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Legal Guides**



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Industry Chapter

1

International Insolvency Institute – An Overview
Justice Kannan Ramesh, International Insolvency Institute

Expert Analysis Chapter

4

The UK's Restructuring Plan – Ahead of the Pack or Playing Catch Up?
Simon Beale & Jat Bains, Macfarlanes LLP
Emil Kleinhaus & Kate Waldock, Wachtell, Lipton, Rosen & Katz

Q&A Chapters

9

Austria
Schindler Attorneys: Martin Abram & Florian Cvak

16

Bermuda
Kennedys: Mark Chudleigh & Nick Miles

25

Canada
Goodmans LLP: Joe Pasquariello & Andrew Harmes

34

England & Wales
Macfarlanes LLP: Jat Bains & Adam Ridley

42

France
De Pardieu Brocas Maffei A.A.R.P.I.:
Joanna Gumpelson, Philippe Dubois & Dorine Chazeau

51

Germany
Noerr Partnerschaftsgesellschaft mbB:
Dr. Thomas Hoffmann, Marlies Raschke, Sabrina Lux &
Dr. Marco Foerderer

58

Hong Kong
ONC Lawyers: Eric Woo & Cloris Lai

65

India
Solaris Legal: Debarshi Dutta, Trinath Tadakamalla &
Nikita Rathi

72

Indonesia
SANDIVA Legal Network: Allova Herling Mengko,
Dudi Pramedi & Adinda Annisa Madani

77

Ireland
McCann FitzGerald LLP: Michael Murphy &
Áine Murphy

84

Italy
CBB Law: Giovanni Bravo & Sara Piccardo

96

Japan
Anderson Mōri & Tomotsune: Daisuke Asai,
Kanako Watanabe, Mitsuo Shimada & Mai Kurano

102

Mexico
Pérez Correa González: Fernando Pérez Correa
Camarena, Zulima Myriam González García,
María Fernanda García Zamora &
Mileva Maric González González

109

Netherlands
Stibbe: Job van Hooff & Daisy Nijkamp

117

Nigeria
The Trusted Advisors: Deborah Onafadeji,
Ajibola Olaosebikan, Muhiz Adisa & Olufe Popoola

123

Singapore
Fullerton Law Chambers LLC: Tham Wei Chern,
Ling Yuanrong & Samuel Ang Rong En

130

Spain
Monereo Meyer Abogados, SLP: Michael Fries

138

Sweden
NORMA Advokater HB: Louise Lindahl &
Jonathan Ramsten

144

Switzerland
Lenz & Staehelin: Tanja Luginbühl & Anna Pellizzari

154

Turkey/Türkiye
Aksu Çalışkan Beygo Attorney Partnership:
Levent Yetkil, Fulya Sert Topçu, Merve Mert &
Serdar Şahin

163

USA
Paul, Weiss, Rifkind, Wharton & Garrison LLP:
Elizabeth R. McColm & Sean A. Mitchell

170

Zimbabwe
ChimukaMafunga Commercial Attorneys:
Norman Chimuka & Tonderai Sena

Ireland

McCann FitzGerald LLP



Michael Murphy



Áine Murphy

1 Overview

1.1 Where would you place your jurisdiction on the spectrum of debtor- to creditor-friendly jurisdictions?

Ireland's insolvency and restructuring regime is generally regarded to be creditor-friendly with well established and flexible remedies available to pursue delinquent debtors through enforcement of security, judgment proceedings and/or a petition to wind-up.

However, the Irish Courts seek to protect viable enterprise and employment and rescue procedures are available to companies in financial difficulty including examinership, the small company administrative rescue procedure and schemes of arrangement.

1.2 Does the legislative framework in your jurisdiction allow for informal work-outs, as well as formal restructuring and insolvency proceedings, and to what extent are each of these used in practice?

There are a various options available to companies in financial difficulty in Ireland, ranging from informal consensual arrangements and work-outs to formal restructuring and insolvency processes.

