

Examinership



A Second Chance for Companies in Distress

The economic impact of the spread of the Covid-19 Coronavirus across the globe has resulted in the issue of business rescue coming back onto centre stage in Ireland.

Examinership was introduced in Ireland in 1990. To date, it has resulted in the rescue of well over 1,000 companies and tens of thousands of jobs. The current crisis has led to an urgent requirement now for the preservation, rescue and restructuring of viable Irish businesses.

What is Examinership?

Examinership is a corporate recovery mechanism for companies that are insolvent. It is suitable for businesses that have a 'reasonable prospect of survival' if certain conditions are met. These typically include securing investment or refinancing as well as the writing down of creditor balances.

In the current Covid-19 crisis, virtually every business in Ireland has been touched by the economic calamity that is unfolding. The obvious sectors worst impacted by the advent of the crisis are retail, tourism and hospitality, sectors that are closely aligned in Ireland. Many businesses cannot afford to continue to trade and when they do re-open, will do so with significant debts owed to creditors. Such debts will be a huge barrier to those entities returning to normal trading.

Liquidation by its very nature has quite devastating results for business owners, creditors and employees alike, crystallizing losses and resulting in a loss of goodwill.

The primary purpose of this corporate rescue mechanism is:

“to save otherwise viable trading companies and the underlying employment those entities support, for the benefit of the community”.

For examinership to succeed, creditors must fare at least as well as they would on a liquidation. In many cases, creditors who would typically receive nothing on winding up will secure a dividend and preserve the trading relationship with their customer under an examinership. Therefore, the upside from the process is quite significant.

Practical Steps:

In order to secure examinership, a company shall prepare:

1. The Independent Expert's Report – typically prepared by the company's auditor confirming the company is viable.
2. A Petition to Court seeking the Examiner's appointment.

Once filed in Court, the business gains breathing space and comprehensive protection.

At the Court hearing for the appointment of the Examiner, creditors have an opportunity to be heard. The protection of the Court lasts for up to 100 days. During this time, no creditor is entitled to institute any proceedings against the company; a secured creditor cannot appoint a receiver or a liquidator to the company and creditors cannot repossess stock or other assets that are subject to retention of title. In the meantime, the Company continues operating without disruption. All historic liabilities incurred before the petition are frozen. Ongoing supply of goods and services are paid for as normal from the continued trade.

The Examiner, unlike a Receiver or Liquidator, does not take over the executive powers of the company: *control remains with the Directors.*

Scheme of Arrangement

The Examiner's function is to examine the affairs of the Company and then formulate a "Scheme of Arrangement" ("Scheme") in relation to the liabilities of the company as at the date it applied for Court protection.

This process is done in close consultation with the management, shareholders and interested parties of the company. The Scheme, when formulated is presented to the various classes of creditors of the Company so they can express their views as to its acceptability. The Examiner then reports the outcome of these meetings to the Court who will then decide whether the Scheme has sufficient support to warrant an Order to put the Scheme into effect. Once this Order is made, the Scheme becomes binding on all creditors and the business is restored to solvency.

Baker Tilly are market leaders in the examinership process, having acted in over 250 cases.

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