purpose of this amendment would be to revert to the use of independent person. This would be to ensure the section was consistent with the provisions of Article 10 of Directive 2011/35/EU and Article 8 of Directive 82/89/EEC.

Question put and agreed to.

Section 470 agreed to.

SECTION 471

Chairman: Amendments Nos. 82 and 83 are related and may be discussed together.

Deputy Sean Sherlock: I move amendment No. 82:

In page 441, line 14, to delete “*subsection (5)*” and substitute “*subsections (4)(a) and (5)*”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 83:

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In page 442, to delete lines 1 to 9 and substitute the following:

“(4) With regard to *subsections (1) and (2)* -

(a) compliance with those subsections is not required in a case where the Summary Approval Procedure is employed to effect the merger; and

(b) subject to that, those subsections shall be complied with by each of the merging companies at least 30 days before the date of the passing of the resolution on the common draft terms of merger by each such company in accordance with *section 474*.”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 84:

In page 442, line 20, to delete “2 daily newspapers” and substitute “1 daily newspaper”.

Amendment agreed to.

Section 471, as amended, agreed to.

SECTION 472

Deputy Sean Sherlock: I move amendment No. 85:

In page 442, line 38, after “absorption” to insert “or in any other case where such a report is not required to be prepared by that section”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 86:

In page 443, lines 30 to 33, to delete all words from and including “before” in line 30 down to and including “date.” in line 33 and substitute the following:

“before-

(a) where the Summary Approval Procedure is employed to effect the merger, the date of the resolution referred to in *section 203(1)(a)(ii)* of the company; and

(b) where that procedure is not employed for that purpose, the date of the general meeting of the company which, by virtue of *section 474*, is to consider the common draft terms of merger,

and ending at least 30 days after that date.”.

Amendment agreed to.

Question proposed: “That section 472, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 472 on Report Stage to relieve companies from the requirement to make certain documents available for physical inspection where the documents are made available free of charge on their websites.

Question put and agreed to.

SECTION 473

Question proposed: “That section 473 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 473 on Report Stage to introduce a reference to the application of section 480 where the summary approval procedure is employed.

Question put and agreed to.

SECTION 474

Deputy Sean Sherlock: I move amendment No. 87:

In page 444, line 32, after “471(2)(b)” to insert “or, as the case may be, the notice in the daily newspapers referred to in *section 471(5)(b)*”.

Amendment agreed to.

Section 474, as amended, agreed to.

Sections 475 to 504, inclusive, agreed to.

SECTION 505

Question proposed: “That section stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to Part 9 on Report Stage to remove references to the company not having been formed for the purpose of the operation in the context of mergers by acquisition.

Question put and agreed to.

Sections 506 to 531, inclusive, agreed to.

SECTION 532

Deputy Sean Sherlock: I move amendment No. 88:

In page 488, line 7, to delete “the CRO Gazette” and substitute “*Iris Oifigiúil*”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 89:

In page 488, lines 13, to delete “the CRO Gazette” and substitute “*Iris Oifigiúil*”.

Amendment agreed to.

Section 532, as amended, agreed to.

Sections 533 to 544, inclusive, agreed to.

SECTION 545

Chairman: We agreed earlier that we would break for lunch.

Deputy Sean Sherlock: Can we finish this section?

Chairman: We can if the Minister of State wishes. Are members agreeable to continue for a while? Agreed.

Question proposed: "That section 545 stand part of the Bill."

Deputy Dara Calleary: We will be looking at tabling amendments to section 545 on leases for Report Stage.

Question put and agreed to.

Sections 546 to 558, inclusive, agreed to.

SECTION 559

Question proposed: "That section 559 stand part of the Bill."

Deputy Sean Sherlock: The members may wish to note that some of the innovations in this Part will be provided for in the Companies (Miscellaneous Provisions) Bill 2013. I am sorry. I was going a bit too far in my reading note but some of the issues raised earlier in regard to auditing are covered by this Bill.

I remind the members that the jurisdiction of the Circuit Court in regard to examinership will be extended to small companies as part of section 3 of the Bill. This will create a requirement to make certain amendments to this Bill to ensure that this Bill fully consolidates what by then will be existing law. I propose to bring forward the necessary amendments on Report Stage.

Question put and agreed to.

Sitting suspended at 1.05 p.m. and resumed at 2 p.m.

Section 560 agreed to.

SECTION 561

Question proposed: "That section 561 stand part of the Bill."

Deputy Anthony Lawlor: Sections 561 and 562 are the shortest sections in the whole Bill.

Chairman: Does the Deputy wish to propose an amendment on Report Stage?

Deputy Anthony Lawlor: I ask that all sections be as short.

Deputy Seán Sherlock: Agreed.

Chairman: I think we will take note of that.

Question put and agreed to.

Sections 562 to 581, inclusive, agreed to.

SECTION 582

COMPANIES BILL 2012: COMMITTEE STAGE

Deputy Sean Sherlock: To be clear, perhaps I misheard the Chairman, but did he refer to sections 572 to 578, inclusive?

Chairman: Yes, collectively.

Deputy Sean Sherlock: Sorry, it was my fault.

I move amendment No. 90:

In page 515, line 16, to delete “the CRO Gazette” and substitute “*Iris Oifigiúil*”.

Chairman: This amendment was discussed with amendment No. 29.

Amendment agreed to.

Section 582, as amended, agreed to.

SECTION 583

Question proposed: “That section 583 stand part of the Bill.”

Deputy Dara Calleary: Has consultation taken place with the Department of Finance on the Construction Contracts Bill and its ability to dovetail some of the provisions in the Bill for the protection of creditors, services and so on?

Deputy Sean Sherlock: The answer is “no”, because the sections are unchanged from existing law.

Deputy Dara Calleary: Does the protection which the Construction Contracts Bill hopes to give to subcontractors have any impact on the section?