Creditor forbearance, in the form of standstills, consensual variations, covenant waivers and/or extensions, will usually form a key cornerstone of any informal work-out. For many businesses, reaching an accommodation with landlords, either through a staged payment plan to discharge accrued arrears of rent and service charges or a consensual surrender, can also be part of any informal work-out. While companies will explore these options, if agreement cannot be reached with key stakeholders, they are more likely to avail of a formal restructuring process.

There are various restructuring processes available in Ireland including: (a) examinership, which was introduced in 1990 (similar to Chapter 11); (b) the small company administrative rescue procedure (“**SCARP**”) (available to small and micro-companies); and (c) schemes of arrangement, which have been on our statute books for more than 60 years.

Of these processes, examinership and SCARP are most widely availed of Ireland's scheme of arrangement provisions virtually mirror the regime in England and Wales, and since Brexit, there have been a number of high profile restructurings using the scheme provisions.

2 Key Issues to Consider When the Company is in Financial Difficulties

2.1 What duties and potential liabilities should the directors/managers have regard to when managing a company in financial difficulties? Is there a specific point at which a company must enter a restructuring or insolvency process?

In the ordinary course, the directors of a company owe a fiduciary duty to the company. When a company is in financial difficulty, the directors must also have regard to the interests of creditors. While there is no mandatory obligation to file for insolvency in the event the company is insolvent, the key consideration for directors in this situation is to ensure that by not liquidating the company, they are not worsening the position of creditors.

The Irish legislature codified certain duties of directors arising when a company is in the so-called “twilight zone”, i.e., when there are questions as to a company's ability to trade on a solvent basis. Provisions of the Companies Act 2014 (the “**2014 Act**”) also give effect to the mandatory provisions of the Preventative Restructuring Directive¹ and provide that where a director believes, or has reasonable cause to believe, that the company is, or is likely to be, unable to pay its debts, the director is required to 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.

Shareholder and creditor interests should be considered by directors in exercising their duties. The directors' duty blends from one to the other as a company's financial position declines. If insolvency becomes inevitable, creditors interests become paramount. The directors need to keep their decision to continue to trade under constant review and should not sanction payments which benefit either closely connected companies or themselves personally to the detriment of the general body of creditors.

Irish law does not penalise genuine business failure nor does it penalise directors who have acted honestly and responsibly at a time when the company was in financial difficulty. Rather, the company law sanctions against directors of an insolvent company are designed to penalise individuals who are recklessly incurring credit or liabilities or who use up the company's assets where the directors cannot, on any reasonable or objective basis, believe that the company will be in a position to operate as a going concern.

2.2 Which other stakeholders may influence the company's situation? Are there any restrictions on the action that they can take against the company? For example, are there any special rules or regimes which apply to particular types of unsecured creditor (such as landlords, employees or creditors with retention of title arrangements) applicable to the laws of your jurisdiction? Are moratoria and stays on enforcement available?

The main stakeholders with influence over a company's situation include: (a) secured creditors; (b) preferential creditors, e.g. Revenue Commissioners; (c) employees; (d) landlords; (e) retention of title creditors (whose claims can be validly enforced against a liquidator); and (f) general trade and unsecured creditors.

A secured creditor can appoint a receiver over the assets of an insolvent or defaulting borrower under the contractual powers granted by the borrower in the security documentation.

By issuing a statutory letter of demand, a creditor can petition for the winding up of the debtor company if the demand remains unsatisfied after the expiry of the 21-day period.

In an examinership, which can be triggered by the company, a shareholder or a creditor, the automatic moratorium and stay on enforcement, which comes into effect upon the presentation of the petition to appoint an Examiner, does not operate to prevent employees from taking certain proceedings to enforce outstanding judgments or to wind up the company. All other claims can only be brought or advanced with Court approval.

Counterparties to "executory contracts" cannot withhold performance, terminate, accelerate or in any other way modify contracts to the detriment of the debtor solely because of the appointment of an Examiner or Interim Examiner to the company or a related company. An "executory contract" is a contract between a company and one or more creditors under which the parties still have obligations to perform at the time the stay takes effect, e.g. a lease.

