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TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

Examinership Re-Examined: A guide to the Preventative Restructuring Regulations 2022

Wednesday, 30 November 2022 | 8.30 am to 9.30 am

Michael Murphy
Partner, Head of Dispute Resolution and Litigation Group
Michael.Murphy@mccannfitzgerald.com

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Increased focus on Ireland – **Why?**

1.

Brexit

2.

Recognition and enforcement of judgements in EU, England and US

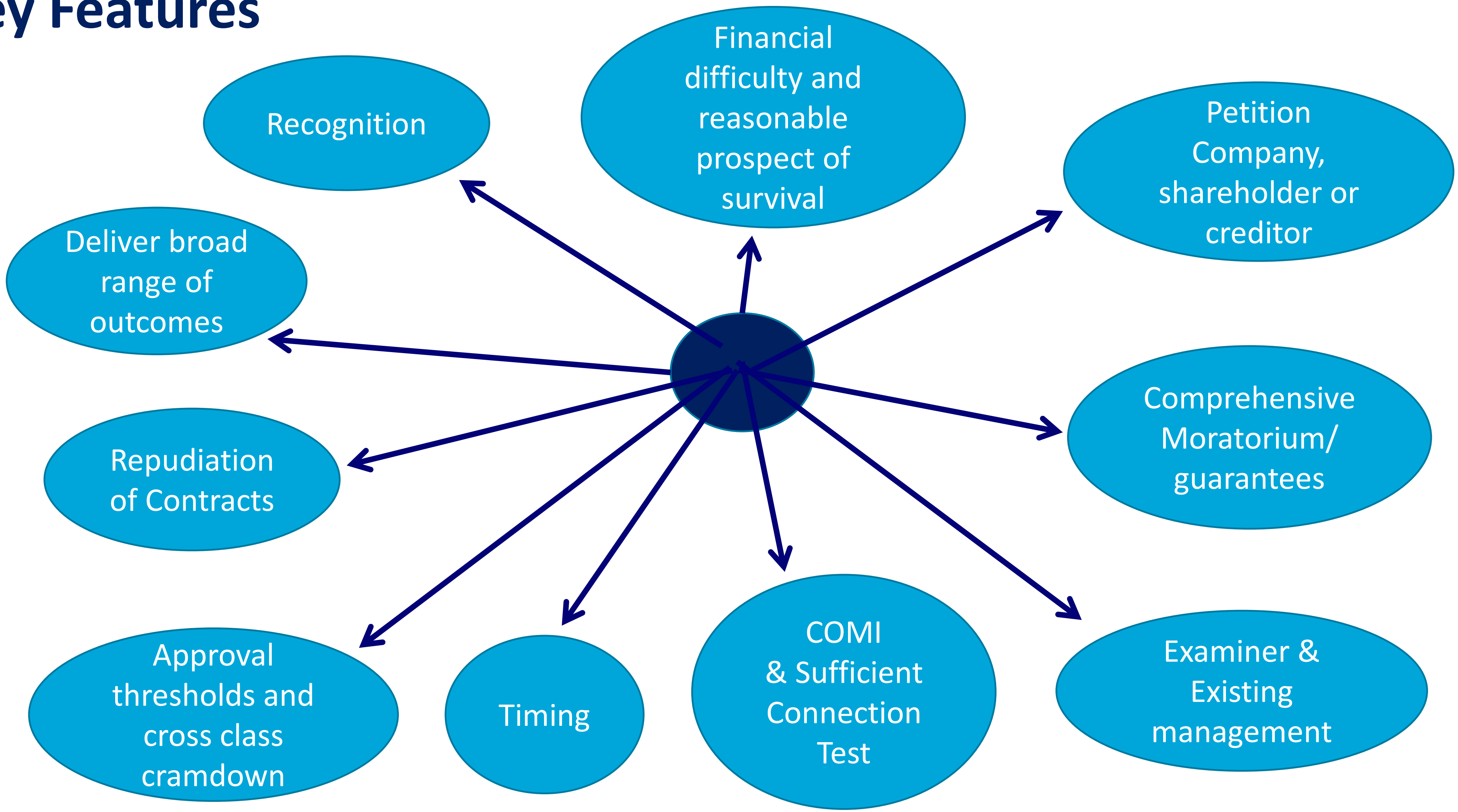
3.

Responsive to changes in national and international landscape

4.

Comprehensive and long established restructuring toolkit

Key Features



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The European Union (Preventative Restructuring) Regulations 2022

- Applies post 29 July 2022
- Give effect to EU Directive
- Aim: Harmonisation of insolvency and restructurings laws across EU
- Phased approach (transposes mandatory aspects of the Directive)
- Examinership already substantially in line with core principles of the Directive

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Key Changes

1. **Confirmation Thresholds**

   Two alternative positions
   - Majority of the voting classes of impaired creditors, including one class of secured or senior creditor or
   - One class of impaired "in the money" creditors (i.e. would receive some payment in the event of liquidation)

2. **Creditors restricted from withholding performance or terminating contracts**

   - Executory contracts (a contract under which the parties have obligations to perform. Directive refers to leases, licence agreements, long term supply contracts, franchise agreements)
   - Cannot withhold performance, terminate, accelerate or modify solely because the company is in examinership
   - Can rely on other grounds (failure to pay etc.)

   - Essential executory contracts (necessary for the continuation of day to day operations)
   - Cannot withhold performance, terminate, accelerate or modify solely because the company is unable to pay its debts

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Key Changes cont'd

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3. Directors' duties and early warning tools

Section 224A

"(1) A director of a company who believes, or who has reasonable cause to believe, that the company is, or is likely to be, unable to pay its debts (within the meaning of section 509(3)), shall have regard to –

- *(a) the interests of the creditors,*
- *(b) the need to take steps to avoid insolvency, and*
- *(c) the need to avoid deliberate or grossly negligent conduct that threatens the viability of the business of the company.*

(2) The duty imposed by this section on a director shall be owed by them to the company (and the company alone) and shall be enforceable in the same way as any other fiduciary duty owed to a company by its directors."

Section 271A

- A director may have regard to early warning tools. Draft information note issued by the CEA.

Key Changes cont'd

4. **Qualification of Examiner in cross border cases**
5. **Notice of meetings**
   - Scheme will not be binding on creditors who did not receive notice of creditors' meeting
   - Examiner required to ensure that all creditors invited to attend meetings
6. **Employee claim carve out**
7. **Best interests of creditors test**
   - Applied at the beginning and end of the examinership process
8. **Long stop date**
   - 12 months from petition

Questions?

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Principal Office
Riverside One, Sir John Rogerson's Quay
Dublin 2 D02 X576
+353 1 829 0000

New York
One Rockefeller Plaza, 30th Floor
New York, NY 10020
+1 646 952 6001

London
Tower 42, Level 38C, 25 Old Broad Street
London EC2N 1HQ
+44 20 7621 1000

Brussels
40 Square de Meeûs, 1000 Brussels
+32 2 740 0370