

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

The Anatomy of a Transformative Scheme of Arrangement

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Michael Murphy
Partner
+353 1 611 9142
Michael.Murphy
@mccannfitzgerald.com



David O'Dea
Senior Associate
+353 1 607 1737
David.ODea
@mccannfitzgerald.com

The Anatomy of a Transformative Scheme of Arrangement

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Michael Murphy, Partner and David O'Dea, Senior Associate

MCCANN FITZGERALD



Rise of the Irish Creditor Scheme of Arrangement

- Provisions have been on the statute books for over 50 years
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- Traditionally have been used for member schemes of arrangement to facilitate a re-organisation of equity capital
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- Examinership has been the go-to creditor restructuring mechanism in Ireland
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- Since Brexit there has been a significant increase in international corporates and their advisors looking to Ireland and the restructuring tools that are available
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- Particular interest in the scheme of arrangement provisions. Almost identical to the English scheme provisions
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- Has resulted in a number of landmark creditor scheme of arrangements being successfully launched in Ireland – Ballantyne Re, Asia Pulp and Paper, NAC

What is a Scheme of Arrangement?

- Can be used to facilitate a broad range of possible compromises or arrangements between either a company and its members or between a company and its creditors
- Compared to other mechanisms it is less prescribed as to what it can and cannot do
- At a high level, once the scheme terms are launched there are three main stages:

1.

Either the directors or the High Court convene the meeting of creditors

2.

The creditors meet to consider and vote on the scheme terms – majority in number and 75% in value of **each** class must vote in favour

3.

The High Court sanctions the scheme

- Creditors who abstained from voting or voted against at the creditor meeting can object at the sanction hearing. Usual grounds are: not fair and equitable; creditor classes composed incorrectly; or key information withheld

Key features to note

- It is not a collective process where all of the assets and liabilities of the company come under the control of a court or insolvency officer in order to carry out a whole-sale restructuring
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- There is no automatic creditor moratorium. You can however apply to court to stay legal proceedings – this does not prevent the appointment of a receiver
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- Unlike Examinership:
 - no time limits or constraints as to when the process has to complete – beneficial for a complex cross-border group restructuring
 - it is **not** an insolvency process – no consequential destruction in value
 - the company proposing the scheme does not need to be a going-concern.
 - it **can** facilitate third party releases.

Nordic Aviation Capital DAC (NAC)



The world's largest regional aircraft lessor and fifth largest commercial aircraft lessor



490 aircraft leased to **75** customers in **50** countries



138 subsidiaries operating in **16** jurisdictions



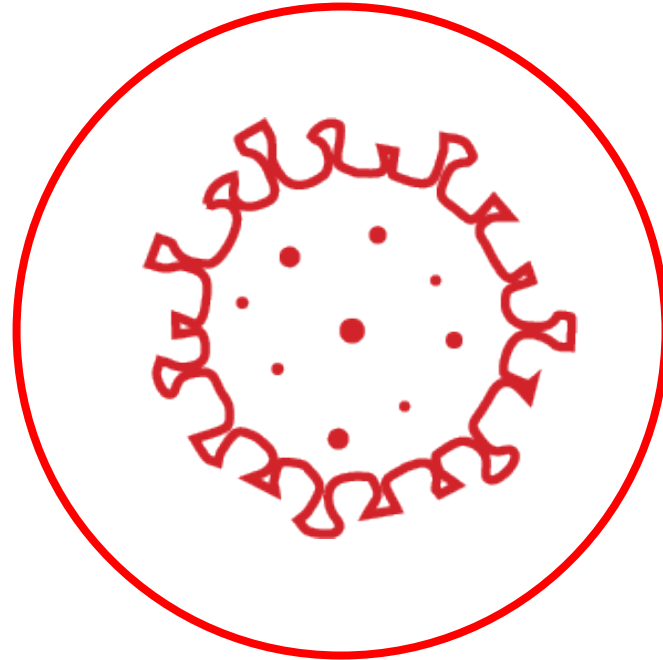
211 personnel in offices located in Ireland, Denmark, Singapore, Hong Kong, Canada and the United States



us \$6 billion of debt (US\$3.7 billion unsecured and US\$2.3 billion secured – **85** different Lenders)

COVID-19

- April 2020 to May 2020
23% to 20% of billed amounts received
- Significant pressure on cash reserves
and aircraft valuations
- Cash-flow deficit end of July 2020
- Going concern status at financial year
end 30 June 2020
- Financial covenants tested quarterly
- Consequences of breach



NAC Group Response

- Solution needed to (1) maximise liquidity (2) relieve covenant pressure (3) provide time to consider long-term solution
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- Mandate from client to McCann FitzGerald, Clifford Chance and Rothschild was to seek a waiver and deferral of covenant breaches and principal and interest payments for 12 months
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- Bi-lateral arrangements not feasible – US\$6 billion of debt with 85 different lenders
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- Irish scheme of arrangement needed – one global document
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- Parent company, NAC DAC as guarantor of the debt, proposed the scheme and then extended the relief to each of the NAC subsidiaries by way of third party release

Scheme Terms

- **6 months** – deferral of interest
- **9 months** – deferral of capital amortisation
- **12 months** – waiver of covenants and deferral of capital redemptions
- Margin uplift for waiver period
- Increased reporting requirement and independent director
- Equity injection of US\$60 million
- Aircraft acquisition rules
- Security

Timetable

Dates	Event
9 June 2020	Application made to transfer proceedings to the Commercial Court. Convening hearing. Orders made providing for remote participation by scheme creditors
24 June 2020	Original scheme meeting of secured and unsecured creditor classes
9 July 2020	Adjourned scheme meetings
10 July 2020	Directions hearing
21 July 2020	Sanction hearing
22 July 2020	Scheme effective date
24 July 2020	US Chapter 15 Order recognising the Scheme



Conclusion

- Insolvency default- scheme of arrangement?
- Comprehensive restructuring tool kit
- Proven track record
- Tension with US/UK advisors?
- Reform

Questions?



Michael Murphy
Partner
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