

TRAINING & DEVELOPMENT PROGRAMME

# Knowledge Network

Webinar Series

## Small Company Administrative Rescue Process (SCARP) – Sounds Good in Theory but Will it Work in Practice?

Wednesday, 22 September 2021 | 8.30 am to 9.30 am



**Michael Murphy**  
Partner  
+353 1 611 9142  
[Michael.Murphy@mccannfitzgerald.com](mailto:Michael.Murphy@mccannfitzgerald.com)



**Simon Walsh**  
Senior Associate  
+353 1 607 1477  
[Simon.Walsh@mccannfitzgerald.com](mailto:Simon.Walsh@mccannfitzgerald.com)

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Michael Murphy, Partner and Simon Walsh, Senior Associate



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# What is SCARP?

- Companies (Rescue Process for Small and Micro Companies) Act 2021
  - Signed on 22 July 2021
- Amends the Companies Act 2014 to provide for a new dedicated rescue process for small and micro companies
  - the principles of Examinership through an administrative process
  - similar potential outcome at a lower cost

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## Evolution of Examinership – Norwegian Air

- Foreign Related Companies
- Repudiation of Leases- foreign governed law contracts
- Examinership timeline- 7 month process!
- Shareholders- can retain an interest
- Limitations
  - Low uptake (average 25 per year, despite Circuit Court jurisdiction)
  - Cost

## SCARP v Examinership

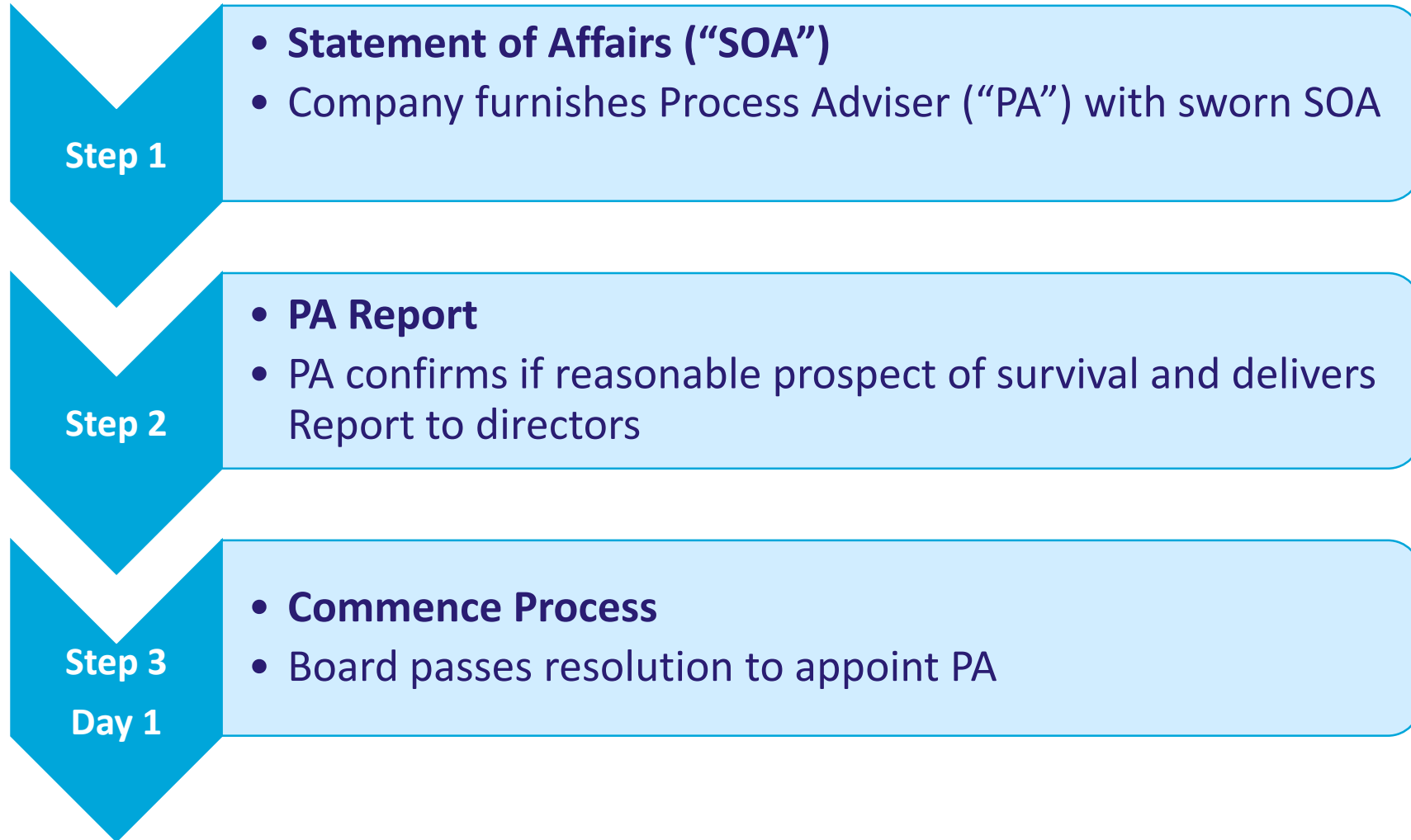
	SCARP	Examinership
<b>Insolvency Practitioner</b>	Process Adviser (“PA”)	Examiner
<b>Company Size</b>	Small or Micro Company	No restrictions
<b>Eligibility</b>	<ul style="list-style-type: none"> <li>• Is or is likely to be insolvent</li> <li>• Not in liquidation</li> <li>• Receiver appointed for less than 3 <b>working</b> days</li> <li>• No examiner or PA appointed in preceding 5 years</li> </ul>	<ul style="list-style-type: none"> <li>• Is or is likely to be insolvent</li> <li>• Not in liquidation</li> <li>• Receiver appointed for less than 3 days</li> </ul>
<b>Commencement</b>	Board Resolution	Petition to Court
<b>Initiating Party</b>	Company	Company, Member or Creditors
<b>Grounding Report</b>	Process Adviser	Independent Expert
<b>Protection Period</b>	Application to Court	Immediate