In addition, counterparties to "essential executory contracts" cannot take the steps referred to above solely because the debtor is deemed unable to pay its debts. In this context, "essential executory contracts" include executory contracts which are necessary for the continuation of the day-to-day operations of the business, including contracts concerning supplies, the suspension of which would lead to the debtor's activities coming to a standstill, e.g. a utility contract.

In a SCARP process, the Revenue Commissioners can elect to have their debts excluded from any rescue plan on certain specific grounds which include: (a) the Company having failed at any time in the past to comply with any tax requirement either under the 2014 Act or any other enactment; (b) the Company being subject to an on going tax audit or intervention; or (c) the Company having appealed any tax-related decision.

2.3 In what circumstances are transactions entered into by a company in financial difficulties at risk of challenge? What remedies are available?

There are various remedies available to a liquidator of an insolvent company. These provisions seek to protect creditors by repatriating assets or setting aside company transactions which involve the transfer or dissipation of company assets. The provisions can, in certain circumstances, also apply to an insolvent company not in liquidation.

Unfair preference

Certain transactions can be set aside if they were carried out with the intention of the directors of preferring one creditor over another.

Fraudulent dispositions of property

If it can be shown that any property of any kind was disposed of, the effect of such was to perpetrate a fraud on the company, its creditors or its members, the court may order any person who appears to have the use, control or possession of such property, or the proceeds of the sale, to deliver it or pay a sum in respect of it to the liquidator.

Invalidity of certain charges

A floating charge on the property of a company created within 12 months before the commencement of the winding up is invalid unless it is proved that immediately after the creation of the charge the company was solvent.

Reckless or fraudulent trading

If an officer is found liable for reckless trading or fraudulent trading, a court may declare him personally liable for all or any part of the liabilities of the company.

3 Restructuring Options

3.1 Is it possible to implement an informal work-out in your jurisdiction?

It is possible to implement an informal work-out in Ireland through consensual arrangements between a company and any one or more of its creditors. One disadvantage of such a process is that, while in negotiations, the company does not benefit from any moratorium or stay on enforcement, and is therefore vulnerable to creditor action. As a result, the company should try to agree a standstill with key creditors while exploring options to address its financial indebtedness.

3.2 What informal rescue procedures are available in your jurisdiction to restructure the liabilities of distressed companies?

There are no defined informal rescue procedures under Irish law. The structure of any informal restructuring is subject to agreement between the company, its shareholders and creditors.

Creditor forbearance, in the form of standstill arrangements, consensual variations of terms, covenant waivers and/or extensions, may form part of an informal restructuring.

Other informal restructuring options may include exploring adjustments to the capital structure of the company by way of additional or new investment, debt-for-equity swaps, sale and leaseback of assets, asset sales, refinancing of existing debt, grant of additional security, etc. While many companies will explore all available options, if agreement cannot be reached with key stakeholders, they are more likely to avail of a formal restructuring process.

3.3 Are debt-for-equity swaps and pre-packaged sales possible? In the case of a pre-packaged sale, are there any restrictions on the involvement of connected persons?

Debt-for-equity swaps are a common feature in examinership. In certain circumstances, an examinership can also implement a pre-agreed transaction, albeit this remains subject to Court approval.

Pre-packaged sales can occur and usually arise in the context of a pre-pack receivership. A receiver may be appointed by a secured creditor over the assets of an insolvent or defaulting

borrower under the contractual powers granted by the borrower in the security documentation. The main function of a receiver is to receive or get in the assets of the borrower comprised in the security document and dispose of them in order to pay off the principal, interest and other sums due to the creditor.

The receiver's primary obligation is to obtain the best price reasonably obtainable for the property at the time of its sale. Where a receiver sells non-cash assets to certain connected persons within a certain period, he must give 14-days' notice of his intention to sell to all creditors of the company (although, this requirement does not apply in the context of an auction sale).