Deputy Sean Sherlock: It should not have any impact as the section is unchanged and, therefore, the existing law pertains.

Deputy Dara Calleary: I thank the Minister of State.

Question put and agreed to.

Section 584 agreed to.

SECTION 585

Deputy Sean Sherlock: I move amendment No. 91:

In page 516, lines 32 and 33, to delete “the CRO Gazette” and substitute “*Iris Oifigiúil*”.

Amendment agreed to.

Section 585, as amended, agreed to.

Sections 586 to 593, inclusive, agreed to.

SECTION 594

Question proposed: “That section 594 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 594 on

Report Stage to remove the mandatory requirement for the secretary to sign the statement of affairs. This is as per the previous amendment.

Question put and agreed to.

Sections 595 to 606, inclusive, agreed to.

SECTION 607

Question proposed: “That section 607 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 607 on Report Stage to provide that an execution of a judgment mortgage shall be deemed to be completed upon the registration of the judgment mortgage.

Question put and agreed to.

Sections 608 to 617, inclusive, agreed to.

SECTION 618

Question proposed: “That section 618 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 618 on Report Stage to reflect the payment of stamp duty as a necessary expense to be incurred in the winding up process.

Question put and agreed to.

Sections 619 to 621, inclusive, agreed to.

SECTION 622

Deputy Sean Sherlock: I move amendment No. 92:

In page 546, to delete lines 13 to 28 and substitute the following:

“(ii) each tax assessable on, in relation to, or by the company under the Taxes Consolidation Act 1997 in respect of the period, ending on or before the relevant date, for which the tax concerned is due and payable, but limited to—

(I) if there is one such tax, the amount in respect of the period of 12 months next ended on or before that date, or

(II) if there is more than one such tax, the aggregate of the amounts in respect of the respective periods of 12 months next ended on or before that date,

for which the foregoing tax or taxes is or are due and payable;

(iii) any amount due at the relevant date in respect of sums for which an employer is liable under Part 18D or Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 and regulations thereunder to deduct from emoluments to which that Part or Chapter applies paid by that employer during the period of 12 months next ended on or before the relevant date reduced by any amount which that employer was under that Part or Chapter and regulations thereunder liable to repay during that period, with the addition of interest

payable under section 991 of that Act;

(iv) any tax and interest for which the company is liable under the Value-Added Tax Consolidation Act 2010 in relation to taxable periods which shall have ended within the period of 12 months next ended before the relevant date;

(v) any local property tax that the company is liable to remit to the Revenue Commissioners under section 74 of the Finance (Local Property Tax) Act 2012 during the period of 12 months next ended before the relevant date and any interest payable in relation to that tax under section 149 of that Act;

(vi) an amount of local property tax payable, under section 16 of the Finance (Local Property Tax) Act 2012, by the company at the relevant date to the extent that such tax is payable in respect of any one liability date (within the meaning of section 2 of that Act) falling before the relevant date and any interest payable in relation to that tax under section 149 of that Act;”.

Deputy Dara Calleary: Will the Minister give the background to this amendment?

Deputy Sean Sherlock: The purpose of the amendment is to include in preferential payments a number of new taxes. It also accommodates the increasing reliance on self-assessment and tax law by changing “assessed taxes” to “assessable taxes”. While this amendment makes small changes to the substance of the law it does not represent a change in policy. It simply updates the Bill where it no longer represents current practice in tax law.

Deputy Dara Calleary: What is the difference between “assessed” and “assessable”?

Deputy Sean Sherlock: “Assessed” is past tense; “assessable” is future tense.

(Interruptions).

Deputy Dara Calleary: I am with Deputy Lawlor-----

Chairman: In two years time I will assess the members on this Bill and ask questions, and we will see how we get on.

Amendment agreed to.

Question proposed: “That section 622, as amended, stand part of the Bill.”

Deputy Sean Sherlock: A further amendment will be necessary, the purpose of which is to further reflect on the 12 months priority period in section 622(2)(a)(ii).

Chairman: Are members okay with that?

Question put and agreed to.

Sections 623 to 633, inclusive, agreed to.

SECTION 634

Question proposed: “That section 634 stand part of the Bill.”

Deputy Dara Calleary: Section 634 raises a broader issue on which I will take the Chairman’s guidance. The Minister speaks of prescribed accountancy bodies yet there is no section

in the legislation that gives protection to those same accountants in terms of the use of that title. I have been trying to find out where we could bring it up but this is a good start. I will take the Chairman's direction if it should come somewhere else. There is nothing to stop any of us saying we are a prescribed accountant other than we do not have a membership certificate.

Chairman: This is an issue on which we had representation here on Committee Stage a number of weeks ago. Many members would be very concerned about this. Discussions have taken place with the Minister, Deputy Bruton, and some of the officials also. It is something members would like to see in this Bill. It might be dealt with on Report Stage but if there is no-----

Deputy Dara Calleary: There is no natural home for it but prescribed accountancy bodies in terms of qualifications is referenced throughout the Bill and we need to discuss the notion. The Chairman may want to keep to the sequence in which we are dealing with the Bill but I want to flag it as a major concern.

Deputy Sean Sherlock: On that issue, I understand the Minister, Deputy Bruton, has signalled his intention to meet with the Chairman or committee members to discuss this issue further. If the Chairman and the members are agreeable we would proceed with that meeting to try to address the issue.

Deputy Dara Calleary: If we have not had that meeting before Report Stage we will have to come up with something to reflect the concern of everybody in terms of amendments.

Chairman: I think the Minister is agreeable to have a meeting on it.

Deputy Dara Calleary: Yes.

Question put and agreed to.

Sections 635 to 640, inclusive, agreed to.

Deputy Anthony Lawlor: I do not think we dealt with section 635.

