

Ireland: Irish Court makes key ruling in Ladbrokes examinership

This decision provides strong support to examiners using their commercial judgment and helps to clarify their role in restructuring companies in Ireland via examinership, Ireland's main corporate rescue mechanism.

Warren Baxter of Deloitte comments on the implications for Irish companies looking to restructure following the High Court's ruling in the examinership of Ladbrokes' Irish business.

The background

In April 2015 Ken Fennell, a partner in Deloitte's Restructuring Services department, was appointed examiner of Ladbrokes' Irish companies ("Ladbrokes Ireland"). Ladbrokes Ireland is part of the British-based Ladbroke group, one of world's leading betting & gaming businesses. At the time of the appointment Ladbrokes Ireland had approximately 200 betting shops and 840 employees.

The court case arose during the examinership process when one of the potential investors, BoyleSports, was refused access to commercially sensitive information about Ladbroke Ireland's business by the examiner. BoyleSports is also one of Ladbrokes Ireland main competitors. BoyleSports challenged the examiner's refusal to provide it with this information by taking the matter to the High Court, contending that they needed it in order to make a proper investment proposal.

The examiner argued that his decision was correct because the business of Ladbrokes Ireland could be irreparably damaged by the provision of such commercially sensitive information to competitors and that, as examiner, he was obliged to preserve the value of the company's assets.



The outcome

The High Court decided in favour of the examiner and, in his judgment, Mr Justice Cregan held that the examiner was not obliged to release the information requested by BoyleSports. Mr Justice Cregan stated that the decision by the examiner to withhold this information was within the scope of his commercial judgment and that the court would only intervene in such circumstances where it considered an examiner's decision to be so *"utterly unreasonable and absurd that no reasonable man would have done it"*. Mr Justice Cregan then concluded that the decision taken by the examiner was clearly neither unreasonable nor absurd.

The Implications

The decision is to be welcomed as it clarifies the extent to which the court will consider an examiner's commercial decisions. It notes that the examiner is appointed by the High Court itself and that, as Mr Justice Kelly stated in the Eircom examinership case, it *"presupposes that the appointment of such a person will involve the court giving the appointment to somebody who has particular knowledge and expertise"*.

The judgment also sets out further comments by Mr Justice

Kelly in the Eircom case where he states that *"the court has neither the expertise, nor indeed the backup to make commercial decisions"* as the court's role in examinerships is primarily to supervise and not to decide legal issues. He goes on to say, that in areas of commercial judgment, *"the court's scope for intervention is very limited"*.

The court's decision allowed the examiner to complete the restructuring of Ladbrokes Ireland and conclude the examinership with the successful investor, Ladbroke UK Ltd, the parent company of Ladbrokes Ireland by:

- achieving big reductions in its annual rent costs on a large number of its shop leases;
- disclaiming and surrendering leases in a number of its unprofitable shops; and
- achieving very significant annual cost savings.

The case has wide implications for future Irish examinerships as it provides struggling companies with the reassurance and certainty they need that their commercially sensitive information can be properly protected during the process. This, in turn, will encourage Irish companies to use what is a very effective tool to restructure their businesses.



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