3.4 To what extent can creditors and/or shareholders block such procedures or threaten action (including enforcement of security) to seek an advantage? Do your procedures allow you to cram-down dissenting stakeholders? Can you cram-down dissenting classes of stakeholder?

While there is no mechanism to cram-down the liabilities of dissenting creditor classes in an informal restructuring, a cross-class cram-down may arise in the context of various formal restructuring processes as follows:

Examinership

Examinership is a statutory scheme for the rescue of individual companies or groups of companies to facilitate the survival of the whole or any part of a company as a going concern. The company is placed under the protection of the court for a limited period whilst its affairs are investigated by an Examiner to see whether the company is capable of being rescued. The Examiner has a maximum of 100 days to lodge a scheme in Court. Examinership usually comprises three main components: (a) new investment into the company; (b) forced write-down of the company's current liabilities; and (c) "legal stay" or protection period which prevents any enforcement action being taken. A secured creditor cannot take any action to enforce its security. Furthermore, no petition may be brought to wind up the company, a receiver may not be appointed, leased goods may not be repossessed, and retention of title rights may not be enforced to recover goods. If upon the presentation of a petition a receiver stands appointed for less than three days, the receiver will cease to act and the examinership will proceed.

Creditors have a key role in approving the Examiner's scheme. Cross-class cram down is permitted provided the Examiner's scheme of arrangement is approved by either: (a) a majority of the voting classes of impaired creditors provided at least one of those classes is a secured creditor or is senior to the ordinary unsecured creditors (e.g. preferential creditors); or (b) at least one class of impaired creditors provided that class is one which would receive some payment or interest in the event that the company were liquidated (i.e. an "in the money" class). The creditors or a creditor class is deemed to have approved the scheme if a majority in number and value (51%) vote in favour.

SCARP

The small company administrative rescue procedure, or SCARP, is a dedicated rescue framework for small and micro companies. SCARP mirrors elements of examinership in an administrative context (i.e., without direct court involvement, save in certain prescribed circumstances) resulting in efficiencies and lower comparable costs. A "Process Advisor", appointed by resolution of the directors, prepares a rescue plan for the company.

In order for the rescue plan to be approved and binding on all creditors, 60% in number representing a majority in value of just one impaired class of creditors have to vote in favour of the rescue plan. If approved, any cross-class cram-down will be binding on all creditors.

Schemes of arrangement

A scheme of arrangement comprises an arrangement between a company, its creditors, and its members to financially restructure a business. There are two types of scheme of arrangement under Irish law: (i) those approved by the Court governed by Part 9 of the 2014 Act; and (ii) those which do not require Court approval governed by Part 11 of the 2014 Act.

The principal differences are as follows: a Court-approved scheme applies to solvent or insolvent companies. It is possible to apply to the Court for a period of protection (i.e., a stay on all proceedings against the company), and once approved by the Court, the scheme is unlikely to be set aside. However, a non-Court approved scheme arises where the company is about to be, or is in the course of, being wound up. No period of protection arises and any creditor or contributory may, within 21 days of completion of the scheme, seek to appeal to the Court.

In either case, the company (or a liquidator in the case of a Part 11 Scheme) draws up a scheme proposal which is submitted to creditors for consideration. At a creditors' meeting, the scheme is explained and creditors can vote. The company continues to trade and directors remain in control during the process.

In the case of a Court Scheme, it is binding when three conditions are satisfied: (i) majority in number and 75% in value of each class votes in favour; (ii) notice of final court hearing has been advertised; and (iii) court sanctions the scheme. If the requisite majority is achieved and the court has sanctioned it, the scheme including any cross-class cram down is binding on the minority.

In the case of a non-court scheme, it is binding if 75% in number and value of all creditors vote in favour of the scheme. Once the scheme has obtained the relevant support, any cross-class cram-down will be binding on the company, its creditors and any liquidator (if the scheme of arrangement is promoted by a liquidator).