Chairman: We did so after Deputy Calleary raised the question. It is great to see that the Deputy is on the ball.

Deputy Anthony Lawlor: I would not like it brought up subsequently that it was not agreed on Committee Stage.

Deputy Sean Sherlock: It will be in the Official Report.

Sections 641 to 672, inclusive, agreed to.

SECTION 673

Chairman: Amendment No. 93 is in the name of the Minister. The amendment was previously discussed with amendment No. 71.

Deputy Sean Sherlock: I move amendment No. 93:

In page 584, line 31, to delete "one month" and substitute "30 days".

Amendment agreed to.

Section 673, as amended, agreed to.

Sections 674 to 705, inclusive, agreed to.

SECTION 706

Chairman: Amendment No. 94 is in the name of the Minister. The amendment was discussed previously with amendment No. 71.

Deputy Sean Sherlock: I move amendment No. 94:

In page 600, line 8, to delete “90 days” and substitute “3 months”.

Amendment agreed to.

Section 706, as amended, agreed to.

SECTION 707

Deputy Sean Sherlock: I move amendment No. 95:

In page 601, line 12, to delete “90 days” and substitute “3 months”.

Amendment agreed to.

Section 707, as amended, agreed to.

SECTION 708

Deputy Sean Sherlock: I move amendment No. 96:

In page 601, line 37, to delete “3 years” and substitute “6 years”.

Deputy Dara Calleary: What is the reason for increasing the period from three to six years?

Chairman: We have discussed the matter but that was a while ago. Is it okay if we defer the matter until the end?

Deputy Dara Calleary: All right.

Deputy Sean Sherlock: The purpose of the amendment is to increase the period for retention of documents from three to six years.

Deputy Dara Calleary: Fair enough.

Amendment agreed to.

Question proposed: “That section 708, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 708 on Report Stage to increase the three year retention period for accounting records.

Question put and agreed to.

Sections 709 to 711, inclusive, agreed to.

SECTION 712

Deputy Sean Sherlock: I move amendment No. 97:

In page 603, line 10, to delete “the CRO Gazette” and substitute “*Iris Oifigiúil*”.

Amendment agreed to.

Section 712, as amended, agreed to.

Sections 713 to 719, inclusive, agreed to.

SECTION 720

Deputy Sean Sherlock: I move amendment No. 98:

In page 605, line 43, to delete “a month” and substitute “30 days”.

Amendment agreed to.

Section 720, as amended, agreed to.

Sections 721 to 725, inclusive, agreed to.

SECTION 726

Question proposed: “That section 726 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to Part 12 on Report Stage to address the restoration of companies that are stuck off and dissolved prior to the enactment of the Bill or during the transition period and to deal with the restoration of companies after the end of the transition period.

Deputy Anthony Lawlor: How long will the transition period last?

Deputy Sean Sherlock: It is 18 months.

Deputy Anthony Lawlor: Is that from the time the Bill is enacted to when companies must comply with the legislation?

Deputy Sean Sherlock: Yes. From the time of commencement of the Bill.

Deputy Anthony Lawlor: Commencement?

Deputy Sean Sherlock: Yes.

Deputy Anthony Lawlor: Is that from enactment to commencement?

Chairman: Yes.

Deputy Sean Sherlock: I cannot give Deputy Lawlor a definitive answer but it is normally between three and six months.

Deputy Anthony Lawlor: Are we talking about two years between the enactment of the Bill and companies complying with the Bill?

Chairman: During some of the presentations to the committee a desire was expressed, be-

cause it was needed, for a period of three to six months between enactment and commencement. That was evident at committee hearings.

Deputy Anthony Lawlor: The Minister of State has mentioned that 18 months may elapse between commencement and enactment, basically two years.

Chairman: I meant to say at the start of the session that we have agreed, with the Minister of State and his colleagues, that we will have one or two briefing sessions after Committee Stage but before Report Stage reaches the Dáil, as we did originally. That will give us an opportunity to go through all of the proposed amendments for Report Stage. We can also discuss any other information and matters similar to this one. Members will have an opportunity to discuss all of those matters at a briefing session, if that is agreeable to them. We can add the transition period to the list for discussion, if need be.

Deputy Sean Sherlock: If Deputy Lawlor articulates a specific concern about the time-frame to us we will be happy to deal with it again at the briefing to be held before Report Stage and we will revert to the Deputy. We can give him assistance if he is concerned about an 18 month period.

Deputy Anthony Lawlor: No, I just want to find out about the matter. The period seems long, particularly when there is not much new material in the section, which seems to be an amalgamation of a wide range of legislation. Do we need to provide such a lengthy period for companies to comply with the legislation?

Deputy Sean Sherlock: The maximum period is 18 months but it can be done straight away. Let us remember that the provision addresses the “restoration of companies that are struck off and dissolved prior to the enactment of the Bill or during the transition period and to deal with the restoration of companies after the end of the transition period.” That lasts for up to 18 months or so but a company could move more quickly.

Deputy Anthony Lawlor: I said that it was about the whole Bill.

Chairman: Yes, Deputy Lawlor’s point relates to the entire Bill, not just the proposal.

Deputy Anthony Lawlor: Yes, my query is not just on this specific issue but the whole Bill.

Deputy Sean Sherlock: I understand that the committee hearings may have dealt with the matter but perhaps they have not. I ask the Chairman to clarify the matter. The business community sought a certain transition period.

Chairman: Yes, after enactment.

Deputy Sean Sherlock: Exactly.

Chairman: But before the commencement of the Bill.

Deputy Sean Sherlock: Yes.

Chairman: Thereafter we did not discuss the transition period. Perhaps the Minister of State could supply us with the reason for having such a long transition period.

Deputy Sean Sherlock: Yes.

Chairman: Deputy Lawlor made a fair point that a lot of the Bill consolidates what was already in existence.