## SCARP v Examinership (Cont.)

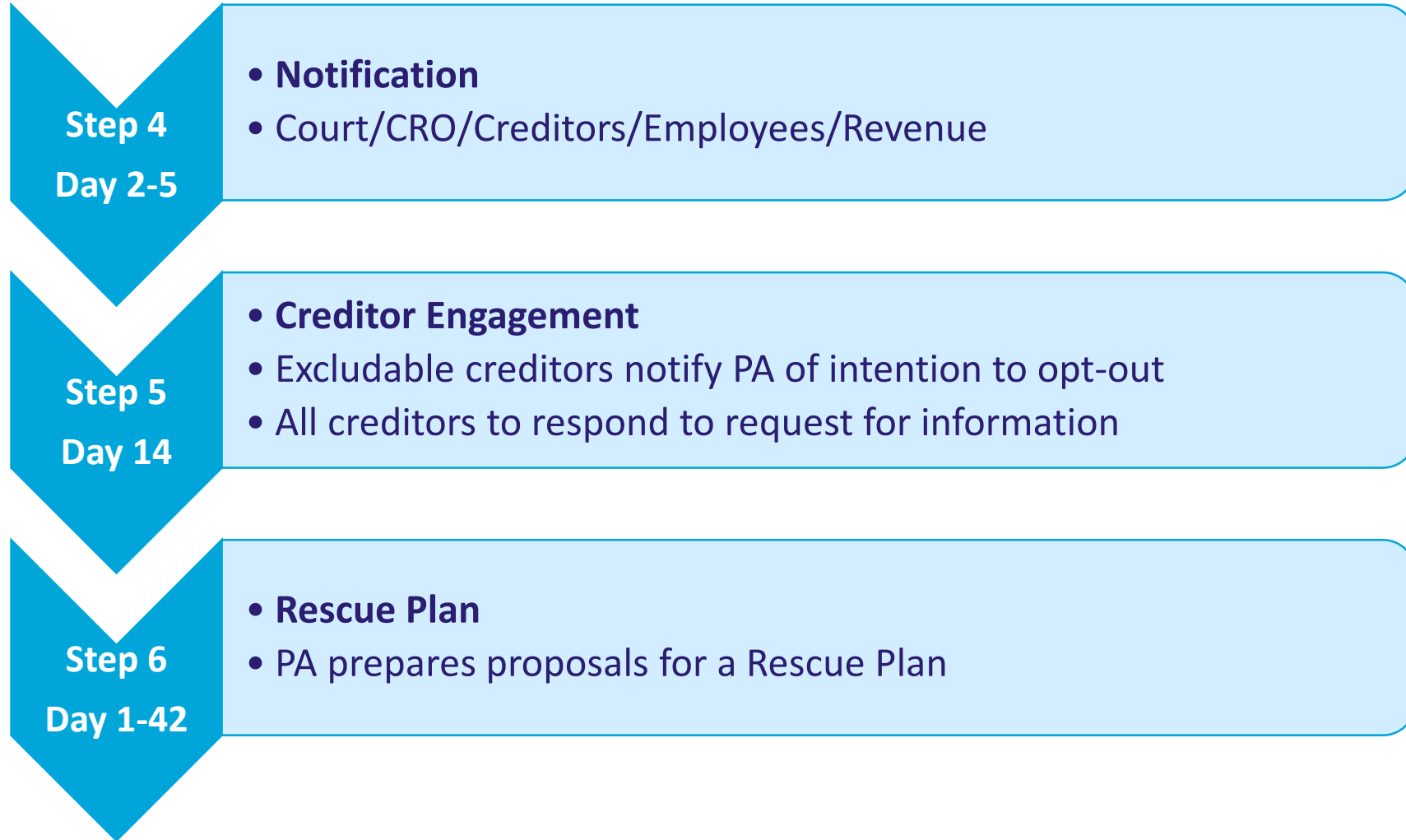
	SCARP	Examinership
Powers of Practitioner	<ul style="list-style-type: none"> <li>• Powers of an Auditor</li> <li>• Certify liabilities</li> <li>• Deal with charged property</li> <li>• Repudiation</li> </ul>	<ul style="list-style-type: none"> <li>• Powers of an Auditor</li> <li>• Certify liabilities</li> <li>• Deal with charged property</li> </ul>
Third Party Guarantees	Cannot cram down liability	Cannot cram down liability
Creditor Approval Thresholds	60% of creditors in number representing a majority in value of at least one class of impaired creditors	Simple majority of creditors in number and value of at least one class of impaired creditors
Excludable Creditors	Yes	No
Timeline	70 days	100 days (150 under Emergency Covid legislation)