3.5 What are the criteria for entry into each restructuring procedure?

Examinership

The criteria to enter into examinership are threefold: (a) the company is, or is likely to become, insolvent; (b) no resolution has been passed (nor has any order been made) to wind up the company; and (c) there is a reasonable prospect of survival of the whole or part of the business as a going concern.

SCARP

SCARP may be availed of by companies which satisfy two of the three following criteria: (i) turnover does not exceed €12 million; (ii) the balance sheet total does not exceed €6 million; and (iii) the average number of employees does not exceed 50. In addition, the company must not have entered an examinership or SCARP process in the previous five years and there must be no order made, and no pending resolution, for its winding up.

Schemes of arrangement

A Part 9 scheme applies to solvent or insolvent companies. A Part 11 scheme may be availed of where the company is about to be or is in the course of being wound up.

3.6 Who manages each process? Is there any court involvement?

Examinership

Examinership is a court-driven and supervised process. The Examiner is appointed to formulate proposals for a scheme of arrangement; however, the directors are not displaced unless the Examiner applies to Court to acquire certain of the directors' powers (which is rare). The Examiner sits alongside the directors while the directors continue to run the business as a going concern.

SCARP

SCARP is an administrative process with no court involvement, save in certain prescribed circumstances. An application to Court may be required where, *inter alia*, the receiver or provisional liquidator is appointed, the Process Advisors wish to disclaim or affirm a contract, and/or where a creditor objects to the rescue plan. A Process Advisor cannot apply to Court seeking a transfer of the director's powers to him.

Schemes of arrangement

Schemes are a company-led process, no insolvency practitioner is appointed, and the directors continue to manage the company. A Part 9 scheme must be sanctioned by the Court.

3.7 What impact does each restructuring procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? What protections are there for those who are forced to perform their outstanding obligations? Will termination and set-off provisions be upheld?

Termination rights arising on the invocation of certain insolvency processes are commonplace in contracts. However, as noted above in question 2.2, there are restrictions on the termination of executory contracts and essential executory contract in an examinership thereby requiring performance of the contract.

There are strict rules regarding the enforcement of third-party guarantees in an examinership and SCARP. A creditor's right to pursue guarantors is preserved if their right to vote on scheme is transferred as prescribed by statute. Creditors should carefully consider the impact of any scheme or rescue plan on guaranteed obligations and act in a timely manner to preserve the guarantee.

Set-off and rights under netting agreements are exercisable in examinership.

3.8 How is each restructuring process funded? Is any protection given to rescue financing?

Examinership

The company must be in a position to discharge liabilities incurred during the examinership. In the event of liquidation or receivership following a failed examinership, the costs and expenses of the examinership rank in priority. In practical terms, the costs of the examinership process will usually be funded by the investor. In certain circumstances, an Examiner can certify certain expenses which has the effect of affording them a priority ranking in a subsequent liquidation.

SCARP

The fees, costs and expenses of the Process Advisor are provided for in the rescue plan and, unless reduced by the court, will be paid in priority to all other claims.

Schemes of arrangement

The costs of a scheme of arrangement will be funded by the company or by the promoters of the scheme.

4 Insolvency Procedures

4.1 What is/are the key insolvency procedure(s) available to wind up a company?

There are two possible ways to liquidate an insolvent company: (a) court liquidation; or (b) creditors' voluntary liquidation.

Court liquidation

An insolvent company may be wound up by the Irish Courts, on a petition issued by the company or a creditor, where the Court is satisfied that it is just and equitable that the company be wound up. A petition can be issued, *inter alios*, where the members of a company have resolved that the company be wound up by the Court or where the company is unable to pay its debts. This procedure is most commonly invoked by disgruntled creditors who must demonstrate that the company is insolvent. In order to do so, a creditor must demand repayment of a sum in excess of €10,000 (or €20,000 if the debt is due to two or more creditors) and if such sum remains unpaid for a period of 21 days, that creditor will have demonstrated that the company is deemed to be insolvent.