Deputy Sean Sherlock: Yes.

Deputy Anthony Lawlor: Fair enough.

Question put and agreed to.

Sections 727 to 731, inclusive, agreed to.

SECTION 732

Question proposed: "That section 732 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 732 on Report Stage to extend the time limit on the Revenue Commissioner's right to object to a company being struck off.

Deputy Dara Calleary: What is the current time limit?

Deputy Sean Sherlock: The current time limit is six months.

Deputy Dara Calleary: Why extend the time limit? Six months is a long time to wait for the Revenue Commissioners to take a view of a company.

Deputy Sean Sherlock: It has increased from six months now but it was 30 days in the Bill and the amendment will push it to three months.

Chairman: The net effect is to reduce the time overall.

Deputy Dara Calleary: All right, a reduction in time.

Chairman: Yes.

Deputy Sean Sherlock: It has increased from six to three months.

Deputy Dara Calleary: All right.

Deputy Sean Sherlock: The Bill stated 30 days so one could argue that it will split the difference with Revenue.

Deputy Anthony Lawlor: I hate being pedantic but how will that happen? Was an error made?

Deputy Sean Sherlock: I know that the Deputy is not being pedantic by posing his question. As he will know, in the case of any Bill consultations take place with a number of stakeholders. There may be a departmental view, there will be a CRO view and there may even be a Revenue view on the matter. The original figure is six months but, following consultation with various stakeholders, it was felt that a figure of three months would be the most expeditious period, rather than 30 days.

Deputy Dara Calleary: Is it six months at the moment?

Deputy Sean Sherlock: At the moment it is six months.

Deputy Dara Calleary: All right.

Deputy Sean Sherlock: The Bill suggested 30 days.

Deputy Anthony Lawlor: Why insert “30 days”? I do not understand the rationale.

Deputy Dara Calleary: It seems to be a departmental concern.

Chairman: Invariably it is for the clarity of the process. That is the joy of having a number of months to debate Committee Stage, it allows us to table amendments and make changes. The Department has held many consultations on the Bill, outside of the committee, and has made suggestions.

Deputy Dara Calleary: It is political.

Deputy Anthony Lawlor: I do not disagree with the proposal.

Question put and agreed to.

Sections 733 to 743, inclusive, agreed to.

SECTION 744

Question proposed: “That section 744 stand part of the Bill.”

Deputy Dara Calleary: Has either the Department or the Company Law Review Group examined the possibility of the District Court taking applications to restore a company? Use of the Circuit Court is, by its very nature, not a regular occurrence. The District Court might be a more immediate remedy, particularly from a cost point of view.

Deputy Sean Sherlock: It is deemed that the District Court is unsuitable for this type of legislation. May I beg the committee’s indulgence to give a further explanation?

Deputy Dara Calleary: Absolutely.

Chairman: In the briefing session. If members do not mind, we will enter private session for a couple of minutes to discuss a couple of issues. Is that agreed? Agreed.

The select committee went into private session at 2.30 p.m. and resumed in public session at 2.32 p.m.

Question put and agreed to.

Sections 745 to 761, inclusive, agreed to.

SECTION 762

Question proposed: “That section 762 stand part of the Bill.”

Deputy Sean Sherlock: We propose to introduce an amendment to section 762 on Report Stage to insert after paragraph (b) “or by virtue of the Director’s functions under the law” in order to acknowledge that the Director of Corporate Enforcement may obtain information or documents in the exercise of his or her functions under the law.

Question put and agreed to.

SECTION 763

Question proposed: “That section 763 stand part of the Bill.”

Chairman: We will discuss sections 763 to 770, inclusive, together.

Deputy Dara Calleary: This range touches on a matter that has been particularly relevant in recent years. Will there be new legislative initiatives on share dealings and inspectors’ reports in this session?

Deputy Sean Sherlock: To which section is the Deputy referring?

Deputy Dara Calleary: Generally, given what we have been through in recent years as regards company reports and share dealings.

Deputy Sean Sherlock: Effectively, Part 13 substantially re-enacts without any significant amendment the law regarding the appointment of inspectors to companies and seeks to codify all of the law relating to the investigation of companies. Therefore, the principal changes are the updating of definitions and terminology, facilitating access to the investigation procedure for small and medium-sized enterprises, SMEs, facilitating the work of the Office of the Director of Corporate Enforcement, ODCE, by empowering the court to make orders in respect of a variety of matters under the Part and, importantly, removing administrative burdens. In that sense, the answer to the Deputy’s question is “Yes”.

Question put and agreed to.

Sections 764 to 770, inclusive, agreed to.

SECTION 771

Deputy Sean Sherlock: I move amendment No. 99:

In page 635, line 24, to delete “the CRO Gazette” and substitute “*Iris Oifigiúil*”.

Amendment agreed to.

Section 771, as amended, agreed to.

Sections 772 to 779, inclusive, agreed to.

SECTION 780

Question proposed: “That section 780 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 780 on Report Stage to correct an error and reflect the existing law by deleting the text “have been or are likely to be unlawful” in paragraph (i) and inserting the text “have been, are or are likely to be unlawful”.

Chairman: Will we get the Minister of State to repeat that?

Deputy Anthony Lawlor: Say it faster.

Deputy Sean Sherlock: For Deputy Lawlor’s purposes, we are being a little bit pedantic.

Question put and agreed to.

Sections 781 to 787, inclusive, agreed to.

SECTION 788

Deputy Sean Sherlock: I move amendment No. 100:

In page 645, line 42, to delete “1 month” and substitute “30 days”.

Amendment agreed to.

Question proposed: “That section 788, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 788 on Report Stage to ensure continuity upon the death, retirement or transfer of a person fulfilling the role of designated officer in an investigation.

Question put and agreed to.

Sections 789 to 792, inclusive, agreed to.