# Process

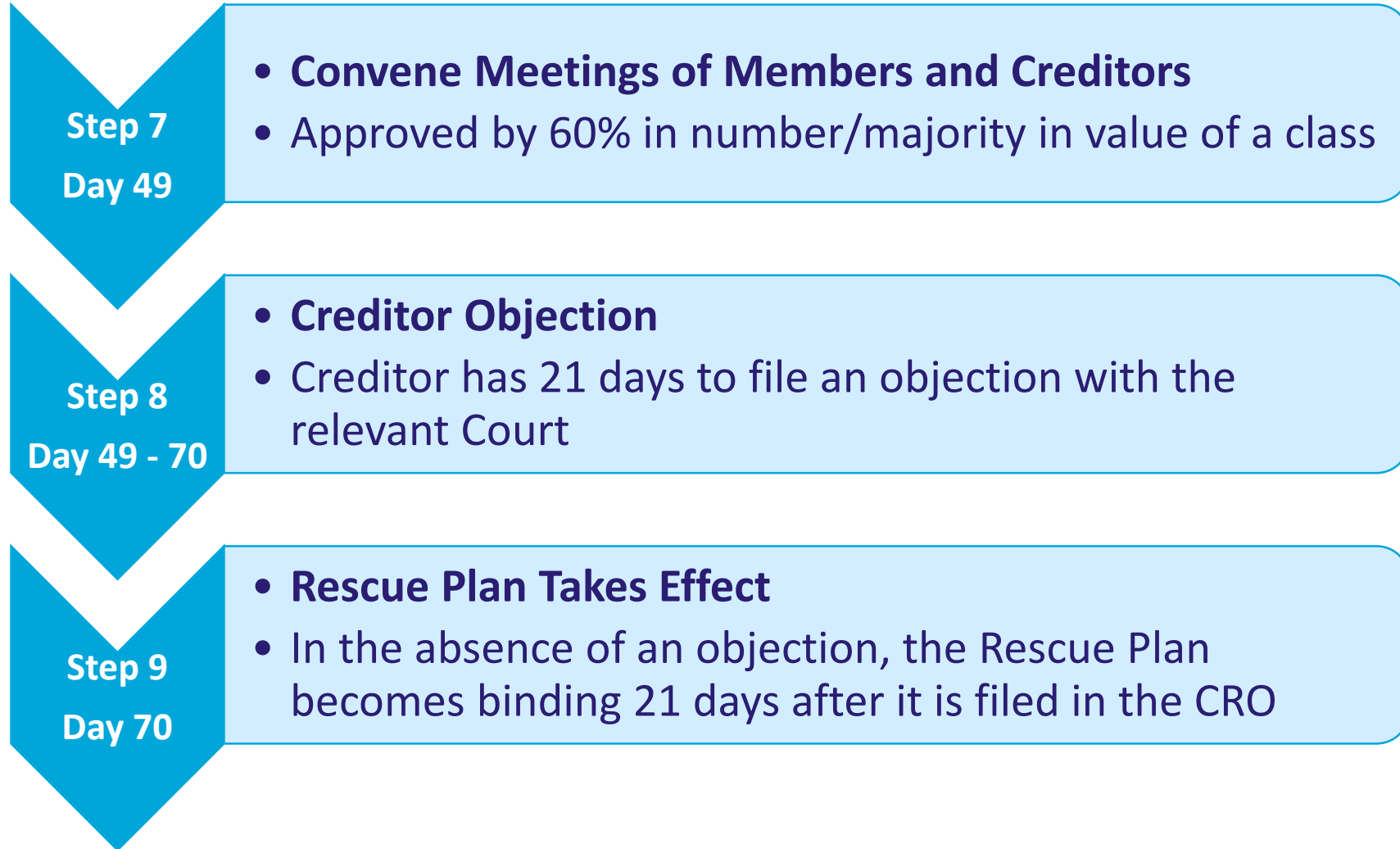


# Process (Cont.)





## Process (Cont.)



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# Directors

- Risk of criminal offence for false or misleading information
- Implications for continuing to trade following failed process
- PA obliged to report certain offences to DPP and ODCE

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# SCARP and Secured Creditors

- Examinership and SCARP firmly on the agenda
- Asset values - secured creditors unlikely to be target of process
- Funding
- Fees - rank in priority
- Trading receivership?

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## Conclusion – Will it Work in Practice?

- Simple and accessible process
- Well-established Examinership principles
- Importance of key creditors
  - No automatic prohibition on enforcement
  - Court involvement seems inevitable – cost?
  - Personal Guarantees
- Reasonable prospect of survival as a going concern
  - SMEs – typically smaller margins
  - Excludable Debt

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# Questions?



**Michael Murphy**

Partner

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Senior Associate

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