Creditors' Voluntary Liquidation (CVL)

Creditor's Voluntary Liquidation is the liquidation procedure most commonly used where a company is insolvent. A CVL is initiated by the Company acting through its board, where the directors determine that the company cannot by reason of its liabilities continue to trade. The directors resolve to commence the process and convene a meeting of members and a meeting of creditors at which a statement of the company's affairs is presented. A notice of the meeting is sent to all known creditors at least 10 days in advance of the creditors' meeting. The purpose of the creditors' meeting is to enable the statement of affairs of the Company to be presented to the creditors, to afford the creditors the opportunity of appointing a liquidator of their own choosing and to appoint a committee of inspection (which has certain supervisory powers in a liquidation). The liquidation is commenced upon the passing of the members' resolution.

4.2 On what grounds can a company be placed into each winding up procedure?

A petition for the appointment of a liquidator by the Court is usually presented: (a) on the basis that the company is unable to discharge its liabilities as they fall due; (b) on the basis that the company is deemed insolvent (for failure to discharge a statutory letter or demand); or (c) where it is just and equitable that the company be wound up. While there are some other bases for grounding a petition, there are seldomly utilised.

A CVL can be commenced by ordinary resolution of the shareholders of the company on the basis that the company cannot by reason of its liabilities continue to trade.

4.3 Who manages each winding up process? Is there any court involvement?

The winding up process is managed by the liquidator who has the statutory powers and functions provided in the 2014 Act.

The Court has a limited supervisory function in the case of a Court liquidation, e.g., in relation to the liquidator's fees and costs in the event they are not approved by the creditors or committee of inspection.

4.4 How are the creditors and/or shareholders able to influence each winding up process? Are there any restrictions on the action that they can take (including the enforcement of security)?

In a CVL, the company/members nominate the proposed liquidator. However, the creditors may nominate an alternative liquidator who shall be appointed if a majority in number and value of the creditors present personally or by proxy at the creditors' meeting vote in favour, thereby ousting the company's nominee.

In a Court liquidation, a creditor(s) may propose an alternative nominee liquidator to the Court. Furthermore, a creditor can also bring an application for directions to the High Court where that creditor is dissatisfied with the conduct of a liquidation.

In either liquidation process, a committee of inspection comprising up to five persons nominated by the creditors and three persons nominated by the company/its members may be formed. The most important roles of the committee relate to: (a) the exercise of certain of the liquidator's powers; and (b) the remuneration of the liquidator.

Secured creditors' rights are generally unaffected by a liquidation. The secured creditor may appoint a receiver over the secured assets, in accordance with its contractual rights in the security document, or it may elect to allow the liquidator to sell the secured assets and remit the net proceeds. In most cases, the secured creditor will opt to appoint a receiver.

4.5 What impact does each winding up procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? Will termination and set-off provisions be upheld?

This will largely depend on contractual terms. Most contracts include a termination right triggered by insolvency. A liquidator can apply to Court seeking an order disclaiming an onerous contract. In addition, a contractual counterparty can call on a liquidator to elect whether or not to disclaim the contract within 28 days of receipt of notice in writing. Creditors may exercise contractual or insolvency set-off in a liquidation context. Damages claims for breach of contract will rank as unsecured claims in a liquidation.

4.6 What is the ranking of claims in each procedure, including the costs of the procedure?

Claims will be satisfied out of any assets of the company in an insolvent winding up, broadly as follows:

1. costs and expenses of an Examiner or Process Advisor (following an unsuccessful examinership or SCARP);
2. super-preferential claims for pay related social insurance ("PRSI");
3. fixed charges;
4. costs and expenses of the liquidation;
5. preferential creditors which comprise a significant number of employee and revenue claims;
6. floating charges ranked by time of creation;
7. unsecured debts rank *pari passu* (termination payments due to employees under contracts of employment will, in general, be regarded as unsecured debts);

8. deferred debts rank *pari passu* (subject to expressed levels of deferment); and
 9. the members of the company are last to be paid.
- Claims of secured creditors and retention of title creditors generally fall outside the pool of assets in an insolvent liquidation.