SECTION 793

Question proposed: “That section 793 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 793 on Report Stage to include the Revenue Commissioners in the list of competent authorities.

Question put and agreed to.

Sections 794 to 797, inclusive, agreed to.

SECTION 798

Question proposed: “That section 798 stand part of the Bill.”

Deputy Seán Kyne: My query is similar to Deputy Calleary’s. I have not had time to go through this section, as I did not believe that we would get through the Bill so quickly. What is new in this Part in terms of compliance and enforcement? Clearly, what we have has proven not to have worked well, given the events of recent years.

Deputy Sean Sherlock: Has the Deputy reverted to Part 13?

Deputy Seán Kyne: Generally on Part 14, compliance and enforcement, rather than on a specific section.

Deputy Sean Sherlock: It brings together the various compliance and enforcement provisions found in existing legislation, a change that will provide greater transparency. The giving and acceptance of restriction and disqualification undertakings from directors are facilitated, thereby saving costs and court time. One of the Bill’s most far-reaching reforms involves the introduction of a new four-tier categorisation of offences. This follows on from a recommendation of the Company Law Review Group, CLRG. It is proposed that, except for the most serious offences, namely, fraudulent trading and market abuse, all offences under the Companies Acts should be categorised according to this four-tier scheme.

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At the higher end of the scale, category 1 offences carry, following conviction on indictment, a term of imprisonment of up to ten years and-or a €500,000 fine. A further new provision allows a trial court to order a person convicted under the Bill to remedy any breach thereof in respect of which he or she is convicted.

Deputy Seán Kyne: Would it be possible to have any new provisions in this Part highlighted as we progress through it?

Chairman: Yes.

Deputy Sean Sherlock: One of the questions that has arisen in relation to this section is around prosecutions of breaches of company law and whether the Bill will rectify this issue. The answer to that is that corporate offences are by their nature difficult to investigate. The fact that white collar criminals have gotten off lightly in the wake of the economic crisis should not lead to the conclusion that the law is flawed. Corporate criminal investigations often require the gathering and examination of large volumes of complex documentation, which can be painstaking and time consuming and necessitates wide consultation with experts, including forensic accountants and lawyers. Equally, people may be unwilling to give evidence voluntarily in circumstances where they have worked with or have close business ties to an alleged offender. As a criminal must be proven guilty beyond all reasonable doubt, many plausible cases of wrongdoing will never be successfully prosecuted. This must be taken into account in terms of the context of this section.

Section 798 as drafted under existing law is unchanged.

Question put and agreed to.

SECTION 799

Question proposed: “That section 799 stand part of the Bill.”

Deputy Sean Sherlock: This section is also substantially unchanged from that provided in existing law. However, the court may make an order restraining a company or an officer of the company from removing his or her assets from the State or reducing those assets below a specified amount. This extends to the current law in that it also applies to the company and not, as provided under existing law, only to officers of a company. The circumstances in which an injunction can be granted are now limited to cases where the primary cause of action also arises under this Bill. Alternatively, the cause of action must arise under the provisions of the constitution of the company or relate to the holding of an office of the company.

Question put and agreed to.

SECTION 800

Question proposed: “That section 800 stand part of the Bill.”

Deputy Sean Sherlock: This is a new section, the purpose of which is to give guidance on the meaning of the terms “disclosure order” and “share acquisition agreement” under this Part.

Question put and agreed to.

Sections 801 to 809, inclusive, agreed to.

SECTION 810

Question proposed: "That section 810 stand part of the Bill."

Deputy Sean Sherlock: Again, this is a new section, the purpose of which is to give the court a supplemental power in relation to share acquisition agreements where it has grounds to believe that all the information sought to be obtained by the disclosure order will not be so obtained by a person against whom the order is made and who is a party or former party to a share acquisition agreement. In such circumstances, the court may make an order requiring any other party or former party to the share acquisition agreement to give information to the court in relation to matters affecting the application of section 807 as it applies to the share acquisition agreement. The court may exercise this power on the making of an application for a disclosure order or at any time subsequent to this an application to the court by a person having a financial interest in the company or by the Director of Corporate Enforcement.

Question put and agreed to.

Sections 811 and 812 agreed to.

SECTION 813

Deputy Sean Sherlock: I move amendment No. 101:

In page 667, line 24, to delete "the CRO Gazette" and substitute "*Iris Oifigiúil*".

The purpose of this amendment is to replace "the CRO Gazette" as the required method of publication with "*Iris Oifigiúil*".

Amendment agreed to.

Section 813, as amended, agreed to.

Sections 814 to 818, inclusive, agreed to.

SECTION 819

Question proposed: "That section 819 stand part of the Bill."

Deputy Dara Calleary: It states in section 819 that this Chapter shall not apply to a company that commenced to be wound up before 1 August 1991. Why is this the case and how many companies are still in a winding-up process some 23 years later? Is that a commonplace occurrence?

Deputy Sean Sherlock: I will seek an answer from my officials to the Deputy's question.

Chairman: As this is a complicated section, I propose that the committee go into private session for a few minutes.

The select committee went into private session at 2.47 p.m. and resumed in public session at 2.48 p.m.

Question put and agreed to.

SECTION 820

Chairman: Amendments Nos. 102 to 106, inclusive, are related and will be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 102:

In page 670, line 19, to delete “€350,000” and substitute “€500,000”.

Deputy Jonathan O’Brien: It is my understanding that subsections (2), (3) (4) and (5) are new subsections. It was always the case that if a director was made insolvent, he or she could not become a director again for a period of five years. It is now proposed to change this. Perhaps the Minister of State would elaborate on the reason for this.

Deputy Sean Sherlock: Does the Deputy’s question pertain to these amendments?

Chairman: It relates to the section.

Deputy Jonathan O’Brien: I am seeking an explanation for the change from current practice whereby a person cannot become a director again within five years. I assume the amendments follow on from this.

