

Consultation Document

Report by Nessa Cahill BL and Kevin Duffy, Chairman of the Labour Court *“Expert examination and review of laws on the protection of employee interests when assets are separated from the operating entity”*

Department of Jobs, Enterprise and Innovation

30th May 2016

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1. Introduction

On 14th January 2016, the then Minister for Jobs, Enterprise and Innovation and the then Minister for Business and Employment commissioned Nessa Cahill B.L. and Kevin Duffy, Chairman of the Labour Court, to conduct an expert examination of legal protections for workers with a particular focus on ways of ensuring limited liability and corporate restructuring are not used to avoid a company's obligations to its employees. The examination was to look specifically at situations where assets of significant value are separated from the operating entity, being the employer, and how the position of employees can be better protected in such situations. The full terms of reference for the examination are at **Appendix 1**. Ms. Cahill and Mr. Duffy submitted their report on 11 March 2016 and the report was published on 26 April 2016. A copy of the report is at **Appendix 2**.

As part of a twin track approach, the then Minister for Jobs, Enterprise and Innovation separately asked the Company Law Review Group (CLRG) to examine legislation with a view to recommending ways company law could be potentially amended to better safeguard employees and creditors. The CLRG has commenced its work and will report on it to the Minister in due course.

2. Substance of the Duffy/Cahill report

The experts' report provides a comprehensive analysis of the relevant provisions of employment law and company law. It makes a number of proposals for reform of the law, which are primarily concerned with amendments to employment law.

Suggested changes to law

The focus of the suggested amendments to employment law is to ensure that employees will have the opportunity to consult with their employer for a period of not less than 30 days before any collective redundancy takes effect, including in the following circumstances

- whether the employer is insolvent or not,
- where decisions are being made in relation to an asset of significant value by a person related to the employer, which will lead to collective redundancies.

The experts also propose increased sanctions for failure to respect the 30 day consultation period.

The experts go on to propose a number of other reforms to employment law designed to

- facilitate the recovery of an asset or proceeds of an asset in circumstances where the transfer of the asset had the effect of perpetuating a fraud on the employees,

- prevent the reduction of a company's assets below the level necessary to discharge accrued liabilities to employees,
- provide a mechanism by which employees could negotiate enhanced redundancy terms in circumstances where the employer entity is separating assets from the operations entity.

The report does not propose any amendments to existing provisions of the Companies Act 2014. However, it does state in clear terms that existing company law provisions provide "substantial weaponry that could be used against directors and related companies to redress the effects of, and deter, harmful transactions" but these provisions are only of weight "if they are employed and seen to be employed". The report makes proposals designed to facilitate and support the use of those provisions in future cases.

The experts stress that the various proposals made need to be considered in conjunction with each other, as no one proposal alone will provide solutions to the issues in question. In conclusion the experts express the view that the success of any proposals in deterring the conduct referred to in the Terms of Reference or in remedying the effects of such conduct, will be heavily dependent on the use that is made of existing provisions of employment and company law, together with the sanctions and measures they are proposing (if acted upon).

3. Government Policy

The report does not represent Government policy. A policy response, for consideration by Government, will be developed after the consultation process is completed.

4. The Consultation Process

4.1 Purpose of the Consultation

The purpose of the consultation is to allow interested parties an opportunity to consider and respond to the detailed proposals made in the report. The consultation will be an important element in Government's consideration of a policy response to the experts' report.

4.2 Consultation Period

The consultation period will close on **Friday 17th June, 2016**. Any submissions received after this date cannot be considered.

4.3 How to respond

In making your submission, in addition to any general points you wish to make, it would be appreciated if you could respond to the following:

- (a) Clearly state whether you support/do not support each of the six proposals for reform set out in Part III of the report? In responding to this question please indicate:
- if you consider the recommendation(s) to be proportionate and appropriate;
 - if you disagree with any recommendation being made, do you believe Government should do nothing in relation to that recommendation or do you feel there are alternative ways to achieve the intended outcome;
 - if you do not support any recommendation on the grounds of additional costs to business please indicate the nature and, if possible, the extent of the additional costs you envisage;
 - if you consider there would be any unintended, negative consequences for employees arising from the proposed changes;
 - if you consider there are other measures that Government should consider.

Also, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear in your submission who the organisation represents and, where applicable, how the views of members were gathered.

Your submission should be forwarded to the Department of Jobs, Enterprise and Innovation by **Friday 17th June 2016**.

Email address: duffycahillreport@djei.ie

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Employment Rights Policy Unit

Department of Jobs, Enterprise and Innovation

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Dublin 2

4.4 Freedom of Information

Responses to this consultation are subject to the provision of the Freedom of Information Acts. Parties should also note that responses to the consultation may be published on the website of the Department of Jobs, Enterprise and Innovation.

4.5 Confidentiality of Submissions

Contributors are requested to note that it is the Department's policy to treat all submissions received as being in the public domain unless confidentiality is specifically requested. Respondents are, therefore, requested to clearly identify material they consider to be confidential and to place same in a separate annex to their response, labelled "confidential". Where responses are submitted by email, and those emails include automatically generated notices stating that the content of same should be treated as confidential, contributors should clarify in the body of their emails as to whether their comments are to be treated as confidential.

Queries

Any queries regarding this consultation should be emailed to duffycahillreport@djei.ie or phone Seamus Grehan at 01-631 3166.

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