



Restructuring & Insolvency

The COVID-19 health crisis presents immediate and severe financial challenges for businesses across Ireland, the United Kingdom and worldwide. Without doubt, there will be wide-ranging implications in the medium to long term for businesses across a large variety of markets and industries. We expect a significant increase in workouts, debt restructurings, rescue financings and forbearances over the coming months. Our dedicated Restructuring and Insolvency team is here to help and is made up of experienced specialists who are available to offer pragmatic advice and innovative, tailor-made commercial solutions to all businesses and stakeholders in these uncertain times.

Our Expertise

Our restructuring and insolvency lawyers advise domestic and international stakeholders of distressed businesses.

Our experience encompasses acting for debtors experiencing financial difficulties, lender groups, agents to syndicated lending groups, commercial creditors, insolvency practitioners, creditors' committees, financial institutions, private equity sponsors, boards of directors, shareholders, investors and financial advisers.

We advise on issues such as directors' duties, due diligence, contingency planning, debt buy-backs, debt trading, litigation and schemes of arrangements.

We have acted on some of the largest loan portfolio transactions in the Irish market on both buy-side and sell-side. We are the leading Irish law firm on loan portfolio transactions and have in-depth experience on dealing with the life cycle of debt from NPLs to re-performing loan trades.

- **Obligations of directors, shareholders and creditors in financial difficulty**
- **Work outs and rescues**
- **Court restructurings and schemes of arrangement**
- **Debt restructurings**
- **Distressed acquisitions/sales**
- **Insolvency procedures**
- **Enforcement actions**
- **All associated litigation**

We have prepared a high-level overview of the key insolvency processes available for distressed companies in Ireland in this document. Where businesses are operated as sole traders, partnerships and co-operatives some significant differences arise. We have extensive experience in advising in relation to such business structures.

Key Corporate Insolvency Processes in Ireland

Examinership

A court-supervised process lasting up to 100 days during which a company is insulated from creditor action. An insolvency practitioner (the "Examiner") is tasked with securing investment and preparing a scheme of arrangement.

Initiation: a petition is presented to the High Court by the company, directors, creditors or certain shareholders. The petition must propose an Examiner to be appointed and be accompanied by a report of an independent expert. The company having a reasonable prospect of survival is a key requirement which must be demonstrated.

Creditor approval: the Examiners scheme must be approved by in excess of 50% (in value and number) of any one impaired class of creditor. Once approved by any one class of creditor, the scheme can be presented for court approval. The court may then confirm, modify or reject the scheme.

Advantages: company can trade during process, high success rate, speedy process and procedural certainty, moratorium on actions against the company, process can be initiated pre-emptively where it is likely that debts will not be met.

Disadvantages: available to companies with their COMI ('centre of main interests') in Ireland only, company must be a going-concern before it can avail of the process, investment will likely dilute or eliminate existing shareholding.

Global Equivalent: often compared to US Chapter 11 proceedings and administration in the UK

Timelines: c. 3 months.

Used By:



Scheme of Arrangement (Part 9, CA 2014)

A court approved compromise or arrangement between a company, its creditors and / or shareholders that can be used to effect a broad range of compromises or arrangements, including solvent corporate re-organisations, mergers or de-mergers and insolvent restructurings.

Initiation: the company prepares scheme proposals for its creditors.

Creditor approval: Scheme must be approved by a resolution obtaining a majority in number of creditors representing at least 75% in value of the creditors in each class of creditor. Separate meetings to approve are required for each class of creditors. An alternative form of arrangement can be availed of under section 676 of the Companies Act 2014 where a company is in the course of, or about to be wound up, which does not need court approval - an arrangement binding on creditors. To use this the company must pass a special resolution and 75% in number and value of the creditors must approve the arrangement.

Advantages: there is no requirement that the company must be a going-concern, no restricted time period within which the company must put into effect the scheme, generally considered a cost-effective procedure, strictly speaking a scheme is not an insolvency process and so can be appealing as it can help to avoid the stigma of insolvency, suitable for complex debt restructuring.

Disadvantages: high creditor approval threshold, convening of various meetings requires logistical management.

Global Equivalent: often compared to UK scheme of arrangement.

Timelines: c. 2 - 3 months.

Used by:



Liquidation

An insolvent company can be wound up by the High Court (a **compulsory liquidation**) or by way of a shareholders' resolution followed by a creditors' meeting (**creditors' voluntary liquidation**). The general criteria required to liquidate an insolvent company is that the company is unable to pay its debts as they fall due or the value of the company's assets is less than its liabilities (including contingent and prospective liabilities).

Initiation: in a compulsory liquidation, a petition is presented to the court by the company, directors, a contributory, a creditor or the Director of Corporate Enforcement, seeking the winding up of the company and appointment of a liquidator. In a creditors' voluntary liquidation, the directors of the company usually initiate this process in a general meeting.

Creditor approval: In a compulsory liquidation, the petition may be dismissed, adjourned or granted by the court. In a creator's voluntary liquidation, the directors are required to convene a meeting of the creditors of the company. At least ten days' notice of the meeting must be given to creditors.