Deputy Anthony Lawlor: No. Subsections (2), (3) and (4) are new subsections.

Chairman: Perhaps Deputy O’Brien would repeat his question.

Deputy Jonathan O’Brien: As I understand it, subsections (2), (3), (4) and (5) are new subsections. They are all new.

Deputy Sean Sherlock: Are we that far in the amendments?

Chairman: They are not the amendments. It is a provision under the section.

Deputy Jonathan O’Brien: It is fine if we deal with the amendments first.

Chairman: Amendments Nos. 102 to 106, inclusive, are related and may be discussed together.

Deputy Sean Sherlock: The purpose of the amendment No. 102 is to increase the monetary limits in existing legislation to allow for inflation and the new limits are in accordance with the recommendations of the Company Law Review Group.

With the Chairman’s permission, I will explain the section now.

Chairman: That is fine.

Deputy Sean Sherlock: The section has some changes when compared with the existing legislation. It deals with the declaration by the court restricting a director of an insolvent company in being appointed or acting as a director. The court will make the declaration restricting the director upon application from the Director of Corporate Enforcement, the liquidator of an insolvent company or a receiver of any property of the company. The restriction is for a period of five years and the restricted person may not be appointed to act in any way, directly or indirectly, as a director or secretary or to be involved in the formation or promotion of a company, unless that company meets the required capitalisation levels.

It provides a defence for directors where they can show that they have acted honestly and responsibly in respect of the conduct of the affairs of the company, whether before or after it became insolvent, and where the court can see no other reason that it would be just and equitable that the director be restricted. The subsection has been amended, and that is as compared

with the Companies Act 1990, in so far as a new proviso has been inserted in line with a recommendation from the Company Law Review Group. The additional requirement is that the person concerned “...has when requested to do so by the liquidator... co-operated as far as could reasonably be expected in relation to the conduct of the winding up of the insolvent company”. The reason for the insertion of this provision is to promote greater co-operation by the directors and other officers with the liquidator. Subsection (3) sets out the capitalisation requirements for a company which has a restricted person acting as director or secretary or taking part in the formation or promotion of that company.

Provision is made for restrictions involving a guarantee company to ensure that a company may not escape a capitalisation-type requirement by reason of not having a share capital. The requirement here is that at least one of the members of the company must give a guarantee of not less than €100,000, subject to the amendment’s being agreed to. In the case of an investment company, subsection (3) will be read as if the requirements are that the value of the issued share capital of the company is not less than €100,000 and that an amount of not less than €100,000 in cash has been paid in consideration for the allotment of shares in the company, subject to the amendment’s being agreed to. A person restricted arising from his or her conduct in relation to a company limited by shares is restricted as regards all other company types as well.

Deputy Jonathan O’Brien: Are we saying that subsection (2) is being included as a bit of a carrot so that there is full co-operation, that it is in the best interests of the company to co-operate fully with the liquidator?

Deputy Sean Sherlock: No.

Chairman: We will move into private session again for a few minutes.

The select committee went into private session at 2.54 p.m and resumed in public session at 2.55 p.m.

Chairman: Are there any further questions on this group of amendments? No.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 103:

In page 670, line 22, to delete “€70,000” and substitute “€100,000”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 104:

In page 670, line 37, to delete “€70,000” and substitute “€100,000”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 105:

In page 670, line 46, to delete “€70,000” and substitute “€100,000”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 106:

In page 671, line 1, to delete “€70,000” and substitute “€100,000”.

Amendment agreed to.

Section 820, as amended, agreed to.

Sections 821 to 826, inclusive, agreed to.

SECTION 827

Question proposed: "That section 827 stand part of the Bill."

Deputy Sean Sherlock: This is a new section which provides that a "company that has a restricted person" is one "(a) in relation to which a restricted person is appointed or acts in any way, whether directly or indirectly, as a director or secretary;" or a company "in the promotion or formation of which a restricted person is concerned or takes part".

Question put and agreed to.

SECTION 828

Question proposed: "That section 828 stand part of the Bill."

Deputy Sean Sherlock: This section is new and provides that "the Summary Approval Procedure" may not be utilised by "a company that has a restricted person" except in circumstances where that procedure is being used to affect a member's voluntary winding up. Furthermore, sections 241, relating to arrangements of certain value, and 246, relating to business transactions, of the Bill do not apply to a company that has a restricted person.

Question put and agreed to.

SECTION 829

Question proposed: "That section 829 stand part of the Bill."

Deputy Sean Sherlock: We are considering introducing an amendment to section 829(2) on Report Stage. The purpose of this amendment will be to make reference to "member" rather than a "subscriber of the constitution". The rationale for this is to ensure that the provision applies to a person who becomes a member some time after its incorporation.

Question put and agreed to.

Sections 830 to 840, inclusive, agreed to.

SECTION 841

Question proposed: "That section 841 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 841 on Report Stage to provide that foreign disqualification orders made before the commencement of the Bill be declared. This is a new section to deal with a situation in which a director becomes disqualified under the law of another state. In such a case, where the company fails to notify the registrar of such a situation, as required by section 150(8) of this Bill, the relevant director will be deemed to be subject to a disqualification order for a period not exceeding the remaining period of the foreign disqualification. This section is new and tightens up the position under the current law whereby a person is only required to notify the registrar of their disqualification under the law of another state upon becoming a director of a company and not where the foreign

disqualification occurs subsequent to their becoming a director of an Irish company.

Question put and agreed to.

Sections 842 to 871, inclusive, agreed to.

SECTION 872

Question proposed: "That section 872 stand part of the Bill."