4.7 Is it possible for the company to be revived in the future?

A creditor may seek an order of the Court reinstating the liquidator for a period of two years following the date of dissolution.

5 Tax

5.1 What are the key tax risks which might apply to a restructuring or insolvency procedure?

The commencement of any restructuring process does not trigger any particular tax liabilities. In an examinership or SCARP, tax liabilities continue to accrue and must be paid during the process. Tax liabilities generally rank as preferential debts in a liquidation or receivership.

In response to COVID-19, the Irish Revenue Commissioners implemented a scheme whereby companies could defer or "warehouse" paying some eligible tax liabilities. While there have been some changes, interest on the warehoused debt is currently 0%. Companies are expected to engage with Revenue to agree a payment arrangement.

6 Employees

6.1 What is the effect of each restructuring or insolvency procedure on employees? What claims would employees have and where do they rank?

The rules regarding collective redundancies, including consultation and notice requirements, apply on the liquidation of a company. A failure by a liquidator to comply with these provisions may constitute a criminal offence. If a liquidator continues to operate the business of company, he may re-engage certain employees on contract terms. If the business is sold, employer's obligations to employees may transfer to the purchaser under TUPE. As noted above, certain employee claims will rank as preferential claims in the liquidation.

The appointment of an Examiner or Process Advisor does not impact on contracts of employment. Similarly, the appointment of a receiver to the assets and undertaking of a company will not automatically terminate employment contracts.

7 Cross-Border Issues

7.1 Can companies incorporated elsewhere use restructuring procedures or enter into insolvency proceedings in your jurisdiction?

In accordance with the provisions of the Recast Insolvency Regulation, companies with their centre of main interests ("COMI") in Ireland can be wound up in Ireland irrespective of their place of incorporation.

In recent years, the Irish Courts have extended the appointment of an Examiner to a company formed and registered outside of Ireland but with a sufficient connection to Ireland and a company incorporated outside of Ireland but with its COMI in Ireland.

While Schemes of Arrangement do not fall within the scope of the Recast Insolvency Regulation, the Irish Courts have sanctioned schemes for companies with a sufficient connection to Ireland.

7.2 Is there scope for a restructuring or insolvency process commenced elsewhere to be recognised in your jurisdiction?

The Recast Insolvency Regulation also requires mandatory recognition of relevant insolvency proceedings commenced in other EU Member States. If the proceedings are commenced in a country outside of the EU, the insolvency practitioner can apply to the Irish Courts seeking an order recognising the proceedings. Ireland is not a signatory to the UNCITRAL Model Law on cross-border insolvency.

7.3 Do companies incorporated in your jurisdiction restructure or enter into insolvency proceedings in other jurisdictions? Is this common practice?

This is not that common. However, in recent years, we have seen a number of instances where large groups of companies with an Irish incorporated public limited company parent availing of Chapter 11 in the United States with a parallel Irish examinership to restructure the shares of the Irish parent company PLC.

There is also a specific mechanism under Section 426 of the Insolvency Act 1986 which provides for the recognition of Irish insolvency and restructuring processes in England & Wales and for the compromise of English law governed debt in this jurisdiction.

8 Groups

8.1 How are groups of companies treated on the insolvency of one or more members? Is there scope for co-operation between officeholders?

Each company will be treated as a separate legal entity. In this regard, the appointment of an Examiner, Process Advisor or liquidator will usually not impact on a related company. However,

the Irish Courts have jurisdiction to appoint an Examiner to a related company where it would facilitate the survival of the company, or of the related company, or both, and the whole or any part of its or their undertaking, as a going concern.