Advantages: clear legislative process, full resolution of company affairs on completion. **Disadvantages:** not suitable for rescues, can be protracted and costly.

Global Equivalent: similar to UK liquidation processes.

Timelines: the length of the process can vary significantly depending on the complexity of the liquidation and the assets to be realised. Routine liquidations can be completed within a year, complex liquidations can take significantly longer.

Used by:



Receivership

it is possible to restructure businesses by way of a pre-pack receivership, in which the sale of a distressed company's assets and business can be negotiated before it enters into receivership and executed shortly after the receiver is appointed.

Initiation: secured senior lender will usually initiate and drive process.

Creditor approval: varies from case to case but usually will require the consent of all secured creditors, as they will need to release their security over secured assets. In practice, this process is usually led by secured creditor(s).

Advantages: cost and time effective, the senior creditors negotiate and settle the sale documents with a buyer so that the business assets can pass immediately upon enforcement -this avoids material interruption to trading and a protracted insolvency process. Particularly useful in a business where a high degree of customer confidence is required. Insolvent company is left behind along with junior/unsecured creditors.

Disadvantages: unsecured creditors often do not realise that a pre-pack sale is going to happen, and have no opportunity to protect their interests. At present, there is no current legislative basis or detailed guidelines for a prepackaged sale in Ireland and thus they are perceived as opaque arrangements.

Global Equivalent: follows similar process to that used in UK pre-packaged administrations.

Timelines: the length of the process can vary significantly depending on the assets to be realised, it can be completed as soon as receiver is appointed but statutory time limits and notice requirements may attach to sale of assets to a connected party.

Used By:



Recent Experience

 <p>Represented the Dixons Group in the orderly wind down of its mobile telephone business in Ireland</p>	 <p>Advising the liquidator of Coast Stores Ireland (in liquidation)</p>	 <p>Advised Irish Auditing and Accounting Supervisory Authority in its new remit under the Companies Act 2014 in relation to the regulation of liquidators</p>
 <p>Advising a number of high-profile US private equity funds in some of the largest loan portfolio acquisitions in the Irish market. This involves advising on all aspects of the acquisition, including providing advices around possible enforcement options and risk analysis</p>	 <p>Represented Invesco Real Estate Fund in the examinership of Debenhams Retail (Ireland) Limited</p>	 <p>Lead advisor to Permanent TSB on its loan deleveraging programme which has resulted in the reduction of PTSB's NPE ratio to 7% from a high of 26%. The €2.1bn Project Glas was the largest non-performing loan sale of its kind in the Irish market</p>
 <p>Advised SCISYS Group on CGI Group Holdings Europe's £79.8m takeover bid and its implementation by way of a court sanctioned scheme of arrangement</p>	 <p>Advised the McGettigan Group in securing an investment from Broadhaven to re-organise the group, incorporate a treasury function and refinance loans held by Oaktree as well as discharging costs of a related examinership and discharge all related creditors</p>	 <p>Advising the joint liquidators of the Waypoint Helicopter Leasing Group</p>
<p>Advising on multiple large scale receivership projects, involving numerous portfolios of residential and mixed use commercial investment properties for multiple lenders, arising from distressed loans with a combined value of €3 billion</p>	 <p>Advising the liquidator of the Doonbeg group</p>	 <p>Acted as lead counsel to SteriPack Group on loan facilities provided by AIB as part of a complex overall group restructuring and growth recapitalisation by Great Point Partners, a private investment firm focused on the health care industry</p>

Our Team

Our team comprises of restructuring and insolvency specialists and finance, corporate, tax, regulatory, commercial, intellectual property, employment, real estate and dispute resolution experts who provide tailored solutions for all restructuring, insolvency and contentious matters.



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What Others Say

Our Restructuring & Insolvency Team

"very knowledgeable and has a can-do attitude when working with banks and compromising with borrowers."

Chambers & Partners, 2020

Our Financial Services Team

"The team are excellent to work with, innovative and experienced, well connected and responsive."

Legal 500, 2020

Our Restructuring & Insolvency Team

Tier 1 Team

Legal 500, 2020

Our Financial Services Team

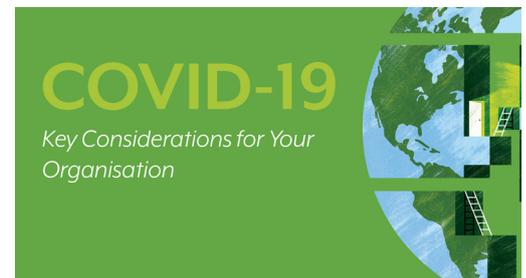
Tier 1 Team

Legal 500, 2020

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- [COVID-19: Impact for the Banking Sector](#)
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- [Show Me the Money: COVID-19 and Cash Collections](#)
- [Projects on Lockdown: Impact of COVID-19 Restrictions](#)
- [COVID-19 and the Management of Companies](#)
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