Deputy Sean Sherlock: This is a new section. It is proposed that, subject to a small number of exceptions, such as fraudulent trading and market abuse, the majority of offences under the Companies Acts should be classified according to a four-tier system. As I outlined earlier, category 4 offences will be prosecutable only on a summary basis and on conviction will give rise to no more than a class A fine, currently set at €6,394 by the Fines Act 2010, previously £5,000. That is an amount no greater than the District Court can impose for any other criminal offence. Category 3 offences will likewise be prosecutable only summarily but on conviction may give rise to a prison sentence of up to six months or a class A fine or both.

Both category 2 and category 1 offences attract the same consequences when prosecuted summarily, namely, a class A fine or imprisonment of up to 12 months or both. Both these categories may also be prosecuted on indictment. In such a case, a category 2 offence will attract a fine of not more than €50,000 or a prison term not exceeding five years or both. A category 1 offence will have a penalty of a fine of not more than €500,000 or up to ten years in prison or both.

Chairman: Are members okay with that?

Deputy Anthony Lawlor: Do we need to cite the Fines Act?

Deputy Sean Sherlock: "No" is the answer.

Deputy Anthony Lawlor: Can we insert a specific figure, because €5,000 makes much more sense than €6,394? We are dealing with smaller scale stuff.

Chairman: It will have to be looked at for Report Stage.

Deputy Anthony Lawlor: Yes, I think so. We could put in a specific figure.

Deputy Sean Sherlock: I do not know if I am answering the question correctly, but we cannot go beyond the level that is set for District Court fines.

Chairman: The Deputy wants to reduce it to €5,000. He wants that to be considered for Report Stage.

Deputy John Lyons: What is the logic of making that statement, as opposed to agreeing with that proposal? Why is Deputy Lawlor coming to that conclusion by pulling the €5,000 figure out of a hat, so speak? On what logic is he basing that proposal?

Deputy Anthony Lawlor: Every other category within that section has a specific fine of €50,000 or €500,000. Why can we not insert a specific fine for that? There is a limit to what class A fines we can set.

Deputy John Lyons: Why is the Deputy picking €5,000 as opposed to some other figure?

Deputy Anthony Lawlor: It is a round figure.

Deputy Sean Sherlock: There were quite a lot of numbers in that section. Category 4 offences will be prosecutable only on a summary basis and on conviction will give rise to no more than a class A fine.

Deputy Anthony Lawlor: Which is set.

Deputy Sean Sherlock: Exactly, but we are not in a position to determine what a class A fine is as per this legislation. It is already set out under the terms of the Fines Act 2010.

Deputy Jonathan O'Brien: Can it be changed?

Deputy Sean Sherlock: I have not seen an amendment to that effect.

Deputy Jonathan O'Brien: If a figure is inserted here and somewhere down the line the class A fine is changed, then this figure remains the same.

Deputy Sean Sherlock: It will reflect that.

Deputy Jonathan O'Brien: That is what I mean. If we put in a figure here and the level of class A fine changes in other legislation, it will not be reflected in this Bill. It makes sense, therefore, to leave it as it is and not put in a monetary value.

Deputy Sean Sherlock: Exactly.

Chairman: Is Deputy Lawlor satisfied with what Deputy O'Brien has said?

Deputy Anthony Lawlor: I do not have a problem with it.

Chairman: As it stands, there is no proposal to change it.

Deputy Sean Sherlock: I am clear in my own mind and the Deputies have articulated their view.

Deputy Anthony Lawlor: All I wanted was to see if there was a possibility of inserting a specific fine figure there, because we have a specific fine figure for other indictments within that category.

Chairman: To clarify this, it is not an issue the Deputy wants the Minister of State to work on for Report Stage.

Deputy Anthony Lawlor: No.

Chairman: He is happy enough to park it.

Deputy Sean Sherlock: For purposes of clarification, it is important to state that there are fines up to what is the equivalent of £5,000. We are prescribing a maximum but it involves fines up to that amount.

Deputy Anthony Lawlor: Yes.

Deputy Sean Sherlock: Therefore there is a discretion on the part of the court.

Chairman: The issue was that in other cases the fine is specified at a certain amount.

Question put and agreed to.

Sections 873 to 875, inclusive, agreed to.

NEW SECTION

Deputy Sean Sherlock: I move amendment No. 107:

In page 705, between lines 40 and 41, to insert the following:

“Civil enforcement of prohibition on trading under misleading name

876. (1) On the application of the Registrar or the Director, the court may order that a person shall cease, within the time specified in the order, to carry on any trade, profession or business in contravention of *section 27(1)* if that person has—

(a) been convicted of an offence under *section 27(2)*;

(b) been served with a notice by the Registrar or Director requiring that person to cease to carry on a trade, profession or business in contravention of *section 27(1)*; and

(c) failed to comply with the notice within 14 days after the date of service of the notice, or such greater period as may be specified in the notice in that behalf.

(2) In making an order under *subsection (1)* the court may order that all costs of and incidental to the application shall be borne by the person against whom the order is made.”.

The purpose of the amendment is to ensure all company types are covered by the offence of trading under a false name. The amendment extends the prohibition to designated activity companies.

Chairman: To clarify, this involves insertion of a new section. If we accept this amendment, it involves the deletion of section 876 of the Bill.

Deputy Sean Sherlock: I wish to clarify this in my own mind because we are all getting a bit confused after 107 amendments.

Chairman: The amendment inserts a new section.

Deputy Sean Sherlock: We vote, in effect, to discard the pre-existing section 876.

Chairman: That is correct.

Deputy Sean Sherlock: The amendment is carried by virtue of that.

Chairman: It has kept me awake at night as well.

Amendment agreed to.

Section 876 deleted.

Section 877 agreed to.

SECTION 878

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Question proposed: "That section 878 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 878(1) (b) on Report Stage. The purpose of this amendment will be to correct a missing reference in subsection (1)(b) that ought to read "book or document".

Question put and agreed to.

