TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

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

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Sounds Good in Theory but Will it Work in Practice?

Wednesday, 22 September Michael Murphy, Partner and Simon Walsh, Senior Associate



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

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
Insolvency Practitioner	Process Adviser ("PA")	Examiner
Company Size	Small or Micro Company	No restrictions
Eligibility	 Is or is likely to be insolvent Not in liquidation Receiver appointed for less than 3 working days No examiner or PA appointed in preceding 5 years 	 Is or is likely to be insolvent Not in liquidation Receiver appointed for less than 3 days
Commencement	Board Resolution	Petition to Court
Initiating Party	Company	Company, Member or Creditors
Grounding Report	Process Adviser	Independent Expert
Protection Period	Application to Court	Immediate

SCARP v Examinership (Cont.)

	SCARP	Examinership
Powers of Practitioner	Powers of an AuditorCertify liabilitiesDeal with charged propertyRepudiation	Powers of an AuditorCertify liabilitiesDeal with charged property
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

 Statement of Affairs ("SOA") Company furnishes Process Adviser ("PA") with sworn SOA Step 1 PA Report • PA confirms if reasonable prospect of survival and delivers Report to directors Step 2 Commence Process Step 3 Board passes resolution to appoint PA Day 1

Process (Cont.)

Step 4
Day 2-5

- Notification
- Court/CRO/Creditors/Employees/Revenue

Step 5
Day 14

- Creditor Engagement
- Excludable creditors notify PA of intention to opt-out
- All creditors to respond to request for information

Step 6
Day 1-42

- Rescue Plan
- PA prepares proposals for a Rescue Plan

Process (Cont.)

Step 7
Day 49

- Convene Meetings of Members and Creditors
- Approved by 60% in number/majority in value of a class

Step 8
Day 49 - 70

- Creditor Objection
- Creditor has 21 days to file an objection with the relevant Court

Step 9
Day 70

- Rescue Plan Takes Effect
- In the absence of an objection, the Rescue Plan becomes binding 21 days after it is filed in the CRO

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

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?

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

Questions?



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