Where there is a shortfall of available assets, a liquidator may apply to the Court for an order directing that a company that is or has been related to the company being wound-up (such as a parent or subsidiary company or a company in common ownership) contribute to the assets of the company (“**Contribution Order**”). Similarly, where two or more related companies are being wound up, the liquidator can apply for an order directing that the companies be wound up together as if they were one company and the assets pooled between the creditors of all the companies (“**Pooling Order**”).

9 The Future

9.1 What, if any, proposals exist for future changes in restructuring and insolvency rules in your jurisdiction?

The Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Bill 2023 is expected to be enacted in 2024. The Bill amends the Protection of Employment Act 1977 which governs collective redundancy rules. These amendments will enhance transparency for employees of employers who become insolvent and will expand the avenues of redress available to all employees in a collective redundancy scenario should their employer fail to comply with these rules.

On 7 December 2022, the European Commission tabled a proposal for a directive harmonising certain aspects of insolvency law. The Irish Department of Enterprise, Trade and Employment, together with the Department of Justice and the Department of Finance, called for stakeholders to provide their views on the proposal for a directive by 24 February 2023. It will likely take a further period of years before the Directive is passed and transposed into Irish law.

Endnote

1. Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks – PE/93/2018/REV/1.



Michael Murphy is Head of the firm's Dispute Resolution and Litigation Group. Specialising in complex restructuring and insolvencies, Michael has played a key role in the most significant restructuring cases in this jurisdiction over the last 20 years, frequently involving cross-border issues. Michael is a member of Insol Europe and has written and lectured extensively on corporate restructuring and Ireland as a restructuring destination. Key highlights include advising:

- Key aircraft leasing companies, financiers and shareholders in the Norwegian Air examinership, which was used to implement a significant fleet reduction and restructuring of US\$5 billion's worth of debt.
- Nordic Aviation Capital on its landmark Irish scheme of arrangement, which implemented a standstill with 89 different lenders with a total debt of approximately US\$6 billion. The scheme was subsequently recognised and enforced in the US.
- Asia Pulp and Paper Group in the restructuring of over US\$1 billion's worth of debt through Irish schemes of arrangement and in the subsequent application for recognition of the schemes in the US.
- Assured Guaranty in relation to the Irish scheme of arrangement and compromised liabilities of Ballantyne Re Plc to noteholders.
- Senior lender groups in the Chapter 11 filings of Skillsoft and Swissport, which, in both cases, involved the restructuring of over US\$2 billion's worth of debt.

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Aine Murphy qualified in 2012 and has extensive experience in advising on all aspects of both contentious and non-contentious insolvency and restructuring including receiverships, examinerships, liquidations and consensual arrangements and has played a key role in the most complex and high-profile mandates. Aine also has significant experience in advising banks, financial institutions, and loan acquirers on all aspects of enforcement and debt recovery including carrying out security reviews and preparing enforcement steps plans with a view to advising on all options for realising/enforcing security. Key highlights include advising:

- First Lien Term Lender Group in the Chapter 11 and Examinership process of Mallinckrodt plc in 2022, which involved the restructuring of over US\$5.1 billion of debt, and the further Chapter 11 and Examinership process in 2023.
- Luke Charlton and Colin Farquharson of EY, as Joint Liquidators, of BlackBee Investments Limited, a MiFID regulated investment firm previously authorised and regulated by the Central Bank of Ireland (following a petition to wind-up by the Central Bank).
- Shane McCarthy and Ian Barrett of KPMG, as Joint Liquidators of Dolphin M.U.T. 116 Limited, one of the Irish companies associated with the controversial German Property Group GmbH formerly Dolphin Trust.
- Kieran Wallace, as Official Liquidator of Custom House Capital Limited (in liquidation) on all aspects of this complex liquidation of the former investment services firm where over €56 million's worth of client assets were misappropriated.
- Everyday Finance DAC in relation to four sets of complex but related Commercial Court proceedings involving Dan Morrissey (Irl) Limited (in receivership), the former operator of one of the largest quarries in Ireland and Stephen Tennant, appointed as Receiver to the assets and undertaking of DMIL.

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