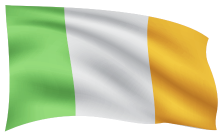
SCARP: An update on the Irish rescue process two years after launch



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In July 2021, the Companies (Rescue Process for Small and Micro Companies) Act 2021 was adopted in Ireland. It introduced the Small Company Administrative Rescue Process ("SCARP") for small and micro companies to permit restructuring of debts within 70 days.

To qualify, a company must be insolvent or likely to be insolvent, but have a viable business. It must also satisfy two of the three criteria set out in the act to qualify as a small or micro company, namely:

- Turnover not exceeding €12m;
- Balance Sheet not exceeding €6m;
- Fewer than 50 employees.

The company must not be in liquidation or have had an Examiner or Process Advisor ("**PA**") appointed in the last five years. The company must have sufficient resources to trade during the SCARP process.

Process Advisor

In order to commence a SCARP, a company must appoint a PA. Persons who qualify for appointment as PA include:

- An accountant or solicitor holding a practising certificate;
- A member of a professional body recognised by IASSA (Irish Auditing & Accounting Supervisory Authority);
- A person qualified under the laws of another EEA State; and
- A person with practical experience of windings-up (subject to Supervisory Authority approval).

The process

1. An eligible company provides a PA with a sworn Statement of Affairs;
2. The PA prepares a report confirming if the company has a reasonable prospect of survival and the conditions required to allow the company to continue trading;
3. Within 7 days of receiving the report, the board passes a resolution to appoint the PA;
4. Following the appointment, the PA sends/publishes requisite notices within 2 working days, including to creditors requesting claims details (for unresponsive creditors, a mechanism is used to estimate claims).
5. Excludable creditors must notify intention to opt out, if applicable, by day 14;
6. The PA has 42 days to prepare rescue plan proposals and 49 days to hold meetings of members and creditors.
7. If 60% of creditors in number of at least one impaired class of creditors which represents a majority in value of the claims in that class pass the rescue plan, it becomes binding on all creditors within 21 days of notice being filed with Court (unless an objection is filed on prescribed grounds). If an objection is filed, the Court will consider and approve it unless it is inequitable or unfairly prejudicial.
8. The PA's appointment ends where either the rescue plan is not approved by the relevant meetings or, if approved, it takes effect.

Court applications

In a SCARP, there is no automatic stay on proceedings. The PA can apply to Court for a stay.

There are various reasons why it may be necessary for the PA to bring proceedings such as uncertainty regarding the exercise by the PA of their powers and seeking a determination of a particular issue. Proceedings can be brought in camera if the Court thinks it necessary.

Activity

As of January 2023, the Revenue Commissioners had been notified of 22 SCARPs. Two of those entities did not have Revenue (tax administration) debt. In 18 of the remaining cases, Revenue included its debt in the plan and it was excluded in two cases. Five of the applications were withdrawn due to an inability to formulate a plan and two cases had objections from other creditors.

Conclusion

Given the increases in the cost of living, the difficulties certain businesses are having in recruiting and retaining staff and the rising energy costs, it is likely that there will be an increase in the number of SCARPs in the coming months. The key for business owners facing financial difficulties is to act early and take professional advice. ■

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