Sections 879 and 880 agreed to.

SECTION 881

Deputy Sean Sherlock: I move amendment No. 108:

In page 708, line 2, before "the purposes" to insert "for".

This is a simple amendment to correct the omission of the word "for".

Chairman: Do members wish to raise any questions on this?

Deputy Anthony Lawlor: No.

Chairman: Can we close the lid on it?

Deputy Anthony Lawlor: It is a very simple word.

Amendment agreed to.

Section 881, as amended, agreed to.

Sections 882 and 883 agreed to.

SECTION 884

Question proposed: "That section 884 stand part of the Bill."

Deputy Sean Sherlock: I am considering tabling an amendment to section 884(2) on Report Stage. The purpose of this amendment would be to correct the reference to subsection (1).

Question put and agreed to.

Section 885 agreed to.

SECTION 886.

Question proposed: "That section 886 stand part of the Bill."

Deputy Sean Sherlock: I propose to table an amendment to section 886 on Report Stage. The purpose of that amendment will be to further clarify the relationship between legal professional privilege and section 448.

Question put and agreed to.

Sections 887 to 891, inclusive, agreed to.

SECTION 892

Deputy Sean Sherlock: I move amendment No. 109:

In page 717, line 22, to delete “kept by the Registrar” and substitute “which has been received and recorded by the Registrar in pursuance of this Act”.

The purpose of this amendment is to clarify that the Companies Registration Office is only obliged to provide documents for inspection that it has received and recorded.

Amendment agreed to.

Question proposed: “That section 892, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I propose to table an amendment on Report Stage to introduce new subsections to provide for the transposition of the necessary elements of Article 3 of Directive 2012/17/EU, which concerns the interconnection of registers between EEA states.

Question put and agreed to.

Sections 893 and 894 agreed to.

SECTION 895

Question proposed: “That section 895 stand part of the Bill.”

Deputy Sean Sherlock: I propose on Report Stage to table an amendment dealing with the archiving of documents. The purpose of the amendment is to assist the Companies Registration Office and the National Archives of Ireland, and to align the Bill with current practice.

Question put and agreed to.

Sections 896 to 901, inclusive, agreed to.

SECTION 902

Question proposed: “That section 902 stand part of the Bill.”

Deputy Sean Sherlock: I will give a brief explanation of section 902, which is a new section. It contains transitional provisions relating to the Irish Auditing and Accounting Supervisory Authority or IAASA, provides for the continuance of the IAASA and the preservation of its membership except in so far as it is changed by section 903 and other provisions allowing for termination, change and an increase of its membership.

Deputy Dara Calleary: The lack of formal representation being offered to the professions has been raised with us by Chartered Accountants Ireland, CAI. Stakeholders with an interest will be prescribed. Practitioners and those with an interest in accounting matters should have formal representation on the board of the IAASA, as opposed to being there at the discretion of the Minister.

Deputy Sean Sherlock: They are there, as I understand it.

Deputy Dara Calleary: Their view is that, under section 908, the size of the IAASA board is being reduced from 14 to eight. There will be two nominees from the accountancy sector and the remaining board membership will be made up of nominees from various agencies.

Chairman: It is for users.

Deputy Dara Calleary: I apologise. It is for business users.

Deputy Sean Sherlock: There is a discretion on the part of the Minister to nominate business users.

Deputy Dara Calleary: Would it not be better to prescribe that? Would the Minister of State consider prescribing that? For instance, if a Minister was unfriendly towards business he or she might decide not to use that discretion.

Deputy Sean Sherlock: It would be rare to have a Minister for Jobs, Enterprise and Innovation who is not business friendly. Let us be honest about it.

Chairman: It was raised in committee and a strong point was made that the end users of the services should be involved. Perhaps the Minister of State could examine the matter for Report Stage.

Deputy Sean Sherlock: Government policy at present, as members know, is to reduce the number of people on boards, which is pertinent in terms of the public purse. We can take the matter back to the Minister, Deputy Bruton. There is no problem in having another look at it, with the Chairman's agreement.

Chairman: We can discuss that on Report Stage. Is Deputy Calleary happy with that?

Deputy Dara Calleary: Yes.

Question put and agreed to.

Sections 903 to 934, inclusive, agreed to.

SECTION 935

Question proposed: "That section 935 stand part of the Bill."

Chairman: It is proposed to discuss and decide on sections 935 to 941, inclusive, together. Is that agreed? Agreed.

Deputy Dara Calleary: I wish to highlight the point again that we are putting a load of regulations on top of recognised accountancy bodies when we have still not defined what an accountant is. I know we are going to discuss it with the Minister, Deputy Bruton, but I wanted to raise that issue again.

Deputy Sean Sherlock: I acknowledge the point made by the Deputy.

Deputy Anthony Lawlor: Is it possible to do something about that under definitions?

Deputy Sean Sherlock: Definitions of what?

Deputy Dara Calleary: At the very start.

Chairman: If it is going to be done, it might fit into that provision. There are a range of issues that we will discuss with the Minister and I hope we can deal with it then.

Deputy Sean Sherlock: I want to be sure it is clear in Deputy Lawlor's mind that there is a proposal to meet the Minister.

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Deputy Anthony Lawlor: I am aware of that. I am only making suggestions as to how we might solve the problem.

Question put and agreed to.

Sections 936 to 964, inclusive, agreed to.

Chairman: As we have come to a natural break in the Bill I propose we adjourn until tomorrow morning. With the agreement of members, we will start at 10 a.m.

Deputy Sean Sherlock: With the permission of the Chair, may I comment? Members raised questions during the course of the discussion and we will seek to have the answers to them tomorrow or the day after. Please ensure I revert to members.

Progress reported; Committee to sit again.

The select committee adjourned at 3.20 p.m. until 10 a.m. on Wednesday, 6 November 2013.